

**FEDERAL COURT OF APPEAL**

BETWEEN:

**INTERNATIONAL RELIEF FUND FOR THE  
AFFLICTED AND THE NEEDY (CANADA)**

Appellant

and

**MINISTER OF NATIONAL REVENUE**

Respondent

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**RESPONDENT'S MEMORANDUM OF FACT AND LAW**

(Pursuant to Rule 346 of the *Federal Court Rules*)

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1. Contrary to its 2004 undertaking to meet requirements for its continued registration as a charity, the International Relief Fund for the Afflicted and Needy (Canada) continued to contravene the *Income Tax Act* between 2005 and 2010. The Minister of National Revenue issued a notice of intention to revoke IRFAN's registration as it had failed to maintain and provide its records, lacked control and direction over its resources, acted contrary to public policy, issued improper receipts, and failed to properly file returns. The Minister properly confirmed IRFAN's revocation. The Minister accorded IRFAN procedural fairness, considered its objection with an open mind, and did not infringe the *Charter*.

### **PART I - STATEMENT OF FACTS**

2. IRFAN's statement of facts contain allegations that are not supported, are inaccurate, or contain argument.<sup>1</sup> The respondent restates the facts as follows.

#### **i. Background to IRFAN**

3. Prior to his role as General Manager and CEO of IRFAN, Rassem Abdul-Majid was the director and president of Jerusalem Fund for Human Services (JFHS). Since 1992, Mr. Abdul-Majid had been trying, unsuccessfully, to register JFHS as a charity in Canada.<sup>2</sup>
4. In September 1993, the Palestinian Liberation Organization and Israel signed the Oslo Accords, pursuant to which Israel withdrew from parts of the West Bank and Gaza, and the Palestinian National Authority ("PA") was created. Hamas, which emerged from the Palestinian branch of the Muslim Brotherhood, rejected the agreement. The following month, members of the Palestine Committee of the

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<sup>1</sup> App.'s Memorandum of Fact and Law, unsupported: at 2 to 9, 2<sup>nd</sup> sentence of para 6, 7, 3<sup>rd</sup> sentence of para 8, 9, 3<sup>rd</sup> and 4<sup>th</sup> sentence of para 10, 11, 2<sup>nd</sup> sentence of para 12, 3<sup>rd</sup> sentence of para 13; 1<sup>st</sup> sentence of para 16, para 21; inaccurate: at 4 to 5, paras 14, 16, 17, 2<sup>nd</sup> and 3<sup>rd</sup> sentence of para 18, para 19, para 23; contain argument at 5, para 17, 1<sup>st</sup> sentence of para 20; 4<sup>th</sup> sentence of para 24; para 29.

<sup>2</sup> Book of Materials Referenced by the Respondent (Resp.'s Book), vol 4, tab 123 at 419-420, tab 126, vol 13, tab 473 at 2831-2837, tab 483 at 2877-2898; Book of Materials Referenced by the Appellant (App.'s Book), vol 1, tab G4, tab M at 2617.

Muslim Brotherhood met in Philadelphia and laid out the path that it would take to support Hamas.<sup>3</sup>

5. Mr. Abdul-Majid, also known as Abu Bassem,<sup>4</sup> attended the “Philadelphia Conference”. He spoke about JFHS during discussions about charities in the international fundraising effort to support Hamas. Mr. Bassem was introduced as the person in charge of the charity in Canada and referred to “Al Quds (which means Jerusalem) Committee for Human Services.” Mr. Bassem told the Committee that the Canadian government would contribute money to his organization, a dollar for a dollar, but that the government kept returning the application. Mr. Bassem said that the government agreed to look into the registration and that if they managed to raise money in Canada, they would be used in charity projects. Mr. Bassem said that from January to June 1993, his organization had raised \$214,000. This amount was consistent with JFHS’ deposits for the year.<sup>5</sup>
6. JFHS and Holy Land Foundation (HLF), an American charity formerly called Occupied Land Fund,<sup>6</sup> had close ties. JFHS’ promotional materials represented that it was formerly called “Occupied Land Fund”. One of JFHS’ incorporating directors sent a letter on OLF letterhead enclosing funds as a “contribution to support the jihad in Palestine,” and represented that he was “in charge of the fund in Canada.” JFHS represented that it cooperated with HLF and knew Haytham Meghawri, one of HLF’s key leaders, very well. JFHS worked with HLF, sent funds to HLF, and used HLF orphan sponsorship forms. In a 1992 letter, Mr. Meghawri stated that he sent requests about Ramallah Zakat orphans to “the

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<sup>3</sup> Resp.’s Book, vol 4, tab 126 at 445-446, vol 9, tab 398 at 91-99; App.’s Book, vol 10, tab M at 2608-2611.

<sup>4</sup> Resp.’s Book, vol 2, tab 31 at 241, vol 4, tab 123 at 419, tab 126 at 445, vol 11, tab 444 at 2519, tab 448, tab 453 at 2590, vol 14, tab 498 at 3203, vol 16, tab 555 at 3645, tab 567 at 3782, tab 568 at 3783, vol 17, tab 601 at 4035, 4039, vol 18, tab 609 at 4118, tab 616 at 4242, vol 26, tab 745 at 238.

<sup>5</sup> Resp.’s Book, vol 4, tab 126 at 445-446, vol 9, tabs 404-405, vol 14, tab 502 at 3233; App.’s Book, vol 10, tab M at 2605.

<sup>6</sup> Resp.’s Book, vol 4, tab 126 at 446, vol 9, tabs 395, 398, vol 10, tab 416; App.’s Book, vol 1, tab G4 at 300.

Canada branch.” In 1994, Mr. Abdel-Majid visited JFHS’ funded projects in Gaza, one of which acknowledged the receipt of funds from the “Holy Land Foundation – Canada”.<sup>7</sup>

7. JFHS and the Canada Revenue Agency communicated between 1993 and 1998 but, in March 1998, the CRA advised Mr. Abdel-Majid that it was concerned, *inter alia*, that JFHS was operating as part of a network providing support for Hamas.<sup>8</sup> In June 1998, IRFAN applied for charitable status.<sup>9</sup>
8. JFHS was a founding member of the Union of Good,<sup>10</sup> an organization created by Hamas leadership in 2000 to transfer funds to Hamas. It acts as a broker for Hamas by facilitating financial transfers between a web of charitable organizations and Hamas-controlled organizations in the West Bank and Gaza. The Union of Good was listed as an unlawful association by Israel in 2002 and by the U.S. in 2008. Its founder promotes the use of zakat funds for waging jihad to free “Muslim lands”.<sup>11</sup>
9. Communication between the CRA and JFHS continued until July 2000 when the CRA, *inter alia*, provided JFHS with documentation showing that the latter had not severed its ties with HLF in 1993 as it had represented.<sup>12</sup> In February 2001, IRFAN and JFHS passed resolutions to “consolidate[e]” efforts and “join forces”. Pursuant thereto, JFHS transferred its assets to IRFAN for \$1.00, including all its monies and its lease, Mr. Abdel-Majid’s employment with JFHS was terminated

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<sup>7</sup> Resp.’s Book, vol 3, tab 123 at 419 (fn), tab 126 at 447, vol 9, tabs 395 and 399, vol 10, tab 421 at 2340.1, vol 11, tabs 437, 439-442, 444, 446, 447, 450, 453; App.’s Book, vol 1, tab G4.

<sup>8</sup> Resp.’s Book, vol 3, tab 123 at 447-448, vol 13, tab 473 at 2831-2837, tabs 483-488; App.’s Book, vol 1, tab G3 and tab G4 at 282-293.

<sup>9</sup> Resp.’s Book, vol 1, tab 2, tab 126 at 448; App.’s Book, vol 10, tab K2.

<sup>10</sup> Resp.’s Book, vol 3, tab 123 at 431-432, vol 12, tabs 460-461; App.’s Book, vol 10, tab M at 2615, 2632.

<sup>11</sup> Resp.’s Book, vol 3, tabs 123 at 431-432, 194, 205, vol 6, tabs 340-341, vol 12, tabs 458, 462-463; App.’s Book, vol 2, tab G6 at 360, vol 10, tab M at 2615.

<sup>12</sup> Resp.’s Book, vol 3, tab 126 at 448, vol 13, tab 489 at 3068-3071, vol 14, tab 491 at 3124-3128, tab 492 at 3133-3135, tab 494 at 3168-3169, 3173-3174; App.’s Book, vol 1, tab G4 at 307-314.

and he was hired by IRFAN, and JFHS was to cease operations on March 31, 2001.<sup>13</sup> IRFAN's directors understood that JFHS was merged into IRFAN.<sup>14</sup>

10. IRFAN did not report to the CD that the operations of IRFAN and JFHS were consolidated in 2001. IRFAN publicly represented that it was a continuation of JFHS. IRFAN and JFHS shared key operational personnel and premises, a foreign office address, a Canadian and a foreign telephone number and a Hapoalim bank account. In 2006, IRFAN's counsel referred to JFHS as IRFAN's "predecessor."<sup>15</sup>

**ii. 2002 audit**

11. In 2001, CRA began monitoring IRFAN as it was known to have links to JFHS.<sup>16</sup>
12. The Charities Directorate (CD) of the CRA audited IRFAN's 2002 year and determined there to be several areas of concern, including IRFAN's preparation of charitable receipts, its reporting of total tax receipted gifts on its return, its lack of direction and control over the distribution of funds and goods via foreign organizations, and its funding of organizations with alleged ties to Hamas.<sup>17</sup>
13. The CRA did not revoke IRFAN's registration as it represented to the CRA that it would take corrective measures and that it had "never knowingly dealt with Hamas, nor with organizations known or credibly alleged to be controlled or directed by Hamas." In November 2004, IRFAN undertook to maintain proper books and records, establish direction and control over resources, develop clearer guidelines and contracts, issue receipts for gifts in kind based on appraisals, and conduct due diligence "to avoid future dealings and misapplication of resources to unlawful organizations" prior to entering into agreements with foreign agencies,

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<sup>13</sup> Resp.'s Book, vol 3, tab 123 at 416, tab 126 at 449, vol 13, tab 468; App.'s Book, vol 1, tab G1 at 139, 169-171, 188-189, vol 10, tab M at 2617-2619.

<sup>14</sup> Resp.'s Book, vol 13, tab 469; App.'s Book, vol 10, tab M at 2619, tab N at 2651.

<sup>15</sup> Resp.'s Book, vol 2, tab 33 at 254, tab 43 at 337, 341, vol 3, tab 123 at 419, vol 13, tabs 466, 468, 470 at 2828, 474, 476 at 2847, tabs 480, 481, vol 18, tab 606 at 4065; App.'s Book, vol 1, tab G1 at 139, 161-171, 188-189, tab G2 at 204, vol 10, tab M at 2617-2619.

<sup>16</sup> App.'s Book, vol 8, tab J28 at 1592.

<sup>17</sup> Resp.'s Book, vol 3, tab 123 at 418, vol 1, tab 15, vol 4, tab 223 at 675; App.'s Book, vol 1, tab G1 at 133-165, vol 10, tab M at 2606-2608, tab N at 2649, 2653-2654.

which would include monitoring government and media sources to systematically obtain updates on the status of organizations.<sup>18</sup>

**iii. The 2005 to 2009 audit**

14. On February 29, 2008, the CD sought to commence a follow-up audit. This was delayed at IRFAN's request and subsequently impeded by its failure to keep records in Canada and to comply with requests for records and a requirement for information. IRFAN's failure to comply contravened ss. 230(2), 231.1(1) and 231.2(1) of the *Act* and ultimately resulted in a 1 year suspension of its receipting privileges, beginning April 13, 2010. The suspension was upheld on objection.<sup>19</sup>

**iv. IRFAN's books and records**

15. IRFAN did not keep copies of all its foreign bank accounts and supporting documentation at an address in Canada, nor was it aware of how to access the ledgers of its foreign office that were stored on a server in Ramallah. When it eventually provided copies of the ledgers, those for 2005 to 2006 were provided in Excel format and contained numerous illegible entries, and those for 2007 to 2009 were provided in portable data format (PDF) with truncated columns.<sup>20</sup>
16. IRFAN's customized donation software impacted its ability to maintain verifiable records. Contrary to an earlier statement and following the CD's review of its software, IRFAN acknowledged that the software had permitted it to delete 7,029 records. Issues with this software also resulted in 97 missing receipt numbers.<sup>21</sup>
17. Prompted by the audit, IRFAN sought to create and obtain supporting documentation for projects funded between 2005 and 2009. It obtained some material from its Ramallah office. It also emailed 8 foreign entities to urgently

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<sup>18</sup> Resp.'s Book, vol 1, tabs 27-28; App.'s Book, vol 1, tab G at 105, tab G1, vol 10, tab M at 2607-2608, tab N at 2649-2653.

<sup>19</sup> Resp.'s Book, vol 3, tabs 73, 92, 96, 99, 219, vol 5, tabs 283-284; App.'s Book, vol 10, tab N at 2650, 2658.

<sup>20</sup> Resp.'s Book, vol 4, tabs 242-243; App.'s Book, vol 1, tab G at 107-109, tab G2, vol 10, tab L3 at 2510, tab M at 2620-2624, tab N at 2650, 2655, 2658.

<sup>21</sup> Resp.'s Book, vol 4, tabs 242, 243; App.'s Book, vol 1 tab G at 107-109, vol 10 tab L3 at 2510, tab M at 2621-2622, 2635-2636, tab N at 2650, 2655.

request they provide signed agency agreements, memoranda of understanding, and/or project reports for 65 projects funded between 2005 and 2009. Some of the agreements provided were not authored until May 2010. IRFAN did not provide supporting documentation for 51 of the 119 projects it funded.<sup>22</sup>

18. In response to the CD's request for a copy of all minutes of meetings, IRFAN initially produced records for only 7 meetings for the 5 year period under review. In January 2010, the CD explained to IRFAN the importance of providing meeting minutes in an audit. No further minutes were provided until the CD's analysis of IRFAN's electronic records revealed the existence of a further 28 meetings. IRFAN refused the CD access to a folder marked Meeting Minutes, which included board of director meeting minutes from 2003 to 2010, agendas for future meetings, and modified minutes of meetings. IRFAN did not produce any minutes from its foreign advisory committee which was to provide recommendations for projects to IRFAN's Board of Directors.<sup>23</sup>
19. Claiming them to be personal, IRFAN refused the CD access to folders marked "My Beloved Palestine" and "My Beloved Lebanon" on the computer used by its Secretary/Treasurer. Other than 300 photographs and some incoming emails, IRFAN refused access to all other records stored on the computer used by its general manager, Mr. Abdel-Majid, alleging they were "Solicitor-Client Privileged". Mr. Abdel-Majid is not a lawyer. At least two of the incoming emails on Mr. Abdel-Majid's computer concerned funding requests from the Al-Ihsan Charitable Society, an entity listed in 2005 under Canada's *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*. While the record of one of the incoming emails reflects that it was forwarded from

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<sup>22</sup> Resp.'s Book, vol 4, tabs 244, 245, 247, 248, excerpts of 249-277; App.'s Book, vol 1, tab G at 107-113, vol 2, tab G5, vol 10, tab L3 at 2510, tab M at 2621-2626, tab N at 2656, 2658.

<sup>23</sup> Resp.'s Book, vol 3, tab 78, vol 5, tab 283 at 1113, tab 284 at 1136-1138, vol 1, tab 27 at 162, 192; App.'s Book, vol 1, tab G, at 109, vol 10, tab L1 at 2487-2489, tab L3 at 2510, tab L6 at 2530, tab M at 2622-2624, tab N at 2650-2655.



Mr. Abdel-Majid's email account, the CD was unable to determine the identity of the recipient as IRFAN refused to provide Mr. Abdel-Majid's out-going emails.<sup>24</sup>

20. IRFAN did not disclose the existence of 13 foreign bank accounts and only admitted their existence following receipt of a requirement for information in which the CD disclosed its knowledge of 5 such accounts. IRFAN did not provide complete bank statements and cancelled cheques for 6 of its 8 Canadian bank accounts. IRFAN told the CD that three of its Canadian accounts had been closed on December 13, 2006, but a third party requirement revealed that IRFAN conducted nearly \$1 million in transactions from these accounts after that date.<sup>25</sup>

**v. Non-compliance with s. 149.1 of the *Income Tax Act***

21. The CD informed IRFAN that it was of the view that its resources were not devoted to activities that were charitable in law.<sup>26</sup>
22. In 2005 and 2006, IRFAN transferred \$1 million to foreign bank accounts over which its Canadian personnel had no signing authority. The account statements were kept abroad. In August 2006, IRFAN became aware that its West Bank office manager had misappropriated over \$100,000 from its foreign accounts, over which he held signing authority.<sup>27</sup> IRFAN did not terminate his employment until April 2007 or remove his signing authority over 4 accounts until January 2008. In December 2006, IRFAN's Board agreed to require cheques issued by the Ramallah office to be co-signed by Mr. Abdel-Majid but this was not done.<sup>28</sup>
23. Despite undertaking to do so, there was no documentary evidence that IRFAN observed publicly available adverse findings on any of its funding recipients, conducted checks with Israeli authorities, ceased relationships with entities raided

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<sup>24</sup> Resp.'s Book, vol 3, tab 103, tab 291 (excerpt); App.'s Book, vol 1, tab G at 109-110, vol 10, tab L3 at 2510, tab M at 2622-2624, tab N at 2650, 2656.

<sup>25</sup> Resp.'s Book, vol 3, tab 99 at 391-394; App.'s Book, vol 1, tab G2 at 202-206, 245-246, vol 10, tab L3 at 2510, tab M at 2622, tab N at 2656.

<sup>26</sup> App.'s Book, vol 1, tab G at 114-125, vol 2, tab G7, vol 10, tab M at 2601, 2626-2635.

<sup>27</sup> Resp.'s Book, vol 5, tab 302 (except), tabs 303, 304, 306 (excerpt), 314; App.'s Book, vol 1, tab G at 113-114, vol 10, tab M at 2626, 2631.

<sup>28</sup> App.'s Book, vol 1, tab G1 at 113-114, vol 10, tab L3 at 2511, tab M at 2626, tab N at 2650, 2656, 2658; Resp.'s Book, vol 5, tab 314 at 1317.

or listed as unlawful by Israel, or avoided partner relationships with Hamas controlled Ministries. In 2009, IRFAN represented that it would “set up a new Excel Spreadsheet titled ‘Regular Due Diligence Verification Schedule – Year 2009’” but there was no evidence it followed this practice in a meaningful way. IRFAN did produce a thin, spiral bound notebook of Mr. Abdel-Majid, containing notes on a limited number of projects but only a small subset of these reflected anything that could be considered due diligence.<sup>29</sup>

24. IRFAN represents that it was not aware that on December 30, 2004, it was declared an unlawful association in Israel, or that Israel issued seizure and confiscation orders against it in 2007 and 2008, respectively.<sup>30</sup>
25. Hamas-associated charity organizations are part of Hamas’ social infrastructure and cannot be separated from its military and political wings. According to Hamas, the political level is the face of Hamas, but it needs the three parts to survive. In 2007, the PA reorganized the entire zakat committee structure in the West Bank in an effort to take control of the Hamas social infrastructure. Hamas correctly interpreted the PA’s measures as an attack on its charitable institutions. Hamas acknowledged that “of course Salah and other Islamic foundations are identified with us” and stated that Hamas sees “[humanitarian work] as a means of extending the life span of the intifada.”<sup>31</sup>
26. In 2008, a U.S. court convicted HLF of providing material support to Hamas. To show the breadth of the conspiracy, the prosecution named 246 unindicted co-conspirators. The prosecution alleged that “Jersualem [sic] Fund, aka IRFAN”

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<sup>29</sup> Resp.’s Book, vol 25, tabs 729-734, vol 26, 740-742, 747; App.’s Book, vol 1, tab G at 118-124, vol 2, tabs G7, G9, vol 10, tab L3 at 2511, tab M at 2623-2632, tab N at 2651, 2654-2656, 2658; App.’s Book, vol 1, tab G at 105 and 120 to 121, tab G1 at 168, 183-184, vol 10, tab M at 2606, 2608, 2629.

<sup>30</sup> Resp.’s Book, vol 6, tabs 340-341; App.’s Book, vol 2, tab G2 at 226, tab G8, vol 7, tab J at 1713, 1717, 1718, vol 10, tab N at 2649.

<sup>31</sup> Resp.’s Book, vol 3, tab 123 at 430-432, tab 193, vol 7, tab 360, vol 8, tabs 368 at 1688, 375 at 1726-1729, 377 at 1803-1804, 383 at 1870, 384, 385 at 1899-1901, 388, 389 (see in particular 2014-2015, 2032), vol 9, tab 398 at 2001-2025, 2032, vol 11, tabs 435, 449; App.’s Book, vol 2, tab G6, vol 10, tab M at 2608-2617.

was among unindicted co-conspirators that “are and/or were part of the Global HAMAS financing mechanism.”<sup>32</sup>

27. IRFAN, and before it, JFHS, provided funding to the Al-Salah Islamic Society, the Jenin Zakat Committee, the Islamic Charitable Society of Hebron and the Nablus Zakat Committee, which were all controlled by Hamas and were part of its social infrastructure.<sup>33</sup> The CD expressed concerns over these organizations to JFHS in 1998 and 1999 and again to IRFAN in 2004.<sup>34</sup> Fawaz Hamad of the Jenin Zakat Committee, who first established JFHS’ office in Jerusalem, later became a Hamas military leader.<sup>35</sup> Ahmed Al Kurd, director of the Al-Salah Islamic Society, was listed as one of JFHS’ 3 contact people, was considered to be a top Hamas leader in Gaza in 2003, and later became a member of the Hamas cabinet. Mr. Al Kurd and Al-Salah Islamic Committee were each designated by the U.S. government as a Specially Designated National and Blocked Person in 2007.<sup>36</sup>
28. Between 2005 and 2009, IRFAN provided over \$750,000 to organizations that were part of Hamas’ social infrastructure.<sup>37</sup> One notable example is the Ramallah

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<sup>32</sup> Resp.’s Book, vol 3, tab 123 at 418-419, tabs 395, 397, 398. Mr. Baker and four other individuals were also convicted; The list was unsealed by the Fifth Circuit Court of Appeal (Resp.’s Book, vol 9, tab 395 at 1961-1973); App.’s Book, vol 2, tab G at 105-106, tab G2 at 212-213, vol 10, tab M at 2605-2606.

<sup>33</sup> Resp.’s Book, vol 3, tab 123 at 418-419, 431, vol 6, tab 341, vol 9, tab 403, vol 10, tabs 416, 418, 419, 426, vol 11, tabs 432, 435, vol 12, tabs 457-463, vol 15, tabs 530, 543. IRFAN’s funding continued until 2003 with respect to Jenin Zakat, 2002 with respect to Al-Salah and ICSH, and 2004 with respect to Nablus Zakat. App.’s Book, vol 1, tab G2 at 263-264, vol 2, tab G7, vol 10, tab M at 2611, 2616.

<sup>34</sup> Resp.’s Book, vol 1, tab 15, vol 13, tab 488; App.’s Book, vol 1, tab G1 at 133-163, tab G4 at 282-293, 294-309.

<sup>35</sup> Resp.’s Book, vol 3, tab 126 at 446-447, vol 14, tabs 490, 497, vol 22, tab 690; App.’s Book, vol 1, tab G4 at 286, 290-291, vol 2, tab G7 at 259.

<sup>36</sup> Resp.’s Book, vol 3, tab 126 at 446-447, vol 6, tabs 332-334, 336, vol 7, tab 365, vol 8, tab 388, vol 13, tab 474, vol 15, tabs 529, 530; App.’s Book, vol 1, tab G4 at 286, 287, 290-291, tab G7 at 635, 671-672, 675, tab G9 at 575.

<sup>37</sup> The Ramallah Zakat Committee, Al Khidmat Foundation, Al Muntada Al Tahqafi Cultural Forum, Arab Medical Union, Al Lod Charitable Society, Tubas Charitable Society, Inash El Ursa, and Al Khansa Women’s Society. Resp.’s Book, vol 3, tab 123 at 424-437, vol 9, tab 403, vol 6, tab 341, vol 23, tabs 707-714, vol 17, tabs 596-597, vol 18, tabs 605-611; vol 12, tab 459, vol 18, tab 614-616, vol 20, tab

Zakat Committee, which IRFAN continued to fund after 2004 despite representing to the CD that it had ceased activities with this entity in response to the 2002 audit. In March, 1998, the Minister expressed concerns to JFHS about its funding of the Committee. In 2002 and 2004, respectively, Israel listed the Committee as unlawful and confiscated its bank account. Evidence from the HLF trial, including wiretap evidence from the Philadelphia Conference, documents seized from the offices of the Palestinian National Authority Intelligence Services, a letter from Mr. Baker of HLF and the testimony of a legal advisor for the Israeli Security Agency, identified the Committee as belonging to Hamas and the prosecutors named the Committee as an unindicted co-conspirator.<sup>38</sup>

29. In April 2006, Jamaat-i-Islami set up a fund to help Hamas and appealed for donations, saying that helping Hamas was a jihad (religious duty). In May 2006, IRFAN sent US\$50,000 to Al Khidmat Foundation (Pakistan), the social welfare wing of Jamaat-i-Islami, and in August, 2006, Al Khidmat presented a cheque for \$6 million rupees (CDN\$112,140) to a Hamas political leader.<sup>39</sup>
30. The head of the Al Muntada Al Tahqafi Cultural Forum, Mohammed Attoun, was elected as a Hamas representative in January 2006. Along with Mr. Atoun, IRFAN's West Bank office manager was a director of the Forum. Israeli officials raided the Forum in March, 2006. Despite this, IRFAN provided funding to the Forum from April to June, 2006.<sup>40</sup>
31. Between 2005 and 2009, IRFAN also provided funding and resources to organizations in Lebanon that had connections to Hamas, through the Union of Good, and to the Lebanese branch of the Muslim Brotherhood. Dar al-Fatwa,

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639-643, vol 23, tab 715-719, vol 20, tabs 656-661, vol 17, tabs 593-595; App.'s Book, vol 2, tab G9, tabs G6, G7, vol 10, tab M at 2598, 2624-2632, tab N at 2651.

<sup>38</sup> Resp.'s Book, vol 3, tab 123 at 433-435, vol 9, tabs 397, 403, vol 10, tabs 416, 418, 419, 426, vol 11, tab 432, 435 at 2419-2421, 2428, 2466-2467, vol 23, tab 707; App.'s Book, vol 1, tab G1 at 159, tab G4 at 290, vol 2, tab G7 at 367, 372, 374, tab G8.

<sup>39</sup> Resp.'s Book, vol 17, tab 599 at 3885-3898, tabs 596-604; App.'s Book, vol 2, tab G7 at 379, tab G9, vol 10, tab M at 2629-2630.

<sup>40</sup> Resp.'s Book, vol 3, tab 123 at 436, vol 11, tab 348 at 1566, tabs 605-611; App.'s Book, vol 2, tab G7 at 367-369; vol 10, tab M at 2629-2630.

Zakat Fund is a member of the Union of Good<sup>41</sup> and was listed as an unlawful association by Israel in 2008.<sup>42</sup> It is an umbrella organization that includes the Islamic Medical Association and Humanitarian Relief for Development. IRFAN provided over \$13 million to Dar al Fatwa, Zakat Fund and the Islamic Medical Association. Rami Dergham, president of the Islamic Medical Association, was asked to sign “agency agreements” post facto with IRFAN. He was nominated in the 2009 parliamentary elections to represent the Lebanese branch of the Muslim Brotherhood, whose platform advocated using all forms of resistance including jihad.<sup>43</sup>

32. From 2006 to 2009, IRFAN transferred over \$772,000 in funds and resources to Hamas Ministries.<sup>44</sup>

**vi. Fundraising**

33. IRFAN repeatedly misrepresented its fundraising activities to the public. Despite soliciting urgent and immediate donations to ostensibly provide relief in the wake of specified disasters, IRFAN did not use the funds raised for their stated purposes. Following two such campaigns, IRFAN falsely claimed in its 2006 calendar that relief had been provided to the victims. In total, \$581,000 in donations raised for disaster relief were co-mingled in IRFAN’s general operating fund with no indication in its audited financial statements that such funds were reserved for future use.<sup>45</sup>

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<sup>41</sup> Resp.’s Book, vol 3, tab 123 at 431-432, vol 5, tabs 292-294, 296, 298, vol 12, tab 458 at 2737, tab 460-461, vol 24, tab 727 at 5256-5262; App.’s record, vol 2, tab G7 at 368-369, 371, 373, vol 10, tab M at 2630; and electronic record Issue 2 III Con to Union of Good p. 64.

<sup>42</sup> Resp.’s Book, vol 6, tabs 340 at 1486, tab 341 at 1524; App.’s Book, vol 2, tab G7 at 369-371, tab G8.

<sup>43</sup> Resp.’s Book, vol 21, tabs 671, 676 at 4819, vol 24, tabs 720, 722, 724-725, 727 at 5250-5258, 5286, 5288; App.’s Book, vol 10, tab L3 at 2511, tab N at 2650, tab M at 2630.

<sup>44</sup> Resp.’s Book, vol 3, tab 123 at 427-438, vol 16, tabs 566-582, tabs 617-638, vol 22, tab 693-700, vol 25, tab 738 at 5471-5474; App.’s Book, vol 2, G7 at 364-367, tab G9 at 575, vol 10, tab M at 2629-2635.

<sup>45</sup> Resp.’s Book, vol 27, tabs 753-756, excerpt of tabs 758, 761, 762, 768 and 769; App.’s Book, vol 10, tab N at 2651, vol 1 tab G at 125, vol 10, Tab M at 2632-2636.

**vii. Receipting**

34. IRFAN's receipting practices did not comply with the *Income Tax Regulations*. It issued 1) receipts totalling \$441,867 for gifts in kind that did not describe the property donated; 2) 18 receipts over 3 years totalling \$96,239 to individuals rather than the corporate donor; 3) 132 receipts for 2 years totalling \$150,620 that failed to show that they were duplicates and display a unique serial number; and 4) 39 receipts totalling \$17,600 that did not identify a donor.<sup>46</sup>
35. IRFAN receipted donations on behalf of the Guyana Islamic Trust (GIT), a non-registered organization domiciled outside of Canada. In 2007, IRFAN agreed to facilitate GIT's Ramadan collection in Canada, offering to supply it with 5 (tax) receipt booklets. IRFAN also offered to have its representative attend an event organized by GIT in Toronto in September 2007. IRFAN's records suggest that the event raised \$54,611, and that it issued 67 receipts totalling \$27,720. Three months later, GIT provided IRFAN with a proposal for a 2008 project sponsorship totalling \$56,000. In early 2008, GIT repeatedly pressed IRFAN to transfer funds to it, expressing its dissatisfaction with the transfer to date and stating it had no project reports as it had not received funding. In April 2008, IRFAN sent a first instalment to be used for "humanitarian relief". In 2010, mid-audit, IRFAN sent an urgent email requesting the signing of an agreement for a 2008 project.<sup>47</sup>

**viii. IRFAN's returns**

36. IRFAN's returns for the 2005 to 2008 years contained numerous and significant errors. There were errors in the journal entries and ledger accounts for each year between 2005 and 2008. IRFAN's 2005 and 2006 returns did not reconcile with its financial statements for these years. No satisfactory explanation or supporting documentation was provided in respect of other reported amounts, including 1) unsubstantiated project expenses and a discrepancy of \$876,891 in gifts from

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<sup>46</sup> Resp.'s Book, vol 3, tab 139 at 450, vol 27, tabs 770, 776-781, 782, 784, 786-789; App.'s Book, vol 1, tab G at 125-126, vol 10, tab L3 at 2511, tab N at 2651, 2657, 2659, vol 10, tab M at 2635-2636.

<sup>47</sup> Resp.'s Book, vol 27, tab 790-794, 796; App.'s Book, vol 1 tab G at 126-127, vol 10, tab L3 at 2511, tab M at 2636-2637, tab N at 2652, 2657.

other charities in its 2005 return, 2) incorrect statements of revenues and expenses and an unsubstantiated claim that it operated in Sri Lanka and Indonesia in its 2006 return; 3) incorrect reporting of total eligible gifts and an unsubstantiated claim that \$125,000 directed to its lawyer, in trust, was a project expense in its 2008 return. Despite knowing it had filed a draft and erroneous version of its 2007 return, IRFAN did not file a finalized 2007 return with the CRA.<sup>48</sup>

**ix. Notice of intention to revoke**

37. Upon completing the 2005 to 2009 audit, the CD determined that IRFAN had 1) failed to comply with or contravened sections 230 to 231.5 of the *Act*; 2) ceased to comply with the *Act*'s requirements for its continued registration; 3) issued a receipt for a gift otherwise than in accordance with the *Act* and its *Regulations*, or that contained false information; and 4) failed to file an information return as required by the *Act*. By letter dated December 14, 2010, the CD informed IRFAN of its conclusions, detailed in 9 appendices, and invited its representations.<sup>49</sup>
38. IRFAN provided representations on February 22, 2011. For reasons set out in the Notice of Intention to Revoke, and its two appendices, the CD found the representations lacked satisfactory explanation. The Notice revoking IRFAN's registration was published in the Canada Gazette on April 9, 2011.<sup>50</sup>

**x. Process at objection and confirmation**

39. In March 2011, IRFAN filed an objection and requested a copy of the audit file. Ms. Landry, Manager, Tax and Charities Appeals Directorate (Appeals), sent IRFAN a copy of the audit report and advised that further documents could be provided if needed to ensure that IRFAN fully understood the basis of the decision. On April 28, 2011, IRFAN's counsel advised the appeals officer assigned to the file that it had made a request under the *Access to Information Act*. The officer advised counsel that if there was something specific IRFAN required

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<sup>48</sup> Resp.'s Book, vol 3, tab 139 at 475, vol 28, tabs 797-826, App.'s Book, vol 1, tab G at 127-128, G 10, vol 10, tab L3 at 2511, tab M at 2638-2639, tab N at 2652, 2659.

<sup>49</sup> App.'s Book, vols 1-2, Tab G 1-10, at 104-582, vol 10, tab N at 2650.

<sup>50</sup> Resp.'s Book, vol 3, tab 139, App.'s Book, vol 10, tab L2 at 2502-2509, tab M at 2597-2648, vols 1-2, tabs G 1-10.

to clarify the issues, she would review the file for such information. The officer provided IRFAN's counsel with the CD's log of action.<sup>51</sup>

40. To the extent that the objection repeated the February 22, 2011 representations, Appeals reviewed and concurred with the CD's findings that such explanations were unsatisfactory. Appeals further determined that IRFAN's additional materials and arguments did not adequately address the CD's findings that it had failed to comply with the *Act*. On August 28, 2012, Appeals advised IRFAN that, based upon the review, it was reasonable to issue the Notice and invited questions and representations prior to a final decision.<sup>52</sup>
41. In October 2012, IRFAN's counsel and its directors each provided submissions, amounting to over 730 pages. At the end of its written submissions, IRFAN requested complete disclosure but specified no area of the Notice that required clarification. Appeals reviewed these submissions and determined that they did not establish that IRFAN had maintained direction and control over its resources and activities, or that it had exercised due diligence. Appeals further determined that the submissions did not adequately explain IRFAN's failure to maintain and provide its books and records, its funding of organizations that were part of the Hamas social infrastructure, its improper receipting, or the errors and deficiencies which led to its filing of misleading and unreliable tax returns. The officer and Ms. Landry signed an objection report that summarized the evidence, arguments, and the decision to confirm the Notice.<sup>53</sup>
42. On December 11, 2012, the Minister confirmed the Notice as IRFAN 1) had ceased to comply with the requirements of the *Act* for its continued registration as it did not maintain direction and control over the use of its resources and failed to implement due diligence procedures; 2) failed to file a return as required under the *Act* or a *Regulation* for reason that its 2005 to 2008 returns contained a number of

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<sup>51</sup> App.'s Book, vol 3, tab H at 583-584, Resp.'s Book, vol 3, tabs 223, 227, 234.

<sup>52</sup> App.'s Book, vols 3-6, tabs H 1-55, I1-35, at 583-1704, vol 10, tab N, at 2653-2657, tab L3 at 2510-2512.

<sup>53</sup> App.'s Book, vols. 7-9, tab J1-J66 at 1705-2432, vol 10, tab L4 at 2513-2517, tab LN at 2649-2659.



discrepancies; 3) issued receipts otherwise than in accordance with the *Act* and the *Regulations* or that contain false information; and 4) failed to comply with or contravened sections 230 to 231.5 of the *Act*, as it did not maintain and provide proper books and records to demonstrate its compliance with the *Act*.<sup>54</sup>

## **PART II - POINTS IN ISSUE**

43. The issues are whether:

- a. the Minister accorded IRFAN procedural fairness;
- b. the Minister's decision confirming the revocation was reasonable;
- c. the Minister's decision demonstrates improper discretion, close-mindedness, a reasonable apprehension of bias or bias; and
- d. the decision violates s. 2 and s. 15 of the *Canadian Charter of Rights and Freedoms*.

## **PART III - SUBMISSIONS**

### **A. Standard of Review**

44. In an appeal from the Minister's decision confirming a notice to revoke a charity's registration, questions of fact or mixed fact and law are reviewable on a standard of reasonableness. Extrinsic questions of law are determined on a standard of correctness.<sup>55</sup>

### **B. IRFAN was accorded procedural fairness**

45. The Minister accorded IRFAN procedural fairness by providing it with an opportunity to make submissions and by making it aware of the case to be met.<sup>56</sup>
46. Reasonableness is concerned with the "justification, transparency and intelligibility within the decision-making process."<sup>57</sup> Where these attributes are satisfied by the reasons of a decision-maker, the decision will normally be upheld without further inquiry. If the reasons fall short of that, the question becomes whether, when read in light of the evidence and the nature of the statutory task, the

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<sup>54</sup> App.'s Book, vol 1, tab C at 23-24.

<sup>55</sup> *Prescient Foundation v Canada*, 2013 FCA 120 at para 12.

<sup>56</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 23.

<sup>57</sup> *Dunsmuir v New Brunswick*, 2008 SCC 9.

reasons adequately explain the bases of the decision. Reasons need not be perfect or comprehensive to be adequate.<sup>58</sup> Only in the absence of adequate reasons must the Court ask whether the outcome falls within a range of decisions reasonably open to the decision-maker having regard to the law and the facts.<sup>59</sup>

47. The confirmation and the letter that set out Appeals' concerns and invited questions and representations, were adequate to explain the bases for the decision. The adequacy of the reasons is apparent as IRFAN sought no clarification of the proposal letter yet responded in length. Even if this were not so, any inadequacy in the reasons is remedied by the detailed considerations set out in the objection report provided to IRFAN in this appeal.<sup>60</sup> Moreover, the outcome falls within a range of decisions reasonably open to the Minister given the facts and law.
48. The Minister did not act unfairly in not providing the working papers during the audit or objection as their substance pertaining to the grounds for revocation was communicated to IRFAN in correspondence. The test is whether IRFAN was fully informed of the case to be met and was given a full opportunity to respond.<sup>61</sup> It was. The CD's letter of December 2010 and the Notice detailed its findings, including those pertaining to HLF documents,<sup>62</sup> IRFAN's promotional videos,<sup>63</sup> IRFAN's connection to JFHS, and JFHS's connection to the Union of Good.<sup>64</sup> IRFAN filed an objection comprised of over 1100 pages of argument and evidence. In early 2011, Appeals provided IRFAN with the audit report and activity log and offered to provide any further documents necessary to clarify the Notice. IRFAN made no such request until it filed its final submissions in October 2012. Having submitted further argument and evidence, exceeding 730 pages,

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<sup>58</sup> *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 18.

<sup>59</sup> *Dunsmuir*, *supra* note 57 at para 47.

<sup>60</sup> *Sherry v Canada*, 2011 FC 1208 at para 24; App.'s Book, vol 10, tab N at 2649-2659.

<sup>61</sup> *Canadian Committee for the Tel Aviv Foundation*, *supra* note 56 at paras 23-24.

<sup>62</sup> Resp.'s Book, vol 3, tabs 123, 126, 396. In the administrative fairness letter (tab 123), the Minister also provided IRFAN with the court website where all of the exhibits were available.

<sup>63</sup> Resp.'s Book, vol 3, tab 123. The videos speak for themselves. See, for example, *Gaza Press*, CD-ROM, item 556 at 0:00 to 2:30 and 13:11 to 13:28.

<sup>64</sup> Resp.'s Book, vol 3, tabs 123, 126; App.'s Book, vol 10 tab M at 2615-2632.

IRFAN concluded its representations with a request for “complete disclosure”. Given the timing of the request which followed its extensive submissions, the failure to specify any particular ground requiring clarification, and the detailed bases for the revocation provided in the CRA’s correspondence, it cannot be said that IRFAN was not fully informed of the case it had to meet nor denied a chance to fully respond.<sup>65</sup>

49. The Minister’s powers under the *Act* were properly exercised during the review of IRFAN’s objection and the issuing of the confirmation. Subsection 165(3) required the Minister to consider IRFAN’s objection and to vacate, confirm or vary the decision and notify it in writing. It did not require that the person considering the objection be the same as the person authorized to issue the confirmation. In any event, there is no evidence that Ms. Landry did not consider the objection prior to confirming. To the contrary, the officer advised IRFAN’s counsel on October 30, 2012 that the file was with Ms. Landry for review. Ms. Landry signed the objection report the week prior to issuing the confirmation.
50. Moreover, the Minister’s processes were followed exactly and did not result in a breach of natural justice. The Minister has instructed that, prior to confirming, vacating, or varying under ss. 165(3), an appeals officer will be assigned to: 1) conduct an impartial review of the decision; 2) ensure that the charity understands the reasons behind the decision; and 3) analyze the arguments raised in the objection.<sup>66</sup> Ms. Landry advised IRFAN that such steps would be taken by an appeals officer. The officer did exactly that. In so doing, the officer prepared an objection report which Ms. Landry was entitled to rely on when exercising the power under s.165(3) delegated to her as “Manager, Tax and Charities Appeals Directorate” under of the *Act*. Ms. Landry subsequently confirmed the Notice.<sup>67</sup>

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<sup>65</sup> *Canadian Committee for the Tel Aviv Foundation*, *supra* note 56 at paras 23-24; App.’s Book, vol 10, tab L4 at 2516.

<sup>66</sup> “Registered Charities Newsletter No. 28” (Summer 2007).

<sup>67</sup> Resp.’s Book, vol 3, tab 234; *Income Tax Act*, s 220(2.01); *1185740 Ontario Ltd v Canada*, [2000] FCJ No 541 at para 21, 2001 FCA 193.

51. The rules of procedural fairness do not require IRFAN to be given an opportunity to make submissions to Ms. Landry prior to her issuing the confirmation. IRFAN had ample opportunity to provide all necessary information to the Minister in the course of its objection. The rules of procedural fairness did not entitle it to further comment before the decision was made.<sup>68</sup>

**C. The Minister properly confirmed the proposal to revoke**

52. IRFAN has not met its onus of demonstrating that the Minister erred in her decision or unfairly exercised her discretion.<sup>69</sup> The Minister properly interpreted the *Act*, and her conclusion that there were four independent grounds for revoking IRFAN's registration was reasonable.

**(i) IRFAN failed to maintain and provide books and records**

53. The Minister did not err in confirming the revocation under s. 168(1)(e) as IRFAN did not maintain proper records or provide records in a voluntary and timely way.
54. In light of the significant tax advantages available to them, registered charities must maintain records containing information that allows the Minister to verify compliance with the *Act*.<sup>70</sup> Subsection 230(2) requires a charity to maintain, at an address in Canada, its records containing, *inter alia*, information to enable the Minister to determine if there are grounds for revocation and to verify donations made to it. Where a charity keeps records electronically, s. 230(4.1) requires they be in an electronically readable format.
55. In spite of the *Act*'s requirements and IRFAN's undertaking, IRFAN did not keep a substantial portion of its books and records in Canada, a breach aggravated by the extent to which it carried on activities overseas and used foreign bank accounts. This, coupled with its failure to maintain records, such as agency agreements and project reports, on an ongoing basis, contravened s. 230(2).

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<sup>68</sup> *Sherry*, *supra* note 60 at para 18.

<sup>69</sup> *Canadian Committee for the Tel Aviv Foundation*, *supra* note 56 at paras 25-27.

<sup>70</sup> *Prescient*, *supra* note 55 at para 45.

56. The numerous problems with IRFAN's customized donation software made it reasonable to conclude that IRFAN failed to maintain books and records with information that would allow the Minister to verify donations. IRFAN's software lacked adequate controls and was laden with technical problems: it had permitted record deletion and duplicate receipting, and created gaps in sequential receipting. Such deficiencies permitted at least 97 receipts to go unaccounted for and created the possibility that donations could be claimed twice.
57. Contrary to s. 230(4.1), IRFAN's records were not kept in an electronically readable format that would allow the Minister to determine if there were grounds for revocation. The CRA publications concerning electronic records explain that they must be useable copies capable of being processed and analyzed on CRA software. Despite the *Act*'s requirements and the guidance available, records produced from IRFAN's Ramallah office were illegible and truncated such that the Minister could not verify the information recorded.<sup>71</sup>
58. IRFAN frustrated the Minister's lawful exercise of her inspection power by failing to provide requested Canadian and foreign bank records and meetings minutes voluntarily or in a timely manner, and by refusing access to electronic files. The Minister's power under s. 231.1 allows her to examine IRFAN's records and "any document ...of any other person that relates or may relate to the information that is, or should be, in [IRFAN's] books and records". As the *Act* broadly defines "record", s. 231.1 clearly extends to meeting minutes and banking information. As "document" includes a "record" for purposes of s. 231.1, it also extends to IRFAN's computer records entitled Palestine and Lebanon, as they may relate to information in IRFAN's records even if they were personal to the Treasurer. IRFAN should have permitted the CD to examine the files on the computer used by its general manager. Given the incoming emails from employees and entities seeking funding, it is highly improbable that none of the out-going emails, or other files on this computer, would have pertained to IRFAN's daily operations.

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<sup>71</sup> Resp.'s Book, vol 4, tab 238.

59. IRFAN not only failed to maintain proper records and provide those requested, but it also made misleading representations about outstanding records and admitted the existence of other records only after their discovery by the CD. As noted by this Court, a failure to maintain records coupled with a failure to voluntarily and promptly disclose information is a very serious matter.<sup>72</sup> The Minister's decision to confirm the revocation in light of IRFAN's failures to maintain proper records and produce those within its power is well founded in fact and law.

**(ii) IRFAN ceased to comply with the requirements for registration under the *Act***

60. The Minister did not err in confirming that the Notice was properly issued pursuant to s.168(1)(b) as IRFAN had ceased to comply with the requirements for registration under the *Act*. Those requirements are found in s. 149.1(1), which defines a charitable organization as one that, *inter alia*, devotes all of its resources to charitable activities carried on by the organization itself.<sup>73</sup> As IRFAN did not establish that it devotes its resources to charitable activities that it carried on, the Minister determined that IRFAN failed to demonstrate that it met the test for continued registration under the *Act*.<sup>74</sup>
61. The Minister properly concluded that IRFAN had failed to establish direction and control over its resources contrary to the *Act*'s requirements. Where a charity carries on activities in a foreign country, it must establish by credible evidence that it effectively authorized, controlled and monitored any acts purported to be its own.<sup>75</sup> IRFAN has not done so. The lack of control over its foreign bank accounts and the absence of supporting documentation for 42% of the projects it allegedly funded is strongly indicative of IRFAN's failure to authorize, direct and control these activities. The post-dated documents put forward by IRFAN cannot

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<sup>72</sup> *Prescient*, *supra* note 55 at para 56.

<sup>73</sup> S. 149.1(1) of the *Act*, definition of 'charitable organization'. See also s. 149.1(6), which provides that a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

<sup>74</sup> App.'s Book, vol 1, tab 19 at 248-249.

<sup>75</sup> *Canadian Magen David Adom for Israel v Her Majesty the Queen*, 2002 DTC 7353 at paras 30, 74 (FCA); *Lepletot v Canada*, 2006 FCA 128 at paras 5-6.

establish the existence of an agency agreement prior to their execution. Absent IRFAN's bare assertions, there is no evidence that such agreements could not have been executed in a timely manner, or that there otherwise existed an agency relationship, or that IRFAN monitored and controlled such projects. This alone justifies revocation.

62. The *Act*'s requirement that a charitable organization conduct its own activities does not differentiate between those operating inside versus outside of Canada. Any charitable organization that uses an agent to conduct activities must demonstrate direction and control over its resources. This is consistent with Appeals' conclusion that a registered charity is expected to maintain the same degree of control over the use of its resources outside of Canada as it would if its activities were conducted in Canada. It is also consistent with the CRA's published position.<sup>76</sup>
63. The Minister properly determined that IRFAN failed to devote all of its resources to charitable activities. Exclusively charitable activities are those that directly further charitable purposes and not other, non-charitable, purposes. It is the purpose in furtherance of which an activity is carried out that determines whether the activity is of a charitable nature. Purposes that offend public policy that has been officially declared and implemented are not charitable.<sup>77</sup>
64. It is contrary to an officially declared and implemented public policy to make resources available to Hamas, directly or indirectly. Canada's *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* the *Charities Registration (Security Information) Act*, the *Anti-terrorism Act* and the *Criminal Code* make it clear that it is contrary to Canadian public policy to make available any resources, directly or indirectly, to a listed entity or to an entity

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<sup>76</sup> *Canadian Magen David Adom for Israel v Her Majesty the Queen*, supra note 75 at para 30; CG-004 "Using an Intermediary to Carry out a Charity's Activities within Canada".

<sup>77</sup> *Vancouver Society of Immigrant & Visible Minority Women v Canada*, [1999] 1 SCR 10 at para 152; *Everywoman's Health Centre Society (1988) v MNR* [1991] 2 CTC 320 (FCA) at paras 15-16; *Canadian Magen David*, supra note 76 at paras 57-60.

engaged in terrorist activities.<sup>78</sup> Canada listed Hamas in 2002 and considers it to be a terrorist group. Canada remained steadfast in this policy after Hamas formed the government in 2006.<sup>79</sup>

65. It was reasonable to conclude that IRFAN's provision of resources to organizations that were part of Hamas' social infrastructure was not charitable in law.<sup>80</sup> At a minimum, by virtue of its 2004 undertaking, IRFAN should have been aware that Hamas' social infrastructure included charitable organizations. Contrary to that earlier undertaking, IRFAN presented no evidence of having conducted meaningful due diligence prior to funding foreign entities. There was ample evidence to conclude that IRFAN provided funds to organizations that were part of Hamas' social infrastructure, and transferred gifts in kind to organizations that were members of the Union of Good, which facilitated financial transfers between a web of charitable organizations and Hamas-controlled organizations in the West Bank and Gaza, and provided funds to Hamas Ministries.<sup>81</sup> As noted by this Court, where there is evidence in the record to support the grounds of the decision, it is not this Court's role to re-weigh the evidence.<sup>82</sup>
66. The Minister placed appropriate weight on sources from Israel<sup>83</sup> and the HLF trial, including the listing of IRFAN on the prosecution's list of unindicted co-conspirators. The Minister also considered vast amounts of information from other sources, including open source research, information found on websites of IRFAN's partners, information provided by IRFAN and JFHS, American sources, non-Israeli Middle Eastern sources,<sup>84</sup> a variety of academic sources and the Al

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<sup>78</sup> Resp.'s Book, , vol 6, tabs 316-317; *Charities Registration (Security Information) Act*, SC 2001, c 41, s 113, section 2, *Anti-terrorism Act*, SC 2001, c 41, preamble, and *Criminal Code*, RSC 1985, c C-46, Part II.1; App.'s Book, vol 10, tab N at 2656.

<sup>79</sup> Resp.'s Book, vol 6, tabs 321-325, 327, vol 26, tab 746.

<sup>80</sup> App.'s Book, vo. 10, tab N at 2656.

<sup>81</sup> For example, Resp.'s Book, vol 3, tab 193, vol 7, tabs 342-353, 355-364, vol 8, tabs 368, 373, 381, 383-385, 387-389, vol 9, tabs 395, 398-407, vol 10, tabs 408-414, 416, vol 11, tabs 435, 449, vol 12, tabs 458-459, 462-463.

<sup>82</sup> *World Job and Food Bank Inc v Canada*, 2013 FCA 65 at para 5.

<sup>83</sup> Including the Intelligence and Terrorism Information Center at the Center for Special Studies.

<sup>84</sup> Resp.'s Book, vol 7, tabs 345-346, 349, 363-364, vol 11, tabs 432.



Aqsa Foundation decision in Germany.<sup>85</sup> The Minister was entitled to consider the fact that the prosecution in the HLF trial named IRFAN as an unindicted co-conspirator in an unsealed list, a purpose of which was to show the breadth of the conspiracy.<sup>86</sup>

67. IRFAN further failed to meet the requirement that all of its resources be devoted to charitable activities by reason of its deceptive fundraising. Deceptive fundraising harms the public, and its confidence in the charitable sector, when funds solicited for charitable purposes are misdirected. IRFAN repeatedly misrepresented to the public the nature of its work and its beneficiaries. Despite urgently soliciting funds for the victims of seven natural disasters over a four year period, there is no evidence that any of the \$580,000 raised was, or would ever be, received by the victims. Despite this, IRFAN represented in its 2006 calendar that it had sent emergency relief to earthquake and tsunami victims. Its public return also misrepresented that it had provided aid to Sri Lanka and Indonesia.<sup>87</sup>
68. The Minister properly determined that it was reasonable to issue the Notice pursuant to s. 168(1)(b) in light of the numerous and significant ways in which IRFAN failed to devote all of its resources to charitable activities carried on by it.

**(iii) IRFAN's receipting procedures contravened the *Act***

69. It was reasonable for the Minister to confirm the revocation pursuant to s. 168(1)(d) as IRFAN's receipting practices contravened the *Act* and *Regulations*.
70. IRFAN's receipting practices breached several regulations, resulting in \$96,000 of illegitimate donation entitlements and the potential for more. *Regulation* 3501(1)(g) requires every official donation receipt to show, *inter alia*, the name of the donor. IRFAN's contravened this regulation by knowingly issuing 18 receipts to two individuals, rather than the corporate donor, over a three year period, creating over \$96,000 of improper donation entitlements. It further contravened

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<sup>85</sup> Resp.'s Book vol 7, tabs 357, vol 8, tabs 371, 373, 378, 383, App.'s Book, vol 2, tab 6.

<sup>86</sup> Resp.'s Book, vol 9, tabs 395, 397-398. The list was unsealed by the Fifth Circuit Court of Appeal in October 2010 (Resp.'s Book, vol 9, tab 395).

<sup>87</sup> *Re Public Trustee and Toronto Humane Society et al*, [1987] OJ No 534 at para 47; *Innovative Gifting Inc v House of the Good Shepherd*, [2010] OJ No 2210 at para 22.

this regulation by issuing receipts that did not show the donor's name and thus could be claimed by anyone. IRFAN also contravened *Regulation* 3501(4) by issuing 132 duplicate receipts that did not contain "in addition to its own serial number ... the serial number of the receipt originally issued". This created the potential for over \$150,000 in donations to be claimed twice.

71. IRFAN issued receipts for donations that were raised by and received for the GIT. In so doing, IRFAN allowed an unregistered foreign organisation to benefit from the tax advantages reserved to registered charities under the *Act*. The receipts so issued contained false information by misrepresenting that amounts had been donated to IRFAN, when in fact they were received for GIT. This alone justifies revocation under s. 168(1)(d).

**(iv) IRFAN failed to file returns as required by the *Act***

72. It was reasonable for the Minister to confirm the Notice was properly issued pursuant to ss. 168(1)(c) as IRFAN failed to file returns as required by the *Act*.
73. In a self-reporting system, a charitable organization must provide the necessary and substantive information required by a return, which is relied on by the Minister in administering the *Act* and made available to the public. The *Act* requires IRFAN to file with the Minister an information return and a public information return for the year in prescribed form and containing prescribed information.<sup>88</sup> The prescribed information is that which is demanded by the prescribed form, being a Registered Charity Information Return (T3010). The T3010 further requires that an officer certify that the information given is, to the best of his or her knowledge, "correct, complete, and current".
74. By failing to provide prescribed information, IRFAN failed to file a return as required by the *Act* for each year between 2005 and 2008. The want of prescribed information that goes to the heart of a form invalidates the form.<sup>89</sup> IRFAN's numerous errors in its books and accounts, the unreconciled differences between its audited financial statements and its returns, the unexplained discrepancies in the

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<sup>88</sup> Ss. 149.1(14) and (15), 244(16) and 248(1) "prescribed", of the *Act*.

<sup>89</sup> *Bullard Estate v Canada*, 2004 TCC 294 at paras 39-40.

reporting of revenues and expenses resulted in inherently unreliable returns for each year between 2005 and 2008. Furthermore, despite knowing that the return it filed for 2007 was only a draft version, and representing that it would file a finalized version, IRFAN did not do so. Consequently, IRFAN failed to provide the prescribed information that goes to the heart of the T3010 and thus did not file a return as required by the *Act*.

**D. No improper discretion, close-mindedness or reasonable apprehension of bias**

75. The Minister is charged with administering the *Act*, which includes determining whether registered charities are compliant with its requirements. To that end, the Minister must determine how the *Act*'s provisions should be administered in each case.<sup>90</sup>
76. The Minister's decision to confirm the revocation rather than pursue some other means of enforcing compliance is a proper exercise of discretion. Given the 2002 audit concerns and the failure to abide by its undertaking, the Minister's choice of revocation as a tool to address IRFAN's continuing contraventions of the *Act* was reasonable. It was also consistent with the CRA's guidelines for aggravated non-compliance.<sup>91</sup>
77. When confirming a revocation under the *Act*, the Minister acts in an administrative capacity. The standard for review is therefore the closed mind test. This asks whether the Minister prejudged the matter to "the extent that any representations at variance with the view, which has been adopted, would be futile."<sup>92</sup>
78. There is no evidence that the Minister prejudged the question of IRFAN's revocation. Rather, the record establishes that the Minister considered IRFAN's materials with an open mind. The objection report shows that Appeals considered all of IRFAN's materials before confirming the Notice. Appeals found the

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<sup>90</sup> *International Pentecostal Ministry of Fellowship of Toronto v Canada (Minister of National Revenue – MNR)*, 2010 FCA 51.

<sup>91</sup> *Canadian Committee for the Tel Aviv Foundation*, *supra* note 56 at para 31; "CRA Guidelines for applying sanctions" (last modified August 18, 2011).

<sup>92</sup> *Canadian Arab Federation (CAF) v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1283 at para 75.

materials that challenged the CD's reliance on certain sources and its conclusion that IRFAN had ties to Hamas insufficient. Nor was Appeals persuaded by IRFAN's other arguments, including those which were not borne out by the evidence and those that sought to relieve IRFAN from maintaining proper records and exercising due diligence. Having concluded that such arguments neither explained nor remedied the breaches, Appeals properly concentrated its review on the non-compliance issues that gave rise to the Notice. As such, it cannot be said that the Minister ignored information, fettered her discretion, or closed her mind.<sup>93</sup>

79. Even if the more stringent test of reasonable apprehension of bias applied in this instance, its threshold is not met. The test asks what an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude, and whether it was more likely than not that the decision-maker, consciously or unconsciously, would not fairly make the decision. The grounds for this apprehension must be substantial in light of the strong presumption of impartiality. This is a fact specific inquiry, in which the context, and the particular circumstances, are of supreme importance.<sup>94</sup>
80. IRFAN's allegations of bad faith and reasonable apprehension of bias are untenable at law. Claims that improper political considerations tainted everything from the audit, to the CD to Appeals, are so broad as to constitute an allegation of corporate taint. Such allegations made against the CRA and its officers cannot be sustained as the law does not recognize the doctrine of corporate taint.<sup>95</sup>
81. Even if IRFAN's allegations were sufficiently succinct as to merit consideration, they are rooted in conjecture and insinuation, which cannot found the serious allegations of reasonable apprehension of bias.<sup>96</sup> A reasonable apprehension of bias cannot be made out in light of the manner in which the Minister has dealt with IRFAN. Despite concerns over its compliance in 2002, the Minister allowed

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<sup>93</sup> App.'s Book, vol 10, tab N, at 2652-2655, 2657-2659.

<sup>94</sup> *Wewaykum Indian Band v Canada*, [2003] 2 SCR 259 at paras 76-77.

<sup>95</sup> *Zündel v Citron*, [2000] 4 FC 225 (FCA) at 242, 245, leave to appeal to SCC refused, 28008 (December 14, 2000).

<sup>96</sup> *Arthur v Canada (AG)*, 2001 FCA 223 at para 8 [*Arthur*].

IRFAN to remain registered based upon its representations and its undertaking of future conduct. Further, throughout the recent audit and objection, the Minister repeatedly extended the deadlines by which IRFAN was to provide information.<sup>97</sup>

82. There is nothing improper or suggestive of a reasonable apprehension of bias in the CRA noting the treatment of IRFAN by members of the international community. The Minister has a statutory responsibility to protect the public interest by ensuring that registered charities comply with their obligations under the *Act*.<sup>98</sup> Being aware that IRFAN has been listed in Israel and named as an unindicted co-conspirator in the HLF prosecution is consistent with such responsibility.
83. The test for bias is inapplicable in this administrative context of the Minister exercising her power to confirm a revocation under the *Act*. Even if this were not so, there is no evidence that demonstrates that the Minister's conduct derogated from the standard.<sup>99</sup> The Minister proposed IRFAN's revocation after considering IRFAN's representations and vast amounts of information from a variety of sources. In its December 2010 letter and the Notice, the CD made 238 footnoted references to sources that it considered, of which six referenced Dr. Levitt or the Washington Institute for Near East Policy where he serves as a senior fellow and director of the Stein Program on Counterterrorism and Intelligence.<sup>100</sup> The Minister's consideration of Dr. Levitt's materials, albeit limited, was reasonable as he is an expert in the field of terrorism funding, has testified before the U.S. House of Representatives Subcommittee on International Terrorism and as an expert witness in several terrorism cases, including HLF, and has spoken at an International Counterterrorism Forum.<sup>101</sup> The Minister also thoroughly considered

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<sup>97</sup> Resp.'s Book, vol 3, tabs 224, 234; App.'s Book, vol 10, tab L at 2478 – 2479.

<sup>98</sup> *International Charity Association Network v The Queen*, 2008 TCC 3 at paras 76-77.

<sup>99</sup> *Arthur*, *supra* note 96 at para 8; *Patry v Canada (Attorney General)*, 2011 FC 1032 at para 24.

<sup>100</sup> Resp.'s Book, vol 3, tabs 123, 126; App.'s Book, vol 1, tabs G1 to G4, vol 2, tabs G5 to G 10, vol 10, tab M.

<sup>101</sup> Resp.'s Book, vol 3, tabs 185, 187-188, vol 9, tab 395.

the political, social and humanitarian situation in West Bank and Gaza and gave proper consideration to the role of zakat committees.<sup>102</sup>

**E. The Minister's decision does not breach IRFAN's rights or freedoms**

84. The Minister's decision was reasonable and did not interfere with any *Charter* right or guarantee that IRFAN may claim. On review, the question is whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play. As the revocation of charitable status under the *Act* does not engage either the freedom to associate or the guarantee of equality rights, the Minister was not required to balance such considerations in her decision.<sup>103</sup>
85. The Minister was not required to consider any chilling effect that her decision might have as the *Charter* values inherent in s. 2(d) were not engaged. The revocation of charitable status does not infringe the freedom of association. IRFAN has not established that the confirmation prevented it from pursuing common goals with anyone or caused it to hesitate, in anticipation of being penalized, before exercising its freedom to associate.<sup>104</sup>
86. The Minister was not required to balance the *Charter*'s guarantee of equality rights in rendering her decision. The purpose of s. 15 is to promote the recognition at law that all individuals are human beings equally deserving of concern, respect and consideration; the rights it guarantees are personal in nature. Courts have

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<sup>102</sup> Eg, Resp.'s Book, vol 3, tab 193-194, 205, vol 6, tabs 315-341, vol 7, tabs 342-463, vol 15, tabs 527-551, vol 16, tabs 563, 580, 582, vol 17, tabs 586-589, 591, 595, 599, vol 18, tabs 610-611, 615, vol 19, 625-627, 629, vol 20, tabs 641, 659-660, vol 21, tabs 670, 676, vol 22, tabs 685, 690, 697, vol 23, tabs 711, 719, vol 24, tab 727, vol 26, tab 746.

<sup>103</sup> *Doré v Barreau du Québec*, [2012] 1 SCR 395 at paras 55-57.

<sup>104</sup> *Longley v MNR*, 99 DTC 5549 at paras 101, 104, 2000 BCCA 241 at para. 19, leave to appeal to SCC refused, 27927 (November 9, 2000); *Human Life International in Canada Inc v Canada (Minister of National Revenue – MNR)*, [1998] 3 FC 202 (FCA) at 215, leave to appeal to SCC refused, 26661 (January 21, 1999); *Dunmore v Ontario (Attorney General)*, [2001] 3 SCR 1016 at para 148; *R v Khawja*, [2012] 3 SCR 555 at paras 78-82.

consistently held that corporations are not individuals and are not entitled to the protection of section 15. IRFAN, being a corporation, may not claim the Charter's protection under s. 15(1).<sup>105</sup>

87. Even if IRFAN did possess rights under s. 15, the requirement of the *Act* to maintain records does not breach its guarantee. To claim the protection of s. 15(1), there must be differential treatment on the basis of a personal characteristic that is an enumerated or analogous ground and that discriminates in purpose or effect by perpetuating historic disadvantage, prejudice or stereotyping. The *Act*'s records requirements do not create differential treatment under s. 15(1) as the use of a foreign banking institution is not a personal characteristic. In any event, the requirements do not distinguish based on an enumerated or analogous ground, nor do they discriminate in purpose or effect. The scheme of the *Act* is such that any organization, by restricting itself to charitable purposes and activities, can qualify for registration. Such requirements apply to every organization, as do those for continued registration, including the requirement to maintain books and records. IRFAN's revocation results not from any discrimination based upon its characteristics, those of its donors or those of its beneficiaries, but from its failure to comply with the requirements of the *Act* applicable to all registered charities.<sup>106</sup>
88. Even if the Court were to conclude that the decision had interfered with a *Charter* value, such interference would not exceed that necessary given the statutory objectives of the *Act*. In such instance, the decision will be entitled to deference as it falls within a range of possible, acceptable outcomes.<sup>107</sup>

## **F. Conclusion**

89. IRFAN was aware of the Minister's concerns with its record keeping, its funding of projects, its receipting, and its reporting. It was given numerous opportunities to

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<sup>105</sup> *R v Kapp* [2008] 2 SCR 483 at para 15; *National Anti-Poverty Organization v Canada*, [1989] F.C.J. No 433(CA) at 14, leave to appeal to SCC refused, 21585 (November 23, 1989).

<sup>106</sup> *Withler v Canada*, [2011] 1 SCR 396 at para 30; *Vancouver Society*, *supra* note 77 at para 128.

<sup>107</sup> *Doré*, *supra* note 103 at para 56.

respond to those concerns. IRFAN did not address the concerns in a satisfactory manner. It was open to the Minister to confirm the Notice as IRFAN demonstrated continuing and serious non-compliance with the *Act*.

**PART IV - ORDER SOUGHT**

90. The respondent requests that the appeal be dismissed with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

February 28, 2014

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Deputy Attorney General of Canada  
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Per: Rosemary Fincham /April Tate  
Department of Justice Tax Law Services

Counsel for the respondent

**TO:** The Registry  
Federal Court of Appeal

**AND TO:** Yavar Hameed  
Hammed & Farrokhzad  
Solicitors for the appellant

Akbar Mohammed  
Barrister and Solicitor



## **PART V - LIST OF AUTHORITIES**

### **Legislation**

*Income Tax Act*, RSC 1985, c 1 (5th supplement), as amended

s. 149.1

s. 165(3)

ss.168(1) (b), (c), (d), and (e)

ss. 172(3)

s. 220(2.01)

ss. 230 to 231.5

*Income Tax Regulations* C.R.C., c. 945

ss. 3500 and 3501

*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c 11

ss. 2 and 15

*Charities Registration (Security Information) Act*, SC 2001, c 41  
s 113, section 2

*Anti-terrorism Act*, SC 2001, c 41, preamble

*Criminal Code*, RSC 1985, c C-46, Part II.1

### **Other Materials**

“Registered Charities Newsletter No. 28” (Summer 2007)

“CRA Guidelines for applying sanctions” (last modified August 18, 2011)

CG-004 “Using an Intermediary to Carry out a Charity’s Activities within Canada”

**Jurisprudence**

*1185740 Ontario Ltd v Canada*, [2000] FCJ No 541

*Arthur v Canada (AG)*, 2001 FCA 223

*Bullard Estate v Canada*, 2004 TCC 294

*Canadian Arab Federation (CAF) v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1283

*Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72

*Canadian Magen David Adom for Israel v Her Majesty the Queen*, 2002 DTC 7353 (FCA)

*Doré v Barreau du Québec*, [2012] 1 SCR 395

*Dunmore v Ontario (Attorney General)*, [2001] 3 SCR 1016

*Dunsmuir v New Brunswick*, 2008 SCC 9

*Everywoman's Health Centre Society (1988) v MNR* [1991] 2 CTC 320 (FCA)

*Human Life International in Canada Inc v Canada (Minister of National Revenue – MNR)*, [1998] 3 FC 202 (FCA) at 215, leave to appeal to SCC refused, 26661 (January 21, 1999)

*Innovative Gifting Inc v House of the Good Shepherd*, [2010] OJ No 2210

*International Charity Association Network v The Queen*, 2008 TCC 3

*International Pentecostal Ministry of Fellowship of Toronto v Canada (Minister of National Revenue – MNR)*, 2010 FCA 51

*Lepletot v Canada*, 2006 FCA 128

*Longley v MNR*, 99 DTC 5549, 2000 BCCA 241, leave to appeal to SCC refused, 27927 (November 9, 2000)

*National Anti-Poverty Organization v Canada*, [1989] F.C.J. No 433(CA) at 14, leave to appeal to SCC refused, 21585 (November 23, 1989)

*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62

*Patry v Canada (Attorney General)*, 2011 FC 1032

*Prescient Foundation v Canada*, 2013 FCA 120

*R v Kapp* [2008] 2 SCR 483 at para 15

*R v Khawja*, [2012] 3 SCR 555

*Re Public Trustee and Toronto Humane Society et al*

*Sherry v Canada*, 2011 FC 1208

*Vancouver Society of Immigrant & Visible Minority Women v Canada*, [1999] 1 SCR 10

*Wewaykum Indian Band v Canada*, [2003] 2 SCR 259

*Withler v Canada*, [2011] 1 SCR 396

*World Job and Food Bank Inc v Canada*, 2013 FCA 65

*Zündel v Citron*, [2000] 4 FC 225 (FCA)