



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

BN: 884802356RR0001
File No: 0404426

MAR 30 2017

Attention: [REDACTED]

**Subject: Notice of Intention to Revoke
ISNA, Islamic Services of Canada**

Dear [REDACTED]:

We are writing further to the audit of the books and records of the ISNA, Islamic Services of Canada (the Organization) for the audit period January 1, 2007 to December 31, 2009, and our letter of June 16, 2014 (copy enclosed), in which you were invited to submit representations as to why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (Act).

We have now reviewed and considered your written response dated November 18, 2014. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization had failed to demonstrate that it was constituted for charitable purposes, failed to demonstrate that it devoted its resources to charitable activities carried on by itself, failed to maintain adequate books and records, failed to comply with Regulation 3501 regarding the contents of its official donation receipts, and issued a receipt for a gift or donation on behalf of a non-qualified donee. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated June 16, 2014, we wish to advise you that, pursuant to subsection 168(1) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business number	Name
884802356RR0001	ISNA, Islamic Services of Canada

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the date of this letter. The notice of objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

Notwithstanding the filing of an objection, a copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of **30 days** from the date this letter was mailed. The Organization's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "B", attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on prescribed Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, we wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Attachments:

- CRA's AFL, dated June 16, 2014
- Organization's Representations, dated November 18, 2014
- Appendix "A" – CRA position on representations
- Appendix "B" – Relevant provisions of the Act

c.c.: Mr. Shameem Mohammed
Director of Finance and Accounting
2200 South Sheridan Way
Mississauga, ON
L5J 2M4



REGISTERED MAIL

June 16, 2014

ISNA, Islamic Services of Canada
2200 South Sheridan Way
Mississauga, ON L5J 2M4

BN: 884802356RR0001

File No: 0404426

Attention: Mr. Shameem Mohammed

Re: Audit of ISNA, Islamic Services of Canada

Dear Mr. Mohammed:

This letter is further to our audit of the books and records of ISNA, Islamic Services of Canada (the Organization) by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2007 to December 31, 2009, inclusively.¹

The CRA has now completed its review of the Organization's books and records and has identified specific areas of non-compliance with core requirements of the *Income Tax Act* (Act) and its Regulations for maintaining charitable status in the following areas:

AREAS OF NON-COMPLIANCE		
Section	Issue	Reference
1	Ceased to comply with the requirements of the Act for its continued registration	149.1(1), 168(1)(b)
2	Failed to comply with or contravened any of sections 230 to 231.5 of the Act	230(2), 230(4), 168(1)(e)
3	Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations	168(1)(d) Regulations 3501(1)

The purpose of this letter is to describe the areas of non-compliance identified during the audit as they relate to the legislative and common-law requirements applicable to registered charities in order to provide the Organization with an opportunity to respond to our concerns, provide any additional information regarding the issues outlined in this letter, and submit written representations, accompanied by any relevant supporting

¹ The Organization was notified on October 12, 2011, that it had been selected for audit by the CRA. The audit visit took place the week of November 28, 2011.

documentation, as to why the Organization's status as a registered charity should not be revoked, or it should not be imposed a monetary penalty.

1. Ceased to comply with the requirements of the Act for its registration
(Paragraph 168(1)(b) of the Act)

The Organization was registered by the CRA in September 1972 as a charitable organization. Subsection 149.1(1) of the Act requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself." Generally speaking, in order to maintain charitable registration, an organization must demonstrate that it is constituted exclusively for charitable purposes, and that it devotes its resources to its own charitable activities carried on in furtherance thereof.²

As outlined by the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, the determination as to whether an organization qualifies as a charity under the Act is, in essence, a two-part test:

1. the purposes of the organization must be exclusively and legally charitable under common law, and must define the scope of the activities engaged in by the organization; and
2. all of the organization's resources must be devoted to these activities.³

To summarize, the CRA must be satisfied that a registered charity's purposes are exclusively charitable at law, that there is a clear relationship and link between the activities and the purposes, and that the activities themselves do not fall outside the bounds of what can be considered charitable in the legal sense.

Our preliminary findings regarding the Organization's non-compliance with these requirements are dealt with below under the headings:

- 1.1 Failure to demonstrate that it is constituted for exclusively charitable purposes
- 1.2 Failure to meet the definition of a charitable organization under the Act/Failure to demonstrate that it carries out its own charitable activities
- 1.1 **Failure to demonstrate that it is constituted for exclusively charitable purposes**

Among the various aspects that an audit may examine is whether a charity advances purposes that are charitable at law. Maintaining charitable registration demands that a charity continue to meet the existing statutory and common law requirements associated with registered status. Although a charity's formal purposes may have been accepted at the time of its registration, it is possible they may be determined to no longer

² *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue (Vancouver Society)*, [1999] 1 S.C.R. 10, at paras. 155-159.

³ *Vancouver Society*, *ibid* no 2, para. 158. The only qualification relates to other purposes that are merely incidental to charitable purposes - better construed as activities in direct furtherance of a charitable purpose. The organization will not fail to qualify as charitable because it describes an activity as a purpose.

qualify as charitable at law in the course of a subsequent audit. In addition, it is possible that the activities and focus of an organization may have changed since its initial registration. Such changes may adversely affect the organization's present day eligibility.

To be exclusively charitable, the law requires that purposes fall within one or more of the following four broad categories (also known as "heads") of charity:

- relief of poverty (first category);
- advancement of education (second category);
- advancement of religion (third category); or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).⁴

The fourth category identifies an additional group of specific court-recognized purposes. It does not mean that all purposes that might be considered beneficial to the public qualify as charitable as a matter of law.

Furthermore, it is a basic and important principle of charity law that to be charitable, the stated purposes of an organization be expressed as clearly as possible.⁵ If the wording is too broad or vague, it will not be clear that a purpose is charitable (falls within a charitable purpose category and provides a public benefit) and defines the scope of the organization's activities.⁶ Where there is any doubt as to whether a purpose is charitable, or where there is a mix of charitable and non-charitable purposes, the courts have determined that an organization should not be registered as a charity.⁷

As outlined in CRA's Guidance "How to Draft Purposes for Charitable Registration", to be eligible for charitable registration a purpose should identify three elements: (1) the charitable purpose category – to establish that the purpose falls within one of the four broad categories of charity outlined above; (2) the means of providing the charitable benefit – to define the scope of the activities that can be conducted to directly further the purposes and ensure the provision of a charitable benefit; and (3) the eligible

⁴ The *Income Tax Act* does not define what is charitable. (See subsection 248(1) "registered charity"; subsection 149.1(1) "charitable foundation", "charitable organization", "private foundation", and "public foundation." These definitions use the term charitable but do not define it (i.e., charitable foundations are to be "constituted and operated exclusively for charitable purposes" and charitable organizations' resources must be "devoted to charitable activities.") The single exception is subsection 149.1(1) which defines charitable purposes as including "the disbursement of funds to qualified donees". The CRA must therefore rely on the common law definition, which sets out four broad categories, or "heads" of charity. The four broad charitable purpose categories were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.) (*Pemsel*). The classification approach was first explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133, and confirmed in *Vancouver Society*, *ibid* note 2.

⁵ *Vancouver Society*, *ibid* note 2 at para. 159

⁶ Broad meaning the purpose may allow for both charitable and non-charitable activities and/or the delivery of unacceptable private benefits; and vague meaning the wording may be interpreted in different ways.

⁷ In *Earth Fund v. Canada (M.N.R.)*, 2003 D.T.C. 5016, 2002 FCA 498 at para. 20, the Court held that "[a]s a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate objects and activities are exclusively charitable."

beneficiary group – to ensure that charitable benefit is provided to the public or a sufficient section of the public. Each stated purpose should identify the three elements either expressly or implicitly, through its context.⁸

The Organization's purposes, as set out in its Letters Patent issued to it under the provisions of the *Ontario Corporations Act*, and dated May 30, 1973,⁹ are:

- a) *To help new Muslim students get familiarized with Canadian laws and customs and adjust to Canadian life;*
- b) *To provide educational, cultural and religious services;*
- c) *To arrange prayer meetings;*
- d) *To promote friendly relations among students of different faiths;*
- e) *To provide books, libraries, and reading room services;*
- f) *To arrange lectures, seminars, camps and conferences in order to make Islam better understood;*
- g) *To arrange hostel accommodations;*
- h) *To arrange visits to hospitals to look after sick students and to help them in their period of convalescence; and*
- i) *To further co-operation with existing Muslim organizations.*

Although they do not identify a charitable purpose category in the explicit manner that is recommended in the CRA's Guidance mentioned above, the Organization's purposes c), f) and h) could nonetheless qualify as charitable.¹⁰ Given that these purposes, which may more aptly be described as specific activities, could bear a sufficiently coherent relationship to the advancement of religion, it is possible each may be understood to implicitly fall under the charitable category of advancement of religion.¹¹ Similarly, purposes e) could also be acceptable, even though it is not clear whether the books, libraries and reading room services are of a religious, or an educational, nature.¹²

⁸ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drlfprps-eng.html>.

⁹ Originally incorporated under the name Muslim Students Associations, Islamic Services of Canada, the Organization formally adopted its current name, ISNA, Islamic Services of Canada, with the issuance of its Supplementary Letters Patent, dated October 17, 1994.

¹⁰ Providing, of course, that the activities undertaken in furtherance thereof are found to be charitable.

¹¹ Depending on the nature of the activities undertaken and the services offered, purpose h) could also be found to be charitable under the fourth charitable purpose category.

¹² As described in section 1.2 below, however, it is not clear to us what activities, if any, the Organization is pursuing in furtherance of these purposes

We consider the Organization's remaining purposes to be non-charitable, specifically:

- Purpose a), "To help new Muslim students get familiarized with Canadian laws and customs and adjust to Canadian life", is broad and vague, as it is unclear what type of programs/services it intends to offer and how it will deliver them. Further, in the context of the delivery of settlement services to newcomers, which we assume to be the intention of this purpose, the Organization has not shown why it restricts the delivery of its services to "new Muslim students." If the Organization proposes to restrict its services to a particular category of beneficiaries, it must justify the restriction, by showing that there is a relevant connection between the restriction and the benefit to be provided.¹³
- Purpose b), "To provide educational, cultural and religious services", is broad and vague as it lacks the degree of clarity required to ensure that the activities undertaken in support of this purpose will be exclusively charitable.¹⁴
- Purpose d), "To promote friendly relations among students of different faiths", and purpose i), "To further co-operation with existing Muslim organizations", are both broadly worded, and place no restrictions on the programs that the Organization might conduct while pursuing them, thus leaving open the possibility that the Organization could undertake activities that may not be exclusively charitable. In addition, the aim expressed in these purposes is problematic in itself, as the courts have stated that a purpose to promote closer and more sympathetic understanding between groups is not analogous to any that have been held charitable at law.¹⁵
- Purpose g), "To arrange hostel accommodations", can not be found to be charitable, as it neither expressly nor implicitly identifies a charitable purpose category, a condition that can be relieved through charitable means, an eligible class of beneficiaries, or the expected charitable relief.

¹³ See, for example, *Vancouver Society*, *ibid* note 2 at paras. 175-189. We would note that limiting a charity's programs to a particular category of beneficiaries will offend the public benefit test, unless the restriction is shown to be related to the charitable benefit being conferred. There are certain circumstances in which an organization that provides assistance to a specific community can be registered. However, there has to be a logical connection between the proposed restriction and the benefit provided, and that connection needs to be demonstrated by the charity. For further information please refer to the CRA publications, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

¹⁴ We would particularly note our concern in this regard as pertains to the use of the term "culture". The meaning of culture is vague, and, depending on the context in which it is used, not necessarily charitable. While we could consider enhancing the public's knowledge and appreciation of the art, history and language of a particular culture to be charitable under the advancement of education, the "promotion" of a particular culture is not. Promoting culture can mean different things to different people. It can mean advancing the interests of a particular community. It can also mean promoting the institutions and practices of a historically identifiable group. Promoting culture lacks the necessary element of public benefit to qualify as charitable, because the benefit provided is not to the community as a whole or a significant section of it. As presently worded, we are unable to determine the context in which the term culture is presented in the Organization's purpose (b) and can not therefore determine it to be charitable.

¹⁵ See *Anglo-Swedish Society v. C.L.R.* (1931) T.C. 34 (K.B.D.) as cited in *Toronto Voligograd Committee v. M.N.R.*, 88 DTC 6192 (F.C.A.).

For each of these reasons, the CRA cannot determine that the Organization is established for purposes that are exclusively charitable. Therefore, it is our preliminary view that the Organization fails to comply with the requirements of section 149.1(1) the Act for its continued registration.

1.2 Failure to meet the definition of a charitable organization under the Act/Failure to demonstrate that it carries out its own charitable activities

Under paragraph 149.1 (1)(a) of the Act a "charitable organization" is defined, in part, as an organization, whether or not incorporated,

(a) all the resources of which are devoted to charitable activities carried on by the organization itself ...

A registered charity, therefore, can only use its resources (for example, funds, personnel, and property) in two ways, whether inside or outside Canada:

- on its own activities (those that are carried out under the charity's direction, control and supervision, and for which it can account for any funds expended); and
- on gifts to qualified donees.¹⁶

The courts have directed that to be *carried on by the organization itself*, activities must be the charity's *own*, meaning they are conducted under the charity's direction and control. A registered charity must have ongoing control over all activities carried out on its behalf, and over the use of its resources.¹⁷ A charity's own activities may be carried out by its directors, volunteers, employees or other staff, or by intermediaries (agents, contractors, or partners) acting on its behalf. However, in all instances, the charity must be able to demonstrate that the activities involved are undertaken at its initiative and direction, and are conducted under its supervision and control.¹⁸

During the audit commencement interview, the Organization explained to the CRA that it no longer focused on the provision of services for Muslim students, an intent evident in its incorporating purposes, but rather on activities directed at the wider Muslim

¹⁶ Broadly speaking, a qualified donee is an organization that can issue official donation receipts for gifts that individuals and corporations make to it, and that can receive gifts from registered charities. Qualified donees are defined in the Act as "a person that is (a) registered by the Minister and that is (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration, (ii) a municipality in Canada, (iii) a municipal or public body performing a function of government in Canada that has applied for registration, (iv) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, or (v) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the 36-month period that begins 24 months before that time, (b) a registered charity, (c) a registered Canadian amateur athletic association, or (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations."

¹⁷ *The Canadian Committee for the Tel Aviv Foundation v. Canada*, (2002) FCA 72; *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, (2002) FCA 323; and *Boyil Lepletot v. Canada (Minister of National Revenue)*, (2006) FCA 128.

¹⁸ For more information, see CRA Guidance CG-002 *Canadian Registered Charities Carrying Out Activities Outside Canada* and CRA Guidance CG-004 *Using an Intermediary to Carry out a Charity's Activities within Canada*.

community.¹⁹ In this regard, the Organization stated that it undertook only two programs: the provision of religious services through the Islamic Centre of Toronto (Jami Mosque); and the operation of the Islamic Book Service (IBS).²⁰

1.2.1 Islamic Centre of Toronto (Jami Mosque)

The Organization presented itself and Jami Mosque as “essentially” one organization, stating that Jami Mosque was “established under ISNA, Islamic Services,” and describing the Organization as operating as “a local mosque”. The Organization’s assertions in this regard are further reiterated through the reporting of Jami Mosque’s activity and financial information on the Organization’s Registered Charity Information Returns (T3010).²¹

Furthermore, according to information available on Jami Mosque’s website, the Organization was established in order to hold in trust title to the Jami Mosque property located at 56 Boustead Avenue, Toronto, Ontario:

Brothers Sirajuddin Ahmed, National Vice President of the MSA [Muslim Student Association], Abdul Hai Patel, the MSA Canadian Representative, and Ata-ul-Haq Malick, the Coordinator of MSA Montreal chapter, setup a charitable trust

¹⁹ The audit commencement interviews for the ISNA family of charities took place the week of November 28, 2011, at ISNA-Canada’s headquarters at the 2200 South Sheridan Way, Mississauga, Ontario. While the Organization was touched on as a topic of conversation during the entire week, the Organization’s interview itself took place on November 30, 2011. The following current and former directors were present at the interview: Abdallah Idris Ali, Shamcem Mohammed, M.D. Khalid, Mohammed Bekkari, Seema Khan, Syed Imtiaz Ahmad, and Mohammad Khadim. The following individuals were identified on the Organization’s T3010s as its directors for the period under audit: Mohammad Ashraf (2007, 2008, 2009), Mohammad Khadim (2007, 2008) and Ghulam Anwar (2009).

²⁰ There is no indication in the documentation available to the CRA that the Organization undertook any other activities. Our review of the Organization’s books and records indicates that it maintained two sets of accounting books, one for Jami Mosque and the other for the Islamic Book Service. Based on the combined figures from these two sets of books, the Organization prepared and filed its T3010 returns. The Organization reported a total of \$815,157 as its total expenditures over the three-year period under audit. In addition the Organization also maintained a total of six bank accounts; four for Jami Mosque and two for Islamic Book Service.

²¹ In Section C2 of its T3010, the Organization consistently described its activities during the audit period (2007-2009) as:

*Maintenance of place of worship in Toronto
Celebration of Islamic Festivals
Daily and Congregational prayers arrangement
Provide financial support to needy Families
Held religious lectures & workshops.*

Total expenditures attributable to Jami Mosque, per the Organization’s general ledger for each of the fiscal periods are as follows:

YE	Jami Mosque
2009	242,403
2008	207,148
2007	199,149
Total	648,700

called MSA Islamic Services of Canada,²² so that no one will ever claim ownership and sell it [Jami Mosque]. They repurchased the Mosque under the ownership of the MSA Islamic Services of Canada, and the Mosque was reopened in June 1973.²³

However, aside from the above, the Organization has not provided the CRA with any documentation supporting the assertion that Jami Mosque is a charitable program of the Organization.²⁴ We note that:

- Jami Mosque is an independently incorporated entity, operating under a separate set of purposes and governing documents;²⁵
- Jami Mosque's governing documents, including its bylaws, fail to mention the Organization, but rather grant operational oversight to the Islamic Society of North America (ISNA);²⁶
- The Organization failed to demonstrate that it directs and controls the activities of Jami Mosque, a separately incorporated organization and a non-qualified donee.²⁷

²² As already mentioned above, originally incorporated under the name Muslim Students Associations, Islamic Services of Canada, the Organization formally adopted its current name, ISNA, Islamic Services of Canada, with the issuance of its Supplementary Letters Patent, dated October 17, 1994.

²³ http://www.jamimosque.com/some_words_about_us.php

²⁴ In regard to the activities undertaken through Jami Mosque, we would note that the Organization is not explicitly incorporated to maintain and operate a Mosque.

²⁵ Jami Mosque was incorporated on August 28, 1990 under the auspices of the *Ontario Corporations Act*.

Incorporated as the Islamic Centre of Toronto (Jami Mosque), its main purposes are:

- (a) to preach, promote and advance the spiritual teachings of Islam by practicing the religious observances, tenets and doctrines associated with the Islamic faith;
- (b) to conduct religious, charitable, educational, and Islamic activities according to the Qur'an and Sunnah;
- (c) to arrange prayer meetings; and
- (d) to arrange visits to hospitals, prisons and other institutions to look after the sick and needy and to help them in their period of convalescence and recuperation.

²⁶ Jami Mosque's bylaws make no reference to the Organization, including its role in Jami Mosque's operation, but do make the following provisions regarding ISNA:

- The Mosque is to remain permanently affiliated with ISNA;
- The Mosque's Executive Committee is to include one member appointed by the ISNA-Canada Council. The role of this individual is to "provide a constant link between the two bodies";
- Elections to the Executive Committee are to be conducted by an Election Committee instituted by ISNA-Canada Council;
- The ISNA-Canada Council is to confirm the appointments of the Imam and Executive Director as recommended by the Executive Committee of the Mosque;
- The ISNA-Canada Council is to approve all major alterations to the property; and
- The ISNA-Canada Council has the power to "take action deemed necessary against any unIslamic use of the property and reserve the right to interpret rules of Islamic conduct in consultation with ISNA's Fiqh Council and the ISNA-Executive Council if the [Mosque's] Executive Committee fails to do so."

²⁷ Particularly in instances in which an organization professes to undertake its activities through a non-qualified donee, in order to discharge the evidentiary burden of establishing that it has met the operational requirements of the Act, a registered charity must keep books and records that will provide a means of verification, which would satisfactorily demonstrate that its resources have been devoted to charitable activities "carried on by the organization itself." In addition to copies of operating agreements or contracts with and project reports from a chosen intermediary, or an agent, this may include all records demonstrating the charity's internal decision-making mechanisms, such as minutes of board meetings, copies of relevant correspondence and communications, a charity's operational policies and procedures, as well as source documents for financial transactions, such as invoices, receipts, cancelled cheques, and bank statements. The Organization failed to provide any such documentation.

Further heightening confusion are the assertions made by Jami Mosque in documentation submitted to the CRA [REDACTED]

- [REDACTED] Jami Mosque described the Organization as *"a Canada-wide organization that began as a Muslim student association in 1973 with its objects mainly related to students. The Corporation [Jami Mosque] operates the oldest mosque in Toronto. Because Services has charitable status and the Corporation does not, the Corporation has carried out many of its activities in conjunction with Services to date so that charitable receipts could be issued for donation to Jami Mosque."*²⁹ *Services uses office space at the mosque for meetings from time to time*³⁰ **but otherwise the organizations are independent of each other** [emphasis added]."
- [REDACTED] Jami Mosque again reiterated, *"ISNA Islamic Services of Canada ('Services') has charitable status and the Corporation [REDACTED] the sole reason the Corporation has carried on its activities in connection with Services is to enable the Corporation to provide charitable receipts for donations to the Corporation. [REDACTED] the Corporation and Services will be fully independent of the other."*

Furthermore, our analysis of the information available to the CRA indicates that the larger operational and financial decisions pertaining to Jami Mosque fall not to the Organization, but rather to Canadian Islamic Trust Foundation (CITF).³¹

- As described on Jami Mosque's website, the Organization's primary responsibility of holding title to Jami Mosque was apparently usurped with the establishment of CITF, which took over this function upon its establishment.³²

²⁸ Jami Mosque [REDACTED] at the CRA's suggestion, which was made based on the Organization's assertion that the Mosque's activities were the Organization's own.

Paragraph 241(4)(a) of the Act states that "an official may provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act..." As such, the CRA - in assessing the charitable nature of the Organization's activities - has considered information provided to the CRA [REDACTED]

²⁹ Our concerns regarding this receipting arrangement are addressed below under heading 3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations.

³⁰ The CRA has found no evidence that the Organization holds meetings at Jami Mosque or elsewhere. See section 2.2 below for further information in this regard.

³¹ CITF was incorporated federally under the *Canada Corporations Act* on August 18, 1983, and registered by the CRA as a charitable organization with an effective date of August 31, 1988. The CRA has not determined what CITF's role is in relation to the authority granted to ISNA under the Mosque's bylaws. See note 26.

³² The exact wording used on the website states that the "Trust", referring to the MSA, Islamic Services of Canada, was "later renamed as Canadian Islamic Trust Foundation" and that, "later on... [a] new organization, the Islamic Society of North America (ISNA) was instituted in 1976 which took MSA and CITF under its banner." Although, the Jami Mosque website states that the Organization was simply renamed the Canadian Islamic Trust Foundation this was not

Land transfer records confirm that the Organization transferred ownership of the 56 Boustead property to CITF on July 17, 1987.

- A review of the minutes of CITF's board of directors meetings suggests that CITF has had operational control of Jami Mosque since at least January 1992.³³ According to information recorded in the minutes, CITF's board regularly renders decisions pertaining, for example, to such issues as the revision of Jami Mosque's bylaws, decisions pertaining to the make-up of the Jami Mosque Executive Committee, and review or control of Jami Mosque finances.³⁴
- A resolution passed by the ISNA Canada Majlis confirms CITF's control over Jami Mosque in a January 10, 2009, decision:

Jami Mosque affairs to be handled by the CITF: Mohammad A. Khadim recommended that the earlier decision of the Majlis should be reversed and let the CITF Board look after the affairs of the Jami Mosque. The Majlis made the following decision:

Mohammad A. Khadim moved that earlier decision of the Majlis to handle the affairs of the Jami Mosque be reversed and CITF Board would be responsible for the running affairs of the Jami Mosque. The motion was seconded by M. Ashraf and it was carried unanimously.³⁵

- As recorded in the minutes of its January 30, 2009, Executive Committee meeting, Jami Mosque has officially recognized the jurisdiction of CITF over its affairs:

As we understand, the Committee is responsible for day to day operation of the Jami Mosque such as arrangement of prayers, setting up regular weekly programs of 'dars and halaqas or other similar activities, and special programs such as invited speakers, collection of donations and regular expenses, activities related to maintenance, repairs, safety, and security, etc. It is our understanding that the Committee is not authorized for hiring and firing

the case, as both organizations were, and are, separately registered charitable, and independently incorporated, organizations.

³³ Please note that the earliest recorded meeting minutes available to the CRA date back to January 1992.

³⁴ Paragraph 241(4)(a) of the Act states that "an official may provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act...." As such, the CRA – in assessing the charitable nature of the Organization's activities – has considered information provided to the CRA by CITF.

³⁵ ISNA Canada Majlis Meeting Minutes, January 10, 2009.

personnel, and where expenses of fairly considerable amount of money are involved, which should be recommended to the CITF Board. This is so because of the possibility that CITF or ISNA Canada may be dragged into a legal suit, and the CITF and ISNA would have to deal with its consequences [Emphasis Added].³⁶

- In October 2011, the ISNA Canada Majlis passed a motion ratifying terms of reference for the Jami Mosque Operations Committee. The terms of reference identifies CITF's role in the operation of Jami Mosque, seemingly giving CITF authority over the Mosque Operations Committee and thus Jami Mosque.³⁷

In light of the above, the CRA is unable to conclude that the activities undertaken at Jami Mosque are, in fact and law, the Organization's own activities, being carried on by the Organization itself. As such, it is also our position that the revenues and expenditures as reported on the Organization's T3010 should not have been attributed to the Organization.³⁸

Accordingly, a determination as to whether the purposes and activities of Jami Mosque would be considered charitable has not been made. Should the Organization demonstrate in its representations that Jami Mosque is its "own" activity, then, it will also need to demonstrate that Jami Mosque's purposes and activities are charitable at law.

1.2.2 Islamic Book Service

Islamic Book Service (IBS) has been in operation since 1972 (and online since 1999).³⁹ The Islamic Book Service's website states "IBS Canada is a not-for-profit division of ISNA's Islamic Services organization."⁴⁰

This notion was re-iterated during the audit commencement interview at which time the Organization explained that "IBS [is] under ISNA, Islamic Services of Canada."

³⁶ Minutes of January 30, 2009, Executive Committee Meeting of Jami Mosque

³⁷ The terms of reference specifically outlines CITF's power and authority over the Jami Mosque Operations Committee, otherwise referred to as OCJ, as follows:

- The OCJ reports to the CITF board
- CITF hires and fires individuals on the recommendation of the OCJ
- OCJ cannot undertake projects worth more than \$10,000 without approval of CITF
- CITF approves the budget of Jami Mosque
- OCJ committee members can only be removed by CITF
- CITF develops a list of eligible voters, from ISNA Canada members, for the OCJ
- CITF sets up the election committee and conducts the election for the OCJ positions
- CITF can dissolve the OCJ without notice and appoint administrator to manage the affairs of the mosque

³⁸ If it were to be determined otherwise, then, it would be open to us to conclude that the Organization provided funding to a non-qualified donee, with no evidence that it maintained the required direction or control over the resources expended and the activities undertaken.

³⁹ Islamic Book Service operates at two locations, one at the Islamic Center of Canada located at 2200 South Sheridan Way, Mississauga, and the other at 56 Boustead Avenue, Toronto.

⁴⁰ <http://www.islamicbookservice.ca/about.html>

We further note that the Organization included Islamic Book Service's financial information as its reported expenditures in its T3010 Returns.⁴¹

However, following a review of the available information, the CRA is unable to determine that the Islamic Book Service is in fact the Organization's own program. A review of the minutes of CITF's board of directors meetings suggests that, at least historically, CITF has had responsibility for the Islamic Book Service, rendering key operational and financial decisions since at least January 1992.⁴² We note that:

- The presentation and discussion of Islamic Book Service's financial statements and/or sales results is recorded as a regular agenda item on CITF board of directors meeting minutes.⁴³
- CITF implemented a sales commission incentive program for the Manager of the Islamic Book Service as a means of encouraging greater sales.⁴⁴
- CITF approved the move of Islamic Book Service's to 2200 South Sheridan Way.⁴⁵
- CITF prepared guidelines for Islamic Book Service's operations, including the policy on hiring its manager.⁴⁶
- CITF decided on the suppliers to be used by Islamic Book Service, including for the Jami Mosque location.⁴⁷

⁴¹ Total expenditures attributable to Islamic Book Service, per the Organization's general ledger for each of the fiscal periods are as follows

YE	IBS
2009	61,580
2008	58,845
2007	46,032
Total	166,457

⁴² Paragraph 241(4)(a) of the Act states that "an official may provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act...." As such, the CRA – in assessing the charitable nature of the Organization's activities – has considered information provided to the CRA by CITF.

⁴³ See for example, meeting minutes from January 25, 1992, June 27, 1992, September 21, 2002, November 7, 1992, January 15, 1994, December 03, 1994, November 18, 1995, June 10, 2000, March 23, 2001, November 3, 2001, March 20, 2004, March 31, 2007.

According to the documents available to the CRA, IBS was last mentioned by CITF at the March 31, 2007, Board meeting, where M.D Khalid reported on his supervising responsibilities over IBS; however, since that meeting, there has been no recorded discussion of IBS by the CITF Board. Rather, at a June 19, 2010, ISNA Canada Majlis meeting, Mr. Umar Farooq noted about that "the affairs of the Islamic Book Service, which M.D. Khalid has been handling single handedly, have not been presented to the Majlis." Furthermore, it was alleged by M. Ashraf, "that M.D. Khalid makes unilateral decisions for the IBS and that he single handedly signs cheques for both the IBS [Islamic Book Service] and ISB [Islamic School Board]." It is unclear if there is any current operational oversight of Islamic Book Service from either the CITF or ISNA Boards.

⁴⁴ CITF board meeting minutes dated December 3, 1994.

⁴⁵ CITF board meeting minutes dated October 14, 1996.

⁴⁶ CITF board meeting minutes dated June 10, 2000.

⁴⁷ CITF board meeting minutes dated November 3, 2001. In this regard, we further note that a January 2009 facsimile by Mr. Mohammad Khadim, a director of CITF, which issued instructions regarding the purchase of books, suggests that CITF maintained control of Islamic Book Service during the audit period. The instructions were carbon copied to the Executive Committee, CITF Files, and ISNA Canada Secretary General.

In light of the above observations, it is our preliminary view that the Organization's role with the Islamic Book Service is limited to bookkeeping services and that responsibility for its operation may more appropriately rest with CITF. Should the Organization be able to demonstrate that the Islamic Book Service is in fact and law its own activity, it will also need to demonstrate that the Islamic Book Service meets the requirements for carrying on an acceptable, or related, business.⁴⁸

Our analysis of the information available to the CRA, indicates that neither the activities undertaken at Jami Mosque nor those of the Islamic Book Service can be found to represent the Organization's own activities. Consequently, it is our preliminary view that the Organization has ceased to comply with the requirements of the Act by failing to carry on its own charitable activities, and failing to meet the definition of a charitable organization as defined by subsection 149.1(1) of the Act. This constitutes sufficient reason to revoke the Organization's status as a registered charity under paragraph 168(1)(b) of the Act.

2. Failed to comply with or contravened any of sections 230 to 231.5 of the Act (Paragraph 168(1)(e) of the Act)

Subsection 230(2) of the Act requires that every qualified donee keep records⁴⁹ and books of account, at an address in Canada recorded with the Minister or designated by the Minister, containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

In addition, subsection 230(4) provides that:

"Every person required by this section to keep records and books of account shall retain

⁴⁸ Generally speaking, an organization established to carry on a business cannot be registered as a charity, even if all the business proceeds are distributed to a charity. However, a registered charity established for exclusively charitable purposes is permitted to carry on a "related business" in support thereof. A related business is one that

- a) itself delivers a charitable service;
- b) is linked and subordinate to a charity's charitable purposes; or
- c) is unrelated to the charity's purposes, but is run substantially by volunteers.

It is our opinion that, in the context of our current understanding of the Organization's lack of charitable programming, the Islamic Book Service would not be found to meet our requirements in this regard and would be found to be operating an unrelated business, thereby precluding the Organization from registration.

See CRA publication, CPS-019, *What is a Related Business?*, available at <http://www.cra-arc.gc.ca/chrs-gvng/chrts/plcy/cps/cps-019-eng.html>, for further information.

⁴⁹ Subsection 248(1) of the Act defines a record as follows that it "includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

(a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and

(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate."

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;⁵⁰
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;⁵¹ and
- the failure to maintain proper records and books of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.⁵²

Our audit of the books and records kept by the Organization for the period under review has noted the following deficiencies:

2.1 Failed to maintain adequate books and records for receipted donation amounts

A comparison between the duplicate donation receipts provided by the Organization to the CRA and the amounts recorded at line 4500 of the Organization's T3010, *Registered Charity Information Return*, was made in order to assist the CRA in determining whether the Organization maintained a duplicate of each receipt.

Over the three-year period under audit a discrepancy of \$174,650 was noted for the receipted amounts between the duplicate receipts and the reported amounts on T3010s, that is, \$340,516 and \$515,166, respectively.⁵³ The scale of this variance, which

⁵⁰ *The Canadian Committee for the Tel Aviv Foundation v. Her Majesty the Queen*, 2002 FCA 72.

⁵¹ *Supra*, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397.

⁵² *College Rabbinique de Montreal Oir Hochaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; subsection 168(1) of the *Act*.

⁵³ Comparison for the Receipted Amount between T3010 and Official Duplicate Receipts

was determined to be significant and material, raises concerns to the CRA that the Organization did not keep a duplicate copy for each receipt it issued.

In addition, the concerns whether the Organization maintained a duplicate copy for each receipt issued are further complicated by the fact that:

- The duplicate receipts the Organization provided, 1,005 of them in total, begin with a receipt number 801 and end with 8700.⁵⁴ Normally, this would indicate that the Organization issued a total of 7,900 receipts, that is, 8700 less 800, during the years under audit.

However, given the number of duplicate receipts provided, that is, 1,005, this represents some 6,900 unaccounted duplicate receipts,⁵⁵ and raises concerns as to whether any of those unaccounted receipts were issued with or without the Organization's control or knowledge.

- The Organization issued its pre-printed numbered receipts in non-sequential order. Receipts numbered from 851 through 1000, for example, were issued for year-end 2009, while the higher receipt numbers from 2251 through 2300 were issued for the previous year 2008.⁵⁶

YE	T3010 (1)	Duplicate Receipts (2)	Variance [(1) - (2)] (3)
07	182,427	112,009	70,418
08	141,693	114,203	27,490
09	191,046	114,304	76,742
	<u>515,166</u>	<u>340,516</u>	<u>174,650</u>

⁵⁴ The organization provided 1,005 duplicate receipts, each with a pre-printed serial number.

⁵⁵ The number of accounted duplicate receipts:

Ending Serial No.	8,700
Starting Serial No.	(801)
Total Receipts, per Serial No. (Inclusive of Receipt# 801)	<u>7,900</u>
ADD: Receipts with same pre-printed Serial No.	<u>5</u>
Total Receipts, Revised	<u>7,905</u>
Accounted for	1,005
Unaccounted for	<u>6,900</u>

⁵⁶ Pre-printed serial receipt numbers and issued years:

Receipt Serial No.		
Start	End	Year-end
801	850	2008
851	1000	2009
2251	2300	2008
2301	2400	2009
3251	3300	2008
5201	5300	2009
5901	5946	2008
5947	5950	2009
5951	6150	2007

By issuing receipts in such a non-sequential manner, the Organization failed to provide continuity in the serial numbers from one period to another. This makes it impossible for the CRA to verify the completeness of the donation receipts in a given period in order to determine whether all of the official donation receipts were accounted for.

Therefore, it is our preliminary view that the Organization failed to maintain proper duplicate donation receipts for the CRA to verify whether donations receipts issued by the Organization were in accordance with the Act and its Regulations, and, as a result, whether the Organization should maintain its registration as a charitable organization.

2.2 Failed to maintain records or minutes of its board of directors meetings

The Organization failed to maintain records or minutes of its Board of Directors meetings. Minute books are an integral part of books and records of a charity organization because they explain, among others, the decision-making process of the charity, historical information on operational and financial decisions the charity has considered and made, and the organization's mind with respect to its operations.

The meeting minutes were requested in the list of "Required Information and Documentation" accompanying our audit commencement letter, dated October 28, 2011. However, the Organization did not provide the requested minutes for review.⁵⁷ As a result, the CRA was unable to fully understand the decision-making process of the Organization, or to determine (in conjunction with other books and records) whether its resources were used for exclusively charitable purposes in compliance with the provisions of the Act.

It is our preliminary view that the Organization has failed to meet the requirements set out in subsection 230(2) of the Act. The Minister may revoke the registration of a charity because it failed to comply with or contravened sections 230 to 231.5, pursuant to paragraph 168(1)(e) of the Act. However, this particular non-compliance issue, on its own, may not necessarily result in the revocation of charitable status, but, nonetheless, is addressed as a non-compliance issue.⁵⁸

6851	6852	2008
6853	6853	2005
6854	6950	2008
7651	7700	2007
8601	8609	2007
8610	8611	2006
8612	8614	2007
8615	8615	2006
8616	8700	2007

⁵⁷ The CRA was also unable to locate any such meeting minutes in the electronic documentation provided to the CRA or any other documentation that would suggest that such meetings were ever held or even scheduled.

⁵⁸ The CRA has a wide range of measures to obtain compliance including: an "education letter," which explains the rules to a charity; a compliance agreement, which identifies the problems, the steps the charity will take to bring itself into compliance, and the potential consequences to the charity of not abiding by the agreement; sanctions of a financial

3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations (Paragraph 168(1)(d) of the Act)

A registered charity is in contravention of the Act and its Regulations when it issues donation receipts that contain incorrect, incomplete, or false information.

The Act and its Regulations 3500 and 3501 set out the requirements for registered charities with respect to the issuing of official donation receipts and allow for various penalties or sanctions set out in subsection 188.1(7) to 188.1(10) and 188.2(1) of the Act. In addition, it should be noted that improper receipting of gifts or donations is considered serious enough that it may, on its own, result in the revocation of registered status under paragraph 168(1)(d) of the Act. These requirements are also described on the CRA's Internet website.⁵⁹

3.1 Issued Official Donation Receipts that lacked the content requirement of Regulation 3501(1)

The audit reveals that the Organization issued donation receipts in direct contravention of Regulation 3501 of the Act as follow:

Regulation 3501(1) Every official receipt issued by a registered organization shall contain...	Observed non-compliance
(a) the name and address in Canada of the organization as recorded with the Minister;	<p>All of the receipts were issued under the name of "ISNA-Islamic Services of Canada Jami Mosque," for the years under audit. The name registered with the CRA was, and still is, ISNA, Islamic Services of Canada, without "Jami Mosque."</p> <p>In this regard, we note that shortly after the Organization changed its name in October, 1994, it confirmed with the CRA so that its receipts would properly reflect the name change.⁶⁰ This indicates that the Organization knew and ought to have known that the receipts should reflect the</p>

penalty and/or a suspension of ability to issue official donation receipts; and, ultimately, revocation of a charity's registration. (CRA's publication, entitled "Guidelines for applying sanctions," at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/nwsnctns-eng.html>). Refer to section 4 below.

⁵⁹ See Issuing receipts, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/>

⁶⁰ The Organization went through a name change from Muslim Students Associations, Islamic Services of Canada to the current name of ISNA, Islamic Services of Canada, by way of Supplementary Letters Patent, dated October 17, 1994. Subsequent to the name change, the Organization notified the CRA of such change on two occasions, dated February 17, 1995 and May 9, 1995. On the latter correspondence, i.e. dated May 9, 1995, the Organization requested for a confirmation that the CRA has had made a name change in its records, "in order that [the Organization's] receipts for income tax purposes may be changed to reflect the change in name."

	proper name on record with the CRA.
(j) the name and Internet website of the Canada Revenue Agency.	None of the receipts issued, or provided for review, contained the name or Internet website of the Canada Revenue Agency.

3.2 Third-party receipting

The purpose of the registration system for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts. The integrity of the system is seriously breached when a registered charity colludes with an unregistered organization for the purpose of providing tax relief for donations that are not made to that registered charity, a practice known as a third-party receipting. A registered charity may not issue receipts for gifts intended for an unregistered organization, or allow an unregistered organization to use its charitable registration number.

According to our audit findings, the Organization issued donation receipts for a total of \$340,516,⁶¹ under one of three donation categories: "Relief," "Zakat," or "Masjid," depending on the purpose of the donations collected. Based on the information we have reviewed, it is our understanding that the funds receipted by the Organization were not gifts made to it, but rather gifts made to Islamic Centre of Toronto (Jami Mosque), including those gifts intended for further disbursement to a foreign organization in Pakistan. We note that:

- Jami Mosque is an independently incorporated non-profit organization.
- Jami Mosque's accounting books indicate that all of the receipts reviewed were issued by the Organization on behalf of Jami Mosque.
- [REDACTED] Jami Mosque explained that:
 - o "[b]ecause [the Organization] has charitable status and [Jami Mosque] does not, [Jami Mosque] has carried on many of its activities in conjunction with [the Organization] to date so that charitable receipts could be issued for donations to Jami Mosque."⁶²

⁶¹

Donation Category	Year-end			Total
	09	08	07	
Masjid	89,565	76,187	81,452	247,225
Relief	18,100	34,174	15,459	67,733
Zakat	6,619	3,842	15,098	25,559
	114,304	114,203	112,009	340,516

⁶² As explained in section 1.2.1 above, the CRA is unable to conclude that the activities undertaken at Jami Mosque are, in fact, the Organization's own activities, being carried on by the Organization itself

- its "only function is the operation of a mosque in Toronto. The objects of [the Organization] does not include operation of a mosque."
- Donation receipts issued under the "Relief" category refer to a relief fund, which was "budgeted by the [Jami Mosque]" to be "distributed to organizations operating relief efforts on behalf of Muslims world wide affected by natural or man made disasters."

We note that during the audit commencement interview, the Organization indicated that much of the funds raised for Jami Mosque's "Relief" fund were collected by the Mosque in cooperation with the Canadian non-profit organizations, the Kashmiri Canadian Council (KCC) and the Kashmiri Relief Fund of Canada (KRFC), with the ultimate goal of sending the raised funds to a Pakistan-based non-governmental organization entitled the Relief Organization for Kashmiri Muslims (ROKM).⁶³

- [Jami Mosque] was the collector of donations issued under the "Zakat" category.⁶⁴
- The funds collected under the "Masjid" category relate to general funds for the operation of the Mosque.

As a result, it appears that the Organization issued official receipts on behalf of an unregistered organization, that is, Jami Mosque, to provide tax relief for gifts that were not made to the Organization.

It is therefore our preliminary view that the Organization issued donation receipts in contravention to the Act and Regulation 3501. Such a non-compliance practice⁶⁵ is significant enough that it constitutes grounds for revocation pursuant to paragraph 168(1)(d) of the Act.

Alternatively, subsection 188.1(9) of the Act provides for the levying of a penalty. A registered charity that has been found to contravene the receipting requirements of the Act by issuing receipts on behalf of an organization that has no right to issue official donation receipts is liable to pay a penalty equal to 125% of the eligible amount of the

⁶³ These funds were provided to the ISNA Development Foundation, a registered charity and qualified donee at the time, for it to remit to ROKM. Our research indicates that ROKM is the charitable arm of Jamaat-e-Islami, a political organization that actively contests the legitimacy of India's governance over the state of Jammu and Kashmir, including reportedly through the activities of its armed wing Hizbul Mujahideen. Hizbul Mujahideen is listed as a terrorist entity by the Council of the European Union and is declared a banned terrorist organization by the Government of India, Ministry of Home Affairs, under the Unlawful Activities (Prevention) Act of 1967.

Given the identified commonalities in directorship between ROKM and Jamaat-e-Islami and the Hizbul Mujahideen executive committee, concerns exist that the funds collected and disbursed as part of this relief fund may have been used to support the political efforts of Jamaat-e-Islami and/or its armed wing, Hizbul Mujahideen.

⁶⁴ In its letter to CRA dated April 15, 2008, Jami Mosque explained that "Zakat" is an "obligation on Muslims to pay 2.5% of their wealth to specified categories in society when their annual wealth exceeds a minimum level."

⁶⁵ Please note the fact that the Organization issued Official Donation Receipts that lacked the content requirements of Regulation 3501(1), on its own, may not necessarily result in the revocation of charitable status, but, nonetheless, is addressed as a non-compliance issue.

gift as it appears on any false receipt, plus a year's suspension if the total of all such penalties exceeds \$25,000.⁶⁶ According to our audit findings, the Organization may be liable for a penalty of \$425,645 (\$340,516 x 125%).

4. Conclusion

On the basis of our audit findings, it is our view that there are sufficient grounds for the revocation of the Organization's charity registration under subsection 168(1) the Act.

The Organization's Options:

a) No response

The Organization may choose not to respond to the issues raised above. In that case, the Director General of the Charities Directorate may then consider a course of action that could include the issuance of a *Notice of Intention to Revoke* the registration of Organization in the manner described in subsection 168(1) of the Act.

b) Response

Should the Organization choose to respond, please provide written representations, and any additional information and documentation, regarding the findings outlined above that the Organization wishes the CRA to consider within **30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include one of the following:

- No compliance action necessary;
- The issuance of an educational letter;
- Resolving the issues through the implementation of a Compliance Agreement;
- Sanctions of financial penalties and/or suspension of the Organization's right to issue official donation receipts for one year; or
- The Minister giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.

⁶⁶ A CRA's publication, entitled "Guidelines for applying sanctions," under subheading, *False information on official donation receipts*, at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/nwsmcns-eng.html>

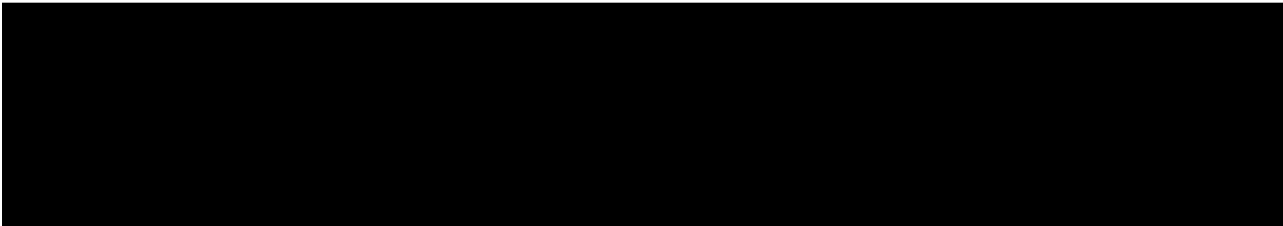
If the Organization appoints a third party to represent it in this matter, please send the CRA a written authorization naming the individual and explicitly authorizing that individual to discuss the Organization's file. If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the number indicated.

Yours sincerely



Charities Directorate
320 Queen Street
Ottawa ON K1A 0L5





November 18, 2014

SENT BY FAX [613-941-0186]

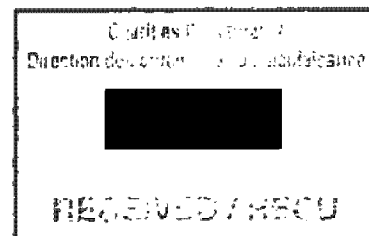
Charities Directorate
Canada Revenue Agency
320 Queen Street
Ottawa ON K1A 0L5

ATTENTION: [REDACTED] Senior Analyst

"PRIVATE & CONFIDENTIAL"

Dear Sir/Madam:

Re: ISNA, Islamic Services of Canada
Re: Our File # [REDACTED]
Re: Audit of ISNA, Islamic Services of Canada
Re: Your File # 0404426 BN# 884802356RR0001



A. INTRODUCTION

We are the solicitors for ISNA, Islamic Services of Canada (the "Charity"). We are writing further to the administrative fairness letter ("AFL") from Canada Revenue Agency ("CRA") dated June 16, 2014 concerning the audit for the period from January 1, 2007, to December 31, 2009, inclusively (the "Audit Period"). A copy of the AFL is attached at Tab A of this submission. The Charity appreciates the extension to November 18th, 2014, granted by you to respond to the AFL and has confirmed all of the information and representations contained in this submission as its own.

Once you have had an opportunity to review this submission, we would suggest that either a telephone conference call or an in-person meeting be arranged to discuss any additional questions or concerns that you may still have, if any, about the Charity as a result of the audit, the AFL or this submission.

B. BACKGROUND TO AUDIT

We note that the audit of the Charity was conducted by way of a field audit which began in 2011. Initially, the Charity received a telephone call on 12th October, 2011 from CRA to advise that an audit would be conducted. The Charity received an audit questionnaire dated October 27th, 2011. The Charity responded to the audit questionnaire on the 28th November 2011 a copy of which is attached at Tab B and an initial meeting with the auditors was held on November 30, 2011.

C. SUMMARY OF CRA'S SPECIFIC AREAS OF CONCERNS IN THE AFL

The AFL relates to the audit of the Charity for the period of January 1, 2007, to December 31, 2009. As a result of the audit, the AFL provides the following alleged areas of non-compliance with the Act:



- Failure to demonstrate that it is constituted for exclusively charitable purposes;
- Failure to meet the definition of a charitable organization under the Act/Failure to demonstrate that it carries out its own charitable activities;
- Failed to comply with or contravened any of sections 230 to 231.5 of the Act (Paragraph); and
- Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations.

The AFL concludes that based on the findings from the audit, CRA has sufficient grounds to revoke the registered charity status of the Charity. In addition, on page 35 of the AFL, CRA suggests that the Charity may also be liable for a penalty of \$425,645 for contravening the receipting requirements of the Act.

D. RESPONSE TO SPECIFIC AREAS OF CONCERNS

1. Failure to demonstrate that it is constituted for exclusively charitable purposes

At page 4 of the AFL, CRA lists the charitable purposes of the Charity as set out in its letters patent dated May 30, 1973 as follows:

- To help new Muslim students get familiarized with Canadian laws and customs and adjust to Canadian life;*
- To provide educational, cultural and religious services;*
- To arrange prayer meetings;*
- To promote friendly relations among students of different faiths;*
- To provide books, libraries, and reading room services;*
- To arrange lectures, seminars, camps and conferences in order to make Islam better understood;*
- To arrange hostel accommodations;*
- To arrange visits to hospitals to look after sick students and to help them in their period of convalescence; and*
- To further co-operation with existing Muslim organizations*

The AFL concludes at pages 5 and 6 that while c, f, and h may qualify as charitable (as well as e with some qualifications), purposes a, b, d, and g are not charitable. As such, the AFL states that the Charity has not met the requirements of the Act.

The AFL applies the requirements set out in CRA Guidance CG-019 *How to Draft Purposes for Charitable Registration*¹ to the charitable purpose of the Charity as set out in its letters patent. It should be noted that the guidance was released by CRA on July 25, 2013. The release of the guidance occurred both after the Audit Period, and after the audit itself. The Charity was registered with CRA on in September 22, 1973. In this regard, applying a guidance document that was not in existence at the time of the audit, or during the Audit Period, to charitable purposes which were approved more than three decades ago is fundamentally unfair.

The AFL also relied upon the Federal Court of Appeal decision in *Earth Fund*. The AFL cites the reasons of the Court at paragraph 20 wherein the Court stated that "[a]s a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate objects and activities are exclusively charitable". It should be noted that *Earth Fund* was a case in which the Minister had denied Earth Fund's application for charitable status based upon the definition of "charitable foundation" under section 149.1 of the Act. In this case, the Charity has already been registered for a number of years. As such, the Charity has relied upon the Minister's earlier decision that it met the definition of "charitable organization", as it was designated, and that it was registered on the basis that "all the resources of [it] are devoted to charitable activities carried on by the organization itself". As such, retroactively deciding that the purposes of the Charity are no longer charitable is fundamentally unfair, and the appropriate recourse of the Minister if applying the *Earth Fund* decision would be to give notice to the Charity that it's registration is annulled solely as a result of a change in law in accordance with subsection 149.1(23) of the Act as noted later in this submission.

2. Failure to meet the definition of a charitable organization under the Act/Failure to demonstrate that it carries out its own charitable activities

At page 7 of the AFL, CRA states that, "the Organization stated that it undertook only two programs: the provision of religious services through the Islamic Centre of Toronto (Jami Mosque); and the operation of the Islamic Book Service (IBS)". However, the AFL alleges that neither activity is an activity of the Charity. The Charity's response is set out below:

a) Operation of Jami Mosque

At page 8 of the AFL, CRA states that "... the Organization has not provided the CRA with any documentation supporting the assertion that Jami Mosque is a charitable program of the Organization." Moreover, CRA notes that:

- Jami Mosque is an independently incorporated entity, operating under a separate set of purposes and governing documents;
- Jami Mosque's governing documents, including its bylaws, fail to mention the Organization, but rather grant operational oversight to the Islamic Society of North America (ISNA);
- The Organization failed to demonstrate that it directs and controls the activities of Jami Mosque, a separately incorporated organization and a non-qualified donee.

¹ Guidance CG-019 *How to Draft Purposes for Charitable Registration*, online at: <http://www.cra-arc.gc.ca/chris-gvng/chris/plcy/cgd/draftprss-eng.html>.

[REDACTED]

As such, CRA concludes on page 11 that, "In light of the above, the CRA is unable to conclude that the activities undertaken at Jami Mosque are, in fact and law, the Organization's own activities, being carried on by the Organization itself. As such, it is also our position that the revenues and expenditures as reported on the Organization's T3010 should not have been attributed to the Organization."

The AFL makes reference to correspondence between the Charity and CRA, and Islamic Centre of Toronto (Jami Mosque) and CRA, which was incorporated under the *Corporations Act* (Ontario) by letters patent dated August 28, 1990. The correspondence from Jami Mosque indicated that [REDACTED] and that Jami Mosque and the Charity are independent of one another.

However, as noted at footnote 28, Jami Mosque [REDACTED] at the suggestion of CRA. A copy of the correspondence from CRA dated [REDACTED] is attached hereto at Tab C. The letter notes that the representations sent to CRA by Jami Mosque were [REDACTED]. This was due in part because, "the organization [Jami Mosque] may, in fact, be a duplicate organization or ISNA, Islamic Services of Canada". As such, CRA suggested on the basis of [REDACTED] that the activities of Jami Mosque were the activities of the Charity.

As such, CRA has now taken a contrary position following the Audit Period to the position earlier taken by CRA in suggesting that Jami Mosque is not an activity of the Charity. While representatives of the Charity may have incorrectly described the relationship between the two corporations, it remains the Charity which functionally operates Jami Mosque.

The AFL notes that the T3010s have consistently described the operation of Jami Mosque as its own activity. Moreover, all the expenses listed on the T3010s are expenses related to the operation of Jami Mosque. This was done because the Charity does employ and pay all of the employees concerning the operation of Jami Mosque. Attached at Tab D are the T4s for the employees during the Audit period, together with those following the audit period until 2013. Given that the Charity employed the employees concerning the operation of Jami Mosque, and paid their appropriate salaries, it is unclear how the operation of Jami Mosque is not an "own activity" of the Charity.

While the AFL notes that the charitable purposes of the Charity would not appear to permit the operation of a mosque, purpose c) makes reference to the operation of prayer meetings, and purpose b) makes reference to providing religious services. As such, it would appear that the operation of prayer services at Jami Mosque falls within the charitable purposes of the Charity. However, the Charity is willing to amend its objects by application for supplementary letters patent to clarify its charitable purposes given the fact that the current charitable purposes were drafted several decades ago.

Given the confusion that has occurred concerning the operation of Jami Mosque, the Charity will seek to coordinate the dissolution of Jami Mosque as a separate corporation, since Jami Mosque neither owns the real property on which the mosque is operated, nor does Jami Mosque employ or pay the employees of the mosque. As a result, Jami Mosque will cease to exist as a separate entity and will continue to be a

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
program of the Charity. In the alternative, Jami Mosque [REDACTED]
[REDACTED]

b) Islamic Book Service

As with Jami Mosque, the AFL alleges that IBS Canada is not an activity of the Charity. All employees are employed and paid by the Charity in carrying out its own activities, as indicated in the attached T4 statements.

2. Failed to comply with or contravened any of sections 230 to 231.5 of the Act

a) Failed to maintain adequate books and records for receipted donation

The AFL notes on page 16 that "By issuing receipts in such a non-sequential manner, the Organization failed to provide continuity in the serial numbers from one period to another. This makes it impossible for the CRA to verify the completeness of the donation receipts in a given period in order to determine whether all of the official donation receipts were accounted for."

The Charity recognizes that receipts were issued in a non-sequential manner. As noted in the AFL, the Charity used pre-printed receipt booklets in order to issue official donation receipts. The individual responsible for issuing receipts would select from the pre-printed booklets at random when issuing official donation receipts. The Charity has ceased issuing receipts in this manner.

b) Failed to maintain records or minutes of its board of directors meetings

At page 16 of the AFL, CRA notes that the Charity "failed to maintain records or minutes of its Board of Directors meetings." As a consequence, "CRA was unable to fully understand the decision-making process of the Organization, or to determine (in conjunction with other books and records) whether its resources were used for exclusively charitable purposes in compliance with the provisions of the Act."

As noted in the AFL, the Charity is an affiliate with Islamic Society of North America (ISNA). ISNA is also affiliated with the Canadian Islamic Trust Foundation. As a result of the overlap in governance between ISNA and CITF, much of the operation of the Charity fell to a committee within these organizations. As such, the Charity did not always operate in accordance with its own by-laws, or under the direction of its own board of directors. Nonetheless, the individuals who were responsible for the Charity and the operation of Jami Mosque maintained minutes of their decisions with respect to the operation of the Charity, specifically, the operation of Jami Mosque. As such, these minutes were available and were reviewed by the auditor during the Audit Period.

3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations

The AFL notes on page 18 through 19, "the Organization issued donation receipts for a total of \$340,516, under one of three donation categories: "Relief," "Zakat," or "Masjid," depending on the purpose of the

[REDACTED] [REDACTED]
[REDACTED]

donations collected." The AFL concludes that the Charity receipted donations which were in fact intended for Jami Mosque. As such, the AFL concludes that the Charity may be liable for a penalty of \$425,645.

The conclusion that the Charity issued receipts on behalf of Jami Mosque is owed in part to representations made by Jami Mosque [REDACTED] as a separate corporation. However, as noted above, that [REDACTED] at the suggestion of CRA because the operation of Jami Mosque was an activity of the Charity. As well, Jami Mosque has been operated as an activity of the Charity by virtue of the fact that the employees are all employed and paid by the Charity. As such, this is not a case where a registered charity has lent its registration number to a non-qualified donee, but the funds are in fact receipted by and spent by the Charity for the operation of Jami Mosque. As well, no funds were transferred from the Charity to Jami Mosque during the Audit Period or after, as Jami Mosque does not have a bank account and all donations were deposited into the bank account of the Charity.

E. OPTIONS FOR CRA TO CONSIDER

The Charity recognizes that it may not have always acted in full compliance with the Act and is prepared to enter into a compliance agreement in order to address the concerns of CRA.

Alternatively, as noted in the AFL, CRA alleges that the Charity has ceased to be constituted for exclusively charitable purposes. This is based upon the decision of the Federal Court of Appeal in *Earth Fund v. Canada* (M.N.R.)² wherein the Court stated that "[a]s a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate objects and activities are exclusively charitable". As such, the Charity submits that if a compliance agreement is not possible, then as an alternative to revocation, it would be appropriate for the Charity to be annulled pursuant to subsection 149.1(23).

Under subsection 149.1(23), the Minister may annul the registration of a charity if it was found to be registered in error or in the case of a change in law which results in the organization no longer being charitable. Either *Earth Fund* constitutes a change in law meaning that the Charity is no longer charitable, or, the Charity was registered in error. The Charity was incorporated to and was intended to continue operating the Islamic Centre of Toronto (Jami Mosque). The AFL alleges that the charitable purposes of the Charity do not permit it to operate a mosque. As such, it is arguable that the Charity was registered in error and that its registration status should be annulled.

F. CONCLUSION

Once you have had an opportunity to review this submission, we would suggest that either a telephone conference call or an in-person meeting be arranged to discuss any additional questions or concerns that you may still have, if any, about the Charity as a result of the audit, the AFL or this submission.

² 2003 D.T.C. 5016, 2002 FCA 498.

[REDACTED]

In addition, should CRA have any further concerns, the Charity would request the opportunity to address these concerns by further written communications.

Yours truly,

[REDACTED]

Per:

[REDACTED]

Encls.

cc: ISNA, Islamic Services of Canada

[REDACTED]

[REDACTED]

[REDACTED]

ISNA, Islamic Services of Canada

COMMENTS ON REPRESENTATIONS OF NOVEMBER 18, 2014

Based on the Canada Revenue Agency's (CRA) audit of ISNA, Islamic Services of Canada (the Organization), and after careful consideration of the representations dated November 18, 2014, it remains our position that the identified areas of non-compliance with the provisions of the *Income Tax Act* and/or its Regulations are sufficiently serious to warrant revocation of the Organization's registration.

The reasons are described in greater detail in this Appendix, which addresses the CRA's responses to the Organization's representations regarding the non-compliance issues identified in the CRA's Administrative Fairness Letter (AFL) sent to the Organization.

Below please find:

- A summary of the issues raised by the CRA in our AFL, dated June 16, 2014;
- A summary of the representations provide by the Organization's representative, [REDACTED] dated November 18, 2014; and
- The CRA's conclusions.

1. Ceased to comply with the requirements of the Act for its continued registration

1.1 Failure to demonstrate that it is constituted for exclusively charitable purposes

The Organization's purposes, as set out in its Letters Patent issued under the provisions of the *Ontario Corporations Act*, and dated May 30, 1973, are:

- a) *To help new Muslim students get familiarized with Canadian laws and customs and adjust to Canadian life;*
- b) *To provide educational, cultural and religious services;*
- c) *To arrange prayer meetings;*
- d) *To promote friendly relations among students of different faiths;*
- e) *To provide books, libraries, and reading room services;*
- f) *To arrange lectures, seminars, camps and conferences in order to make Islam better understood;*
- g) *To arrange hostel accommodations;*
- h) *To arrange visits to hospitals to look after sick students and to help them in their period of convalescence; and*
- i) *To further co-operation with existing Muslim organizations.*

Our AFL stated that the Organization's purposes would not be found to be exclusively charitable as concerned purposes a), b), d), g) and i).

Organization's representations

As per its representations, the Organization did not contest our particular concerns regarding its stated purposes, but rather raised the following points:

- 1) The CRA's analysis of the Organization's purposes is premised upon the requirements outlined in CRA Guidance CG-019, *How to Draft Purposes for Charitable Registration*. The Organization observed that this document was published on July 25, 2013, well after both the audit period and the Organization's registration by the CRA in September 1973. As a result, it is the Organization's expressed opinion that the CRA's application of a "guidance document that was not in existence at the time of the audit, or during the Audit Period, to charitable purposes which were approved more than three decades ago is fundamentally unfair."
- 2) In reaching its findings on the purposes, the CRA relied upon the Federal Court of Appeal decision in *Earth Fund v. Canada (M.N.R.)*, 2003 D.T.C. 5016, 2002 FCA 498 (*Earth Fund*) at para. 20, which states "[a]s a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate objects and activities are exclusively charitable". The Organization noted that *Earth Fund* was a case in which the Minister had denied an application for charitable status based upon the definition of "charitable foundation" as defined under section 149.1 of the Act. The Organization, however, was granted charitable registration by the CRA as a "charitable organization", and has continued to operate on this basis.

It is the Organization's position that "retroactively deciding that the purposes of the [Organization] are no longer charitable is fundamentally unfair, and the appropriate recourse of the Minister if applying the *Earth Fund* decision would be to give notice to the [Organization] that its registration is annulled solely as a result of a change in law in accordance with subsection 149.1(23) of the Act as noted later in this submission."

CRA's Conclusion

Although the CRA's Guidance CG-019, *How to Draft Purposes for Charitable Registration*, was released in 2013, the requirements set out therein were in effect before, during, and after the audit period. The Guidance does not articulate a new standard by which the CRA renders a determination on the acceptability for reasons of charitable registration of an organization's stated purposes. Rather, as indicated in the opening paragraph of the Guidance itself, it "replaces policy statement CPS-004, *Applicants with Broad Object Clauses*, Summary Policy CSP-C01, *Charitable Purposes*, Summary Policy CSP-001, *Objects (Charitable)*, Summary Policy CSP-002, *Objects (broad and vague)*, and Summary Policy CSP-003, *Objects (standard)*", in order to allow for greater ease of use by the charitable sector.¹

We correctly relied on the Guidance as a compilation of the relevant legal requirements and suggested approach for drafting purpose statements. The Guidance offers a practical and accessible means to frame the preliminary determinations set out in our AFL, enabling the Organization to develop a comprehensive understanding the CRA's requirements in this regard and assisting the Organization in its preparation of a response to our expressed concerns.

¹ These earlier policy documents are no longer available on the CRA's website, and therefore, the Guidance is the only publicly available document outlining our position.

Furthermore, in reaching our preliminary determinations on the Organization's purposes, the CRA allowed for some flexibility. We acknowledged in the AFL that, although the Organization's stated purposes do not conform in the explicit manner that is recommended in the CRA's Guidance mentioned above, we nonetheless considered that purposes c), e), f) and h) qualified as charitable.²

We have considered the Organization's assertions pertaining to the CRA's alleged "retroactive" and misapplied reliance on the Federal Court of Appeal's decision in *Earth Fund*. It is clear that the case addresses the CRA's refusal to register an organization as a "charitable foundation", rather than the eligibility of a charity designated as a "charitable organization" to remain registered. However, this distinction is immaterial to the question at hand: the necessity that all purposes be exclusively charitable in order to comply with the requirements for registration has universal application, regardless of designation.

In *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, the Court stated:

*While the definition of "charitable" is one major problem with the standard in s. 149.1(1), it is not the only one. Another is its focus on "charitable activities" rather than purposes. The difficulty is that the character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable, but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature. In other words, it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature. Accordingly, this Court held in *Guaranty Trust*, supra, that the inquiry must focus not only on the activities of an organization but also on its purposes.*

[...]

The final consideration raised by s. 149.1 is that of exclusive charity. Under subs. (1), the definition of "charitable foundation" includes the requirement that it "is constituted and operated exclusively for charitable purposes" and "charitable organization" means, inter alia, an organization "all the resources of which are devoted to charitable activities carried on by the organization itself". The [Income Tax Act], therefore, clearly requires that all of the purposes and activities of the foundation or organization be charitable [Emphasis added].³

Contrary to the representations made by the Organization, our determination did not rest solely on the application of the *Earth Fund* decision.⁴ In this regard, we would note that we referenced the *Vancouver Society* decision in the opening paragraphs of section 1 of our AFL, where we explained that the determination as to whether an organization qualifies as a charity under the Act is, in essence, a two-part test:

² Providing, of course, that the activities undertaken in furtherance thereof were found to be charitable.

³ *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue* (*Vancouver Society*), [1999] 1 S.C.R. 10 at paras. 152 and 154.

⁴ Please note that the case law examples we provide in our correspondence are not intended to be exhaustive, but rather, illustrative.

1. the purposes of the organization must be exclusively and legally charitable under common law, and must define the scope of the activities engaged in by the organization; and
2. all of the organization's resources must be devoted to these activities.⁵

In rendering its decision in *Vancouver Society* the Court cited the Supreme Court of Canada's 1967 decision in *Guaranty Trust Co. of Canada v. Minister of National Revenue*.⁶ In *Guaranty Trust*, the Court offered its first explicit approval of the classification approach to charitable purposes outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.),⁷ and also found that "*the question as to whether the association was constituted exclusively for charitable purpose could not be determined solely by reference to the objects and purpose for which it was originally incorporated*", but must also take into account an organization's activities.⁸

In regard to the application of this two-part test, it is noted that the Organization was originally incorporated and registered under the name "Muslim Students Associations, Islamic Services of Canada".⁹ In keeping with this name, as confirmed by the directors present at the audit commencement interview, and as generally evidenced by its incorporating purposes, the Organization's original focus was the provision of services to Muslim students. During the audit interview, the Organization's Board of Directors explained that the Organization's focus had evolved significantly since it was incorporated.¹⁰ The documentation provided by the Organization in the course of the audit confirmed that it no longer exclusively or expressly provides services for students.

We recognize and have acknowledged the Organization's *historical* ties to Jami Mosque. As noted in section 1.2.1 of our AFL, information available on Jami Mosque's website explains that the Organization was established to hold title to the Jami Mosque property located at 56 Boustead Avenue, Toronto, Ontario, in order to protect the property on behalf of the Muslim community:

Brothers Sirajuddin Ahmed, National Vice President of the MSA [Muslim Student Association], Abdul Hai Patel, the MSA Canadian Representative, and Ata-ul-Haq Malick, the Coordinator of MSA Montréal chapter, set up a charitable trust called MSA Islamic Services of Canada, so that no one will ever claim ownership and sell it [Jami Mosque]. They repurchased the Mosque under the ownership of the MSA

⁵ *Vancouver Society*, *ibid* no 3, at para. 159 (Erroneously referenced as paragraph 158 in the AFL). As stated in the decision, the Court's findings in this regard were reached on the "basis of Canadian jurisprudence."

⁶ *Vancouver Society*, *ibid* no 3, at para. 152.

⁷ As described in our AFL.

⁸ *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133. The ratio of the *Guaranty Trust* decision, one that has been cited with approval in a number of recent decisions and continues to strongly influence the determination of whether an organization meets the requirements for registration, would have been applied at the time the CRA approved the Organization's 1972 Application for Registration.

⁹ Although subsequently changed to "Muslim Students Associations [MSA], Islamic Services of Canada" during the application process, the Organization originally submitted its Form T2050 under the name "Muslim Students' Academic, Religious and Cultural Services or the MSA Services". The Organization formally adopted its current name with the issuance of its Supplementary Letters Patent, dated October 17, 1994.

¹⁰ This evolution in the Organization's focus is remarked upon in our AFL.

Islamic Services of Canada, and the Mosque was reopened in June 1973
[emphasis added].¹¹

There is no evidence that this property holding arrangement was communicated to the CRA during the application process, nor does it appear to have come to fruition until after the date of registration in September 1972.

More pertinently in terms the current audit, and as described in section 1.2.1 of our AFL, the Organization's undertakings in this regard evidently ended with the establishment of the Canadian Islamic Trust Foundation (CITF)¹² and the Organization's subsequent transfer to CITF of title to the property, and seemingly any accompanying operational responsibility for Jami Mosque, in July 1987.¹³

Contrary to the Organization's assertions that we have "*retroactively decid[ed] that the purposes of the Charity are no longer charitable*", the CRA has rather applied the two-part test and considered the purposes afresh through the lens of the audit findings related to the Organization's admitted and evident shift in activities away from a focus on the provision of services to Muslim students.

As a result of our review, it remains the CRA's position that the Organization has failed to demonstrate that it is constituted for exclusively charitable purposes. The Organization has failed to comply with the requirements of section 149.1(1) the Act for its continued registration. This constitutes grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

1.2 Failure to meet the definition of a charitable organization under the Act/Failure to demonstrate that it carries out its own charitable activities

During the course of the audit, the Organization represented itself as having undertaken two programs: the provision of religious services through the Islamic Centre of Toronto (Jami

¹¹ http://www.jamimosque.com/some_words_about_us.php. As further explained on the website, the property, which was formally a Christian church, was purchased in 1969 by the Canadian Muslim Society. However, "[i]deological differences among Muslims of diverse culture and *mazhabs* (religious thoughts) and greed for power soon gave birth to numerous conflicts for leadership, operation and administration of the Mosque." As a result, attendance and donations declined and the "*Mortgagee locked the doors and it was put up for sale.*" In an attempt to save the Mosque, the MSA [the Organization] appealed to the late King Faisal of Saudi Arabia, who reportedly agreed to provide the needed funds, on "*the condition that it must be given to a registered organization.*"

¹² CITF was incorporated federally under the *Canada Corporations Act* on August 18, 1983, and registered by the CRA as a charitable organization with an effective date of August 31, 1983.

¹³ As explained in our AFL, the wording used on Jami Mosque's website to describe the title transfer states that the "Trust", referring to the MSA, Islamic Services of Canada, was "later renamed as Canadian Islamic Trust Foundation" and that, "later on...[a] new organization, the Islamic Society of North America (ISNA) was instituted in 1976 which took MSA and CITF under its banner." Although, the Jami Mosque website states that the Organization was simply renamed the Canadian Islamic Trust Foundation, this was not the case, as both organizations were, and are, separately registered charitable, and independently incorporated, organizations.

However, the wording used does suggest that the Organization's responsibilities as related to Jami Mosque ended with the transfer of title to the property and lends support to our position, as described in some detail in section 1.2 of our AFL, and 1.2 and 2.2 below, that it is CITF and not the Organization that can claim operational responsibility for, or oversight of, the activities undertaken at Jami Mosque. We note that a review of the minutes of CITF's Board of Director meetings would indicate that CITF has had operational oversight of Jami Mosque since at least 1992, which is the earliest date of the minutes made available to the CRA by CITF.

As stated in our AFL, section 241(4)(a) of the Act states that "*an official may provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act.*" As such, the CRA – in assessing the charitable nature of the Organization's activities – has considered information provided to the CRA by CITF.

Mosque), an independently incorporated entity, operating under a separate set of purposes and governing documents; and the operation of the Islamic Book Service.

As documented in our AFL, the audit was unable to determine that either of these activities are, in fact and law, the Organization's own activities, carried on by the Organization itself. Consequently, it was our preliminary view that the Organization had ceased to comply with the requirements of the Act by failing to carry on its own charitable activities and failing to meet the definition of a charitable organization under section 149.1(1) of the Act.

Organization's Representations

In regard to the operations of Jami Mosque, the Organization's representations raised the following points:

- 1) Jami Mosque, a separately incorporated organization under the *Corporations Act (Ontario)*, [REDACTED] and [REDACTED] to that effect. However, [REDACTED] at the suggestion of the CRA. The Organization referenced the CRA's letter to Jami Mosque dated [REDACTED] as follows:

The letter notes that the representations sent to CRA by Jami Mosque were

[REDACTED] This was due in part because, "[Jami Mosque] may, in fact, be a duplicate organization of ISNA, Islamic Services of Canada."

It is the Organization's contention that the "CRA [in its letter of [REDACTED] suggested on the basis of a [REDACTED] that the activities of Jami Mosque were the activities of the [Organization]" and that the CRA had subsequently "taken a contrary position following the Audit Period to the position earlier taken by CRA in suggesting that Jami Mosque is not an activity of the [Organization]."

- 2) While past representations of the "Charity" may have incorrectly described the relationship between the two corporations,¹⁴ it is the Organization that functionally operates Jami Mosque. In this regard, the Organization stated that it has consistently described Jami Mosque as its own activity and included Jami Mosque's operational expenses on its Form T3010s, *Registered Charity Information Return*, because "the [Organization] does employ and pay all of the employees concerning the operation of Jami Mosque." In light of this

¹⁴ Referring presumably to the AFL's quoted references to Jami Mosque's representations, and not the Organization's, made to the CRA in which Jami Mosque described its relationship to the Organization as follows:

- The Organization is "a Canada-wide organization that began as a Muslim student association in 1973 with its objects mainly related to students. The Corporation [Jami Mosque] operates the oldest mosque in Toronto. Because the [Organization] has charitable status and the Corporation does not, the Corporation has carried out many of its activities in conjunction with the [Organization] to date so that charitable receipts could be issued for donation to Jami Mosque. The [Organization] uses office space at the mosque for meetings from time to time but otherwise the organizations are independent of each other [emphasis added]" (Letter of April 15, 2008)
- The Organization has "charitable status and the Corporation [REDACTED] the sole reason the Corporation has carried on its activities in connection with the [Organization] is to enable the Corporation to provide charitable receipts for donations to the Corporation [REDACTED] by the CRA, the Corporation and the [Organization] will be fully independent of the other." (Letter of May 14, 2010)

responsibility, the Organization stated it is therefore, "unclear how the operation of Jami Mosque is not an 'own activity' of the [Organization]".

3) In concluding its representations on this particular issue, the Organization made two proposals:

i. It would undertake to "seek to coordinate the dissolution of Jami Mosque as a separate corporation, since Jami Mosque neither owns the real property on which the Mosque is operated, nor does Jami Mosque employ or pay the employees of the mosque"; or

ii. "Jami Mosque [REDACTED]"

As regards the operation of Islamic Book Service, the Organization simply stated that "[a]ll employees are employed and paid by the [Organization] in carrying out its own activities" and substantiated this position through the provision of copies of related T4 statements.

CRA's Conclusion

In regard to the Organization's representations pertaining to the [REDACTED]

[REDACTED] by the Islamic Centre of Toronto (Jami Mosque) and its assertion that the CRA had, in our letter of January 19, 2012, "suggested on the basis of a [REDACTED] that the activities of Jami Mosque were the activities of the [Organization]" and that the CRA had subsequently "taken a contrary position following the Audit Period to the position earlier taken by CRA in suggesting that Jami Mosque is not an activity of the [Organization]", we would respectfully disagree.¹⁵

We would note that any opinion that CRA may have had in the time leading up to the [REDACTED] was not reached on the basis of a [REDACTED] as [REDACTED]. Rather, as is discussed in further detail below, our quoted statement that "the organization [Jami Mosque] may, in fact, be a duplicate organization of ISNA, Islamic Services of Canada [emphasis added]" served not as a conclusion drawn by the CRA, but as a summation of the representations made by the directors present at the audit commencement interview.

As explained in our letter of [REDACTED] Jami Mosque [REDACTED]

[REDACTED] These concerns, including but not limited to our stated confusion surrounding the seeming overlap between the activities claimed by the Organization on its Form T3010s and those claimed by Jami Mosque [REDACTED]

¹⁵ As stated in our AFI, section 241(4)(a) of the Act states that "an official may provide to any person taxpayer information that can reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act. . ." As such, the CRA – in assessing the charitable nature of the Organization's activities – has considered information provided to the CRA by Jami Mosque.

¹⁶ The CRA's undertaking should have more properly been termed [REDACTED]

It was Jami Mosque's [REDACTED]

[REDACTED] in conjunction with an audit of the operations of the Organization. [REDACTED]

The audit visit for both organizations was scheduled to take place the week of November 28, 2011, at 2200 South Sheridan Way, Mississauga, Ontario. As is stated in our letter to Jami Mosque dated [REDACTED] it was during this visit that the CRA was informed that the majority of the directors were unaware [REDACTED]⁷ It was also at this time that we were further informed that the Organization and Jami Mosque were "essentially" one organization and that Jami Mosque was "established under ISNA, Islamic Services."

Following some further discussion with the directors, it was agreed to conduct the audit interview of the Organization in conjunction with Jami Mosque on November 30, 2011. Supporting their earlier assertions pertaining to the Organization's and Jami Mosque's relationship, the description of all activities provided by the directors were those undertaken through Jami Mosque.

It was during the audit visit, and based upon the representations made by the directors, that the CRA enquired as to the [REDACTED]

[REDACTED] was provided to Jami Mosque for its consideration with our letter of [REDACTED]

Upon receipt of the letter, we were told that the board members would discuss [REDACTED] and that when a collective decision regarding the future of Jami Mosque was made, the CRA would be informed.¹⁹ [REDACTED]

While we accepted at face value the statements made at the time of the interview, the directors' representations as to the Organization's relationship with Jami Mosque were not substantiated by our subsequent audit of the Organization's books and records which, as detailed in our AFL, failed to demonstrate that the activities undertaken at Jami Mosque were the Organization's own.

¹⁷ It was further explained to us at the interview that [REDACTED]

[REDACTED] This last comment of which we understood to mean the issuance of official donation receipts for tax purposes.

¹⁸ Comprised of the following correspondence, as recorded in [REDACTED]

¹⁹ As described by Mr. Shameem Mohammed, during a January 9, 2012 conversation with the CRA auditor.

As explained in our AFL, under section 149.1(1)(a) of the Act a "charitable organization" is defined, in part, as an organization, whether or not incorporated,

all the resources of which are devoted to charitable activities carried on by the organization itself...

A registered charity can only use its resources (for example, funds, personnel, and property) in two ways, whether inside or outside Canada:

- on its own activities (those that are carried out under the charity's direction, control and supervision, and for which it can account for any funds expended); and
- on gifts to qualified donees.

Our AFL further explained that a charity's own activities may be carried out by its directors, volunteers, employees or other staff, or by intermediaries (agents, contractors, or partners) acting on its behalf. However, in all instances, the charity must be able to demonstrate that the activities involved are undertaken at its initiative and direction, and are conducted under its supervision and control.

The simple act of the Organization reporting Jami Mosque's activities and financials on its Form T3010, or being the employer of record for employees working for the benefit of Jami Mosque is not sufficient to demonstrate that the activities undertaken at Jami Mosque are activities "*carried on by the organization itself*." The documentation provided does not establish that these employees were employed on behalf of the Organization, undertaking activities under its direction and control.²⁰

In addition to the concerns expressed regarding the Organization's failure to demonstrate that it directs and controls the activities of Jami Mosque, a separately incorporated organization and a non-qualified donee, our AFL raised three other areas of related concern: one, the statements made by Jami Mosque [REDACTED] as to nature of its relationship with the Organization;²¹ two, Jami Mosque's governing documents, including its bylaws, fail to mention the Organization, but rather grant operational oversight to the Islamic Society of North America (ISNA);²² and three, and perhaps most significantly, our review of the available documentation that indicated that it is the CITF and not the Organization that exercised and was formally granted operational oversight of Jami Mosque, including as

²⁰ See also section 3.2 below for our further considerations in this regard.

²¹ That, in short, Jami Mosque issued official donation receipts via the Organization, otherwise, they are independent of each other. Please refer to footnote 13 above for more detail.

²² Jami Mosque's bylaws make no reference to the Organization, including its role in Jami Mosque's operation, but do make the following provisions regarding ISNA:

- The Mosque is to remain permanently affiliated with ISNA;
- The Mosque's Executive Committee is to include one member appointed by the ISNA-Canada Council. The role of this individual is to "*provide a constant link between the two bodies*";
- Elections to the Executive Committee are to be conducted by an Election Committee instituted by ISNA-Canada Council;
- The ISNA-Canada Council is to confirm the appointments of the Imam and Executive Director as recommended by the Executive Committee of the Mosque;
- The ISNA-Canada Council is to approve all major alterations to the property; and
- The ISNA-Canada Council has the power to "*take action deemed necessary against any unislamic use of the property and reserve the right to interpret rules of Islamic conduct in consultation with ISNA's Fiqh Council and the ISNA-Executive Council if the [Jami Mosque's] Executive Committee fails to do so.*"

related to Jami Mosque's Executive Committee, the body responsible for the day-to-day operations of the Mosque.²³

The Organization's representations are silent on the second and third finding and thus fail to address our concerns. Consequently, the CRA is unable to conclude that the activities undertaken at Jami Mosque are, in fact and law, the Organization's own activities, being carried on by the Organization itself.

It is our further opinion that the Organization's representations as related to the operation of the Islamic Book Service similarly fail to allay the concerns expressed in our AFL.²⁴

As a result, it is our conclusion that neither the activities undertaken at Jami Mosque nor those of the Islamic Book Service can be found to represent the Organization's own. Consequently, it remains our view that the Organization has ceased to comply with the requirements of the Act by failing to carry on its own charitable activities, thereby failing to meet the definition of a charitable organization as defined by section 149.1(1) of the Act. This constitutes sufficient reason to revoke the Organization's status as a registered charity under paragraph 168(1)(b) of the Act.

Dissolution of Jami Mosque's Corporate Status

In light of this conclusion, and putting aside the question of why it could only "seek to coordinate" the dissolution of a corporate entity over which it claims control, the Organization's proposal to undertake "the dissolution of Jami Mosque as a separate corporation" does not address the concerns outlined in our AFL, as the Organization has failed to establish the activities as its own, nor offer any clarification as to CITF's role in the operations of Jami Mosque.

The Organization's second proposal that [REDACTED] similarly does not address our concerns. In broaching such an uncertain scenario, it is our understanding that the Organization is suggesting that its sole purpose would be to gift funds to a qualified donee, [REDACTED] a purpose for which it is neither constituted, nor registered. Furthermore, the Organization is asking us [REDACTED]

[REDACTED] For further

²³ As quoted in our AFL, according to its January 30, 2009 minutes, the Executive Committee "is responsible for day to day operation of the Jami Mosque such as arrangement of prayers, setting up regular weekly programs of 'dars and halaqas or other similar activities, and special programs such as invited speakers, collection of donations and regular expenses, activities related to maintenance, repairs, safety, and security, etc. It is our understanding that the Committee is not authorized for hiring and firing personnel, and where expenses of fairly considerable amount of money are involved, which should be recommended to the CITF Board. This is so because of the possibility that CITF or ISNA Canada may be dragged into a legal suit, and the CITF and ISNA would have to deal with its consequences." In addition to our AFL, see also sections 1.1 and 2.2 for further information pertaining to CITF's role in the operations of Jami Mosque.

²⁴ The CRA was unable to determine that the Islamic Book Service is in fact the Organization's own program, as the review of the minutes of CITF's Board of Directors meetings suggests that it was CITF that has had responsibility for the Islamic Book Service, rendering key operational and financial decisions.

Amendment to Purposes

Stating that "*the AFL notes that the charitable purposes of the [Organization] would not appear to permit the operation of a mosque*"²⁵ and contesting this position by citing "*purpose c), [which] makes reference to the operation of prayer meetings, and purpose b) [which] makes reference to providing religious services*", the Organization nonetheless expresses its willingness "*to amend its objects by application for supplementary letters patent to clarify its charitable purposes given the fact that the current charitable purposes were drafted several decades ago.*"

Had the Organization resolved the other issues raised in our AFL, we acknowledge that amending its charitable purposes would have been an acceptable course of action to address the concerns raised in section 1.1 of our AFL. However, as it is our opinion that there are sufficient and substantial grounds for the revocation of the Organization, any amendment to the Organization's purposes would not address the identified non-compliance concerns.

Annulment of Registration

In its letter dated November 18, 2014, the Organization proposed that "*the appropriate recourse of the Minister if applying the Earth Fund decision would be to give notice to the [Organization] that its registration is annulled solely as a result of a change in law.*"

According to section 149.1(23) of the Act, "*the Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity.*" This means that registration may be annulled for only the following reasons:

- Registration was granted in error; or
- An organization no longer qualifies as a registered charity because of a change in the law.

In this regard, and as outlined in section 1.1 above, it is our position that the Organization qualified for charitable registration at the time of its registration. There is no indication that the decision to register was not a reasonable one based on the information available to the CRA at the time of registration. In the absence of clear error in registration, an annulment of registration should not be considered.

We also considered if an annulment as a result of a change in law, specifically a change to the legislation affecting the charitable nature of the Organization such as a change to the Act or a change to the common law could be granted. As is also described above, the Organization has not shown, nor have we been able to identify, any changes to the law which

²⁵ Footnote 24 in section 1.2.1 of our AFL in fact states that "*the Organization is not explicitly incorporated to maintain and operate a Mosque [emphasis added]*".

would warrant its annulment. We have concluded there was no change in law that would justify the Organization's annulment.

In the case of the Organization, it was neither registered in error nor has it ceased to be a charity as a result of a change in law. As such, the Organization's registration as a registered charity cannot be annulled, but should be revoked in the manner described in section 168(1) of the Act.

2. Failed to comply with or contravened any of sections 230 to 231.5 of the Act (Paragraph 168(1)(e) of the Act)

Section 230(2) of the Act requires that every qualified donee keep records and books of account, at an address in Canada recorded with the Minister or designated by the Minister, containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

2.1 Failed to maintain adequate books and records for receipted donation amounts

The Organization failed to maintain proper duplicate donation receipts for the CRA to verify whether donations receipts issued by the Organization were in accordance with the Act and its Regulations, and, as a result, whether the Organization should maintain its registration as a charitable organization.

A comparison between the duplicate donation receipts the Organization issued and the amount reported on Form T3010, *Registered Charity Information Return* for the years under audit resulted in a discrepancy of \$174,650,²⁶ where duplicate receipts accounted for only \$340,516 of the \$515,166 reported on the Form T3010s, raising concerns that the Organization had failed to maintain a duplicate copy for each receipt it issued.

In addition, the Organization issued its donation receipts in such a manner that the completeness of the receipts could not be verified for the period under audit.²⁷ Thus, the CRA

²⁶ Comparison for the Receipted Amount between T3010 and Official Duplicate Receipts

YE	T3010 (1)	Duplicate Receipts (2)	Variance [(1) - (2)] (3)
07	182,427	112,009	70,418
08	141,693	114,203	27,490
09	191,046	114,304	76,742
	<u>515,166</u>	<u>340,516</u>	<u>174,650</u>

²⁷ The Organization issued its donation receipts, which were pre-printed and pre-numbered, in a non-sequential order. Therefore, there was no continuity of serial numbers for the receipts issued from one period to another. For more detail, please refer to section 2.1 of the AFI.

was unable to determine whether all of the official donation receipts were accounted for, or if any of those unaccounted receipts were issued with the Organization's control or knowledge.

Organization's Representations

As for the practice of issuing receipts in non-sequential order, the Organization, on page five of the representations, acknowledged and accepted the audit findings relating to this particular practice and stated that it has now ceased issuing receipts in this manner.

CRA's Conclusion

The Organization did not address audit findings specific to the discrepancy of \$174,650 between the duplicate receipts and the reported amount on its Form T3010 in its representations. Thus, it is assumed that the Organization does not dispute the audit findings with respect to this particular issue. However, the Organization failed to demonstrate how it intends to correct the deficiency so that all duplicate receipts would be properly maintained.

2.2 Failed to maintain records or minutes of its Board of Directors meetings

Minute books are an integral part of books and records of a registered charity because they explain, among other matters, the decision-making process of the charity, historical information on operational and financial decisions the charity has considered and made, and the charity's mind with respect to its operations.

The Organization failed to maintain records or minutes of its Board of Directors meetings. As a result, the CRA was unable to fully understand the decision-making process of the Organization, and by extension, to determine (in conjunction with other books and records) whether its resources were used for exclusively charitable purposes in compliance with the provisions of the Act.

Organization's Representations

The Organization stated, on page five of the representation, that "[a]s noted in the AFL, the [Organization] is an affiliate with Islamic Society of North America (ISNA). ISNA is also affiliated with the Canadian Islamic Trust Foundation. As a result of the overlap in governance between ISNA and CITE, much of the operation of the [Organization] fell to a committee within these organizations."

The Organization continues that "[a]s such, the [Organization] did not always operate in accordance with its own by-laws, or under the direction of its own board of directors. Nonetheless, the individuals who were responsible for the [Organization] and the operation of Jami Mosque maintained minutes of their decisions with respect to the operation of the [Organization], specifically, the operation of Jami Mosque. As such, these minutes were available and were reviewed by the auditor during the Audit Period."

CRA's Conclusion

The meeting minutes the Organization provided for the CRA's review were those of the Executive Committee of the Islamic Centre of Toronto - Jami Mosque, a separately incorporated entity. The minutes indicated that the Executive Committee consisted of four to six members for the time period under audit. While one of the directors of the Organization was also a member of the Executive Committee for year-ends 2007 and 2008, this number increased to two for year-end 2009.

Thus, the makeup of the Jami Mosque Executive Committee was such that the number and percentage of directors of the Organization who were also Committee Member was as follows:

	Year-end	2007	2008	2009
Total Number of Jami Mosque Executive Committee Members		5	4	5 - 6
No. of Organization Directors who are also Committee Member		1	1	2
Percentage of Directors of Organization at Committee (%)		20	25	33 - 40

Given that the directors of the Organization made up only 20% to 40% of the Jami Mosque Executive Committee, which is far from obtaining 50+1 percent majority in the Committee, especially for year-ends 2007 and 2008, the Organization lacked authority to maintain control and direction on the operations of Jami Mosque. Thus, it would be improbable that the Organization was able to excise such control and direction over Jami Mosque.

In essence, these Executive meetings were held by the Jami Mosque Committee, presumably, for the purpose of serving Jami Mosque, and that resulting records were maintained for the benefit of Jami Mosque. Therefore, the Organization failed to show that it maintained "minutes of [its] decisions with respect to the operation of the [Organization]," as it asserted in its representations.

In addition and as noted in section 1.2.1 of our AFL, our analysis of the information available to the CRA indicated that the larger operational and financial decisions pertaining to Jami Mosque fell not to the Organization, but rather to CITF, and, as a result, many of the decisions pertaining to Jami Mosque were recorded in CITF's minutes.²⁸

We similarly do not accept the Organization's assertions that CITF's meeting minutes can be considered the decisions of the Organization simply due to any overlap in directors between the two organizations. In this regard, we note the following:

	Year-end	2007	2008	2009
Total Number of Directors at CITF		5	4	4
No. of Directors of Organization who are also Directors at CITF		2	2	1
Percentage of Directors of Organization at CITF (%)		40	50	25

²⁸ As recorded in CITF's Board of Director meeting minutes. CITF's role in this regard dates back at least as early as 1992, and continued throughout the audit period.

Given the makeup of CITF's Board of Directors, i.e., the Organization failing to reach 50+1% membership in the CITF Board of Directors in any of the audit period, it is not apparent how the decisions recorded in CITF's minutes could be construed as representing those of the Organization. Furthermore, it should be noted that the decisions stemming from the CITF Board of Director meetings are not represented, nor can they be recognized, as those of the Organization, or even as joint-decisions of the Organization and CITF, but are rather quite clearly recorded as those of CITF alone.

Moreover, the Organization's representations fail to address the audit findings that indicated that oversight of Jami Mosque was formally granted to CITF, and not the Organization. As recounted in our AFL:

- A January 10, 2009 resolution passed by the ISNA Canada Majlis confirmed CITF's administration of Jami Mosque:

Jami Mosque affairs to be handled by the CITF: Mohammad A. Khadim recommended that the earlier decision of the Majlis should be reversed and let the CITF Board look after the affairs of the Jami Mosque. The Majlis made the following decision:

Mohammad A. Khadim moved that earlier decision of the [ISNA] Majlis to handle the affairs of the Jami Mosque be reversed and CITF Board would be responsible for the running affairs of the Jami Mosque. The motion was seconded by M. Ashraf and it was carried unanimously.²⁹

- As recorded in the minutes of its January 30, 2009, Executive Committee meeting, Jami Mosque has officially recognized the jurisdiction of CITF over its affairs:

As we understand, the Committee is responsible for day to day operation of the Jami Mosque such as arrangement of prayers, setting up regular weekly programs of 'dars and halaqas or other similar activities, and special programs such as invited speakers, collection of donations and regular expenses, activities related to maintenance, repairs, safety, and security, etc. It is our understanding that the Committee is not authorized for hiring and firing personnel, and where expenses of fairly considerable amount of money are involved, which should be recommended to the CITF Board. This is so because of the possibility that CITF or ISNA Canada may be dragged into a legal suit, and the CITF and ISNA would have to deal with its consequences [Emphasis Added].³⁰

- In October 2011, the ISNA Canada Majlis passed a motion ratifying terms of reference for the Jami Mosque Operations Committee (formerly the Executive Committee). The terms of reference identifies CITF's role in the operation of Jami

²⁹ ISNA Canada Majlis Meeting Minutes, January 10, 2009.

³⁰ Minutes of January 30, 2009, Executive Committee Meeting of Jami Mosque

Mosque, seemingly giving CITF authority over the Mosque Operations Committee and thus Jami Mosque.³¹

Additionally, it is of note that although there was much overlap in the make-up of the boards of directors of a number of the ISNA-affiliated charities, the respective boards took care to differentiate the meeting minutes of each charity. For example, on June 28, 2008, the same group of individuals making up the board of directors of both ISNA and CITF, held meetings one after another for the respective organizations. Distinct and separate minutes were recorded for each organization and the business and decisions of each were clearly demarcated.

In this context, the question arises as to why separate meeting minutes were maintained for the other ISNA-affiliated charities and not for the Organization. The simple explanation of an overlap in directors is not sufficient to address our concerns. It, therefore, remains our position that the Organization failed to maintain and provide minutes of its Board of Director Meetings.

The Organization has failed to meet the requirements set out in section 230(2) of the Act. The Minister may revoke the registration of a charity because it failed to comply with or contravened sections 230 to 230.5, pursuant to paragraph 168(1)(e) of the Act.

3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations (Paragraph 168(1)(d) of the Act)

A registered charity is in contravention of the Act and its Regulations when it issues donation receipts that contain incorrect, incomplete, or false information.

The Act and its Regulations 3500 and 3501 set out the requirements for registered charities with respect to the issuing of official donation receipts and allow for various penalties or sanctions set out in section 188.1(7) to 188.1(10) and 188.2(1) of the Act. In addition, it should be noted that improper receipting of gifts or donations is considered serious enough that it may, on its own, result in the revocation of registered status under paragraph 168(1)(d) of the Act.

³¹ The terms of reference specifically outline CITF's power and authority over the Jami Mosque Operations Committee, otherwise referred to as OCJ, as follows:

- The OCJ reports to the CITF board
- CITF hires and fires individuals on the recommendation of the OCJ
- OCJ cannot undertake projects worth more than \$10,000 without approval of CITF
- CITF approves the budget of Jami Mosque
- OCJ committee members can only be removed by CITF
- CITF develops a list of eligible voters, from ISNA Canada members, for the OCJ
- CITF sets up the election committee and conducts the election for the OCJ positions
- CITF can dissolve the OCJ without notice and appoint administrator to manage the affairs of the mosque

3.1 Issued Official Donation Receipts that lacked the content requirement of Regulation 3501(1)

All of the receipts were issued under the name of "ISNA-Islamic Services of Canada Jami Mosque," while the name registered with the CRA was ISNA, Islamic Services of Canada, without "Jami Mosque."

None of the receipts the Organization issued, or provided for review, contained the name or Internet website of the Canada Revenue Agency.

CRA's Conclusion

The Organization did not address any of the audit findings relating to the information content for official donation receipts it issued. Thus, it is assumed that the Organization does not dispute the audit findings with respect to this particular issue. However, the Organization failed to propose how it intends to meet the content requirements of Regulation 3501(1).

3.2 Third-party receipting

The purpose of the registration system for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts. The integrity of the system is seriously breached when a registered charity colludes with an unregistered organization for the purpose of providing tax relief for donations that are not made to that registered charity, a practice known as a third-party receipting. A registered charity may not issue receipts for gifts intended for an unregistered organization, or allow an unregistered organization to use its charitable registration number.

The Organization issued donation receipts for a total of \$340,516 on behalf of an unregistered organization, namely, Islamic Centre of Toronto (Jami Mosque), over the years under audit, thereby, providing tax relief for gifts that were not made to the Organization.

In addition, the Organization may be liable for a penalty of \$425,645 ($\$340,516 \times 125\%$), that is equal to 125% of the eligible amount of the gift as it appears on any false receipt, pursuant to subsection 188.1(9) of the Act, plus a year's suspension if the total of all such penalties exceeds \$25,000, subsection 188.2(1).

Organization's Representations

In response to our concerns, the Organization submitted the following representations, on page six of its representations:

- 1) The conclusion that the Organization issued receipts on behalf of Jami Mosque is owed in part to [REDACTED]

However, [REDACTED]

- 2) Jami Mosque has been "*operated as an activity of the [Organization] by virtue of the fact that the employees are all employed and paid by the [Organization]*,"
- 3) The Organization did not lend its registration number to a non-qualified donee, as the donations were receipted by and spent by the Organization for the operation of Jami Mosque.
- 4) No funds were transferred from the Organization to Jami Mosque as the latter does not have a bank account and all donations were deposited into the Organization's bank accounts.

CRA's Conclusion

The question as to whether the activities of Jami Mosque were the Organization's own (Point No. 1, above) is addressed under section 1.2 above, where it was concluded that the Organization has failed to demonstrate that the operation of Jami Mosque was an activity of the Organization. Please refer to the aforementioned section for details.

The Organization asserted that Jami Mosque has been operated as an activity of the Organization by virtue of the fact that the employees are all employed and paid by the Organization (Point No. 2). This assertion is not accepted.

Reviewed records indicate that, likely in consultation with CITF, it was Jami Mosque, not the Organization, which exercised control over and made decisions relating to the hiring, firing, and working terms and conditions of the employees.³² This suggests that the Organization may have been no more than the employer of record for the employees that worked for the benefit of Jami Mosque; however, it fails to sufficiently demonstrate that the activities undertaken at Jami Mosque are activities "*carried on by the organization itself*."

On the Organization's assertion that it did not lend its registration number to a non-qualified donee because the donations were receipted by and spent by the Organization for the operation of Jami Mosque (Point No. 3), we do not accept this assertion, as the Organization has failed to demonstrate that the activities undertaken at Jami Mosque were its own.

Reviewed duplicate donation receipt books indicated that donations were collected and donated in one of three donation categories clearly intended for use by Jami Mosque, namely:

1. Category – "Relief"

The Organization indicated at the audit commencement interview that much of the funds raised for Jami Mosque's "Relief" fund were collected by the Mosque in cooperation with another third-party organization.

³² The Jami Mosque Executive Committee, for example, passed a motion to hire a candidate for the position of Assistant Imam and Quran Teacher at Jami Mosque, at the April 22, 2009 meeting. Subsequently, the meeting minutes recorded that the candidate was hired and a review of T4 *Statement of Remuneration Paid* slips confirmed that the person was hired as indicated in the minutes. The minutes also indicated that it was the Committee that decided the level of remuneration for the position, and reviewed it upon the completion of three-month period based on the performance.

Jami Mosque explains in its correspondence to the CRA, [REDACTED] that the [REDACTED]

2. Category – "Zakat"

The same correspondence of April 15, 2008, explains that "Zakat" is an "obligation on Muslims to pay 2.5% of their wealth to specified categories in society when their annual wealth exceeds a minimum level." And that [Jami Mosque] was the collector of Zakat.

3. Category – "Masjid"

"Masjid", indicates that the funds collected under this category relate to general funds for the operation of the Mosque.

Given that Jami Mosque is a separate legal entity, which collected donations and expended the funds for its activities and programs, it is reasonable to conclude that the Organization issued receipts for the gifts that were not made to the Organization but intended for an unregistered organization, that is, Jami Mosque. In other words, the Organization allowed an unregistered organization to use its charitable registration number.³³

The Organization's assertion that *"no funds were transferred from the Organization to Jami Mosque as the latter does not have a bank account and that all donations were deposited into the Organization's bank accounts"* (Point No. 4), does not satisfactorily demonstrate that the Organization did not participate in a third-party receipting scheme. The bank accounts, to which deposits were made, may have belonged to the Organization; however, there is no evidence disputing that Jami Mosque had anything but unfettered access to the bank accounts for the programs and operations of Jami Mosque. In this context, the fact that deposits were made into the Organization's bank accounts does not change the fact that the Organization lent its charitable registration number to an unregistered organization.

Therefore, it is our view that the Organization issued donation receipts in contravention to the Act and Regulation 3501. As a result, it remains our view that such a non-compliance practice is significant enough that it constitutes grounds for revocation pursuant to paragraph 168(1)(d) of the Act.

³³ The Organization stated at the November 30, 2011 interview with the CRA that it was a member of Jami Mosque's Executive Committee who prepared and signed the official donation receipts on behalf of the Organization for the period under audit.

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1(3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

(a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (a) applies to the Minister in writing for revocation of its registration;
- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168(2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168(4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172(3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180(1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A

is the total of all amounts, each of which is

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B

is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

(a) a debt of the charity that is outstanding at the end of that taxation year,

(b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

(c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

(a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

(c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is a registered charity

(a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(b) that is not the subject of a suspension under subsection 188.2(1);

(c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies

188(4) Transfer of property tax

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

"net asset amount"

« *montant de l'actif net* »

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

A

is the fair market value at that time of all the property owned by the foundation at that time, and

B

is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"

« *valeur nette* »

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

where

A
is the fair market value of the property on that day, and

B
is the amount of any consideration given to the foundation for the transfer.

189(6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed

the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(a) the consideration given by the other person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.