



**REGISTERED MAIL**

BN: 125104976RR0001

File No: 0801985

Attention: [REDACTED]

**MAR 30 2017**

**Subject: Notice of Intention to Revoke  
The Canadian Islamic Trust Foundation**

Dear [REDACTED]:

We are writing further to the audit of the books and records of The Canadian Islamic Trust Foundation (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* (the 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 out in furtherance of its charitable purposes, failed to demonstrate that it devoted its resources to charitable activities carried on by itself, failed to maintain adequate books and records, issued a receipt for a gift or donation on behalf of a non-qualified donee, and failed to file an information return as required under the Act. 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 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)(c), 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.*

<b>Business number</b>	<b>Name</b>
125104976RR0001	The Canadian Islamic Trust Foundation

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](http://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

The Canadian Islamic Trust Foundation  
2200 South Sheridan Way  
Mississauga, Ontario L5J 2M4

BN: 125104976RR0001

File No:0801985

Attention: Mr. Shameem Mohammed

**Re: Audit of Registered Charity: The Canadian Islamic Trust Foundation**

Dear Mr. Mohammed:

This letter is further to our audit of the books and records of the Canadian Islamic Trust Foundation (the Organization) by the Canada Revenue Agency (CRA). The audit related to the operations of the registered charity for the period from January 1, 2007 to December 31, 2009.<sup>1</sup>

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

<b>AREAS OF NON-COMPLIANCE</b>	
<b>Issue</b>	<b>Reference(s)</b>
1. Ceased to comply with the requirements of the Act for its continued registration	149.1(1), 149.1(2)(c), 168(1)(b)
2. Failed to comply with or contravened any of sections 230 to 231.5 of the Act	230(2), 168(1)(e)
3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations	Regulations 3500 and 3501, 168(1)(d), 188.1(9)
4. Failed to file an information return as required under the Act	149.1(14), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA 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 a written representation, accompanied by any relevant documentation,

<sup>1</sup> 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. A review of the Organization's books and records for the periods preceding and following the audit period was also conducted, as required.

as to why its 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 continued registration (Paragraph 168(1)(b) of the Act)**

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.<sup>2</sup> An organization with a mix of charitable and non-charitable purposes and/or activities will not be eligible for registration.

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 charitable, 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.<sup>3</sup>

The requirement that a charity's *purposes* be exclusively charitable was described as follows in *Vancouver Society*:

*It is not sufficient that the society should be instituted "mainly" or "primarily" or "chiefly" for the purposes of science, literature or the fine arts. It must be instituted "exclusively" for those purposes. The only qualification – which, indeed, is not really a qualification at all – is that other purposes which are merely incidental to the purposes of science and literature or the fine arts, that is, merely a means to the fulfillment of those purposes, do not deprive a society of the exemption. Once however, the other purposes cease to be merely incidental but become collateral; that is, cease to be a means to an end, but become an end in themselves; that is, become additional purposes of the society; then, whether they be main or subsidiary, whether they exist jointly with or separately from the purposes of science, literature or the fine arts, the society cannot claim the exemption.<sup>4</sup>*

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

<sup>3</sup> *Vancouver Society*, ibid note 2, at para. 159. The only qualification relates to other purposes which 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 described an activity as a purpose (see para. 158).

<sup>4</sup> *Vancouver Society*, ibid note 2, at para. 156, where Mr. Justice Iacobucci, speaking for the majority, cited with approval the comments of Denning L.J. in *British Launderers' Research Association v. Borough of Hendon Rating*

To summarize, the CRA must be satisfied that the purposes being pursued are charitable in 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. In conducting this review, we are obliged to take into account, and to draw reasonable inferences from, all of the relevant information that may be available to us.

Our 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 established for exclusively charitable purposes
  - 1.1.1 Failure of stated purposes to meet the requirements for charitable registration
  - 1.1.2 Advancement of an unstated, non-charitable, collateral purpose
- 1.2 Failure to devote all of its resources to charitable activities undertaken in furtherance of charitable purposes
  - 1.2.1 Failure of activities to advance a charitable purpose and satisfy the public benefit requirement
  - 1.2.2 Failure to meet fiduciary obligations with respect to the investment of its charitable resources/Failure to properly safeguard its charitable resources
- 1.3 Gifting to non-qualified donees/Failure to devote its resources to charitable activities carried on by the organization itself by demonstrating the necessary direction and control

1.1 **Failure to demonstrate that it is established 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 that they may be determined to no longer 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 for continued registration.

#### 1.1.1 Failure of stated purposes to meet the requirements for charitable registration

As the Act does not define what is charitable,<sup>5</sup> the CRA must rely on the common law definition, which sets out four broad categories, or "heads", of charity: relief of

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*Authority*, [1949] 1 K.B. 462, as applied by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133.

<sup>5</sup> 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

poverty (first category); advancement of education (second category); advancement of religion (third category); and certain other purposes beneficial to the community in a way the law regards as charitable (fourth category). 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.<sup>6</sup>

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, in precise terms, to ensure that the organization does not have the legal capacity to engage in non-charitable activities.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

As outlined in the 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 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.<sup>10</sup>

The Organization's purposes, set out in its Supplementary Letters Patent issued to it under the provisions of the *Canada Corporations Act* and dated August 31, 1988, are:

- (a) *To foster and enhance teachings of the religion of Islam in its true doctrines and spirit throughout Canada.*
- (b) *To set up and operate schools for carrying out the object in (a) above.*

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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".

<sup>6</sup> 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.). 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.

<sup>7</sup> *Vancouver Society*, *ibid* note 2, at para. 159

<sup>8</sup> *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.

<sup>9</sup> 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."

<sup>10</sup> CRA Guidance CG-019, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/draftprpss-eng.html>.

- (c) *To acquire and hold property with a view solely to support the funding of mosques and registered charitable Islamic religious institutions.*
- (d) *To hold title to properties in trust acquired for charitable purposes by other registered charitable Islamic organizations in Canada, if so requested by any such organization and to do so without any reward or gain.*
- (e) *To acquire funds, donations, and property through gifts from members of the various Muslim communities in Canada and to use the same solely for the furtherance of the objects here-before stated of the trust.*
- (f) *To apply any profits or gains of accretions of the assets of the Corporation in accordance with the foregoing objects for the financial assistance of needy Muslims across Canada without profit or gain to any individual member or director of the Corporation, nor any remuneration to any director in his capacity as such.*

We consider that purposes (h) and (d) could qualify as charitable, provided that the activities undertaken in furtherance of these purposes could be found to be primarily charitable.<sup>11</sup> Similarly, although it does not identify a charitable purpose category in the explicit manner that is recommended in the CRA's Guidance mentioned above, the Organization's purposes (f) may nonetheless also qualify as charitable under the assumed category of relief of poverty.<sup>12</sup> Although object (e) describes a power rather than a purpose, it is acceptable for reasons of meeting the definition of a charitable organization.<sup>13</sup>

However, while clearly intended to be directed at the advancement of religion, we consider purpose (a) to be broad and vague, failing to identify the manner in which the charitable benefit will be achieved, and lacking the degree of certainty and clarity necessary to restrict the Organization to exclusively charitable activities.<sup>14</sup> In addition, the Organization's purpose (c) is considered to be non-charitable, as it fails to restrict the

<sup>11</sup> As pertains to purpose (b) – we would clarify that our findings as to its potential qualification as charitable is based on its being considered in conjunction with purpose (a). In full, the CRA understands this purpose to read “To set up and operate schools in order to foster and enhance the teachings of the religion of Islam in its true doctrines and spirit throughout Canada”. We would note, however, that it is not apparent that the Organization is undertaking activities in direct furtherance of this purpose. As pertains to purpose (d) – as outlined in our publication *Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations*, it is the view of the CRA “that the simple act of holding title to property on behalf of another registered charity is sufficient for registration purposes.” See <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-026-eng.html>

<sup>12</sup> We would note, however, that it is not apparent that the Organization is undertaking activities in furtherance of this purpose.

<sup>13</sup> This is, of course, contingent on the other “objects here-before stated of the trust” having been determined to be charitable, which is not the case.

<sup>14</sup> An organization would qualify for registration under the advancement of religion category only if the activities undertaken in furtherance of the purpose served primarily to advance religion and were not directed to subsidiary or secondary aims not in themselves religious or otherwise charitable. See for example, *Keren Kayemeth Le Jisroel v. IRC*, (1931) Vol X ATC, affirmed [1931] 2 KB 465 (C.A.), affirmed [1932] AC 650 (H.L.) (*Keren Kayemeth*); *United Grand Lodge v. Holborn BC*, [1957] 1 WLR 1080; *Fuaram Foundation v. C.C.R.A.*, 2004 FCA 181 (*Fuaram Foundation*). Our concerns as related to the Organization's specific undertakings are addressed in further detail in sections 1.1.2 and 1.2 below.

provision of its resources to organizations that are qualified donees, as is required by the Act.<sup>15</sup>

Based on the above findings, the CRA cannot determine that the Organization's stated purposes are exclusively charitable. It is, therefore, our preliminary position, that the Organization ceases to comply with the requirements of the Act for its continued registration.

#### 1.1.2 The advancement of an unstated, non-charitable, collateral purpose

Our review and assessment of an organization's purposes is not limited to those that are formally stated in its governing documents. An examination of an organization's activities is also required in order to determine whether it pursues its stated purposes, or has additional, unstated purposes:

*But the inquiry cannot stop there. In Guaranty Trust, supra at p. 144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in Institution of Mechanical Engineers v. Cane, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purposes is the Society at present instituted?"<sup>16</sup>*

A review of the material made available to the CRA during the course of the audit would indicate that the Organization is engaged in two primary activities: first, the Organization acts in the capacity of *waqf*, or Islamic trust, holding title to properties beneficially owned by registered Canadian Islamic charities;<sup>17</sup> and second, and quite apart from the activities undertaken in the first capacity, it operates in support of certain, affiliated Islamic housing co-operatives. It is with this second activity that the CRA has quite substantial concerns.

<sup>15</sup> A registered charity may only gift its resources to organizations that are qualified donees, as defined in subsection 149.1(1) of the Act. 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."

<sup>16</sup> *Vancouver Society*, ibid note 2, at para. 194. See also *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)* [2007] 3 S.C.R. 217 at para. 42, where the Supreme Court of Canada stated that the CRA is "... entitled and indeed obliged to look at the substance of the purposes and activities of an applicant for registered charity status."

<sup>17</sup> Activities the CRA understands to be undertaken in furtherance of the Organization's purpose (d), and which are discussed in further detail in section 1.3 below.

We note that the purposes contained in the Organization's original Letters Patent dated July 5, 1983, which was submitted to the CRA in support of its Application for Registration in June 1985, were significantly different from those contained in the Supplementary Letters Patent that ultimately formed the basis for the Organization's charitable registration.<sup>18</sup>

Correspondence on record indicates that the CRA had had concerns with a number of these original incorporating purposes, and had advised the Organization that many would have to be deleted or amended before registration could proceed.<sup>19</sup>

Of particular relevance to the current audit are the concerns that were expressed over the nature of Organization's original purposes (a) and (b):

- Purpose (a), *To serve the best interests of the various Muslim communities throughout Canada*, was determined to be vague and broad, as it was found to be "phrased in such a general manner as to allow for any activity, some of which may not necessarily be charitable, to be undertaken to serve those 'interests'."
- Purpose (b), *To acquire property or businesses which the Corporation deems proper to facilitate the fostering of Islamic ideals; to create housing [emphasis added] and to provide for Mosques and community centres; to create employment in the fields of Islamic endeavour without the use of interest*, was determined to be very broad in scope, effectively allowing the Organization to acquire and operate any business or participate in other profit-making endeavours.

Following some further communications with the CRA, the Organization officially revised its incorporating purposes and on November 25, 1988, the CRA advised the Organization that, "based on the information supplied, and assuming that your activities will be as stated in your application, we have determined that you qualify for tax-exempt status as a registered charity...[emphasis added]".<sup>20</sup>

<sup>18</sup> As cited on page 4-5 of this letter. Please see Appendix A for a copy of the Organization's original Letters Patent of July 1983 and the purposes identified therein.

<sup>19</sup> As detailed in our letter of December 23, 1985, the CRA had explained to the Organization that, while a review of the Organization's activities would indicate that it "could, in all likelihood, qualify" for charitable registration, there were concerns "with some of its objects which must be overcome before registration may proceed." The letter was concluded with the suggestion that the Organization "amend or delete those clauses with which we are concerned in order to reflect its actual intentions, which, based on the activities statements and other materials provided would appear to directly advance the Muslim religion and related educational/charitable endeavours." See Appendix A for a copy of this letter, which provides a detailed description of the concerns held by the CRA in regards to the Organization's original incorporating purposes.

<sup>20</sup> The Notification of Registration further advised the Organization that "if your sources of support, or your purposes, character, or method of operation change, please advise us immediately so that we may consider its effect on your registered status". We note that the statement of activities accompanying the Organization's application for registration identified four central programs:

1. Religious, which included the provision of religious services to Muslims in Canada and marriage and funeral arrangements.
2. Educational, including the operation of a full-time summer school for Muslim children and the provision of seminars, workshops and conferences.
3. Immigration services, assisting new Muslim immigrants to adapt to Canadian life.
4. Interfaith relationship building.

However, despite the changes made to its incorporating documents and the representations made to the CRA during the application process as to the nature of its planned programming, it appears that the Organization may never have intended to pursue the purposes for which it obtained registration. We note that:

- On February 26, 1989, only three months after obtaining its registration, the Board of Directors approved and signed the Organization's Constitution and By-Law No. 1, which identified the Organization's governing purposes as those contained in its original Letters Patent; and
- These original incorporating purposes were again endorsed by Board of Directors' when it approved the Organization's revised By-Laws, dated August 31, 2008.<sup>21</sup>

Furthermore, our review of the audit material would indicate the Organization has dedicated quite considerable effort towards activities that could be considered more appropriately reflective of the purposes contained in its original Letters Patent, rather than those for which it obtained registration.

Specifically, and as discussed in Appendix B, the information reviewed indicates that the Organization has actively operated, and allowed itself to be governed, in furtherance of the business interests of a number of for-profit housing co-operatives, namely:

- the Islamic Co-operative Housing Corporation (ICHC);<sup>22</sup>
- the Ansar Co-operative Housing Corporation (ACHC);<sup>23</sup> and
- the ISNA Housing Co-operative (IHC).<sup>24</sup>

<sup>21</sup> The By-Law was stamped, signed and identified as "Passed by the board" on August 31, 2008.

<sup>22</sup> ICHC was incorporated as a co-operative with share capital on December 29, 1980, under the *Co-operative Corporations Act* (Ontario). As identified in its Annual Reports, its "Statement of Objectives" is as follows:

- *To provide an opportunity to its members, who are committed not to indulge themselves in riba (interest), to buy a house for their family without riba, with security and as much flexibility as possible, within the taxation and legal framework of the country;*
- *To provide an opportunity to committed Muslims all over the world:*
  - *To mobilize and pool their savings and invest in the houses of fellow Muslims without the string attached to a particular house;*
  - *To keep an individual's funds as much flexible as possible with the right to redeem his/her investment with a reasonable notice;*
  - *To maintain the security of the investment;*
  - *To share the capital gain or loss and the rental income of the "Co-operative" in the form of dividends [emphasis added].*

Further, Section VI, Clause 1 of ICHC's By-Laws state that 80% of all profits, or "occupancy charges", will be "credited to each shareholder's account in proper proportion of his/her quarterly shareholding."

<sup>23</sup> ACHC was incorporated as a co-operative with share capital, under the *Co-operative Corporations Act* (Ontario), on December 23, 1991. Its statement of objectives and by-laws mirror those of ICHC.

<sup>24</sup> IHC was incorporated as a co-operative with share capital under the *Co-operative Corporations Act* (Ontario) on June 2, 2008. As documented in a copy of an occupancy agreement entered into between the Organization, IHC and a homebuyer/Co-operative member, IHC's objects are:

- a) *To help its members in obtaining and maintaining housing facilities for themselves and their families.*

Considered in its entirety, it is our opinion that the available information evidences that the Organization is constituted, at least in part, to further the unstated non-charitable collateral purpose to promote, or facilitate the operations of, specific “affiliated” for-profit housing co-operatives, and non-qualified donees under the Act. An organization established with a purpose of operating in order to confer a benefit upon, or promote the business interests of, such enterprises would be precluded from registration as a charity.

## 1.2 Failure to devote all of its resources to charitable activities undertaken in furtherance of charitable purposes

As detailed above, to be eligible for registration under the Act, Canadian law requires not only that an organization demonstrate that it is constituted exclusively for charitable purposes, but that it devotes its resources to its own charitable activities carried on in furtherance thereof.<sup>25</sup> As well as considering an organization’s purposes, our review of whether an organization meets the legal definition of a charitable organization, therefore, also examines the nature and extent of the activities undertaken in order to determine that they do not fall outside the bounds of what can be considered charitable in the legal sense.

### 1.2.1 Failure of activities to advance a charitable purpose and satisfy the public benefit requirement

In addition to our concerns outlined in section 1.1.2 above, it is our position that the Organization’s efforts in regards to the Housing Co-operatives would otherwise be found to be in contravention of the Act, in as much as it is our finding that the activities that the Organization has operated in support of fail to advance a charitable purpose, and fail to satisfy the public benefit requirement.

#### (a) Failure to advance a charitable purpose

The Organization was registered under the charitable category of advancement of religion. An organization would qualify for charitable registration under this category only if its activities served primarily to advance religion, and were not directed to subsidiary or secondary aims not in themselves religious or otherwise charitable.

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- b) *To provide all community facilities and premises that help improving the residential areas of its members;*
- c) *To buy, own, sell, improve, manage, construct or lease and operate land and building for the purpose of providing residential accommodation to its members, who will occupy housing units otherwise than as owners;*
- d) *To enter into occupancy agreements with its members up such terms as it may deem advisable (the "Occupancy Agreement");*
- e) *To become a member of any association or corporation having objects altogether or in part similar to those of the Co-Operative, or carrying on any business activity capable of being conducted so as to directly or indirectly benefit the Co-Operative.*

Similarly to ICHC and ACHC, Article VIII, Section A of IHC’s By-Laws state that 80% of all “occupancy charges”, or profits, will be “credited to each shareholder’s account in proper proportion of his/her quarterly shareholding.”

<sup>25</sup> Vancouver Society, *ibid* note 2 at para. 159 per Iacobucci J. We would note that this requirement is subject to exceptions relating to administrative, fundraising and political activities that are conducted within legal parameters.

The advancement of religion has been interpreted by the courts to mean manifesting, promoting sustaining and increasing belief in its three key attributes, namely: (1) faith in a “higher unseen power” such as a God, Supreme Being or Entity; (2) worship or reverence; and (3) a particular and comprehensive system of doctrines and observances.<sup>26</sup> When determining if an organization is advancing religion, the courts look for evidence of a targeted attempt to promote an identified religion or to sustain and increase a religious belief, within a structured program in relation to religious advancement.<sup>27</sup>

Not everything done in the name of religion will *advance* it as that term is defined in the context of charity law. The content of the activity – its objective nature and character – must be shown to be a reasonable means of advancing the religion *and* must be found to deliver the required public benefit.<sup>28</sup>

Religious motivation alone will not transform a non-charitable purpose into a charitable one, nor an apparently secular activity into one directed to advancing religion. A clear statement of purpose that advances religion in the charity law sense is required, not just the belief or motivation of those involved.

We refer to *Keren Kayemeth Le Jisroel v. Inland Revenue Commissioner* in which Rowlatt J. stated

*It seems to me that the promotion of religion means the promotion of the spiritual teachings of the religious body concerned and the maintenance of the spirit of the doctrines and observances upon which its rests or in which it finds its expression, if one likes to put it that way, or at any rate with which it is bound up. But if a religion enjoins the pursuit of some ulterior aim in itself secular so that other people not of that religion might, for either reasons of private sentiment or views of public*

<sup>26</sup> Regarding “religion” – see, for example, *In re South Place Ethical Society, Barralet and Others v. Attorney-General and Others*, [1980] 1 WLR 1565; *Regina v. Registrar General, Ex parte Segerdal and Another*, [1970] 2 QB 697 (CA); *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 (Amselem). Amselem is not a charity law case. Amselem involves the individual’s freedom to practice and express religious beliefs not necessarily for the public benefit. In both contexts, however, the first step is to determine whether there is a religion, as distinct from some other belief system, and then to proceed to determine the further distinct issues of whether religion is being advanced or whether freedom of religion has been infringed. This wording of the Supreme Court of Canada describing religion is from *Amselem* per Iacobucci J., but he did not define “particular and comprehensive” (« particulier et complet » in French). A search of this expression on the internet indicates that it is used to describe any writing on a subject that is detailed yet wide-ranging and thorough in scope. From this it would appear that the Supreme Court expects any religion to have doctrines that are detailed yet wide-ranging and thorough. Regarding “advancement” – see, for example, *Keren Kayemeth Le Jisroel v. IRC*, (1931) Vol X ATC, affirmed [1931] 2 KB 465 (C.A.), affirmed [1932] AC 650 (H.L.) (*Keren Kayemeth*), *United Grand Lodge v. Holborn BC*, [1957] 1 WLR 1080; *Fuaran Foundation v. C.C.R.A.*, 2004 FCA 181 (*Fuaran Foundation*).

<sup>27</sup> *Fuaran Foundation*, *ibid.* note 26. Structured programs or targeted activities could include: holding religious services or ceremonies, pastoral or missionary work, publishing religious texts, formal or informal religious instruction, providing guidance or supervision to adherents. It is not enough to:

- Create what may be described as a passive environment where religious activities may, or may not, be pursued; or
- Provide an environment conducive to “living out” the principles associated with one’s faith, or an environment to model and share the organization’s faith in all aspects of daily living. To obey, follow or adhere to religious beliefs once these have been transmitted, sustained or increased cannot constitute advancement.

<sup>28</sup> See, for example, *Keren Kayemeth* (HL) (per Lord MacMillan) *ibid.* note 26.

policy, or what not, support the same aim, then it seems to me that that pursuit of that aim, the promotion or achievement of that aim, is not the promotion of religion for this purpose [emphasis added].<sup>29</sup>

Lord Hanworth, M.R., approved the comments of Rowlatt J.:

*...as to 'religion' I agree with the observation of Mr. Justice Rowlatt on that head. The promotion of religion means the promotion of spiritual teachings in a wide sense, and the maintenance of the doctrines on which it rests and the observances that serve to promote and manifest it – not merely a foundation or cause to which it can be related [emphasis added].*

This concept was expanded upon in *Hutterian Brethren Church of Wilson v. The Queen*, where it was stated:

*The business of farming is neither religious nor a charitable activity; it is a commercial activity. And this is so even if that business is carried on by persons believing farming to be the only activity compatible with a truly religious life and intending to use their income to assist their co-religionists.<sup>30</sup>*

As related to the issue at hand, we note that the primary purposes of the three housing co-operatives to which the Organization has dedicated its resources is to benefit their respective members, or shareholders, through the provision of an interest, or riba, free home financing service,<sup>31</sup> and an opportunity to share in the Co-operative's profits.<sup>32</sup>

A document available on ICHC's and ACHC's website summarizes the particular "nature of the transactions involved in the housing scheme":

(A) *Any person who purchases the common shares of the Corporation becomes a member of the Corporation in the sense that he participates in the profit and loss of the corporation. The profit, if any, is distributed among all the members in proportion to their investment in the corporation by purchasing*

<sup>29</sup> *Keren Kayemeth*, ibid note 26, (adopted by the Canadian Federal Court of Appeal in *Fuanan Foundation*)

<sup>30</sup> *Hutterian Brethren Church of Wilson v. The Queen* [1979] 1 F.C. 745, affirmed [1980] 1 F.C. 757 (F.C.A) section 3.

<sup>31</sup> As described in the *Financial Times* LEXICON, "The prohibition of riba [interest] is the cornerstone of Islamic finance. Riba symbolises both the earning of money on money via a predetermined rate on a loan and a social injustice. Although making a profit is allowed in Islam, earning money on money is not, because there is no productive and/or trade activity creating additional wealth. Riba also creates social injustice because lenders requiring interest on loans tend to profit from the weak position of borrowers. Thus, because social justice and fairness in business are the most important parts of muamalat (economic transactions), riba is prohibited by Shariah, or Islamic law." Source: <http://lexicon.ft.com/Term?term=riba>.

<sup>32</sup> Notes 22, 23, and 24 provides further details on the Housing Co-operatives' purposes.

As regards the distribution of profits, all three Housing Co-operatives contain the same provision stipulating that all surplus revenue over and above the 20% allotted for operational expenses, is to be distributed to "to each common shareholder [or member's] account in the proportion of his/her quarterly share holding, i.e. March 31, June 30, September 30, and December 31, in each fiscal year."

*the common shares.*

- (B) *Any member of the Corporation in his individual capacity can purchase a house in partnership with the Corporation whereby the house is shared by the member and Corporation, each in proportion of his respective investment in that house. But the title deeds of the house shall remain with the corporation as a security.*
- (C) *The share of the Corporation in the house is, then, leased to the member on an agreed rent.*
- (D) *The member has a right to purchase the share of the Corporation in the house (mentioned in the articles as preferred shares) by a gradual process. Each time he buys a "Preferred share" he buys a certain part of the shares of the Corporation in the house, whereby the monthly rent payable by him is reduced to that extent.*
- (E) *The last share of the house to be purchased by the member is preferred share of class "G" the price of which shall be determined by the Board to reflect 10% difference between the cost and the fair market valued. At this stage the full title of the house along with the title deeds shall be transferred to the member.<sup>33</sup>*

In order to be charitable at law, the focus within the advancement of religion must be the maintenance and observance of a religious doctrine. It is not sufficient that religion be advanced merely as an incidental consequence to other pursuits so secular that others not of that religion would support them. While the Housing Co-operatives provide the

<sup>33</sup> "Summary of the Scheme from Shariah Standpoint"  
[http://www.ansarhousing.com/uploads/images/WKJv4Y16Fz\\$AgdUla0-fIA/Sharia\\_English.pdf](http://www.ansarhousing.com/uploads/images/WKJv4Y16Fz$AgdUla0-fIA/Sharia_English.pdf). As explained in the paper, "Islamic Home Financing through Musharakah Muanaqisah and Al-Bay' Bithaman Ajil Contracts: A Comparative Analysis", the mortgage model adopted by ICHC and ACHC "is based on an equity model different from traditional debt-based mortgages. To join the co-operative, members buy shares in a single equity pool. Once a member accumulates enough shares, the Co-op buys a house that his family can live in while paying a proportional rent to the Co-op. Thereon, members are required to increase their ownership by investing more money in the Co-op shares. As they do so, the rent goes down in the same proportion until the payments phase out. Eventually, the home buyer surrenders the shares to the Co-op and the Co-op transfers the title." Source: Ahmed Kameel Mydin Meera. Dzuljastri Abdul Razak. "Islamic Home Financing through Musharakah Muanaqisah and Al-Bay' Bithaman Ajil Contracts: A Comparative Analysis." Selangor, Malaysia: Islamic University of Malaysia, p. 14.

According to the paper cited above, the Co-operative model adopted by ICHC and ACHC was apparently approved by the "renowned scholar Muhammad Taqi Usmani". However, a July 9, 2008, letter from Justice Muhammad Taqi Usmani requests that his Fatwa approving the housing scheme be removed from ICHC's material and publications, as "more than a decade had passed" since it had been issued and it gave the "impression that the functions of the Cooperative are constantly in my supervision, which, you know, is not the case." The letter, addressed to Mr. Pervez Nnsim, was retrieved from the electronic documents provided during our audit visit.

Information available for homebuyers on ACHC's website further sells the benefits of the Co-operative's scheme with the following statements: "Instead of keeping your savings in a bank, you can buy Housing Co-operative's shares while you wait for your turn to occupy your house" and "Your shares in the Housing Co-operative will work as an investment and, you will earn quarterly dividend until you occupy your house".

Information available on ISNA Housing Co-operative's websites appears to describe the same, or a similar, system. See, for example, <http://www.isnahousing.ca/pdf/rulesandregulation.pdf> and <http://isnahousing.org/ISNA%20HOUSING%20IHC%20LTD.REGULATIONS.pdf>.

Muslim community with access to services that may conform to Islamic requirements, the provision of home financing products is not an activity that is inherently religious or charitable; it is first and foremost an economic transaction between the financer and the home buyer. As such, it is our finding that the relation between the Housing Co-operatives' activities and any advancement of religion is overly remote to evidence the advancement of religion as defined by the courts.<sup>34</sup>

(b) Failure to satisfy the public benefit requirement

In addition, to be considered charitable under the Act, an activity must be found to deliver a public benefit. The determination of the public benefit requirement involves the application of a two-part test:

- The first part of the test generally requires that a tangible or objectively measurable, and socially useful benefit be conferred, directly or indirectly. The requirement that the benefit be tangible or objectively measurable stems from the need to have a benefit that is recognizable, or capable of being proved.<sup>35</sup> Social usefulness refers to the nature of the benefit, and necessitates that the work or endeavor have public value or utility and a demonstrable impact on the public.<sup>36</sup> The benefit should necessarily result from the way the purpose is being achieved. This means, in most cases, the benefit should be a direct result and consequence of the charity's activities, and reasonably achievable in the circumstances.<sup>37</sup>

<sup>34</sup> The activities in this regard have also been considered under the relief of poverty category and under the fourth category of charity. In this regard, we would explain that organizations that relieve poverty by providing housing to the poor, or that provide housing in order to relieve a condition associated with mental or physical disability, a symptom of aging, or violence against the person, may be found to meet the requirements for registration. However, based on a review of the available information, it has not been evidenced that the activities undertaken by the Housing Co-operatives, and towards which the Organization's resources have been directed, would be considered to further any of these aims.

<sup>35</sup> See generally, *Vancouver Society*, *ibid* note 2 at para. 41 per Mr. Justice Gonthier (dissenting in the result); and *Gilmour v. Coats et al.*, [1949] 1 All E.R. (*Gilmour*). An intangible public benefit that is regarded as valuable or "approved" by "the common understanding of enlightened opinion for the time being" may be acceptable in certain circumstances. The UK courts have accepted that an intangible benefit approved by "the common understanding of enlightened opinion for the time being" can potentially be charitable under the fourth head. See, for example, *National Anti-Vivisection Society v. I.R.C.*, [1947] 2 All ER 217 (H.L.) per Lord Wright at p. 224. Courts in Canada have taken a more cautious approach, noting courts to be ill-equipped to "assess public consensus, which is a fragile and volatile concept". See *Everywoman's Health Centre Society (1988) v. The Queen*, 92 DTC 6001; [1992] 2 FC 52; [1991] 2 CTC 320 at pp. 68-69.

<sup>36</sup> See *In Re Coats' Trusts Coats v. Gilmour*, [1948] Ch. 340 (CA); per Lord Greene; *Gilmour*, *ibid* note 35 per Lord Reid at p. 462; *Re Pinion (deceased)*; *Westminster Bank v. Pinion and another*, [1965] Ch 85, [1964] 1 All ER 890, per Harmon L.J. at pp. 893-894; *National Anti-Vivisection Society*, *ibid* note 35 per Lord Wright at p. 46

<sup>37</sup> See, for example, *In re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557 per Russell L.J. at p.588: "In my opinion, the Court must determine in each case whether the trusts are such that benefit to the community must necessarily result from their execution." See also *National Anti-Vivisection*, *ibid* note 35 per Lord Wright at p. 49; *I.R.C. v. Oldham Training and Enterprise Council*, [1996] B.T.C. 539; *Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.), at p.583; *In Re Resch's Will Trusts And Others v. Perpetual Trustee Co. Ltd.* [1969] 1 A.C. 514 (P.C.) at p.544. There is legal authority to support indirect benefits. However, an indirect benefit may be considered too remote—particularly when the direct benefit is in favour of private individuals.

- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:
  - have an eligible beneficiary group that is negligible in size, or restrict eligible beneficiaries based on criteria that are not justified by its charitable purpose(s); or
  - provide an unacceptable private benefit as it pursues a charitable purpose. To meet the requirements for registration, an organization must demonstrate that its activities are public rather than private in character and that organization's resources will not be used to benefit a restricted or private group or membership. Some private benefit may occur when an organization pursues its charitable purposes. Such private benefit is acceptable as long as it arises directly from the pursuit of charitable purposes and as long as it is incidental to the achievement of those purposes. In other words, any realized private benefit must be inevitable and necessary for the charity to achieve its charitable purposes.<sup>38</sup>

Broadly speaking, a co-operative is an organization or business enterprise, organized as either an association or corporation, owned by those who use its services. All profits are shared amongst the co-operative's members in proportion to the money, or labour, each member contributes.

In the particular instance at hand, and based on the information reviewed, it is apparent that the Housing Co-operatives are operated as for-profit businesses, engaging in a commercial enterprise to the exclusive benefit of their respective members; both those purchasing shares with the intent of acquiring a house and those purchasing shares for investment purposes only.<sup>39</sup>

Organizations of such a nature, or efforts undertaken to facilitate and promote the operation of such organizations, would be incongruous with the necessary requirement that a charitable organization operate without purpose of conferring a private benefit.

It is our view that, for the reasons outlined above, the Organization has failed to demonstrate that its resources are devoted to charitable activities carried out in furtherance of exclusively charitable purposes. Such a finding would render the Organization ineligible for registration under the Act.

<sup>38</sup> See CRA's Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*, for more information.

<sup>39</sup> As stipulated in their respective by-laws, the requirements for admission, or membership, in the Co-operatives, include the payment of an initial non-refundable membership fee, the purchase of a minimum number of shares per calendar year, and the applicant's approval by particular co-operative's board of directors.

### 1.2.2 Failure to meet fiduciary responsibilities with respect to the investment of its charitable resources/ Failure to properly safeguard its charitable resources

By virtue of their unique role, and as a means of “*encouraging activities which are of special benefit to the community*,”<sup>40</sup> registered charities receive privileged treatment under the Act. In addition to the income tax exemption that is also granted to non-profit organizations, registered charities are further afforded the advantage of being able to issue official donation receipts, whereby individual donors are eligible to receive tax credits for the contributions they make to registered charities.

As a result, the Canadian public contributes to every registered charity by virtue of the loss of tax revenue resulting from the income tax incentives that encourage charitable giving. The public, therefore, has a fundamental interest in ensuring that monies raised from the general public are used to fulfill their intended charitable purposes.<sup>41</sup>

A charity registered under the Act is required to be *bona fide*, meaning that it must be established and operated to confer a tangible or objectively measurable benefit upon the public.<sup>42</sup> What is more, the courts have placed extensive responsibility, known as fiduciary duties, on the directors of charities.<sup>43</sup>

As stated in Issue No. 21 – Winter 2005 of the CRA’s *Registered Charities Newsletter*:

*...regardless of the province or territory in which they operate, directors [of charities], should not be passive. They have a fiduciary responsibility to ensure that a charity is being operated in the public interest. They have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are cared for properly [emphasis added].*<sup>44</sup>

Further, *Registered Charities Newsletter*, No. 22, March 2005, defines fiduciary responsibilities as

*...a duty to act for someone else’s benefit exclusively. It is the highest standard of duty implied by law (e.g. trustee, guardian). For charities,*

<sup>40</sup> *Vancouver Society*, *ibid* no 2, para. 170.

<sup>41</sup> As articulated by the Public Guardian and Trustee of Ontario in *Pathak v. Sabha*, [2004] CanLII 10850 (O.S.C.), at para. 10. See also *Ontario (Public Guardian and Trustee) v. AIDS Society for Children (Ontario)*, [2001] OJ No. 2170 (QL) (O.S.C.J.), at para. 26, which states “There is an implicit acknowledgement that the fiduciary owes a duty to the public in general which supports the privileges extended to charitable corporations and to public in particular which turns over its money to the charitable corporation for the charitable purposes it wishes to support.”

<sup>42</sup> M. Chesterman. *Charities, Trusts and Social Welfare* London: Weidenfeld and Nicolson, 1979. p. 136; and see generally, *Gilmour v. Coats* et al, [1949] 1 All E.R. 848

<sup>43</sup> See, for example, *Ontario (Public Guardian and Trustee) v. AIDS Society for Children (Ontario)*, [2001] OJ No. 2170 (QL) (O.S.C.J.); *Ontario (Public Guardian and Trustee) v. National Society for Abused Women*, [2002] O.J. No. 607 (O.S.C.J.); *Pathak v. Sabha*, [2004] CanLII 10850 (O.S.C.); *Victoria Order of Nurses for Canada v. Greater Hamilton Wellness Foundation*, [2011] CanLII 5684 (O.S.C.J.).

<sup>44</sup> <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-21/charitiesnews-21-e.html>

**this means to accept and hold a public trust to maintain, preserve, and develop the organization's resources to be used for charitable purposes, to ensure that the organization's activities remain charitable, and to manage the organization for the benefit of the public [emphasis added].<sup>45</sup>**

Broadly speaking, there is the expectation that directors and officers will ensure that the organization achieves its purposes, complies with the laws that apply to the organization, and operates in a fiscally prudent, effective, and efficient manner.<sup>46</sup>

A charity may invest its surplus funds or assets for purposes of generating additional revenues to be used for its otherwise charitable activities. However, charity law dictates that a charity's assets must be managed so as to obtain the best return within the bounds of prudent investment principles. While a charity may invest in a for-profit business, including those established by the charity, its directors/trustees need to satisfy themselves both that the investment represents a prudent use of the charity's assets and that no unacceptable or undue private benefit is conferred on the taxable corporation.

The fiduciary duties of the directors of charities with respect to investments and the protection of assets is clearly laid out by the Ontario Public Guardian and Trustee's document *Duties, Responsibilities and Powers of Directors and Trustees of Charities*,<sup>47</sup> which includes a "Duty to be Reasonable, Prudent and Judicious":

*Directors and trustees must handle the charity's property with the care, skill, and diligence that a prudent person would use. They must treat the charity's property the way a careful person would treat their own property. They must always protect the charity's property from undue risk of loss....*

The heightened duty of care of charities' directors is also outlined in the new *Canada Not-for-profit Corporations Act*,<sup>48</sup> section 148(1) of which states,

*Every director and officer of a corporation in exercising their powers and discharging their duties shall*

*(a) act honestly and in good faith with a view to the best interests of the corporation; and*

<sup>45</sup> <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-22/charitiesnews-22-e.html>

<sup>46</sup> See Bourgeois, Donald J. *The Law of Charitable and Not-For-Profit Organizations*. Markham: Lexis/Nexis Butterworths, 2002. p. 211-212.

<sup>47</sup> Office of the Public Guardian and Trustee. *Charities Bulletin #3, "Duties, Responsibilities and Powers of Directors and Trustees of Charities"*. <http://www.attorneygeneral.jus.gov.on.ca/English/family/pgt/charbullet/bullet3.asp>

<sup>48</sup> Please note that all registered charities that are currently incorporated under Part II of the *Canada Corporations Act* (therefore applicable to the Organization) must apply for a certificate of continuance to transition to the *Canada Not-for-profit Corporations Act* by October 17, 2014. See <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtngrfpcl/menu-eng.html> for further information.

*(b) exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.*

Charities incorporated in Ontario, or that have offices or investments in Ontario, are expected to comply with the investment requirements set out in the *Trustee Act* (Ontario), as amended on June 29, 2001.<sup>49</sup> Section 27 of the *Trustee Act* sets a relevant standard of prudence as concerns the investment of charitable property, stating that “[i]n investing trust property, a trustee must exercise the care, skill, diligence and judgement that a prudent investor would exercise in making investments.”

While the *Trustee Act* does not define what is meant by a “prudent investor”, section 27(5) sets out the mandatory criteria that a trustee must consider:

*A trustee must consider the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:*

1. *General economic conditions.*
2. *The possible effect of inflation or deflation.*
3. *The expected tax consequences of investment decisions or strategies.*
4. *The role that each investment or course of action plays within the overall trust portfolio.*
5. *The expected total return from income and the appreciation of capital.*
6. *Needs for liquidity, regularity of income and preservation or appreciation of capital.*
7. *An asset's special relationship or special value, if any, to the purposes of the trust or to one or more the beneficiaries.*

The prudent investment rule focuses on the process used to make investment decisions. As outlined in the document *Investments by Directors and Trustees of Charities* published by the Ontario Ministry of the Attorney General, every charity should have an investments plan, or policy, that takes into account a reasonable assessment of risk and return.<sup>50</sup> A properly conceived policy would demonstrate that the board of directors took into consideration the requirements of the *Trustee Act* both in regards to the seven investment criteria and the mandatory requirements with regards to diversification.

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<sup>49</sup> If the power to invest is not set out in the document that creates the charity, then the charity must follow the requirement of the *Trustee Act*.

See the website of the Ministry of the Attorney General of Ontario, specifically the publications “Duties, Responsibilities and Powers of Directors and Trustees of Charities.”

<http://www.attorneygeneral.jus.gov.on.ca/English/family/pgt/charbullet/bullet3.asp> and “Investments by Directors and Trustees of Charities.” <http://www.attorneygeneral.jus.gov.on.ca/English/family/pgt/charbullet/bullet7.asp>

<sup>50</sup> For further information on the development and implementation of investment policies by charities, please also refer to Donald J. Bourgeois. *The Law of Charitable and Not-For-Profit Organizations*. Markham: Lexis/Nexis Butterworths, 2002. p. 280-288.

In this regard, we note that section 28 of the *Trustee Act* holds that a “*trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances.*”

The Organization’s general ledger (GL) indicates that the Organization had total investments of \$270,850, at year-end 2009. A table below shows a balance amount for investment for each year-end for the period under audit:

Acct. No.	Investment Type	2007	2008	2009
<b>Housing Related:</b>				
	ISNA Housing (IHC) <sup>51</sup>		73,750	90,750
	Takaful <sup>52</sup> Re. ITS	19,000	19,000	19,000
	Takaful <sup>53</sup>	80,000	80,000	80,000
	<b>Housing Related, Total</b>	<b>99,000</b>	<b>172,750</b>	<b>189,750</b>
<b>Other:</b>				
	SSI	100	100	100
	Muneba Nasim Trust	60,800	60,800	60,800
	Muslim Health Care Fund	3,400	3,400	3,400
	Endowment Fund	6,500	6,500	6,500
	CITF T-Afsar	10,300	10,300	10,300
	<b>Other, Total</b>	<b>81,100</b>	<b>81,100</b>	<b>81,100</b>
	<b>Total Investments</b>	<b>180,100<sup>54</sup></b>	<b>253,850</b>	<b>270,850</b>

No information has been shared with, or obtained by, the CRA that would indicate how the decision to invest the Organization’s funds, including who made the decision or why; whether the decision was reached in a fiscally prudent manner, through, for example, a consideration of the investment planning criteria outlined in the *Trustee Act* and enumerated above; whether the financial integrity of the organizations in which it has invested its funds was considered; or whether the investments were or are in fact being actively monitored on a regular basis to take into account the Organization’s losses and gains.<sup>55</sup>

<sup>51</sup> Please note that IHC was only incorporated in June 2008.

<sup>52</sup> It is our understanding that Takaful Canada’s establishment was jointly sponsored by the Ansar group of companies (whose membership includes ICHC and ACHC) and ISNA. Takaful was operated by Mr. Pervez Nasim, with Dr. Ashraf as president. These individuals were Chairperson and Vice Chair respectively of both ICHC and ACHC. We have been informed that CITF investments in Takaful, ICHC, and ACHC were moved from one organization to another by Mr. Nasim. Therefore, the Organization’s investments in Takaful were assumed to be an investment in ICHC or ACHC.

<sup>53</sup> See Footnote 52.

<sup>54</sup> The YE 2007 financial statements reported the total investment of \$201,600, however, on its YE 2008 financial statements, under comparative column of the Notes to Financial Statements, the investment amount for YE 2007 was revised to show the same \$180,100, which matches that of the GL amount as seen in the table above.

<sup>55</sup> For example, the minutes from the Board of Director meetings reviewed by the CRA do not document any discussions related to its investments, and there is no indication that the Organization has developed or implemented an investment policy that would have been used to guide its investment decisions.

Specifically pertaining to the Organization's investments in the Housing Co-operatives, we would highlight our particular concerns regarding the Organization's apparent disregard for the need for liquidity.

The Offering Statements – disclosure documents that provide potential investors with the terms and conditions relating to an offer for sale of shares – with which the Housing Co-operatives offered the sale of its shares to the Organization, cautioned potential investors in the preamble and under the heading called "Risk Factors," that:

- "Purchase of shares in such new ventures involves a high degree of risk, and subscribers should view this subscription as speculative and not invest any funds in this offering unless they can afford to lose their entire investment."
- "There is presently no market for the shares being issued nor is a market expected to develop. Purchasers may not be able to resell shares purchased pursuant to the Offering Statement."
- "There is no certainty that the Co-operative will be profitable and able to pay patronage dividends or regular dividends on shares of the Co-operative."
- "[T]here can be no assurance that the Co-operative will be able to redeem shares when so requested or when membership ceases."<sup>36</sup>

In essence, the Offering Statements clearly warn that the risk associated with its investment products, that is the shares of Housing Co-operatives, were such that once purchased, an investor may not be able to resell them or receive dividends, or the Co-operatives may not be able to redeem the shares, in addition to the fact that the inherent risk with such shares was so high that one should not invest unless they can afford to lose them all. **In spite of these warnings, the Organization purchased the shares of the Housing Co-operatives as per terms and conditions specified.**

These documents should have been available to the Organization for its review and consideration. It appears, therefore, that the Organization entrusted its resources to the Housing Co-operatives with the knowledge that its investment may not ever be redeemable, and with only the expectation of yearly dividends, the receipt of which was not even assured.

We note that this has been the case in the instance of the Organization's purchased shares in ICHC/ACHC, the sale of which the Co-operatives have apparently refused to approve until such time as the dispute over the question of the loan for the renovations of the 2200 South Sheridan Way property is settled. As stated in the Board of Director's meeting minutes of January 23, 2010 "...*there has been no progress on this*

<sup>36</sup> The risk factors listed were from the Offering Statements of ICHC (dated 1993/10/27) and ACHC (dated 2003/10/21 and 2004/10/21) in relation to the investments in the Takaful accounts. However, the available Offering Statement of ISNA Housing Co-operative LTD. (IHC), dated September 15, 2010, contains the exact same terms and conditions as the other two Housing Co-operatives with respect to the risk factors.

*matter as Pervez Nasim is claiming that share redemption is tied to the settlement of ICC construction costs.”*

It is, therefore, reasonable for the CRA to determine that the Organization may be unable to redeem its “investments” in the Housing Co-operatives. As a result, resources that the Organization was obliged to safeguard for purposes of its charitable undertakings may be unrecoverable due to the Board of Directors’ careless, or imprudent, investment decisions.

Furthermore, in light of the above findings and taking into consideration the Organization’s non-arm’s length relationship with the Housing Co-operatives detailed in section 1.1.2 and Appendix B of this letter, it appears reasonable for the CRA to conclude that the Organization’s investment decisions were not made in order to obtain additional revenues to be used for its otherwise charitable activities, but rather in order to advance the commercial interests of the Housing Co-operatives.<sup>57</sup>

In the absence of documentation detailing the Organization’s investment strategy, or any evidence that the Organization’s investments are being made with a view as to the risk and return, the Organization’s Board of Directors has failed to demonstrate that it has exercised due care of the charitable assets entrusted to them. It is, therefore, the CRA’s opinion that the Organization has breached its obligation of prudent investment, and failed to manage its financial resources in a manner suitable to the furtherance of its charitable purposes.

### **1.3 Gifting to non-qualified donees/Failure to devote its resources to charitable activities carried on by the organization itself by demonstrating the necessary direction and control**

Subsection 149.1(1) of the Act requires that a registered charity devote all of its resources to charitable activities carried on by the organization itself. A registered charity, therefore, can only use its resources (including funds, personnel, and property) in two ways, whether inside or outside Canada:

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<sup>57</sup> As related specifically to IHC, we note that its website states that it does not borrow money from other institutions, but rather “relies on the funds provided by its members in terms of shares subscriptions” for its operation. The website further notes that the “motive of the investors is to facilitate the provision of funds for other members who would plan to occupy and potentially purchase a housing unit from the Cooperative.” An IHC “Appeal for Share Subscriptions and New Memberships”, dated March 16, 2009, states that IHC had been doing well since its inception and that “within a short span of time, it has purchased seven housing units for its members.” It, however, further states that IHC has “many more commitments for closing almost up to the middle of 2009 which include at least four closings in April alone. We need to raise the required funds for these commitments.” The appeal further notes that IHC “has relaxed its regulations and made it a lot easier for its members to purchase their houses as compared to other existing housing cooperatives. [IHC] would require a down payment of only \$75K-100K for a house priced at \$500 K as compared to about \$280K by others.” IHC, as an organization, versus the homebuyer, therefore, has to put up more of its own money for the purchase of a home. Such appeal letters appear to be a regular occurrence. See, for example, similar letters dated December 2, 2008, July 28, 2008, May 13, 2009, November 22, 2010, and April 22, 2011. The Appeal for April 22, 2011, notes that “there is a serious problem as we are short of both funds and time. IHC needs your help as quickly as possible to meet this commitment for the month of April.”

1. on activities undertaken by the organization itself, that is to say, on its own activities (those which are directly under the charity's control and supervision and for which it is able to render itself fully accountable for the funds expended); and
2. on gifts to qualified donees.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup> 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 Federal Court of Appeal has confirmed that a charity working with an intermediary must have control over the activities carried out on its behalf, and over the use of its resources.<sup>61</sup> In particular, the Court has highlighted that the relevant issue to be determined in regard to this requirement is not only whether resources are being devoted to activities that the law regards as charitable, but whether funds transferred to a non-qualified donee are, in reality, devoted to activities being carried on by the charity itself. As noted in *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, "the Minister is entitled to insist on credible evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself."

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 verifying that its resources have been devoted to charitable activities "*carried on by the organization itself*".<sup>62</sup> In addition to the copies of operating agreements or contracts and project reports, this may include all records demonstrating the charity's internal decision-making mechanisms, such as minutes of board meetings, communications (e.g., memoranda, facsimile transmissions, emails), policies and procedures, as well as all relevant source documentation such as invoices and receipts.<sup>63</sup>

<sup>58</sup> See note 15 for the definition of qualified donee.

<sup>59</sup> *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 *Bayit Lepletat v. Canada (Minister of National Revenue)*, (2006) FCA 128.

<sup>60</sup> As defined in CRA's Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada*, an intermediary is a person or a non-qualified donee that is separate from the charity, but that the charity works with to carry out its own activities.

<sup>61</sup> *Ibid* note 59.

<sup>62</sup> Subsection 248(1) of the Act defines a record as including: "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".

<sup>63</sup> See CRA's publications *Canadian Registered Charities Carrying Out Activities Outside Canada* and *Using an Intermediary to Carry out a Charity's Activities within Canada* for further information in this regard.

Our review of Organization's books and records indicate that, over the period of the audit, it gifted a total of \$20,215<sup>64</sup> to non-qualified donees, as follows:

Gifting to NQD	2007	2008	2009	TOTAL
(a) ISNA Human Development Institute	7,500	950		8,450
(b) Brandon Islamic Centre and Islamic Centre of Yellowknife		6,146	919	7,065
			5,000	5,000
Total	7,500	7,096	5,919	20,515

(a) Funds gifted to ISNA Human Development Institute

Reviewed records indicate that the Organization disbursed a total of \$8,450 to the ISNA Human Development Institute, a separately incorporated non-profit organization, \$7,500 in 2007, and \$950 in 2008. None of the records provided by the Organization for review demonstrated that it provided direction or exercised control over the funds it gifted.

(b) Resources gifted to the Brandon Islamic Centre and the Islamic Centre of Yellowknife

Reviewed documents indicate that the Organization gifted totals of \$7,065 to the Brandon Islamic Centre<sup>65</sup> and \$5,000 to the Islamic Centre of Yellowknife, two separately, and legally, constituted organizations.

In addition, the review of the audit material indicates that the Organization has otherwise provided its resources, in the form of the rent-free use of its properties – located at 834 10<sup>th</sup> Street, Brandon, Manitoba,<sup>66</sup> and 4100 Franklin Avenue, Yellowknife, Northwest Territories – in support of the operations of these two centres.

It is our understanding that the Organization was founded with the primary purpose of operating as a public *waqf*,<sup>67</sup> holding legal title to properties beneficially owned by Canadian Islamic organizations in order to protect religiously-purposed assets.

<sup>64</sup> Please note, as discussed in section 1.3 b) below, the nature of the resources gifted to the Brandon Islamic Centre and the Islamic Centre of Yellowknife includes resources other than funds. The total amount gifted, therefore, is greater than that reflected by this number.

<sup>65</sup> Please refer to section 3 below for information concerning third party receiving scheme undertaken in support of the Brandon Islamic Centre.

<sup>66</sup> As documented in note 73, the Brandon Islamic Centre was previously located at 123 Rosser Avenue in Brandon, Manitoba.

<sup>67</sup> Our research indicates that a *waqf* is the historical, Islamic equivalent of a trust, or endowment of a resource in perpetuity. According to Islamic tradition, a *waqf* may be private or public:

- A private *waqf* mainly benefits specific individuals or the founder's relatives or descendants. Under such a system, a property's usufruct or income is held for the family of its founder, until the end of his or her line of descendants, whereupon it is diverted to a charitable purpose.
- A public *waqf* has societal objectives, typically involving the permanent devotion of a building or a plot of land, and its usufruct or income, to Muslim religious or charitable purposes. Traditionally, the charitable purposes of *waqf* included educational institutions, orphanages, roads, graveyards, and religious establishments such as mosques.

As described in its response to the CRA's Audit Questionnaire, the Organization was established in order to

*...serve the best interests of various Muslim communities across Canada. It would encourage mosques and Islamic centres to transfer their titles to the CITF in trust so that their property could not be sold when there are conflicts and tensions in the community. CITF would also try to help Muslim communities to establish their own mosques and Islamic centres. CITF would also endeavour to establish other institutions for Muslims' interest such as schools, Islamic bookstores, graveyards, etc. CITF will also be the title holder of all properties that ISNA Canada owns.<sup>68</sup>*

In apparent furtherance of this purpose, the Organization holds trust to the property of numerous Islamic organizations, the vast majority of whom are registered charities, and therefore qualified donees.<sup>69</sup> Our understanding is that the Organization's resources are not used in the purchase or maintenance of these properties,<sup>70</sup> or in the conduct of the activities being undertaken. Rather, title is simply transferred to the Organization in an arrangement similar to the bare trust concept of separating legal and beneficial title.<sup>71</sup>

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There are three requirements of a *waqf*: (1) it must be a voluntary contribution; (2) the endowed property cannot be altered, destroyed or sold; and (3) its *usufruct* is restricted for the benefit of a certain cause or group of people, in the instance of a public *waqf*, the charitable beneficiaries. The *waqf* founder determines the type and management of the *waqf*. The manager, or *mutawalli*, acts as a caretaker of the property, administering the property in accordance with the terms of the deed that established the *waqf*, particularly in regards to its charitable purposes and in accordance with Islamic beliefs and practices. See UN-Habitat, 2005, "Waqf (Endowment) and Islamic Philanthropy," Paper 7 in the research series *Islam, Land & Property*: [http://www.unhabitat.org/downloads/docs/3546\\_80031\\_ILP%207.doc](http://www.unhabitat.org/downloads/docs/3546_80031_ILP%207.doc); Monzer Kahf, Undated, "Fiqh Issues in the Revival of *Awqaf*," [http://monzer.kahf.com/papers/English/revival\\_of\\_awqaf\\_\\_Islamic\\_horizon.pdf](http://monzer.kahf.com/papers/English/revival_of_awqaf__Islamic_horizon.pdf)

<sup>69</sup> Providing further background to its founding purpose, the Organization explained in its response to our Audit Questionnaire that "... the MSA [Muslim Students Association] decided to set up a new wholly-owned trust foundation and named it Canadian Islamic Trust Foundation in about 1983 or 1984, and invited other mosques and Islamic centres to transfer their titles to the new trust foundation for protection from sale of the property in the environment of conflicts and power struggles [emphasis added]."

As well, 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. Source: [http://www.jamimosque.com/some\\_words\\_about\\_us.php](http://www.jamimosque.com/some_words_about_us.php)

<sup>70</sup> Appendix C provides details of the 19 properties (for 16 Islamic organizations) that have been identified as being held title to by the Organization. We note that with only a few additions, the properties held have not changed since at least 2002. Further, its activities in this regard do not appear to have featured prominently in the Organization's efforts during the years of the audit. Rather, a review of the Organization's meeting minutes would indicate a concentration on its undertakings in regards to the Housing Co-operatives and its oversight of the operations of Jami Mosque (as discussed in section 4.2).

<sup>71</sup> Having said this, however, we would note that, while the terms of the property ownership agreements that we have reviewed contain clauses seeking to limit the Organization's liability in terms of such expenses as property taxes, insurances, and etc, as in the instance of the Housing Co-operatives, the agreements are based on the assumption that the beneficial owner is able to meet its obligations in this regard. However, in the event that the beneficial owner is unable or unwilling to meet such expenses we are of the opinion that the Organization, as the legal owner, may be found ultimately liable.

The Organization's involvement in such an undertaking, therefore, represents the potential expenditure of its resources, which would be of concern to the CRA in the event that the Organization were to hold title to properties beneficially owned by organizations other than qualified donees.

<sup>72</sup> It is our understanding that the terms and conditions of each title transfer were outlined in a signed agreement entered into between the Organization and the beneficial owner. Although we do not have copies of the agreements for the

As outlined in our policy statement, *Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations*, registered charities "established to hold title to property on behalf of other registered charities, while not an Umbrella Organization per se, may nonetheless be registered as an organization established to assist other registered charities."<sup>72</sup>

The policy further explains that "registration of the title-holding entity depends on the tenant entity being a registered charity or other qualified donee. A title holding entity may not hold property on behalf of or beneficially owned by non-qualified donees [emphasis added]."

(d)

The Organization's purpose (b), *To hold title to properties in trust acquired for charitable purposes by other registered charitable Islamic organizations in Canada, if so requested by any such organization and to do so without any reward or gain*, clearly meets this requirement. However, neither the Brandon Islamic Centre nor the Islamic Centre of Yellowknife are registered Canadian charities or otherwise considered to be qualified donees.

Further, when questioned as to its relationship with these two Islamic Centres during the audit commencement interview, quite apart from the *waqf* scenario outlined above in which the Organization simply holds title to a property on behalf of its beneficial owner, the Organization explained to the CRA that the activities undertaken by the two Centres are its own, as it purchased and owns the properties out of which they

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majority of the sixteen properties the Organization apparently holds title to, a review of the six agreements available to the CRA would indicate that, while it does stipulate the *general* purposes for which the property may be used, the agreement expressly states that the Organization will not involve itself in the management or upkeep of that property. In this regard, we note, for example, the following sections as contained in the Organization's agreement with the Kanata Muslim Association:

- Section 4 states that "The Beneficiary shall be entitled to possession of the Property and shall use, administer and manage the Property under its present Constitution ... exclusively for religious charitable, educational, cultural, social or other functions of a similar nature ...."
- Section 13 states that "the Beneficiary shall have the exclusive right to occupy, possess and manage the Property..."
- Section 14 states "the Beneficiary shall carry out or cause to be carried out all necessary repairs to maintain the Property...at its own cost. The Foundation shall neither pay the costs of any repairs, alterations, renovations, additions or changes nor be liable to anyone including the Beneficiary for any expenses incurred or services rendered in connection to the Property...."
- Section 17 states that the "Beneficiary shall...procure and maintain, at its own expense...adequate insurance. ...."
- Section 18 states that "the Beneficiary shall pay all taxes or assessments levied or assessed against the Property... The Beneficiary shall pay all utility bills including sewer, water, electricity, gas, etc. ...."

In addition, in keeping with the concept of a *waqf*, we would note that the terms of the property ownership agreements include clauses that limit the conditions under which the property may be sold, and stipulate the purposes towards which the proceeds of the property's sale may be directed.

As applies to certain properties the title to which Organization holds on behalf of ISNA affiliates – namely the 2200 South Sheridan Way and the 56 Boustead Avenue properties – we would note that the Organization's stewardship of the properties appears to include some degree of property management and/or involvement in program delivery. See, for example, section 4.2 as regards Boustead Avenue and Appendix D as regards South Sheridan Way. The nature or terms of the title holding arrangements in these instances would, therefore, appear to differ from the Organization's arrangements with other Islamic organizations.

<sup>72</sup> <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-026-eng.html>

operate.<sup>73</sup> Both Centres were in effect described to the CRA as internal divisions or operating arms of the Organization.

CRA's summary policy CSP-114 states that "an internal division is a branch, section or division of a registered charity."<sup>74</sup> An internal division does not have its own governing documents, but rather operates under the governing document of the parent body. As outlined in Registered Charities Newsletter No. 15 – Spring 2003:

*An internal division is part or an operating unit of an existing registered charity. For our purposes, the division is not a legal entity in its own right, but instead operates under the control, direction, and governing documents of the parent organization [emphasis added]. Therefore, the internal division is not itself incorporated and generally does not have a separate constitution.<sup>75</sup>*

As internal divisions of the Organization, and as non-qualified donees, the activities conducted by the two Centres on property owned and apparently paid for by the Organization, must be undertaken and conducted under its direction and control. There is

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<sup>73</sup> As explained to the CRA by the Organization's Board of Directors during the audit commencement interview. Correspondence retrieved off of ISNA's server would support the assertion that the Organization purchased the properties:

Re. the Yellowknife property, please see, for example, the Organization's letter dated August 28, 2000, addressed to the [REDACTED] and seeking exemption from municipal taxes, which states that the Organization "recently purchased the property at 4100 Franklin Avenue, Yellowknife, N.W.T, to be used as a Mosque." As well, an entry in the minutes from the Organization's March 29, 2008, Board of Directors' meeting reports that, contingent on the receipt of financial assistance from the Islamic Development Bank, the Board's had "unanimously decided to go ahead and purchase" the lot next to the Yellowknife Centre. Reportedly, the owner of the property had "offered to sell it to CITF at a reasonable price (\$190K)."

Re. the Brandon property, please see, for example, the Organization's letter of October 3, 2001, addressed to a [REDACTED], in which it was stated that the Organization is "proceeding to purchase the property at 123 Rosser Avenue, Brandon, Manitoba, for use as a place of worship i.e. as a Mosque." The Organization's Board of Directors' meeting minutes for November 3, 2001, describes in some detail the Organization's involvement in the purchase of the Brandon property. Recorded under the heading "New Additions to CITF Waqf", Dr. Ashraf provided the following summary:

*Islamic Centre of Brandon, Brandon, Manitoba: - The newly acquired property by the small Muslim community (15 families) is in the process of being transferred [REDACTED] of Toronto had purchased the property in his personal name for \$90 k. Out of this price on \$60 k will be paid over 5 (five) years period by [REDACTED]. For the remaining amount of \$30 k CITF will issue a taxable deductible receipt over 3 (three) years period. CITF also committed to pay some \$12 k as help in renovation cost which will total approx \$30 k. CITF will also give some more funds as Qard Hasn [an interest free loan extended on a goodwill basis] to Brandon Islamic Centre by soliciting donations from all sources [REDACTED] [REDACTED] and Takaful Board contributed \$3 k and \$5 k respectively [sic] as designated donation to CITF for this project. This amount has also been passed on to Brandon Islamic Centre with a total amount of \$20,000.*

The Organization has provided the CRA with a copy of an April 8, 2004, letter from a legal firm confirming that sale of the 123 Rosser Avenue property to the City of Brandon for the price of \$185,000.00, and Invoicing the Organization for its services.

We would also note that in the case of the Islamic Centre of Yellowknife and the Islamic Centre of Brandon, as opposed to in the instance of the other organizations on whose behalf it holds property in trust, the cost of the land and building is recorded on the Organization's balance sheet, so it would appear that these properties were purchased by the Organization.

<sup>74</sup> <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-114-eng.html>

<sup>75</sup> <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-15-e.html>

no evidence that this is the case:

- both Centres are separately incorporated entities, operating under their own governing documents and by-laws;<sup>76</sup>
- no documentation has been provided to the CRA outlining the nature or terms of the Organization's relationship with the two Centres or evidencing its direction and control of the activities being undertaken; and
- the Organization's Board of Directors stated during the audit commencement interview that they had no formal agreement with the Centres and that it was "not involved in their affairs whatsoever."

In the absence of documentary evidence demonstrating direction and control, it is our preliminary conclusion that the Organization has gifted its resources to a non-qualified donee and has operated in direct contravention to subsection 149.1(1) of the Act that requires that a charitable organization devote all of its resources to charitable activities carried on by the organization itself.

Subsection 149.1(2)(c) of the Act states that the Minister may, in the manner described in section 168, revoke the registration of a charitable organization where the organization 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.

## 2. Failed to Comply with or Contravened any of Sections 230 to 231.5 of the Act

Subsection 230(2) of the Act requires that every registered charity keep books and records of account at an address in Canada recorded with the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration.<sup>77</sup> A failure to maintain proper books and records in accordance with the requirement of the Act is itself sufficient reason to revoke an organization's charitable status.<sup>78</sup>

<sup>76</sup> We do note, however, that the Islamic Centre of Yellowknife's 2001 By-Law, as amended October 31, 2009, stipulate that trustee membership is limited to "members of [ISNA's] Majlis, CITF and or those persons designated as Trustees by the Society." Furthermore, Article XIV states:

i) *The Titles and Transfer Deeds of all the existing, as well as other Real Estate properties to be purchased by the Society in the future will be put in the name of the CITF.*

ii) *The Society shall be permanently affiliated to ISNA-Canada.*

Referring to the development and implementation of new rules and regulations, Article XV states that the Organization will be notified and "given the opportunity to advise the Committee and the Body of their comments."

<sup>77</sup> Subsection 248(1) of the Act defines a record that "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."

<sup>78</sup> *College Rabbinique de Montreal Oir Hachaim D Tash v. Canada (Minister of the Customs and Revenue Agency)* (2004) FCA 101; subsection 168(1) of the Act.

## 2.1 Failure to maintain proper books and records

Our audit has established that the Organization has failed to maintain proper books and records in the following areas:

### 2.1.1 Properties held in trust

As previously noted, the Organization holds trust to numerous properties in two capacities: the first as related to its role as waqf; and the second as related to the provision of operational support to the Housing Co-operatives. The Organization failed to maintain proper books and records in relation to both, as follows:

- *As related to its role as waqf:* Our Audit Questionnaire requested that the Organization provide the CRA with both the names of all the organizations with which it had entered into waqf agreements and with copies of all related documentation.<sup>79</sup>

In response, the Organization provided the CRA with a list of fourteen organizations, a blank sample copy of a trust agreement, and a signed copy of its agreement with the Halton Islamic Association, an organization that had not been identified by the Organization on its list.<sup>80</sup>

Our subsequent review of the electronic records provided by the Organization during our audit visit procured copies of agreements for three of the thirteen organizations identified on the list, namely: the Islamic Centre of Cambridge, the Communauté Musulmane du Québec, and the Islamic Association of Saskatchewan. In addition, the CRA also retrieved signed trust agreements for two additional organizations that had not been identified by the Organization.<sup>81</sup>

- *As related to its activities undertaken on behalf of the Housing Co-operatives:* As discussed in Appendix B, the Organization was unable to provide documentation pertaining to, or an accounting of, the number of properties it holds title to on behalf of the Housing Co-operatives.

The Organization did not provide copies of the trust agreements entered into with the Housing Co-operatives: no copies of such documents were found pertaining to its title holding agreements with ACHC; one blank copy of a trust agreement with ICHC was recovered off of the electronic documentation provided during our audit visit; and only a handful of trust agreements were recovered pertaining to its agreements with IHC.

<sup>79</sup> The entire request read as follows: "Please provide the names and contact details of all the Muslim institutions to whom the Canadian Islamic Trust Foundation has offered its services. Please also provide copies of any related documentation, including waqf/deeds/contracts, and loan terms."

<sup>80</sup> We would note that the list should only contain 13 organizations, as the ISNA Elementary School and the ISNA High School were separately identified despite the fact that both schools are part of Islamic Schools Association of Canada and that the high school is located at a property that the Organization is holding trust to on behalf of ISNA, or, as identified on the list, the Islamic Centre of Canada.

<sup>81</sup> Appendix C provides a more detailed accounting of our findings in this regard.

It is therefore our preliminary finding that the Organization failed to maintain proper books and records in that it does not have all of the documentation to account for the properties it holds title to. As a result, the CRA is unable to determine the completeness and accuracy of the Organization properties holdings, either as it relates to its activities undertaken as waqf, or in relation to the activities undertaken on behalf of the Housing Co-operatives.

#### 2.1.2 Lack of supporting documentation to account for balance sheet adjustments with respect to the Islamic Centre of Canada (ICC) Project

The ICC is a separately incorporated organization, considered an affiliate of ISNA. The ICC Project relates to the acquisition of the 2200 South Sheridan Way property, and the subsequent construction and renovations done on the property. Records indicated that the above property was acquired "jointly by ISNA and Islamic Co-operative Housing Corporation (ICHC)," in 1996, while the legal ownership of the property was "taken in the name of CITF in Trust."<sup>82</sup> The Certificate of Registration for the property shows that the property was purchased for \$1.6 million, plus land transfer tax of \$22,475, on March 29, 1996, and identifies the Organization as the legal owner of the property.<sup>83</sup> Since then, the Organization has held<sup>84</sup> a nominal title to the property as a trust.

Today, the ICC's primary function appears to be the management of 2200 South Sheridan Way facilities, in Mississauga. The property houses a mosque, a high school, and a number of ISNA affiliate organizations, including for-profit Housing Co-operatives, and the Organization itself.

During the course of our audit, we have observed several questionable balance sheet adjustments with respect to the ICC Project, each time involving millions of dollars, undertaken with little or no supporting documentation:<sup>85</sup>

<sup>82</sup> According to the *"Islamic Centre of Canada Construction Cost Investigation Report"*.

<sup>83</sup> The Organization's financial statements recorded the transactions that gave a rise to the legal ownership of the property, as follows.

Capital Assets:	Yr/Yr		
	YE 1995	YE 1996	Increase
Land	328,600	1,008,854	680,254
Buildings	393,501	1,413,881	1,020,380
	<b>722,101</b>	<b>2,422,735*</b>	<b>1,700,634*</b>
Liabilities - Trust Fund:			
Contributions - Building	-	<b>1,498,100**</b>	<b>1,498,100</b>

\* The Capital Assets section of the Organization's financial statements did not identify the properties in detail, however, the year-over-year increase amount of \$1.7 million appears to correspond to the property in question.

\*\* It is not clear as to why the recorded "Contributions - Building" amount did not match to the purchasing price of \$1.6 million, plus other related costs, when the purchase was all paid for by third-parties.

<sup>84</sup> The year-end 1999 Notes to Financial Statements stated that ICHC has 50% "share holding" in the ICC project. Also, a signed trust agreement, dated June 19, 2011, involving ICHC, ISNA, and CITF, reiterates that ICHC and ISNA "together had acquired and renovated" the property located at 2200 South Sheridan Way, and that "each party will equally own the Property." ICHC and ISNA also agreed that the "title of the Property will be held in the name of CITF as trustee in the trust for the [ICHC] and ISNA."

<sup>85</sup> In addition, please also refer to section 4.1, *Missstatement of the financial statements relating to Trust Property*, for our further concerns.

- Year-end 2004: The Organization's year-end 2004 financial statements reported an increase of an approximately \$4 million each in the asset and liability sections of the balance sheet from the previous year.<sup>86</sup> Specifically, the financial statements show an increase of \$3.8 Million in assets related to the building located at 2200 Sheridan Way, and an increase in liabilities of \$2 million to each, ACHC and ICHC. As further discussed in Appendix D, such increases were allegedly made by Mr. Pervez Nasim<sup>87</sup> to account for a presumed loan made to the Organization by ICHC/ACHC to help meet the rising costs of the ICC Project, which was reportedly completed in 2002.<sup>88</sup>

The Board meeting minutes of October 11, 2008, indicate that the Organization commissioned an internal audit by retaining the service of [REDACTED] CGA, with the task of determining whether, and ensuring that, all the transactions recorded in the books were "complete, accurate and properly classified," for the years ended December 31, 2001 through 2007. In his report, [REDACTED] raised concerns, specifically, with journal entries that have resulted in an increase of over \$4 million in the liabilities for the Organization, due to ACHC and ICHC in year-end 2004, because there were no documents made available to ascertain the validity of such journal entries.<sup>89</sup> The report recommended the following measures for the Organization in dealing with this specific issue, among others:

Please note that a review of books and records relating to the time period outside of the audit period was undertaken for this particular issue, as it involved a series of transactions dating prior to the audit period and was considered necessary to inform our understanding.

<sup>86</sup> The Organization's year-end 2004 financial statements reported significant increases in the accounts relating to the ICC Project, as shown below:

Capital Assets:	YE 2003	YE 2004	Yr/Yr Increase
Land	660,000	660,000	-
Building	1,623,062	5,491,211	3,868,149
	<u>2,283,062</u>	<u>6,151,211</u>	<u>3,868,149</u>
<b>Liabilities - Trust Funds:</b>			
Contribution - ISNA in ICC	1,000,000	1,010,500	10,500
Contribution - ACHC in ICC	1,000,000	3,000,000	2,000,000
Contribution - ICHC in ICC	1,000,000	3,000,000	2,000,000
	<u>3,000,000</u>	<u>7,010,500</u>	<u>4,010,500</u>

<sup>87</sup> As reported in the Organization's minutes from its May 9, 2008, teleconference:

*M.D. Khalid explained that after checking previous statements, he had found that these entries were first made in the 2003 statement. ...*

*[REDACTED] informed the Board that these entries were made by Pervez Nasim without authorization from the CITF Board a few years after the construction/renovations of the ICC [2200 South Sheridan Way] building were completed.*

*M.D. Khalid pointed out that these entries have no justification without the supporting bank documents as to how, when and from where the funds were received and how these were spent. ...*

<sup>88</sup> According to the Islamic Centre of Canada Construction Cost Investigation Report, the renovation project was complete as of December 31, 2002. As documented in the minutes of the Organization's meeting of August 31, 2008, it was Dr. Ashraf's opinion that the project was completed in 2001.

<sup>89</sup> As cited in the meeting minutes, the audit report, prepared by Mr. [REDACTED] contained the following statement:

*... no documents were made available for inspection, especially for those journal entries which were made to records transfers of assets and liabilities to and from Organizations such as Ansar Cooperative and Housing*

- *That all such journal entries be thoroughly scrutinized and investigated to ensure their accuracy and validity.*
- *That wherever necessary the board should reverse all the journal entries which did not appear authentic and or valid.*
- Year-end 2007: In contrast to year-end 2004, the year-end 2007 financial statements reported similar amounts in reverse for the same accounts, where both the assets and liabilities were reduced by \$3.8 million and \$3.5 million, respectively.<sup>90</sup>

The Board meeting minutes of October 11, 2008 notes that the presented total cost of the ICC Project of \$7,250,000,<sup>91</sup> of which \$4.7 million was purportedly paid

*Corporation, Islamic Cooperative and Housing Corporation, Muslim Community Association of US and Canada, and Dar ul-Imam. Of special concern were the journal entries for \$Six Million Liability to CTF (\$3 Million each payable to ICHC and to ACHC) for the construction cost.*

... [REDACTED] also reported that when, in the absence of the documents, he sought explanation from the Brother M. Ashraf and Brother M. Khadim, he was informed that the CTF board had neither approved any of those transactions for which the entries were made nor was the board made aware of any such transactions.

The minutes from the Organization's meeting of August 31, 2008, similarly document the lack of records to support the reported liabilities payable to the Housing Co-operatives. The minutes record Dr. Khadim as stating that "Since 2003 unauthorized entries of six million dollars in the Liabilities Section of the CTF statement have been made by Pervel Nasim. There is no documentation in the CTF records at the ISNA Headquarters to support these entries. These entries also involve Sheridan Development and Management, which had been dissolved as it owed unpaid GST and other taxes." For further information on the Sheridan Development and Management, please refer to Appendix D.

<sup>90</sup> The Organization's year-end 2007 financial statements reported significant decreases in the accounts relating to the ICC Project, as shown below:

	YE 2006	YE 2007	Yr/Yr Decrease
<b>Capital Assets:</b>			
Land	660,000	660,000	-
Building	8,651,163	4,854,732	(3,796,431)
Furniture & Equipments	141,428	141,428	-
	<b>9,452,591</b>	<b>5,656,160</b>	<b>(3,796,431)</b>
<b>Long-term Liabilities:</b>			
ISNA	1,204,767	1,205,767	1,000
ACHC (qardh hasana) <sup>92</sup>	3,000,000	1,095,000	(1,905,000)
ICHC (qardh hasana) <sup>93</sup>	3,000,000	1,434,900	(1,565,100)
<b>Total long-term liabilities</b>	<b>7,204,767</b>	<b>3,735,667</b>	<b>(3,469,100)</b>

<sup>92</sup> Qardh hasana refers to an Islamic banking term where a loan is "extended on goodwill basis, and the debtor is only required to repay the amount borrowed," in other words, an interest-free loan. ([http://en.wikipedia.org/wiki/Islamic\\_banking#Qardh\\_hassan\\_2F\\_Qardul\\_hassan\\_28good\\_loan.2F\\_henevolent\\_loan.29](http://en.wikipedia.org/wiki/Islamic_banking#Qardh_hassan_2F_Qardul_hassan_28good_loan.2F_henevolent_loan.29))

<sup>93</sup> The total project costs, as presented by Mr. Ashraf, were consisted of:

Cost of land and buildings	1,600,000
Total construction/renovation, estimate	4,500,000
Furniture & fittings	200,000
property taxes	150,000
Rezoning expenses	800,000
<b>Total Cost</b>	<b>7,250,000</b>

for by ACHC and ICHC combined, and the remaining, \$2.55 million by ISNA,<sup>92</sup> and that \$4.5 million of the amounts presented was an estimate based on Dr. Ashraf's recollection only, without any substantiating documentary evidence. The Board meeting minutes also indicate that the missing documents "were mostly for monies received and paid and have gone missing since the Housing Cooperatives (ICHC & ACHC) moved out to a different location in November, 2007. The missing records include source documents such as invoices for which the payments were made to the parties concerned from the time the building at 2200 Sheridan Way, Mississauga was acquired in March 1996."

The Board accepted and recognized the gravity of the situation when it unanimously:

- o approved and adopted the recommendations given by [REDACTED] as aforementioned earlier in YE 2004 section above;
- o authorized Dr. M. Ashraf and Mr. M.D. Khalid to "investigate with [REDACTED] all the necessary journal entries," and make "necessary corrections in the accounting records";
- o authorized [REDACTED] to "prepare the revised financial statements for the year ended December 31, 2007 incorporating all the corrections"; and
- o agreed that financial statements amounts relating to the ICC Project be "adjusted to reflect the figures presented from the available records by M. Ashraf and M.D. Khalid, as these figures appeared to be more reasonable."

However, while the Board accepted Dr. Ashraf's figure of \$7.25 million as the total cost of the project, the journal entries relating to the ICC Project shows that only \$5,350,000 was booked as the cost of the Project,<sup>93</sup> leaving a variance of \$1.9 million between the Board's accepted cost figure of \$7.25 million and the amounts actually booked on the Organization's books, that is \$5.35 million. This variance is still unexplained and without supporting documentation.

<sup>92</sup> The Organization appears to have booked ISNA's contribution of \$2.55 million, per Dr. Ashraf's presented figures, under the Contributed - Surplus account in the balance sheet.

<sup>93</sup> Journal entries indicate that the Organization revised the assets and liabilities relating to the ICC Project for YE 2007 to read, as follows:

Acct. No.	Acct. Name	Date	Amount	Comment
1705	Land - ICC	31/12/2007	660,000	Being recognition of correct amounts
1745	Building Additions-ICC Project	31/12/2007	4,542,000	Being recognition of correct amounts
1765	Office Furniture & Equipment	31/12/2007	148,000	Being recognition of correct amounts
			<u>5,350,000</u>	
2400	ICHC- Long Term Loan (qardh hasana)	31/12/2007	(1,500,000)	Being recognition of correct amounts
2401	ACHC-Long Term Loan (qardh hasana)	31/12/2007	(1,300,000)	Being recognition of correct amounts
3560	Contributed-Surplus	31/12/2007	(2,550,000) <sup>94</sup>	Being recognition of correct amounts
			<u>(5,350,000)</u>	

Therefore, it is our preliminary view that the Organization failed to maintain proper books and records to substantiate the adjustments made in the books of accounts, and that it made significant and material adjustments to its year-end 2007 financial statements without any supporting documentation.

- Year-End 2009: In 2009, the Organization commissioned yet another audit or review into the cost of the ICC project by hiring an accounting firm, Fareed Sheik, C.A. The firm was tasked to determine the construction cost of the project and the amount the Organization owed to ICCHC/ACHC.

The firm produced a report, entitled *Islamic Centre of Canada Construction Cost Investigation Report*.<sup>94</sup> The Report estimates that the total construction cost of the ICC Project was \$9,587,943, and that ICCHC and ACHC contributed \$7,657,000 out of the total cost.

However, the Report also:

- Indicated that the revised total cost included \$1,057,337 for which the Report stated “supporting evidences (invoices, bills, etc.) were not provided to us” for review. The Report did not provide further explanation as to the reason why such amount was included in the total cost of the project, when none of the amount was substantiated by supporting documents;
- Included in the total construction cost, \$84,559 that did not directly relate to the construction cost of building. The Report did not provide further explanation as to the nature of such amount and the reason it was, then, still included in the total cost of the ICC Project;
- Added \$156,047 in the total cost for expenses incurred after the completion date of the construction. The Report indicated that the completion date of the construction was December 31, 2002. The Report did not provide further explanation as to the nature of such amount and the reason it was included in the total cost of the ICC Project;

<sup>94</sup> As based on a draft version of the report attached to an October 8, 2009, email from Mr. Sheik to Dr. Ashraf. Under the heading “Objective and Scope of this Management”, Mr. Sheik provides the following summary:

*Due to the involvement of different organizations and different sources of capital investment, a dispute has aroused between the two major parties to the contract viz CITF and ICCHC about the cost of construction of this centre and the amount to be owed to ICCHC by CITF. I am hired by CITF to investigate in to the construction cost of this Centre.*

*My work is limited to identifying the cost of construction of the centre, identifying the amount that is invested in to this project by CITF and ICCHC and how much money is owed to ICCHC by CITF. I did not perform an audit or a review to come up with my findings. I performed an investigation using analytical procedures, Interviews and observations and thereby I do not express an audit opinion or any other form of assurance on the cost of construction.*

- Indicated that ICHC and ACHC contributed additional funds of \$1 million towards the ICC Project as a management fee in 2004, for a project that was reportedly completed in year-end 2002. Once again, the Report did not provide further explanation as to the nature of such amount and the reason it was still included in the total cost of the ICC Project, especially, when the transactions took place after the completion of the Project.

In summary, the revised total construction cost of \$9,587,943 included over \$2.2 million of expenditures that either lacked supporting documentation, or the nature of the expense remains unknown, unspecified, or unexplained.

In spite of this, the Organization accepted the findings, adjusted its books accordingly,<sup>95</sup> and the Board approved the revised financial statements.<sup>96</sup>

It is therefore our view that the Organization failed to maintain proper books and records in order to substantiate the amounts it reported on its 2009 financial statements.

Therefore, it is our preliminary view that, for each of the reasons mentioned above, and for each of these reasons alone, the Organization has failed to meet the requirements set out in subsection 230(2) of the Act. The severity of the non-compliance, with respect to the repeated occurrences and the materiality of the amounts involved, was determined to be such that the Minister may revoke the registration of the Organization because it failed to comply with or contravened sections 230 to 231.5, pursuant to paragraph 168(1)(e) of the Act.

## 2.2 Lack of internal controls

In addition to the related shortcomings documented in section 2.1.2 above, the CRA has found the internal controls supporting the Organization's books and records to be inadequate. As further detailed in Appendix D, our findings in this regard are evidenced by the following:

- The Board of Directors' abdication of its responsibilities to an independent third party as related to the renovation of the 2200 South Sheridan Way

<sup>95</sup> Notes to Financial Statements, year-end 2009, reported the revised amounts with respect to the ICC Project, as follows:

		YE 09	YE 08
	Land - ICC	1,700,000	660,000
	Building Additions - ICC Project	7,887,943	4,542,000
		<u>9,587,943</u>	<u>5,202,000</u>
<b>Note 3: Long Term Loans</b>			
	ICHC - Qardh Hasan	6,562,000	1,434,900
	ACHC - Qardh Hasan	1,095,000	1,095,000
		<u>7,657,000</u>	<u>2,529,900</u>

<sup>96</sup> As indicated in an e-mail dated January 21, 2010, from Mr. Fareed Sheik to Dr. Ashraf.

property;

- A failure to maintain a proper accounting of expenditures, resulting in the accumulation of a third party debt that is unsupported by any reliable documentation;
- A failure to segregate duties and responsibilities as related to the operation of the Organization and that of the Housing Co-operatives; and
- The apparent inadequate authorization of transactions, including as demonstrated through the availability and use of pre-signed blank cheques and the lack of access restriction on bank accounts.

The Organization's Board of Directors failed to have in place adequate controls to properly safeguard its resources. As a result the CRA is unable to confirm with any certainty the expenditures and liabilities as recoded.

### **3. Issued a Receipt for a Gift otherwise than in Accordance with the Act and the Regulations (Regulations 3500 and 3501, and 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 deliberately false information. 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.

Over the three-year period under audit, the Organization issued a total received amount of \$48,735,<sup>97</sup> as part of what appears to be a third-party receipting scheme with the Brandon Islamic Centre, a separately incorporated organization and a non-qualified donee.

According to our understanding of the arrangement, under which the Organization participated in the scheme and issued receipts:

- The Brandon Islamic Centre raised funds for its programming;
- The Brandon Islamic Centre then transferred the raised funds, and provided a donors' list, to the Organization;

<sup>97</sup> \$16,050 in 2007, \$17,950 in 2008, and \$14,735 in 2009.

- The Organization recorded the amount received as its revenue, and then, within days of receiving the funds, re-paid the monies in full to the Brandon Islamic Centre, and issued official donation receipts to the identified donors.<sup>98</sup>

It is, therefore, our preliminary view that the Organization issued donation receipts in contravention to the Act and Regulation 3501. Such a non-compliance practice is significant enough that, for this reason alone, it constitutes grounds for revocation pursuant to paragraph 168(1)(d) of the Act.<sup>99</sup>

In these circumstances, subsection 188.1(9) of the Act also provides for the levying of a penalty. A registered charity that has been found to contravene the receiving requirements of the Act by issuing receipts on behalf of, or in the name of, another person is liable to pay a penalty equal to 125% of the eligible amount stated on the receipt. According to our audit findings, the Organization may be liable to pay a penalty of \$60,918.75 as follows:

YE	Received (1)	Penalty [(1) x 125%]
2007	16,050	20,062.50
2008	17,950	22,437.50
2009	14,735	18,418.75
	<u>48,735</u>	<u>60,918.75</u>

#### 4. Failed to file an information return as required under the Act or its Regulations

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's taxation year, without notice or demand, file both a Registered Charity Information Return (T3010) with the applicable schedules. The

<sup>98</sup> Representing only a sample in a number of similar communications on the subject, an email dated December 31, 2007, from Dr. Ashraf to the Organization's accountant, Mr. Shameem Mohammed, outlines the terms of the accommodation and contains a list of the names of the individuals to whom official donations receipts were to be issued:

*The 2007 donations received (until the end of Aug 2007) at Brandon Islamic Centre would be deposited in ISNA's account (BMO Bank of Montreal; Credit Account of The Canadian Islamic Trust Foundation; Acc [REDACTED]) this afternoon. This is required for ISNA to issue tax-deductible receipt. As the first installment, we are transferring the amount of \$8,510 later this afternoon. We will inform you when the second and last installment will be transferred around year's end. Donors details will be provided to ISNA at years end for tax receipt purposes [emphasis added].*

*When possible, we will appreciate this amount to be transferred back to Brandon Islamic Centre (Credit Account of Brandon Islamic Centre, TD Canada Trust; 903 Rosser Ave, Brandon, MB R7A 0L3; Branch # 0039 [REDACTED]. Please inform when it is transferred back.*

Email dated December 31, 2007, from Dr. Ashraf to Mr. Shameem Mohammed, containing the subject heading FW: RE: Brandon to ISNA to Brandon - 2007 Donations.msg. Although, the email refers to ISNA, receipts were issued by the Organization.

<sup>99</sup> Please note that if these amounts had not been considered under third party receiving, they would have been considered under gifting to a non-qualified donee, as outlined in section.

T3010 must be completed by a director, trustee or like official of the charity. By signing the T3010, the official certifies that “the information given on this form, the basic information sheet and any attachments is, to the best of my knowledge, correct, complete, and current.”<sup>100</sup> The certification block also contains the warning “It is a serious offence under the *Income Tax Act* to provide false or deceptive information.” A charity is not meeting its requirement to file an information return if it fails to ensure the accuracy of the information contained therein.

**4.1 Misstatement of the financial statements relating to a Trust Property (the ICC Project), YE 2007 - 2009**

In addition to the issues discussed in section 2.1.2 regarding the lack of supporting documentation concerning the ICC Project, the nature of the amount reported in the liabilities section of the balance sheet also raises significant concerns that impact the Organization’s liabilities.

As the Organization did not provide to the CRA a copy of the trust agreement signed in 1996 for the property at 2200 Sheridan Way, it is assumed that the beneficial owners are ICHC and ISNA, who reportedly financed the ICC project, and for which is reflected of the later trust agreement signed in 2011. From our audit observations, the Organization has held, since 1996, nominal title to the property as a trust, and when requested should return the property to its beneficial owners. As such, the Organization booked such property as Trust Funds under liabilities section of the balance sheet from the original entry of year-end 1996 through 2006.<sup>101</sup>

However, since year-end 2007, the Organization reported such property as long-term debts payable to ISNA, ACHC and ICHC, as follows:

<sup>100</sup> Under Section E, Certification, of T3010.

<sup>101</sup> The classification of the trust property as reported on the financial statements in the liabilities section of the balance sheet from the original entry of year-end 1996 through 2006:

1996 - 1997	1998 - 2002	2003 - 2006
<b>Liabilities - Trust Fund:</b>	<b>Liabilities - Trust Fund:</b>	<b>Liabilities - Trust Fund:</b>
Contributions - Building	Contributions - Building	Contribution - ISNA in ICC
	Contribution - ISNA in ICC	Contribution - ACHC in ICC
	Contribution - ICHC in ICC	Contribution - ICHC in ICC

<b>Long Term Liabilities – Loans:</b> <sup>102</sup>		<b>2007</b>	<b>2008</b>	<b>2009</b>
	ISNA	1,205,767	1,205,767	464,610
	ACHC - Interest Free Loan	1,095,000	1,095,000	1,095,000
	ICHC - Interest Free Loan	1,434,900	1,434,900	6,562,000
		<b>3,735,667</b>	<b>3,735,667</b>	<b>8,121,610</b>

The change to Interest Free Loan, without documentary evidence, is significant because the Organization has ultimately accepted a liability in the form loans amounting to over \$8.1 million while only maintaining nominal title holding to property in trust.

Therefore, it is our preliminary understanding that the Organization made material misstatements in its financial statements when it reported that the Organization was responsible for long-term loans relating to a trust property, and as such, the Organization failed to file accurate information returns since 2007.

#### 4.2 The nature of programs reported (section C, T3010)

The Organization appears to have failed to accurately report to the CRA the nature of its programs in section C2 of its T3010 for the entire period under audit.<sup>103</sup> The Organization's T3010 Returns consistently identified the following four programs:

- *Help to build Islamic Centres and Mosques in Canada;*
- *Help to build Islamic Schools;*
- *Coordinating Islamic summer school and special educational workshops for adults;*
- *Organizing Islamic programmes to create better understanding between different faiths.*

The CRA has not been provided with documentation to indicate that the Organization has undertaken activities in support of the programs identified in its T3010

<sup>102</sup> The T3010s for the years subsequent to the audit period, including the latest year of filing for year-end 2012, report that such long-term loans have remained. The Organization's reported long-term loans, per the Organization's financial statements:

YE	2009	2010	2011	2012
ISNA	464,610	464,610	464,610	464,610
ACHC* - Interest Free Loan	1,095,000			
ICHC* - Interest Free Loan	6,562,000	7,657,000	7,657,000	7,657,000
	<b>8,121,610</b>	<b>8,121,610</b>	<b>8,121,610</b>	<b>8,121,610</b>

\*In YE 2010, \$1,095,000 of the loan amounts to ACHC appears to have been amalgamated into that of ICHC, thereby, increasing ICHC's receivable by exactly the same amount, as ACHC's was reduced to nil from YE 2009.

<sup>103</sup> The instructions provided on the T3010 pertaining to section C2 read as follows: "Describe how the charity carried out its charitable purposes during the fiscal period. Give detailed information so a reader can clearly understand what the charity actually did to fulfill its mandate. Describe the charity's ongoing programs and new programs in the spaces provided below..." More detail, including example descriptions, as to this section is provided in CRA's guide "Completing the Registered Charity Information Return".

Returns, although it could perhaps be argued that the first two are indirectly accomplished through its activities as a *waqf*.<sup>104</sup>

Furthermore, it is our opinion that the Organization has failed to report the main program areas observed during the audit, namely: acting as a *waqf* by holding the properties of registered charities in trust; supporting the operations of the Housing Co-operatives by holding residential properties in trust; the apparent provision of Islamic funeral services at 2200 South Sheridan Way;<sup>105</sup> and its apparent operational oversight of the Islamic Centre of Toronto (Jami Mosque).<sup>106</sup>

As explained in CRA's publication, *Charities Connection*, "A return that contains unnecessary or incorrect information, or that omits information, can give a false impression of a charity's situation. Accuracy is crucial because the CRA uses the information to determine whether a charity is complying with its obligations under the *Income Tax Act*. The information on the return is also used by potential donors and the general public to evaluate a charity's effectiveness and efficiency."<sup>107</sup>

The provision of misleading information pertaining to an organization's activities on its T3010 causes harm to the public and to the integrity of the registration system for charities by deceiving donors or potential donors.<sup>108</sup> There is significant harm associated with a deceptive or misleading statement, regardless of whether the charity's conduct is intentional or negligent. A registered charity is required to ensure representations made by it, and those acting on its behalf, are fair, truthful, accurate, and complete.

It is our view that the Organization failed to file T3010 Returns that are correct and complete, and that it has improperly certified that it has filed correct and complete returns. Therefore, the Organization did not meet the requirement of the Act to file a prescribed Information Return pursuant to subsection 149.1(14) of the Act.

## 5. Conclusion

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

<sup>104</sup> As regards the programming identified in its T3010 Return, the Organization's directors explained during the audit commencement interview that it undertook "no direct activities of [this] nature", but was rather "once removed."

<sup>105</sup> Our understanding in this regard is not confirmed. Responsibility for the funeral services appears to be divided between ISNA and the Organization; the CRA, however, is unsure of the Organization's exact role.

<sup>106</sup> As determined by an overview of the minutes for the Organization's Board of Directors' meetings and as discussed in further detail in our letter pertaining to the operation of the ISNA, Islamic Services of Canada. However, our opinion in this regard is yet to be confirmed.

<sup>107</sup> *Charities Connection*, No. 6 – May 2011. <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/nwsltrs/cnncn/cnncn06-eng.html>

<sup>108</sup> See also CRA's Guidance, *Fundraising by Registered Charities*, for information on activities resulting in harm to the public interest in the context of misrepresentations and fundraising. <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cfd/fndrsng-eng.html>

**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 the 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:<sup>109</sup>

- 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.

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

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<sup>109</sup> Notwithstanding the course of action taken, the CRA may also impose a monetary penalty.



### **Attachments**

Appendix A: Copies of Organization's Letters Patent of July 1983, the December 1985 letter from the CRA to the Organization, and the ISNA family of organizations governance diagram appended to ISNA's By-laws

Appendix B: The Advancement of an unstated, non-charitable, collateral purpose

Appendix C: List of properties held title to by the Organization

Appendix D: Lack of internal controls

SENT BY FAX | 613-941-0186|  
ORIGINAL AND ATTACHMENTS SENT BY COURIER

November 18, 2014

**Charities Directorate**

Canada Revenue Agency  
Ottawa ON K1A 0L5

***"PRIVATE & CONFIDENTIAL"***

ATTENTION: [REDACTED]. Senior Analyst

Dear Madam:

Re: The Canadian Islamic Trust Foundation  
Re: Our File # [REDACTED]  
Re: Audit of the Canadian Islamic Trust Foundation (CITF)  
Re: Your File # 0801985 BN# 125104976RR0001

**A. INTRODUCTION**

We are the solicitors for The Canadian Islamic Trust Foundation (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 12<sup>th</sup> October, 2011 from CRA to advise that an audit would be conducted. The Charity received an audit questionnaire dated October 27<sup>th</sup>, 2011 (a copy of which is attached at Tab B). The Charity responded to the audit questionnaire on the 28<sup>th</sup> November 2011, a copy of which is attached at Tab C and an initial meeting with the auditors was held on the same day. Two years later, on 4<sup>th</sup> October 2013, the auditors met with representatives of the Charity at the CRA Mississauga office.

### C. APPROPRIATENESS OF COMPLIANCE AGREEMENT

As noted above, the Charity recognizes that not all of its practices have been in complete compliance with the *Income Tax Act* (Canada). Notwithstanding this, the Charity submits that the board of directors acted in good faith in responding in a timely manner to the concerns of CRA as best it was able to at the time without the benefit of legal assistance.

Moreover, one of the main areas of concern identified in the AFL is in the process of being rectified. Specifically, the Charity has begun transferring title of residential properties it held in trust on behalf of the Islamic Co-operative Housing Corporation, the Ansar Co-operative Housing Corporation, and the ISNA Housing Co-operative back to each co-operative housing corporation. Attached at Tab D are copies of the applicable title documentation.

While the Act does not equip the Charities Directorate with specific tools where an individual officer or individual acting on behalf of a Charity contravenes the Act without the approval of the board or members of a Charity, reference to CRA's policies can be helpful in determining an appropriate response from CRA. In this regard, CRA's policy "Guidelines for Applying Sanctions"<sup>1</sup> states that, "[a]s a general rule, the Directorate intends to start with educational methods to obtain compliance, and then move progressively through compliance agreements, sanctions, and the ultimate sanction of revocation, if necessary." The policy does state that "in serious cases of non-compliance, we are prepared to move directly to a sanction or revocation." The Guidelines state that examples of such serious non-compliance are limited to where:

- the organization has a previous record of serious non-compliance, and the current form of non-compliance is both serious and intentional;
- the non-compliance has resulted in a substantial adverse impact on others (beneficiaries, donors, or funders), particularly where the organization cannot or will not remedy the harm done; and
- the organization cannot or will not bring itself into compliance.

While there are acknowledged instances of non-compliance with the Act by the Charity during the Audit Period, those areas of non-compliance were not intentionally carried out by the board of directors of the Charity at the time, but rather by a former director and officer of the Charity. In this regard, we note that the Guidelines specifically reference situations where a Charity has been victimized by an employee or unauthorized individual. Specifically, the Guidelines state:

**"This describes our general approach. However, we know that exceptional circumstances arise, and we intend to allow for them. For example, we would be more likely to use a compliance agreement than a sanction for a case of serious non-compliance resulting from the unauthorized actions of a single employee, where the charity is ready to take steps to rectify the situation and prevent a recurrence."** (emphasis added)

<sup>1</sup> CRA, Guidelines for Applying Sanctions, released April 10, 2007 (modified August 18, 2011). Available online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/nwsncls-eng.html>

The beneficiaries, donors, or funders of the Charity have not been adversely impacted in any way by the areas of actual non-compliance by the Charity. In this regard, it is submitted that the more appropriate remedy is to have the Charity enter into a compliance agreement with CRA, which the Charity is willing to do and abide by the terms therein.

In this regard, it is evident from a review of the AFL and materials available to CRA that a large proportion of the non-compliance was not approved of by the board of directors of the Charity, but instead was the result of the unauthorized actions of the former Secretary General of the Islamic Society of North America (ISNA), Dr. Mohammed Ashraf, who was also the Secretary/Treasurer of the Charity during the Audit Period. Dr. Ashraf later retired from this position when he was forced to retire from ISNA on the advice of employment counsel due to non-compliance issues that had been identified within ISNA by an internal audit. Although Dr. Ashraf was responsible for the operations of ISNA, and affiliated legal entities like the Charity, the board of directors of the Charity were and remain volunteers with full-time jobs which would not always permit them to provide their full attention to the management of the Charity.

In addition, many of the volunteer board members were located outside of GTA and in other provinces. For example, a number of the Charity's directors, such as, Dr. Imtiaz Ahmad lived in [REDACTED] Dr. Haq in [REDACTED], Dr. Bekkari in [REDACTED] Mr. Nabi in [REDACTED], and were therefore not available to take on as many active responsibilities as they would have liked. This situation put extraordinary pressure on volunteers who were located in Toronto and the vicinity. For this reason, the Charity submits that it is not surprising that certain individuals like Dr. Ashraf, or Mr. Parvez Nasim wore a number of hats at any given time.

Although the relationship between the Charity and the other legal entities discussed herein may not have always been segregated in their operations, as much as could have been, these organizations co-operated, supported, complemented and worked together for the mutual benefit of the Muslim community in order to advance religion in accordance with the Muslim faith.

The Charity intends to be in full compliance with the requirements of the Act on a go forward basis and is willing to amend its charitable purposes if determined necessary by CRA, amend its governance structure with related charities and other organizations, and amend its title-holding arrangement to come into compliance with the Act. The Charity has been fully cooperative during the audit and has not attempted to frustrate the investigation by CRA in any way.

If CRA does not feel that a compliance agreement is appropriate in the circumstances, the Charity submits in the alternative that an annulment may also be appropriate. This point is further made in section E.1(a) below.

#### **D. SUMMARY OF CRA'S SPECIFIC AREAS OF CONCERN 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 describes the following alleged areas of non-compliance with the Act:

- Failure to demonstrate that it is established for exclusively charitable purposes;

- Failure of stated purposes to meet the requirements for charitable registration;
- Advancement of an unstated, non-charitable, collateral purpose;
- Failure to devote all of its resources to charitable activities undertaken in furtherance of charitable purposes;
- Failure of activities to advance a charitable purpose and satisfy the public benefit requirement;
- Failure to meet fiduciary obligations with respect to the investment of its charitable resources/Failure to properly safeguard its charitable resources;
- Gifting to non-qualified donees/Failure to devote its resources to charitable activities carried on by the organization itself by demonstrating the necessary direction and control;
- Failure to maintain proper books and records;
- Issued a Receipt for a Gift otherwise than in Accordance with the Act and the Regulations (Regulations 3500 and 3501, and paragraph 168(1)(d) of the Act); and
- Failed to file an information return as required under the Act or 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 \$60,918.75 for contravening the receipting requirements of the Act.

#### **E. RESPONSE TO SPECIFIC AREAS OF CONCERNS**

##### **1. Failure to demonstrate that it is established for exclusively charitable purposes**

###### **a) Failure of stated purpose to meet the requirements for charitable registration**

At pages 4 and 5 of the AFL, the purposes of the Charity as set out in its supplementary letters dated August 31, 1988, which formed the basis for which it was registered under the Act, are stated as follows:

- (a) *To foster and enhance teachings of the religion of Islam in its true doctrines and spirit throughout Canada.*
- (b) *To set up and operate schools for carrying out the object in (a) above.*
- (c) *To acquire and hold property with a view solely to support the funding of mosques and registered charitable Islamic religious institutions.*
- (d) *To hold title to properties in trust acquired for charitable purposes by other registered charitable Islamic organizations in Canada, if so requested by any such organization and to do so without any reward or gain.*
- (e) *To acquire funds, donations, and property through gifts from members of the various Muslim communities in Canada and to use the same solely for the furtherance of the objects here-before stated of the trust.*

(f) *To apply any profits or gains of accretions of the assets of the Corporation in accordance with the foregoing objects for the financial assistance of needy Muslims across Canada without profit or gain to any individual member or director of the Corporation, nor any remuneration to any director in his capacity as such.*

The AFL then reviewed these purposes and indicated at pages 5 and 6:

- "...while clearly intended to be directed at the advancement of religion, we consider purpose (a) to be broad and vague, failing to identify the manner in which the charitable benefit will be achieved, and lacking the degree of certainty and clarity necessary to restrict the Organization to exclusively charitable activities."
- "In addition, the Organization's purpose (c) is considered to be non-charitable, as it fails to restrict the provision of its resources to organizations that are qualified donees, as is required by the Act."

Given these conclusions, the AFL states on page 6 that CRA's "preliminary position, [is] that the Organization ceases to comply with the requirements of the Act for its continued registration.

The AFL applies the requirements set out in CRA Guidance CG-019 *How to Draft Purposes for Charitable Registration*<sup>2</sup> to the charitable purpose of the Charity as set out in the supplementary 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. As noted earlier, the Charity was registered with CRA on November 25, 1998, with an effective date of August 31, 1988. 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 Federal Court of Appeal decision in *Earth Fund v. Canada (M.N.R.)*.<sup>3</sup> The AFL at footnote 8 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. The Charity was registered in 1988, and as noted in the AFL, it was registered only after revising its original charitable purposes in accordance with a letter from CRA dated December 3, 1985. 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

<sup>2</sup> Guidance CG-019 *How to Draft Purposes for Charitable Registration*, online at: <http://www.cra-arc.gc.ca/chrsgd/gvng/chrts/plcy/cgd/dctprpss-eng.html>

<sup>3</sup> 2002 D.T.C. 5016, 2002 FCA 198

to the Charity that its registration is annulled solely as a result of a change in law in accordance with subsection 149.1(23) of the Act.

However, the Charity recognizes that it may have embarked upon charitable activities not strictly within the scope of the charitable purpose initially provided to CRA, notwithstanding that it is the Charity's position that the purpose continues to be charitable. As such, in recognition that the activities of the Charity are somewhat different from when it was initially registered, the Charity proposes to amend its charitable purposes in recognition of its main title-holding activities on behalf of other qualified donees.

b) Advancement of Unstated, Non-Charitable, Collateral Purpose

As noted above, it is evident that when initially applying for charitable status, the Charity was required to amend the charitable purposes contained in its letters patent dated July 5, 1983 with those set out in the supplementary letters patent dated August 31, 1988, in order to obtain registration under the Act.

However, at page 8 of the AFL, CRA alleges that, "... despite the changes made to its incorporating documents and the representations made to the CRA during the application process as to the nature of its planned programming, it appears that the Organization may never have intended to pursue the purposes for which it obtained registration."

As evidence of this, the AFL alleges on page 8 that:

- "On February 26, 1989, only three months after obtaining its registration, the Board of Directors approved and signed the Organization's Constitution and By-Law No. 1, which identified the Organization's governing purposes as those contained in its original Letters Patent"; and
- "These original incorporating purposes were again endorsed by Board of Directors' when it approved the Organization's revised By-Laws, dated August 31, 2008"

Firstly, commenting upon the intent of the Charity with regard to its intended purposes is entirely speculative when it is clear that the focus of the Charity is on acting as a *waqf* as detailed below. Moreover, we note that as a matter of corporate law, the only corporate objects for which the Charity can legally operate are those set out in the letters patent. Furthermore, our office conducted a corporate records search with Corporations Canada in order to locate a copy of the by-laws approved by the Charity on February 26, 1989. In this regard, the only by-laws available were those initially filed with the original application for letters patent. As such, it is not known if the by-laws dated February 26, 1989, or the more recent by-laws of the Charity dated August 31, 2008, ever received Ministerial approval as required by the *Canada Corporations Act*. As such, the validity of the February 26, 1989 by-laws is questionable. It is also unclear when the original by-laws were amended to include reference to the aims and objects from the original letters patent of the Charity. With no Ministerial approval obtained for by-laws or by-law amendments, it may have been that a reiteration of the purposes initially set out in the letters patent were not included in the new by-laws until much later than 1989, as the 1989 by-laws have been amended over time. As indicated above, the directors of the Charity are volunteers and it is more likely than not that the purpose from the original letters patent were included in the invalid by-laws in error due to lack of knowledge of the

supplementary letters patent or a misunderstanding concerning the prominence of the charitable purposes set out in the supplementary letters patent over those set out in the letters patent.

At page 6 of the AFL, CRA states that, "A review of the material made available to the CRA during the course of the audit would indicate that the Organization is engaged in two primary activities: first, the Organization acts in the capacity of *waqf*, or Islamic trust, holding title to properties beneficially owned by registered Canadian Islamic charities; and second, and quite apart from the activities undertaken in the first capacity, it operates in support of certain, affiliated Islamic housing co-operatives. It is with this second activity that the CRA has quite substantial concerns."

With respect to the Charity acting in the capacity of a *waqf*, a brief history of the Charity needs to be considered. Central to the Islamic faith is the concept of *waqf*, an Arabic term which literally means "holding". The Charity submits that the establishment of a *waqf* has been used by the Muslim community well before the West developed the concept of trusts or endowments. This is why, in many Muslim countries, there are endowments and trusts which hold the titles of religious institutions like mosques and schools for the benefit of the community at large. In some countries, such as Egypt, Jordan, and many other Muslim countries, there is a Ministry of *Awqaf* (endowments and trusts).

As indicated in the response to the audit questionnaire submitted by the Charity on November 28<sup>th</sup>, 2011, in 1962, the Muslim Students Association of the US and Canada (MSA) was formed with the idea of serving the basic needs of Muslims in North America. In Toronto, one of the oldest mosques (known as Jami Mosque) was originally bought by a group of Muslims. After some time, a conflict developed between the mosque administrators and a dissident faction, which resulted in the proposed sale of the mosque. One faction within the mosque approached a wealthy individual in the Muslim community to purchase the mosque. However, given the factional dispute within the mosque the individual was wary of purchasing the mosque. As such, he suggested that one faction approach a trust or similar charitable entity in Canada to ensure the mosque would be registered in the name of the trust, instead of an individual. At that time, they approached MSA to assume this role. Since the headquarters of the MSA was in Indianapolis, Indiana, USA, their board advised that a trust be established in Canada under the Canadian laws and jurisdiction. In this regard, ISNA, Islamic Services of Canada was initially incorporated to assume this role.

Later on, there was a need within the Muslim community for a community place for prayer apart from the mosque. Again, ISNA, Islamic Services of Canada was approached in this regard. At that time, MSA was changing in Canada to become the modern Islamic Society of North America (ISNA). Individuals within the ISNA community decided to establish the Charity in order to have an entity similar to ISNA, Islamic Services of Canada which could hold other religious properties in trust.

As indicated in the AFL, there are a number of mosques and schools that the Charity holds title to as bare trustee. The intent among the founders of the Charity was that, acting in the capacity of a *waqf*, the Charity would be able to hold these properties for the Muslim community at large.

In this regard, to the extent that the Charity has held title for other qualified donees in Canada, it should be recognized that this is a charitable activity in furtherance of charitable purpose c) set out in the

supplementary letters patent, i.e., "To hold title to properties in trust acquired for charitable purposes by other registered charitable Islamic organizations in Canada, if so requested by any such organization and to do so without any reward or gain." CRA guidance on *Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations*<sup>1</sup> recognizes that, "Title-holding organizations carry on varying degrees of activity. On the least "active" end of the scale, entities simply hold title to the property of another registered charity. The title-holding entity may also provide a more comprehensive range of services such as property management services, or other support services. Some applicants may also, in addition to performing a support function, be involved in securing and developing additional properties to be used for charitable purposes."

However, the AFL also alleges at page 9 that, "it is our opinion that the available information evidences that the Organization is constituted, at least in part, to further the unstated non-charitable collateral purpose to promote, or facilitate the operations of, specific "affiliated" for-profit housing co-operatives, and non-qualified donees under the Act". In this regard, page 8 of the AFL states that, "the information reviewed indicates that the Organization has actively operated, and allowed itself to be governed, in furtherance of the business interests of a number of for-profit housing co-operatives, namely:

- the Islamic Co-operative Housing Corporation (ICHIC);
- the Ansar Co-operative Housing Corporation (ACHC); and
- the ISNA Housing Co-operative (IHC)." (the "Housing Co-operatives")

These allegations and those raised in Appendix B of the AFL are more particularly detailed in the following section.

c) Failure to devote all of its resources to charitable activities undertaken in furtherance of charitable purposes

Pages 10 through 12 of the AFL cite the activities of the Housing Co-operatives as the activities of the Charity itself. The AFL then applies the case law with respect to the advancement of religion to indicate that the activities of the Housing Co-operatives are not charitable at law.

While the Charity disputes that the activities of the Housing Co-operatives are its own activities, there does not appear to be any basis in law that the provision of home financing compliant with Islamic religious teachings could not be charitable at law. This appears to be a novel issue that has not been ruled upon in Canada or in other common law jurisdictions. As well, this position does not appear to be consistent with the test for advancement of religion under Canadian common law established in *Fuaran Foundation v. Canada Customs and Revenue Agency*. In that decision, the Federal Court of Appeal adopted the reasoning of Justice Iacobucci in relation to the advancement of education in *Vancouver Immigrant Society* by requiring that there be a targeted attempt to promote religion or to take "positive steps" to sustain and increase religious belief.<sup>2</sup> Providing a product, financial or otherwise, compliant

<sup>1</sup> CRA, CPS 026 Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations, May 1, 2008. Online at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-026-eng.html>.

<sup>2</sup> *Fuaran Foundation v. Canada Customs and Revenue Agency*, 2004 FCA 181

with the religious beliefs of a religion to its adherents is no less of a positive step to sustain the religious beliefs of the adherent than providing religiously prepared food or other religious goods and services.

As well, it is unclear that those not of the Islamic faith as interpreted by the Charity would support interest free financing for the purchase of a home when their own religion does not require them to abstain from interest free financing because at the end of the day it would not likely be any less expensive than conventional financing. The AFL states on page 12 that, "In order to be charitable at law, the focus within the advancement of religion must be the maintenance and observance of a religious doctrine. It is not sufficient that religion be advanced merely as an incidental consequence to other pursuits so secular that others not of that religion would support them." While home financing may be a secular activity, just like the slaughter and preparation of food, home financing that is compliant with religious observances is not a secular activity.

Moreover, it is questionable whether those who are not of the Muslim faith would wish to purchase a home through the non-traditional means of Sharia compliant home financing, or if the public would recognize this as a secular activity. It is also well recognized in the common law that religion may be advanced indirectly. In *Re Charlesworth*, a trust established to pay the expenses of dinners consumed by a society of clergymen was upheld by the court, saying the main purpose of such a trust was the advancement of religion insofar as the provision of dinners furthered the usefulness of the society through increased attendance at meetings.<sup>6</sup> Moreover, Justice Iacobucci in *Vancouver Society*, stressed it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, which determines whether or not it is of a charitable nature. This supports the findings of earlier courts,<sup>7</sup> and as a result, although the provision of financing compliant with religious restrictions may not directly benefit those who do not invest in such programs, the purpose is to advance religion by sustaining the belief of its adherents. As stated by the Supreme Court of Canada in the *Vancouver Society* case, "...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 it is of a charitable nature or not." As such, the provision of Sharia law compliant financing is not something which the public would recognize as a secular commercial activity, like farming with respect to the decision in *Hutterian Brethren Church of Wilson v The Queen*, [1979] 1 F.C. 745.

Given the purported commercial and private benefit nature of the Housing Co-operatives, however, the AFL concludes on page 12 that, "is our finding that the relation between the Housing Cooperatives' activities and any advancement of religion is overly remote to evidence the advancement of religion as defined by the courts". These findings are more particularly detailed in Appendix B to the AFL. In order to link the activities of the Housing Co-operatives to being those of the Charity, Appendix B at page 7 states that, "we would note that, while the Organization and the Housing Co-operatives are separate *legal* entities, our analysis of the available information suggests that no clear *operational* division exists, that in reality the

<sup>6</sup> (1910), 101 L.T. 908

<sup>7</sup> See *Re Scowcroft*, [1898] 2 Ch. 638, wherein the furtherance of religious and mental improvement was found to be the essential portion of a gift, and the furtherance of Conservative principles was only a subsidiary part, thereby upholding the gift as being charitable at law. In *Re Hood*, the English Court of Appeal held that where the purpose of an action is in and of itself non-charitable, it will be found to be charitable where it is done for the larger purpose of advancing religion. In that case, a residuary estate gift was given for the larger purpose of spreading Christianity, but the activity was to take steps to stop the drinking of alcohol. Such a gift was determined to be a good charitable gift at law as its purpose was intended to be secondary to the spreading of Christian principles.

Organization has not been governed or operated at arm's length from the Housing Cooperatives." Footnote 16 of Appendix B then goes on to define arm's length as, "a tax concept describing a relationship in which the parties act independently of each other. The opposite, not at arm's length, covers parties acting in concert without separate interests."

As support for the fact that the Charity and Co-operatives are not operating at arm's length, CRA state that:

- Organization and IHC and both identify their primary address as 2200 South Sheridan Way;
- ISNA identifies the Charity and IHC as affiliates;
- ISNA and the Organization are governed by the decisions and actions of ISNA's Majlis Ash-Shura (advisory council) and its Executive Committee;
- The Majlis is composed of 21 members, including ex-officio positions for one board member of the Charity, and one board member of the Housing Cooperatives;
- The Charity's by-laws include an ex-officio position for one director of the Housing Co-operatives;
- The "ISNA-Canada Council" approves the nominees for election to the board of the Charity;

As well, the AFL provides examples of common directors between the Housing Cooperatives, the Charity, and ISNA. In this regard, Dr. Ashraf's position as Secretary General for ISNA, vice-chair or director for the Housing Cooperatives, and director of the Charity is included.

However, this does not appear to form a basis for a conclusion that the Charity is operating not at arm's length with the Housing Co-operatives.<sup>8</sup> Paragraphs 251(2)(b) and (c) of the Act set out the statutory rules for determining when a corporation and another person will be considered to be related persons for purposes of the Act. Specifically, paragraph 251(2)(c) provides that two corporations will be related if:

- i) the two corporations are controlled by the same person or group of persons;
- ii) each of the corporations is controlled by one person and the person who controls one corporation is related to the person who controls the other corporation;
- iii) one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation;
- iv) one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation;
- v) any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation; or
- vi) each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

<sup>8</sup> See Canada Revenue Agency, Income Tax Form, S1-F5-C1: Related persons and dealing at arm's length, May 1, 2014. Online at: <http://www.cra-arc.gc.ca/tx/chncn/ncmty/f1s/s1/f5/s1-f5-c1-eng.html>.

Control for the purposes of 251(2)(c) is *de jure* control, which the general test in *Buckerfield's Limited et al v. MNR* to be effective control, i.e., whether an individual or individuals holds the majority of the votes in the election of the board of directors of a corporation. In this regard, the inclusion of a single director from the Housing Co-operatives of the board of the Charity is not enough to deem the Charity and the Housing Co-operatives not at arm's length. While the ISNA-Canada Council may have approval of the slate of nominees for the board of directors of the Charity, the ISNA-Canada Council is not a related person to the Housing Co-operatives and the approval, while a consideration, is certainly not determinative.<sup>9</sup>

Since the Charity and Housing Co-operatives are not related persons for the purposes of the Act, it is a question of whether or not they are factually not at arm's length. CRA *Income Tax Folio S1 F5-C1: Related persons and dealing at arm's length* states at paragraph 1.38 that, "The following criteria have generally been used by the courts in determining whether parties to a transaction are not dealing at arm's length :

- whether there is a common mind which directs the bargaining for both parties to a transaction;
- whether the parties to a transaction act in concert without separate interests; and
- whether there is *de facto* control."

In this regard, while the Charity denies that the AFL has established that the Charity and the Housing Co-operatives are not acting at arm's length, the Charity recognizes that it has in the past acted unintentionally in error in concert with the Housing Co-operatives. As noted above, this was partly due to a lack of legal understanding on the part of the board, and on the part of the former Secretary General of ISNA having a prominent role on the boards of both legal entities. Specifically, the Charity to hold title to approximately 40 residential properties on behalf of the Housing Co-operatives. The AFL at page 3 of Appendix B states that, "it is the opinion of the CRA, that the Organization's participation in such activities has placed its resources at risk: resources that are to be properly dedicated to, and safeguarded for, the furtherance of the Organization's own charitable purposes". This risk arises from the fact that, although the Charity operates as a bare trustee for these properties, the Charity may possibly be exposed to liability if the residents of the properties default on their mortgage or other housing liabilities. However, the AFL goes on to point out that, "... the issue of liability is one for which the Organization has apparently dedicated much effort and resources attempting to address, beginning as early as March 2008 with the Board's decision to request ICHC/ACHC to 'transfer all of its properties from the CITF name with immediate effect.'" As such, it would appear that CRA recognizes that the directors of the Charity have in fact made efforts to protect the charitable property of the Charity by transferring the residential properties back to the Housing Co-operatives. The Charity submits that the board is continuing to take efforts to transfer title from the Charity to the Housing Co-operatives, but that this has become complicated due to an ongoing legal action against ISNA by the Housing Co-operatives. The legal action is not related to the transfer of titles from CITF to the Housing Cooperatives. Attached to this submission at Tab E are copies of the minutes where the Charity argued that title should be transferred back to the Housing Cooperatives. It is the intent of the Charity to restrict itself to exclusively charitable activities and to not permit its resources to be used by non-qualified donees like the Housing Cooperatives. However, extricating itself from the investments in the Housing Cooperatives, title holding arrangements, is an ongoing complex and lengthy process. As recently as September 24, 2014, ISNA communicated with IHC in an attempt to redeem its investments in order to begin the process of having ISNA and its affiliates, including the Charity, extricated out

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<sup>9</sup> *Datta Printers (Western) Ltd. v. The Queen*

of its investment and governance relationship with the Housing Cooperatives. Attached is a copy of this correspondence at Tab F.

As well, as noted in section C above, the Charity has begun transferring title of residential properties it held in trust on behalf of the Housing Co-operatives back to each co-operative housing corporation.

- d) Failure of the board of directors to meet its fiduciary obligations and ensure that its resources are used in support of charitable purposes

Page 18 of the AFL cites investments of \$270,850.00 that the Charity has in various organizations, including one of the Housing Co-operatives. The AFL states that, "No information has been shared with, or obtained by, the CRA that would indicate how the decision to invest the Organization's funds, including who made the decision or why".

As well, the AFL notes that the Offering Statements for shares in the Housing Co-operatives indicated a high degree of warnings concerning the risks associated with the investment. The AFL states at page 19 that, "the Organization entrusted its resources to the Housing Co-operatives with the knowledge that its investment may not ever be redeemable, and with only the expectation of yearly dividends, the receipt of which was not even assured."

As a result, the AFL alleges on page 20 that, "In the absence of documentation detailing the Organization's investment strategy, or any evidence that the Organization's investments are being made with a view as to the risk and return, the Organization's Board of Directors has failed to demonstrate that it has exercised due care of the charitable assets entrusted to them. It is, therefore, the CRA's opinion that the Organization has breached its obligation of prudent investment, and failed to manage its financial resources in a manner suitable to the furtherance of its charitable purposes."

With respect to the standard risk warnings of the Offering Statements for the investments in the Housing Co-operatives, the Charity submits that these risk warnings are a normal practice on all Prospectus, Offering Statements, and Offering Memorandum and are required by law in Ontario. As well, as noted above, the AFL cites that the Charity did act in concert with the Housing Co-operatives due to some overlap in board members. In this regard, the Charity was in fact able to manage some of the risk associated with these investments by having board representation on each corporation. As a result, CRA cannot on the one hand say that the Charity had too much control over the Housing Cooperatives, but then say that it did not have enough control in order to manage the risk associated with these investments. As well, the Charity notes that the board of directors restricts the investments made by the Charity into those which would be compliant with Sharia law. As such, the Charity cannot ordinarily invest its funds in non-Sharia compliant institutions.

Furthermore, the Housing Co-operatives operate on a non-profit basis and gives out "Patronage Dividends" to the members/shareholders in the ratio of funds provided to the Housing Co-operatives. Since the Housing Co-operatives are Sharia compliant, they cannot borrow money on interest from any financial institutions, and instead seek funds from the members only. As a result, the Housing Co-operatives have no bank loans, mortgages or interest bearing bonds, etc, which would ordinarily put the investments of members at risk as a debt obligation ahead of the members. Almost all net rental income is distributed to the members every

year. The Housing Co-operatives, therefore, do not make any profit. As such, they are not operated as commercial business as alleged in the AFL.

The fact is that the purpose for these investments was to hold funds raised across Canada for the building of mosques or Islamic cultural centres until a sufficient amount was available to construct a mosque or centre for the benefit of the community that raised the money. Rather than simply hold the funds, the Charity thought it prudent to invest the funds in the Housing Co-operatives until sufficient funds were available for the construction or purchase of mosques and cultural centres. As such, notwithstanding the risks identified in the Offering Statements, the directors of the Charity have put the charitable property into prudent and appropriately secure investments.

It should also be noted that the fiduciary duties of directors of corporations are governed by the incorporating statute of a corporation and the common law. In support of evidencing the fiduciary duties of directors of registered charities, the AFL quotes newsletters published by the Charities Directorate in the past, together with summaries produced by Industry Canada or the Ontario Public Guardian and Trustee in order to assist registered charities with understanding their duties at common law. These newsletters and guidelines do not have the force and effect of law and certainly do not constitute the relevant case law of which directors should be aware.

In this regard, the AFL cites the fiduciary duty of directors codified at section 148(1) of the *Canada Not-for-profit Corporations Act*, together with relevant portions of the *Trustee Act* (Ontario). The fiduciary duty of corporate directors as stated in the *Canada Not-for-profit Corporations Act*, as well as in the *Canada Business Corporations Act* is not related to the common law fiduciary duties of directors of charitable corporations. Further, the Charity has not yet continued under the *Canada Not-for-profit Corporations Act*, in part, due to the governance dispute that has resulted in the above referenced court order that it may not do so until it holds an election of directors. In this regard, the codified fiduciary duties of directors as set out at section 148 of the *Canada Not for-profit Corporations Act* is not applicable to the directors of the Charity. The Charity remains under the *Canada Corporations Act*. In this regard, the standard of care for the directors remains the common law subjective standard of care as articulated in *Re: City Equitable Fire Insurance Company Limited*.<sup>10</sup>

In addition, the fiduciary duty of directors of a corporation as articulated in the *Canada Not-for-profit Corporations Act* and interpreted by the common law in the Supreme Court of Canada decision in *BCE Inc. v. 1976 Debentureholders*<sup>11</sup> that the AFL makes reference to is not related to the "prudent investment standard" under the *Trustee Act* (Ontario).

Lastly, whether or not the directors failed to adhere to the "prudent investment standard" under the *Trustee Act* (Ontario) is within the jurisdiction of the courts in Ontario and through the Ontario Public Guardian and Trustee through its *parens patriae* jurisdiction and not that of CRA as the regulator under

<sup>10</sup> *Re: City Equitable Fire Insurance Company Limited*, [1925] 40 Ch D 4

<sup>11</sup> *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, [2008] 3 SCR 560, [2008] SCJ No 37 (SCC)

the Act.<sup>12</sup> At no point is any reference made to a section or regulation of the Act upon which these allegations are being judged. It is unclear under what jurisdiction these comments are provided from by CRA. In this regard, while CRA through the Charities Directorate regulates the Act with respect to the registration of charities for income tax purposes, the *Constitution Act, 1867* states at section 92 that:

"In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, ... The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals".<sup>13</sup>

Further, the jurisdiction of the common law over charitable matters falls to the provinces in Canada. With regard to the Charity, the Charity's head office is located in Ontario and is under the jurisdiction of the Ontario Public Guardian and Trustee in accordance with the *Charities Accounting Act*.

That the Charities Directorate is not the regulator of charities in common law provincial matters, including fiduciary duty, has been recognized by comments made by the Director General the Canadian Bar Association charity section. Specifically, the Director General stated that, "The Constitution makes it clear that the responsibility for managing the operations of charities falls to provinces and territories."<sup>14</sup>

As well, the Director General went on to say the following with respect to the role of CRA:

"The CRA's role is to ensure that only qualified entities are registered under the *Income Tax Act* and that, once registered, they adhere to the obligations associated with tax exempt status. The preferential tax treatment that charities receive, in particular the ability to issue tax deductible receipts, is considered by many charitable organizations to be crucial to their existence."

"We have attempted to strike the most appropriate balance between those two views, always keeping the constitutional boundary within our sight. In recent years, we have on occasion published suggested best practices that we know, from experience, will help charities avoid non-compliance with the *Income Tax Act*. Our discussions with counterparts at the provincial level indicate they are supportive of the approach we have taken. Venturing beyond a narrow interpretation of our legal mandate by offering assistance that will indirectly help charities remain compliant with the law is, in my view, consistent with our commitment to client service, and does not overstep our authority.

<sup>12</sup> See *Pathak v. Hindu Sabha* [2004] O.J. No. 1981 citing *Wallis and Others v. Solicitor-General for New Zealand* [1903] A.C. 173 (P.C.). *In Re Baker* (1984) 47 O.R. (2d) 415 and *Toronto Aged Men's and Women's Homes v. Loyal True Blue and Orange Home* [2003] O.J. No. 5381.

<sup>13</sup> *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted to R.S.C. 1985, App. II, No. 5., at 92.

<sup>14</sup> CBA Charity Law Symposium – May 23, 2014. The importance of an independent and effective charities regulator in Canada, available online at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/bt/2014-lwsympsm-eng.html>

After all, failure to follow our recommended best practices, on its own, would not have any consequences for a charity under the *Income Tax Act*.<sup>15</sup> [emphasis added]

In light of these statements, including allegations against the directors of the Charity in relation to their fiduciary duties at common law as a basis for deregistering the Charity, CRA is venturing well beyond indirectly helping charities remain compliant with the law.

Although the recent Tax Court of Canada decision in *McKenzie v. R.* concerned the *Excise Tax Act*, the court commented in concluding its reasons that:

"While not a factor in my decision, I question the propriety of a CRA auditor being too closely involved in a taxpayer's business affairs where it could be seen as taking a policing role looking into a suspected criminal activity. It would trouble me too much, in these circumstances, to say that a director's record keeping duties move from industry standards to nearly perfect. As well, it underlines the imprudence of insisting on something (evidence of delivery) where compliance seems dependent on an unreliable CRA administrative practice as preached by a particular auditor."<sup>16</sup>

In this regard, in demanding compliance with materials that are arguably outside the jurisdiction of CRA, or at least venturing beyond the scope of providing assistance to charities in complying with best practices, the auditor would seem to be taking on a policing role which appears to be outside the role of the Charities Directorate.

- e) Gifting to non-qualified donees/Failure to devote its resources to charitable activities carried on by the organization itself by demonstrating the necessary direction and control;

At page 22 of the AFL, CRA states that "the Organization disbursed a total of \$8,450 to the ISNA Human Development Institute, a separately incorporated non-profit organization, \$7,500 in 2007, and \$950 in 2008" and "gifted totals of \$7,065 to the Brandon Islamic Centre and \$5,000 to the Islamic Centre of Yellowknife, two separately, and legally, constituted organizations"

During the Audit Period, all of the directors of ISNA Human Development Institute were also directors of the Charity. As such, the Charity maintained full direction and control over ISNA Human Development Institute. Attached at Tab G is a list of the directors, together with a description of the purpose of ISNA Human Development Institute. See also a copy of ISNA Human Development Institutes corporate objects as set out in its letters patent and its general operating by-law at Tab H. The Charity maintained direction and control over this activity because ISNA Human Development Institute was controlled by the Charity. As well, the by-laws for ISNA Human Development Institute restricts the membership of the corporation, in part, to those who are also members of the Charity.

As well, the AFL notes that the Charity also provided charitable resources to these entities "in the form of the rent-free use of its properties located at 834 10th Street, Brandon, Manitoba, and 4100 Franklin

<sup>15</sup> *Ibid.*

<sup>16</sup> *McKenzie v. R.* 2013 CarswellNat 2698, 2013 TCC 239 at 156

Avenue, Yellowknife, Northwest Territories." In this regard, at page 25 of the AFL, it is noted that "Both Centres were in effect described to the CRA as internal divisions or operating arms of the Organization."

The objective of the Charity in doing so was to assist the Muslim community in Brandon and Yellowknife, where the Muslim community is very small, and the individuals there could not raise enough funds to buy prayer facilities. In this regard, the local Muslim community in Brandon and Yellowknife had asked for help from fellow Muslims in Ontario and elsewhere. The Charity assisted in raising funds for that purpose and were used to pay for the purchase of the property, taxes, utilities and operating expenses by the Charity.

The intention of the board of the Charity was that the operation of these mosques be charitable activities of the Charity, which would have fallen within the charitable purposes of the Charity. However, these mosques, as noted, are separately incorporated and have their own board of directors and governing documents. As intended activities of the Charity, though, the Charity has attempted to exercise direction and control over the operations of these mosques. As an example, the bank account for the non-qualified donee in Yellowknife has two or three directors of the Charity as its signing officers. During the Audit Period, the signing officers for Yellowknife were Dr. Mohammad Ashraf, Mohammad Basha and Nur Ali Saifuddin Butt, all of whom were directors of the Charity. As well, during the Audit Period, Dr. Mohammad Ashraf and Pervez Nasim were on the executive committee of The Islamic Centre of Yellowknife. Please see the attached list of executive committee members attached at Tab I.

— Recognizing, however, that the Charity may have achieved this intent through other means, the Charity is prepared to undertake to:

- Have Brandon Islamic Centre and Islamic Centre of Yellowknife dissolve and transfer their assets to the Charity so that they can become the own activities of the Charity; or
- Brandon Islamic Centre and Islamic Centre of Yellowknife will apply for charitable status in order to become qualified donees.

2. Failure to maintain proper books and records.

a) Properties held in trust

The AFL notes that, "the Organization holds trust to numerous properties in two capacities: the first as related to its role as *waqf*; and the second as related to the provision of operational support to the Housing Co-operatives". With respect to its role as *waqf*, the AFL notes that the Charity provided CRA with, "a list of fourteen organizations, a blank sample copy of a trust agreement, and a signed copy of its agreement with Halton Islamic Association." The AFL concludes that this was not sufficient for the purposes of the audit. The use by the Minister of paragraph 230(2)(a) of the *Income Tax Act* (Canada) was recently question in the holding of *Prescient Foundation v. Minister of National Revenue* (2013 FCA 120). Specifically, the court held at paragraph 47 that:

"For the revocation of a registration to be reasonable under this ground, the Minister must (a) clearly identify the information which the registered charity has failed to keep, and (b) explain why this breach justifies the revocation of the charity's registration. It is not sufficient to simply state that the charity has

failed to keep proper records. Rather, the Minister must clearly set out the particulars of the alleged breach."

In this regard, the Charities Directorate was provided with the information requested to the best of its ability. We submit that there is a positive onus under *Prescient* for the charity to understand its obligations concerning the books and records requirement under the Act. The *Prescient* decision also called into question revocation on the basis of inadequate books and records, as is the case with respect to the Society, when "the Minister has less drastic administrative corrective measures or intermediate sanctions available to him, such as formal notices, compliance agreements, or the suspension of a charity's tax receiving privileges for one year under paragraph 188.2(2)(a) of the Act."

However, the Charity is now providing further trust agreements in order to evidence that it has maintained adequate books and records with regard to the properties it holds in trust. Attached are copies of the trust agreements and other agreements with the following registered charities for the holding of their real property at Tab J:

- Communauté Musulmane Du Québec (Muslim Community Of Quebec) BN# 886801398RR0001
- Kanata Muslim Association BN# 859651275RR0001
- The Islamic Centre of Cambridge BN# 119238699RR0001
- Association Culturelle Islamique de L'Estrie BN# 892416363RR0001

As well, the AFL also notes on page 27 that the Charity did not provide copies of documents relating to the properties it holds title to on behalf of the Housing Co-operatives.

Each house has a separate Trust Agreement drawn by legal counsel at that time. The reason that the Charity took title to these properties was because in the start-up phase of the Housing Co-operatives, the Housing Co-operatives had very few members in those provinces and the Housing Co-operatives were not extra-provincial registered in those provinces. As membership and home purchases increased in some provinces, the Housing Co-operatives were registered there and thus eliminated the need to hold the title in trust. [

b) Lack of Supporting Documentation to Account for Balance Sheet Adjustments with Respect to the Islamic Centre of Canada (ICC) and Lack of Internal Controls

At page 28 of the AFL, CRA states that, "During the course of the audit, we have observed several questionable balance sheet adjustments with respect to the ICC project, each time involving millions of dollars, undertaken with little or no supporting documentation." The AFL then concludes on page 33 that, "The severity of the non-compliance, with respect to the repeated occurrences and the materiality of the amounts involved, was determined to be such that the Minister may revoke the registration of the Organization because it failed to comply with or contravened sections 230 to 231.5."

The adjustments relate to the acquisition of the 2200 South Sheridan Way property and subsequent construction and renovations on the property, i.e. the ICC Project. The allegations of non-compliance are also detailed in Appendix D to the AFL. The position of the Charity in response is as follows:

i) Renovations of 2200 South Sheridan Way property

Both ISNA and ICHC agreed to assign the project management responsibilities to [REDACTED] Development & Management (SDM) mainly as an asset protection strategy and to avoid any liability associated with the management of the building. SDM was also asked to sign all contracts in its own name and to raise capital by selling shares at its own cost to pay all the construction bills as they become due to avoid interest payments. It was agreed that ISNA and ICHC will pay SDM their equal share of contribution as funds become available and they will pay a 5% markup on the total cost excluding cost relating to the high school, in addition to a \$20,000 management fee. Some ICC Project employees were transferred to SDM payroll as per the Management Agreement.

Sometime in 2007 the ICHC board realized that it did not have approval from its shareholders to invest in ICC property, whereas ICHC did have, so it decided to cancel its agreement with ICHC and ICHC reimbursed ACHC all the funds it has invested/advanced for ICC Project. Therefore, all ACHC's contribution in the Charity's books were transferred to ICHC's name.

There was absolutely no personal benefit to any of the directors/officers/advisors of SDM, Takaful and both Housing Co-operatives, including Dr. Ashraf and Mr. Nasim. Even though Mr. Ashraf, Mr. Nasim, Takaful, ICHC and ISNA are each listed as 20% owners/common shareholder, their individual investment is \$20 each for a total Common Share Capital of \$100. The entire working capital of SDM approximating to \$3 million was raised by selling Preferred Shares to ISNA, ICHC and ACH members. SDM and Takaful were structured the same way with same sort of nominal common shares structure just to incorporate these companies. All capital was raised through preferred shares from the membership.

The Charity submits that it is unfair for CRA to assume, conclude or allege that \$1,661,863 were received by Mr. Ashraf and Mr. Nasim as dividend income from SDM without reviewing the books and records of SDM. This dividend amount was disbursed to 45+ Preferred Shareholders, at various stages, who had invested their savings over this period of 5-6 years to build the ICC. Each such shareholders were issued a T5 Information Slip detailing their Taxable Dividend amount. No dividend income was ever given by SDM to the five Common Shareholders listed at page 5 of Appendix D in the AFL.

ii) Sale of the Queensway Property

Page 6 of Appendix D to the AFL cites as an example of lack of internal controls the sale of the 1272 Queensway, Etobicoke, property that the Charity held title to.

The Charity submits by way of background, that the ISNA board approved this sale for the sole purpose of increasing its share of its contribution towards the ICC Project. After this sale but before the closing date in early 2007, the former Secretary General, Dr. Ashraf, and ICHC and ICC Project Committee Chairman, Pervez Nasim Nasim, had falling out with each other because Mr. Nasim refused to agree and support Dr. Ashraf's campaign to sue the owners of ISNA Travel Service. The

ICHC board was also pressuring Dr. Ashraf, who at the time was also Vice Chairman of ICHC, to pay ISNA's committed funds for 50% of the cost. As a result, Dr. Ashraf took a number of actions to deny/delay repayment of money owing to ICHC and to undermine and discredit Mr. Nasim. In this context Mr. Ashraf alleged that Mr. Nasim transferred funds from the Queensway sale proceed to the Housing Co-operative without specific authorization. This transfer was subsequently approved by the Charity's board in a formal manner in the minutes attached hereto at Tah K.

3. Issued a Receipt for a Gift otherwise than in Accordance with the Act and the Regulations (Regulations 3500 and 3501, and paragraph 168(1)(d) of the Act); and

At page 34 of the AFL, CRA notes that, "Over the three-year period under audit, the Organization issued a total received amount of \$48,735, as part of what appears to be a third-party receiving scheme with the Brandon Islamic Centre"

The Charity has ceased this practice since 2013

4. Failure to File an Information Return as Required by the Act

Pages 35 through 39 of the AFL allege that the Charity has failed to file T3010 annual returns during the Audit Period because it failed "to ensure the accuracy of the information contained therein."

a) Misstatement of the financial statements relating to a Trust Property (the ICC Project), YE 2007 - 2009

At page 36 of the AFL, CRA states that "the Organization has held, since 1996, nominal title to the property as a trust, and when requested should return the property to its beneficial owners. As such, the Organization booked such property as Trust Funds under liabilities section of the balance sheet from the original entry of year-end 1996 through 2006". However, at page 36 CRA notes that "since year-end 2007, the Organization reported such property as long term debts payable to ISNA, ACHC and ICHC. CRA states that this is significant because this "change to Interest Free Loan, without documentary evidence, is significant because the Organization has ultimately accepted a liability in the form of loans amounting to over \$8.1 million while only maintaining nominal title holding to property in trust"

As such, the AFL alleges that the Charity made a material misstatement in its financial statements when it reported that it was responsible for the long-term loans related to this property.

The Charity has provided its submissions relating to the ICC Project in this submission at section 2h(i) which is adopted herein.

b) The nature of programs reported (section C, T3010)

At page 37 of the AFL, CRA notes that the Charity indicated the following activities as its activities during the Audit Period on its T3010 information returns.

- Help to build Islamic Centres and Mosques in Canada;

- Help to build Islamic Schools;
- Coordinating Islamic summer school and special educational workshops for adults;
- Organizing Islamic programmes to create better understanding between different faiths.

At page 38, CRA alleges that, "the Organization has failed to report the main program areas observed during the audit, namely: acting as a *waqf* by holding the properties of registered charities in trust; supporting the operations of the Housing Cooperatives by holding residential properties in trust; the apparent provision of Islamic funeral services at 2200 South Sheridan Way; and its apparent operational oversight of the Islamic Centre of Toronto (Jami Mosque)."

With respect, alleging that the Charity has not ensured that it filed an accurate T3010 based upon its own description of its activities in the T3010 is manifestly unfair. As you are no doubt aware, T3010s are generally prepared with the assistance of accountants who normally recite the same description of activities that a registered charity has filed year over year. As well, it is not clear how acting as a *waqf*, with the intent to hold religious and educational properties in trust, is any different than helping to build Islamic centres, mosques and schools in Canada. By holding these properties in trust for the benefit of the Muslim community, the Charity is in effect helping to establish these centres by preserving them and preventing them from being taken over by factional disputes.

Moreover, the AFL does not allege that information returns were not filed, only that information returns were not accurately completed. Since the information returns were filed in the prescribed form with the prescribed information, paragraph 168(1)(c) has no application to the Charity. Where an information return has been filed incomplete or where inaccurate information is included on the annual information return, the proper recourse of CRA is section 188.2 of the Act, which provides for a suspension of receiving privileges only. By indicating that the deficiencies alleged on the T3010s of the Charity constitute a failure to file the information return, the AFL is imposing additional requirements on the Charity which are not found in the Act.

The returns were prepared with the assistance of a professional accountant who reviewed the financial information provided by the Charity and completed the T3010 accordingly. The directors of the Charity relied upon this professional advice and were not aware of the inaccurate completion of the T3010.

#### **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.

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

Yours truly,

*Enclos.*  
cc: The Canadian Islamic Trust Foundation

**The Canadian Islamic Trust Foundation**

**COMMENTS ON REPRESENTATIONS OF NOVEMBER 18, 2014**

Based on the Canada Revenue Agency's (CRA) audit of The Canadian Islamic Trust Foundation (the Organization), and after careful consideration of the Organization's representations dated November 18, 2014, it remains our position that the identified areas of non-compliance with the provisions of the *Income Tax Act* (the 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 on June 16, 2014.

Below please find:

- A summary of the issues raised by the CRA in our AFL dated June 16, 2014;
- A summary of the representations provided by the Organization's representative, Carters Professional Corporation, 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 established for exclusively charitable purposes**

**1.1.1 Failure of stated purposes to meet the requirements for charitable registration**

The Organization's purposes, set out in its Supplementary Letters Patent issued to it under the provisions of the *Canada Corporations Act* and dated August 31, 1988, are:

- a) *To foster and enhance teachings of the religion of Islam in its true doctrines and spirit throughout Canada.*
- b) *To set up and operate schools for carrying out the object in (a) above.*
- c) *To acquire and hold property with a view solely to support the funding of mosques and registered charitable Islamic religious institutions.*
- d) *To hold title to properties in trust acquired for charitable purposes by other registered charitable Islamic organizations in Canada, if so requested by any such organization and to do so without any reward or gain.*
- e) *To acquire funds, donations, and property through gifts from members of the various Muslim communities in Canada and to use the same solely for the furtherance of the objects here-before stated of the trust.*
- f) *To apply any profits or gains of accretions of the assets of the Corporation in accordance with the foregoing objects for the financial assistance of needy Muslims across Canada without profit or gain to any individual member or director of the Corporation, nor any remuneration to any director in his capacity as such.*

Our letter dated June 16, 2014 stated that we considered purposes a) and c) to be non-charitable.

### Organization's representations

As per its representations, the Organization did not contest our particular findings regarding its stated purposes, but 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 November 1988. 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 preliminary conclusion 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 paragraph 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 notes 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 designated and granted charitable registration by the CRA as a "charitable organization", and has continued to operate on that basis.

*It is the Organization's opinion that "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 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."*

- 3) The Organization acknowledged that "*it may have embarked upon charitable activities not strictly within the scope of the charitable purpose initially provided to the CRA, notwithstanding that it is the Charity's position that the purpose continues to be charitable*" and, as a result, proposes to "*amend its charitable purposes in recognition of its main title-holding activities on behalf of other qualified donees.*"

### 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 have been in effect since 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.

We correctly relied on the Guidance as a compilation of the relevant legal requirements and suggested approach for drafting purpose statements. The Guidance offered a practical and accessible means to

frame the preliminary determinations set out in our AFL, enabling the Organization to develop a complete understanding the CRA's requirements in this regard.<sup>1</sup> As a result, the Guidance represents the most comprehensive reference document available to assist the Organization in its preparation of a response to our expressed concerns.

Furthermore, in rendering our preliminary determinations on the Organization's purposes, the CRA allowed for some flexibility. In this regard, the CRA acknowledged in its 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 (b) and (f) qualified as charitable.<sup>2</sup> Similarly, although it was found to describe a power clause rather than a charitable purpose, the CRA considered the Organization's purpose (e) to be "acceptable for reasons of meeting the definition of a charitable organization."<sup>3</sup>

We considered the Organization's assertions pertaining to the CRA's purported 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 "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 charitability. 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*

<sup>1</sup> Furthermore, the earlier policy documents referenced above are no longer available on the CRA's website.

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

<sup>3</sup> Contingent on the other "'objects here-before stated of the trust'" having been determined to charitable, which was not the case."

**that all of the purposes and activities of the foundation or organization be charitable**  
[Emphasis added].<sup>4</sup>

Additionally, contrary to the representations made by the Organization, our determination did not rest solely on the application of the *Earth Fund* decision.<sup>5</sup> We would highlight the reference to 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:

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.<sup>6</sup>

In rendering its decision in *Vancouver Society* the Court cited the Supreme Court of Canada's 1967 decision in *Guaranty Trust Company of Canada v. Minister of National Revenue*.<sup>7</sup> 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.),<sup>8</sup> 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.<sup>9</sup>

As we explained in the introductory paragraph to section 1.1 of our AFL, "[a]lthough a charity's formal purposes may have been accepted at the time of its registration, it is possible that they may be determined to no longer 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 [emphasis added]. Such changes may adversely affect the organization's present day eligibility for continued registration."<sup>10</sup>

In regard to the application of this two-part test, it is noted that at the time of its application, the Organization described its primary purpose as the advancement of religion, as furthered through such activities as the provision of religious services to Muslims in Canada, including: making arrangements for prayers, marriages, and funeral services; the operation of a "full-time summer school for educating Muslim children about Islam"; and the provision of "seminars, workshops and conferences for the Islamic education of Muslims – both men and women, youth camps for the education of teenage children."<sup>11</sup>

<sup>4</sup> *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 at paragraphs 152 and 154. (*Vancouver Society*).

<sup>5</sup> Please note that the case law examples we provide in our correspondence are not intended to be exhaustive, but rather, illustrative.

<sup>6</sup> *Vancouver Society*, ibid note 4, at paragraph 159. As stated in the decision, the Court's findings in this regard were reached on the "basis of Canadian jurisprudence".

<sup>7</sup> *Vancouver Society*, ibid note 4, at paragraph 152.

<sup>8</sup> As described in our AFL.

<sup>9</sup> *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 issued its Notification of Registration on November 25, 1988.

<sup>10</sup> As found in the document entitled "Statement of Activities and/or Programs" submitted by the Organization. The document references some additional activities directed at "helping the new immigrants and visitors to Canada" and developing and ensuring respectful relationships with other faiths.

As noted in our AFL, a review of the material made available to the CRA during the course of the audit indicated that the Organization was engaged in only two primary activities: first, the Organization was acting in the capacity of *waqf*, or Islamic trust, holding title to properties beneficially owned by registered Canadian Islamic charities;<sup>11</sup> and second, and quite apart from the activities undertaken in the first capacity, it was found to be operating in support of certain, affiliated Islamic housing co-operatives.

It is our consideration of this second activity, in addition to our audit findings indicating that the Organization was gifting its resources to “mosques” or Islamic centres that were non-qualified donees, that directed our reconsideration of the Organization’s stated purposes.<sup>12</sup>

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 examined them afresh through the lens of the audit findings related to the Organization’s current activities; and as a result, the CRA has found that the Organization’s purposes (a) and (e) did not meet the requirements for charitable registration.

It, therefore, remains the CRA’s position that the Organization has failed to demonstrate that it is constituted for exclusively charitable purposes. Accordingly, the Organization fails 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.

#### 1.1.2 The advancement of an unstated, non-charitable, collateral purpose

A review of the audit material indicated that the Organization actively operated, and allowed itself to be governed, in furtherance of the business interests of a number of for-profit housing co-operatives, namely:

- the Islamic Co-operative Housing Corporation (ICHC);
- the Ansar Co-operative Housing Corporation (ACHC); and
- the ISNA Housing Co-operative (IHC).

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<sup>11</sup> Activities the CRA understands and has acknowledged are undertaken in furtherance of the Organization’s purpose (d) and which, as described in section 1.3 of our AFL, we considered charitable, so long as it is holding title to property on behalf of qualified donees. We note that subsequent documentation submitted by the Organization during the application process, and in response to the CRA’s enquiries, makes reference to its activities in this regard:

- The Organization’s letter of February 10, 1987, states that it “*currently holds various properties which comprise of mosques and schools...in trust for other charitable Muslim Community Organizations. The object is to have a central body looking after and managing the properties so as to economise the expenditure and have a focal point for the Muslim Organizations from where assistance may be organized. The emphasis of the services provided by the Foundation has been on providing facilities for formal prayers and principally for providing religious education to children and create consciousness among Muslims of their obligations.*”
- The Organization’s letter of May 5, 1987, states that “*the stated reason for acquiring and holding property was inserted in order to limit such holdings for religious purposes only and this was done after consultation with your office.*”

<sup>12</sup> In describing our findings related to the wording of the Organization’s purpose (a), the AFL explained that the CRA’s “*concerns as related to the Organization’s specific undertakings [in furtherance of purpose a] are addressed in further detail in sections 1.1.2 and 1.2*” of the AFL. Although not expressly stated in our AFL, our concerns regarding the wording of the Organization’s purpose (c) were similarly based on audit findings indicating that it was operating to the benefit of “mosques” or Islamic centres that were found to not be qualified donees, including as described in section 1.3 of our AFL.

Considered in its entirety, it is our opinion that the available information evidences that the Organization is constituted, at least in part, to further the unstated non-charitable collateral purpose to promote, or facilitate the operations of, specific “affiliated” for-profit housing co-operatives, which are non-qualified donees under the Act. An organization established with a purpose of operating in order to confer a benefit upon, or promote the business interests of, such enterprises would be precluded from registration as a charity.

#### Organization's representations

- 1) The Organization stated that the CRA's commenting upon the intent of the Organization with regards to its intended purposes is “*entirely speculative when it is clear that the focus of the Charity is on acting as a waqf*”; a role undertaken in furtherance of its charitable purpose (d)<sup>13</sup>, as set out in its Supplementary Letters Patent.
- 2) The Organization further stated that the only corporate purposes for which it can legally operate are those set out in its letters patent. It is not apparent that its bylaws dated February 26, 1989 and August 31, 2008, which contain the set of alternative purposes for which the CRA raised concerns, were ever filed with Corporations Canada or received Ministerial approval as required by the *Canada Corporations Act*. The Organization, therefore, questioned the validity of these by-laws and the stated purposes contained therein.
- 3) As also pertains to the existence of the second purpose statement contained in the 1989 and 2008 bylaws, the Organization reminds the CRA that its directors are volunteers “*and it is more likely than not that the purpose from the original letters patent were included in the invalid by-laws in error due to lack of knowledge of the supplementary letters patent of a misunderstanding concerning the prominence of the charitable purposes set out in the supplementary letters patent over those set out in the letters patent.*”

#### CRA's Conclusion

As noted in our AFL, a review of the material made available to the CRA during the course of the audit indicated that the Organization was engaged in two primary activities: first, the Organization was acting in the capacity of *waqf*, or Islamic trust, holding title to properties beneficially owned by registered Canadian Islamic charities; and second, and quite apart from the activities undertaken in the first capacity, it was found to be operating in support of a number of affiliated Islamic housing co-operatives and non-qualified donees, namely:

- the Islamic Co-operative Housing Corporation (ICHC);
- the Ansar Co-operative Housing Corporation (ACHC); and
- the ISNA Housing Co-operative (IHC).

The CRA, therefore, acknowledged that the Organization's undertakings as related to its role as *waqf* do represent a primary focus.<sup>14</sup> We further acknowledged that these activities are considered charitable, so long as the Organization is only holding title to properties on behalf of qualified donees.<sup>15</sup>

<sup>14</sup> Erroneously referenced as purpose (c) by the Organization in its representations and as purpose (b) in section 1.3(b) of our AFL.

<sup>15</sup> While its role as *waqf* is well documented – the CRA was able to identify some 17 properties to which it holds title to on behalf of 16 registered charities (as documented in Appendix C of our AFL) – our AFL also noted that its role in this regard is a relatively passive one.

The CRA concurs with the Organization's statement that "*the only corporate purposes for which it can legally operate are those set out in its letters patent* [emphasis added]". However, it is in fact our view that during the audit period the Organization operated *ultra vires* of its stated purposes; that in addition to acting in the capacity of *waqf*, the Organization operated, or allowed itself to be operated in the furtherance of non-charitable purposes, conferring a private benefit on the Housing Co-operatives.

As is discussed above in section 1.1.1, whether or not an organization is constituted for exclusively charitable purposes is determined based on its stated purposes as contained in its constating documents, and on the activities in which it engages.<sup>16</sup>

The Supreme Court of Canada specifically chose to refer to the purposes pursued by an organization rather than to its legal, incorporating purposes:

*But the inquiry cannot stop there. In Guaranty Trust, supra at p. 144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in Institution of Mechanical Engineers v. Cane, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purposes is the Society at present instituted?"<sup>17</sup>*

As such, once an organization undertakes activities in pursuance of non-charitable purposes, it would appear to make little difference how the formal purposes are drafted. The courts have directed us to look beyond an organization's stated, or incorporating, purposes to determine if it has undertaken activities that reveal a collateral, unstated purpose.

Where an activity is, or becomes, a substantial focus of an organization, the activity may be found to advance a separate or collateral purpose – or form a separate or collateral purpose in and of itself.<sup>18</sup>

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similar to that of a bare trustee and has been largely static, with the overall number of properties remaining unchanged since at least 2002. A review of its Board of Director meeting minutes for the period of the audit indicate that the Organization's undertakings in furtherance of this role focused largely on issues concerning the sale of the properties and the related local expansion plans.

<sup>16</sup> Our position in this regard is discussed in section 1.1.1 where we find the Organization's purpose d) to qualify as charitable, and in section 1.3(b), where we outlined our understanding of the Organization's role as *waqf* and directly quote CRA's publication *Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations*, which states that

- registered charities "established to hold title to property on behalf of other registered charities, while not an *Umbrella Organization per se*, may nonetheless be registered as an organization established to assist other registered charities" and
- "registration of the title-holding entity depends on the tenant entity being a registered charity or other qualified donee. A title holding entity may not hold property on behalf of or beneficially owned by non-qualified donees [emphasis added]."

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/pley/cps/cps-026-eng.html>

<sup>17</sup> *Vancouver Society*, ibid note 4, at paragraph 194.

<sup>18</sup> *Vancouver Society*, ibid note 4, at paragraph 194.

<sup>19</sup> *Vancouver Society*, ibid note 4, at paragraph 156, where Mr. Justice Iacobucci, speaking for the majority, cited with approval the comments of Denning L.J. in *British Launderers' Research Association v. Borough of Hendon Rating Authority*, [1949] 1 K.B. 462 (C.A.) at pp. 467-68, as applied by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133.

Contrary to the Organization's assertions, our determination that it was undertaking activities in furtherance of a collateral, unstated, non-charitable purpose was not "speculative". Nor did this determination rest solely on the basis of the existence of the alternative purpose statement contained in the Organization's bylaws clearly dated February 26, 1989 and August 31, 2008.<sup>19</sup> If there had been no suggestion in the available documentation that the Organization was actively pursuing activities arguably undertaken in furtherance of these alternative purposes, then the CRA may well have accepted the Organization's representations that its approval of these later bylaws was a simple oversight on the part of a board of directors composed mainly of volunteers.

However, our findings were based on a review of the available documentation, which evidenced a preponderance of effort, beyond what could be considered ancillary and incidental to any of its stated purposes, dedicated to this secondary, unstated, non-charitable purpose.<sup>20</sup>

Furthermore, as noted in our AFL, the decision to assist the Housing Co-operatives was a conscious one, discussed and approved by the Organization's Board of Directors:

- The basis of its arrangement with ICHC and ACHC is recorded in the minutes of the Organization's Board of Directors' meeting dated November 7, 1992, as follows:

*... The Housing Co-op has to buy some houses in Manitoba and Alberta. There was some difficulty in registering a branch of Housing Co-op in Alberta and Manitoba. The CIT [the Organization] already has an Extra-Provincial Registration in Alberta. It would be much simpler to register CIT in Manitoba rather than registering the Housing Co-op. Under this arrangement, the CIT will hold the titles of these houses for Housing Co-op under a "TRUST AGREEMENT".*

The minutes go on to state that, "[a]fter some discussion and clarifications the CIT Board approved the arrangement and the terms of the Trust Agreement with Housing Co-op on a motion by Br. Khalid Iqbal and seconded by Br. Anwarul Haque. The Trust Agreement was signed by Br. Mohammad Jinnah on behalf of the CIT Board."

- The Organization's agreement to the arrangement with IHC is recorded in the Board of Directors' meeting minutes of July 4, 2009, as follows:

*There is a need to assist the IHC in property purchases outside of Ontario due to the difficulties of incorporating the IHC in each of the provinces of Canada. Since CITF has an extra provincial registration in almost all the provinces, with CITF help, IHC would not have to register in the provinces other than Ontario. After some discussion, the board decided to approve that CITF can hold the titles of IHC properties in Canada except in Ontario.*

<sup>19</sup> In this regard, we note that this alternative purpose statement is contained in the Organization's versions of its bylaws both of which were officially stamped, signed, and dated after the Organization's registration, and which, in the instance of the February 26, 1989 version, were provided to the CRA by the Organization during our audit visit in response to our request for "a copy of the Organization's governing documents, including its bylaws, and all amendments thereto". A PDF version of the 2008 bylaws was recovered from amongst the electronic documents obtained by the CRA during the audit visit.

<sup>20</sup> As detailed in Appendix B of our AFL, the effort it expended was such that the Organization's undertakings could not be said to be merely a means to an end, but rather, constituted an end in themselves, forming an independent non-charitable purpose.

*This was approved on a motion by Muratib Ali and seconded by Mohammad A. Khadim.*

As further documented in Appendix B of our AFL, the Organization was found to have subsequently actively implemented the agreements; our research indicating that it has held title on behalf of IHC, ACHC, or ICCHC to over 40 residential properties in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, and Nova Scotia.<sup>21</sup> Its activities in this regard were undertaken without any apparent compensation, and with only the self-admitted motivation of allowing the Housing Co-operatives to expand their businesses outside of Ontario.

Additionally, and as also documented in Appendix B of our AFL, in undertaking these activities, the Organization opened itself to quite substantial liability and thereby placed its charitable resources at risk. As documented in its meeting minutes, the issue of its liability is one that was known to the Organization by at least March 2008. Despite this knowledge, and as discussed in note 13 of Appendix B of our AFL, it seemingly readily entered into the same title holding arrangement with IHC in July 2009; some 15 months after its Board of Directors' meeting minutes first record its knowledge of the liability inherent in its arrangement with ICCHC/ACHC and in the midst of ongoing and costly legal measures to address the situation.

In such circumstances, the Organization's representations as to the questionable legal validity of bylaws that were never apparently filed with Corporations Canada or that had not received approval by the Minister of Industry as required by the *Canada Corporations Act* is, in our opinion, immaterial to the issue at hand.

It consequently remains our view that, considered in its entirety, the available information evidences that the Organization is constituted, at least in part, to further the unstated non-charitable collateral purpose to promote, or facilitate the operations of, specific "affiliated"<sup>22</sup> Islamic housing co-operatives and non-qualified donees under the Act. By operating for the purpose of conferring a benefit upon, or promoting the interests of, such organizations, the Organization has ceased 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.<sup>23</sup>

## **1.2 Failure to devote all of its resources to charitable activities undertaken in furtherance of charitable purposes**

### **1.2.1 Failure of activities to advance a charitable purpose and satisfy the public benefit requirement**

<sup>21</sup> As noted in our AFL, the total number of houses held by the Organization under such arrangements is not known, but is based on title searches conducted by the CRA. We requested that the Organization provide the CRA with a complete list of properties it holds in trust for the Housing Co-operatives at the audit commencement interview; however, the Organization was unable to provide such information. The Organization's directors explained to the CRA that they were generally unaware of how many properties the Organization holds title to. The Organization's representations of November 18, 2014, do not offer any clarification in this regard, but rather appear to accept the numbers provided by the CRA.

<sup>22</sup> The term "affiliate" is one used by the Organization, and its parent body the Islamic Society of North America (ISNA), to describe the relationship between and amongst the Organization, ISNA, the Housing Co-operatives, and the various other associated organizations.

<sup>23</sup> Further to this, we would also repeat the position expressed in our AFL and as outlined in the CRA's publication CPS-026, *Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations*, namely that the Organization ceased to operate in compliance with the requirements of the Act pursuant to paragraph 168(1)(b) simply by holding title to over 40 residential properties on behalf of the Housing Co-operatives, all non-qualified donees.

In addition to our findings related to the Organization operating in furtherance of the unstated, non-charitable purpose of advancing the interests of non-qualified donees, it is our position that the Organization's efforts in regards to the Islamic Housing Co-operatives would otherwise be found to be in contravention of the Act, in as much as it is our opinion that the activities of the Housing Co-operatives, activities that the Organization has operated in support of, fail to advance a charitable purpose and fail to satisfy the public benefit requirement. In so doing, the Organization failed to demonstrate that its resources are devoted to charitable activities carried out in furtherance of exclusively charitable purposes.

#### Organization's representations

The Organization disputes that the activities of the Housing Co-operatives are its own, but nonetheless challenges our finding that the activities of the Housing Co-operatives do not advance religion in the charitable sense. The Organization's position rests on the following arguments:

- 1) There does not appear to any basis at law that the provision of home financing compliant with Islamic religious teachings could not be charitable. It is a novel issue that has not been ruled upon in Canada or in other common law jurisdictions.
- 2) The position taken by the CRA appears to be inconsistent with the test for advancement of religion under Canadian common law established in *Fuaran Foundation v. Canada Customs and Revenue Agency*. Providing a product, financial or otherwise, compliant with the religious beliefs of a religion to its adherents is a positive step to sustain those religious beliefs and is commensurate with the provision of religiously prepared food or other religious goods and services.
- 3) While home financing may be a secular activity, just like the slaughter and preparation of food, home financing that is compliant with religious observances is not a secular activity. It is questionable whether those not of the Islamic faith would wish to purchase a home through the non-traditional means of Shari'a compliant home financing, or if the public would recognize this as a secular activity.
- 4) It is recognized in common law that religion can be advanced indirectly. As demonstrated in the American case *Re. Charlesworth*,<sup>24</sup> a trust established to pay the expenses of dinners consumed by a society of clergymen was upheld by the court, saying the main purpose of such a trust was the advancement of religion insofar as the provision of dinners furthered the usefulness of the society through increased attendance at meetings.
- 5) *Vancouver Society* stressed that it is really the purpose in furtherance of which an activity is carried out and not the character of the activity itself, which determines whether or not it is of a charitable nature. As a result, although the provision of financing compliant with religious restrictions may not directly benefit those who do not invest in such programs, the purpose is to advance religion by sustaining the belief of its adherents.

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<sup>24</sup> (1910) 101 L.T. 908.

### CRA's Conclusion

It is not the CRA's position that the activities undertaken by the Housing Co-operatives are the Organization's own, but rather, as described in section 1.1.2 of our AFL and the accompanying Appendix B, that the Organization operated, and allowed itself to be governed, in order to benefit to the Housing Co-operatives, and in so doing used its resources in furtherance of the non-charitable activities/purposes of these non-qualified donees.

The CRA agrees that the courts have not addressed the specific question as to whether the provision of Shari'a compliant home financing would constitute the advancement of religion.

Absent such a ruling, the existing case law must be applied. To this point and as detailed in our AFL, advancing a religion in the charitable context means promoting, maintaining or increasing its doctrine, observances, and practices.<sup>25</sup> To achieve this end, the activities of the organization must manifest, promote, sustain or increase one or more of the subject religion's key attributes; namely, (1) faith in a "higher unseen power" such as God, a Supreme Being or Entity, (2) worship/reverence, and/or (3) its particular and comprehensive system of doctrines and observances.<sup>26</sup>

When determining if an organization is advancing religion, the courts look for evidence of a targeted attempt to promote an identified religion or to sustain and increase a religious belief, within a structured program relating to religious advancement.<sup>27</sup>

Although the purpose an activity furthers determines if it takes on a charitable character, not everything done in the name of religion advances it within charity law, and the fact that someone believes that what they are doing is advancing their religion does not mean that it will be recognized as such.<sup>28</sup>

In order to be considered charitable under the advancement of religion an activity must do more than have a connection with, or be conducive to, religion. An activity will not advance religion automatically merely because the undertaking conforms to religious edicts or teachings. Religious motivation alone will not transform a non-charitable purpose into a charitable one. In the charitable context, to achieve the required public benefit, methods of advancing religion cannot be so subjective.

<sup>25</sup> See *Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioner*, [1931] 2 KB 465 (CA); *Fuaran Foundation v. C.C.R.A.*, 2004 FCA 181 per Sexton J.A. at paras. 7 and 15; and *United Grand Lodge v. Holborn BC*, [1957] 1 WLR 1080 at 1090 per Donovan J.

<sup>26</sup> See *In re South Place Ethical Society, Barralet and Others v. Attorney-General and Others*, [1980] 1 WLR 1565 at 1572 per Dillon J.; *Segerdal Regina v. Registrar General, Ex parte Segerdal and Another*, [1970] 2 QB 697 (CA) at 709 per Winn J.; and *Amselem Syndicat Northerrest v. Amselem*, [2004] 2 S.C.R. 551 at paragraph 39 per Iacobucci J.

<sup>27</sup> *Fuaran Foundation*, ibid. note 25, per Sexton J.A. at paragraphs 14 and 15; "The analysis of Iacobucci J. in *Vancouver Society*, although the Court was dealing with the 'advancement of education', would presumably apply also to 'advancement of religion'.

*To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough ...*

In effect, what the Appellant proposes is to simply make available a place where religious thought may be pursued. There is no targeted attempt to promote religion or to take positive steps to sustain and increase religious belief. There seems to be no structured program relating to advancement of religion and the focus in the Appellant's advertising is not just upon religion but also on personal enjoyment and quiet retreat."

<sup>28</sup> See *Gilmour v. Coats et al.*, [1949] 1 All E.R. 848; *Hutterian Brethren Church of Wilson v. The Queen*, [1979] 1 F.C. 745, affirmed, [1980] 1 F.C. 757 (F.C.A.); and *House of Holy God v. A. G. Canada*, 2009 FCA 148.

understated, indirect or informal that it cannot be determined that the organization's religion will be reasonably furthered as a sufficiently direct result and consequence.<sup>29</sup>

The promotion of a single or limited number of religious tenets cannot be used as a cover for a purpose to advance a particular non-charitable goal. An organization would qualify for registration under this category only if its activities served *primarily* to advance religion and were not directed to purposes not in themselves religious or otherwise charitable. The content of the activity – its objective nature and character – must be shown to be a reasonable means of advancing the religion<sup>30</sup> and must be found to deliver the required public benefit.

The CRA recognizes that the products or services that the Housing Co-operatives offer have been conceptualized in such a manner as to adhere to specific Islamic religious requirements; however, the question that must be answered is whether the mortgage and investment scheme that underpins the purposes of the Housing Co-operatives could be considered to advance religion in the charitable sense. It remains our position that it does not.

As previously noted in our AFL, the three Housing Co-operatives have been established in order to provide its members with interest-free investment opportunities and home financing services.<sup>31</sup> Specifically, and as identified in its Annual Reports, ICHC's "Statement of Objectives" is as follows:

- *To provide an opportunity to its members, who are committed not to indulge themselves in riba (interest), to buy a house for their family without riba, with security and as much flexibility as possible, within the taxation and legal framework of the country;*
- *To provide an opportunity to committed Muslims all over the world:*
  - *To mobilize and pool their savings and invest in the houses of fellow Muslims without the string attached to a particular house;*
  - *To keep an individual's funds as much flexible as possible with the right to redeem his/her investment with a reasonable notice;*
  - *To maintain the security of the investment;*
  - *To share the capital gain or loss and the rental income of the "Co-operative" in the form of dividends.*

<sup>29</sup> See *National Deposit Friendly Society Trustees v. Skegness UDC*, [1959] AC 293 at 322 (H.L.), per Lord Denning; *In Re Pinion*, [1964] 1 All E.R. 890, where the court refused to hold charitable a bequest to a museum of the testator's paintings, which may otherwise be charitable as educational, as they had no artistic merit and were thus neither educational nor of public utility; *Fuqan Foundation v. C.C.R.L.*, per Sexton J.A. at paras. 7, 13, 14, 15; *House of Holy God v. A. G. Canada; Hutterian Brethren Church of Wilson v. The Queen*, *ibid* note 28.

<sup>30</sup> See, for example, *Keren Kayemeth* (HL) (per Lord MacMillan) *ibid*. note 25.

<sup>31</sup> As quoted in our AFL, the *Financial Times* LEXICON. "The prohibition of riba [interest] is the cornerstone of Islamic finance. Riba symbolises both the earning of money on money via a predetermined rate on a loan and a social injustice. Although making a profit is allowed in Islam, earning money on money is not, because there is no productive and/or trade activity creating additional wealth. Riba also creates social injustice because lenders requiring interest on loans tend to profit from the weak position of borrowers. Thus, because social justice and fairness in business are the most important parts of muamalat (economic transactions), riba is prohibited by Shariyah in Islamic law." Source: <http://lexicon.ft.com/Term?term=riba>.

With no stated reference to whether its services/products are *riba*-free, IHC's objects are:

- a) *To help its members in obtaining and maintaining housing facilities for themselves and their families;*
- b) *To provide all community facilities and premises that help improving the residential areas of its members;*
- c) *To buy, own, sell, improve, manage, construct or lease and operate land and building for the purpose of providing residential accommodation to its members, who will occupy housing units otherwise than as owners;*
- d) *To enter into occupancy agreements with its members up such terms as it may deem advisable (the "Occupancy Agreement");*
- e) *To become a member of any association or corporation having objects altogether or in part similar to those of the Co-Operative, or carrying on any business activity capable of being conducted so as to directly or indirectly benefit the Co-Operative.*

It is not apparent from the Housing Co-operatives stated objectives that its principal or even underlying purpose is to advance religion, or any other charitable purpose. The objectives rather point to the advancement of a business or economic model designed to appeal to a reportedly growing Muslim market interested in availing itself of Shari'a compliant products.<sup>32</sup>

Furthermore, a review of the available informational and promotional material produced by the Housing Co-operatives – including websites, annual reports, newsletters, PowerPoint presentations, brochures, and offering statements – clearly demonstrates a focus not on the propagation of the Muslim faith, but on the furtherance of their business interests and the private benefit offered to their respective memberships.<sup>33</sup>

<sup>32</sup> The CRA would note that in delivering its Shari'a compliant home financing and investment services, the Islamic Housing Co-operatives are operating and competing in what has been termed "*one of the most rapidly growing segments of the international financial services sector.*" ("Making Toronto the North American Centre for Islamic Finance: Challenges and Opportunities." May 2010. Islamic Finance Working Group. Toronto Financial Services Alliance.) A January 30, 2014, paper entitled "The Rise of Islamic Finance" notes that "*Global Islamic Financial assets have soared from less than \$600 billion in 2007 to more than \$1.3 trillion in 2012, an expansion rooted in the growing pool of financial assets in Muslim-majority countries driven by consumer demand for products that comply with religious codes...the sector appears poised to enter Western markets and complement conventional financing.*" The article further notes that the demand "for new Islamic investments is expected to outstrip supply by as much as \$100 billion by 2015" and that international banks, including HSBC, Crédit Agricole, and Standard Chartered, have established Shari'a-compliant banking divisions in order to capture a portion of this market. (Mohammed Aly Sergie. 30 January 2014. "The Rise of Islamic Finance." Council on Foreign Relations: <http://www.cfr.org/economics/rise-islamic-finance/p32305>).

Under the heading "Marketing" IHC remarks on this market potential in its Offering Statement dated September 15, 2010; noting that

"Islam is the fastest growing religion in Canada", and stating that it regards "the Community as its market base".

Our own, admittedly cursory, search of the internet revealed many organizations offering Shari'a compliant home financing services in Canada.

<sup>33</sup> For example

- As mentioned above, the stated objective for both ACHC and ICHC is to provide an opportunity to buy a house without the use of *riba* for their members, according to their Annual Reports of 2013. The Reports also speak of providing opportunities for maintaining the security of members' investment, and the sharing of capital gain or loss and rental income, among others, as part of their stated objectives. The provision of opportunity for bypassing the use of *riba* in purchasing a house appears to be the only segment of the Housing Co-operatives' activities that references religion or religious requirements. However, such business practice can hardly be categorized as an act of advancing religion, but more of a business model suited to serve their

Regarding the Organization's representations that the activities undertaken by the Housing Co-operatives should be considered analogous to the provision of religiously prepared foods, we would note that, while educating people on the religious requirements pertaining to food consumption or ensuring and "certifying" that food is prepared or processed in the appropriate manner can be considered activities that advance religion,<sup>34</sup> the CRA does not consider the production or sale of such foods to be a charitable activity under the advancement of religion. Similarly, the sale or provision of Shari'a compliant home financing or investment services is not considered to be a charitable activity.<sup>35</sup>

While the Housing Co-operatives provide the Muslim community the option of services that may conform to Islamic requirements, the provision of home financing products is not an activity that is charitable; it is an economic transaction between the financer and the home buyer. As such, it remains our finding that the relation between the Housing Co-operatives' activities and any advancement of religion is overly remote to evidence the advancement of religion as defined by the courts.

Furthermore, as detailed in our AFL, in order to be considered charitable, an activity must be undertaken for the benefit of the public, or a sufficient section thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing charitable

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chosen market niche; especially, when the respective bylaws of the Co-operatives require a minimum of 80% of total income to be returned to their members in a form of dividend, while the rest is to be used for operating expenses. As such, according to the financial statements in the 2013 Annual Reports, which were provided by the Organization for review covering the period closest to the period under audit, ACHC paid out, or booked as payable, 87% of its revenue of \$1,058,041 (i.e. \$916,906) and ICHC 85% of \$1,274,866 (i.e. \$1,079,871) as dividend for year-end 2011.

- A PowerPoint presentation available on the 2007 archived version of ACHC's website and delivered by ACHC/ICHIC's President makes the following statement: "*Interest free banking and financing means: conventional banking and financing delete the word 'interest', add the word 'profit'*". A later slide in the same presentation asks the question "*What is the difference between a businessman and a Muslim Businessman?*" and responds "*Truthful and no deceptions; Honesty and integrity; Expects blessing and rewards from the creator, in addition to, monetary profit; Consciousness of social and environmental benefits rather than just monetary benefits*" [emphasis added].  
<http://web.archive.org/web/2007081903715/http://isnacanada.com/achac.htm>
- The Housing Co-operatives' websites tout the appeal of the Housing Co-operatives from an investor's standpoint and for the security offered to homeowners. ACHC's 2008 archived site list the following four points:
  1. You will be entitled to a dividend on the shares based on end-of-the-quarter balance i.e., March 31, June 30, September 30, and December 31 each year.
  2. Instead of keeping your savings in a bank, you can buy the Housing Co-operative's shares and earn Halal income.
  3. You can start investing on behalf of your children now, so they will be in a position to buy their houses easily after they get married.
  4. You can save and invest for your children's college/university education and their marriages.  
<https://web.archive.org/web/20080810001910/http://www.ansarhousing.com/investors.htm>
- The April-September 2008 edition of IHC's newsletter states  
*The sole purpose of the IHC is to provide members with the means to purchase homes and yield dividends for investors.*  
*IHC is also committed to balancing the needs of homeowners and investors; the regulations are designed to ease the qualifying conditions for the purchase of homes while still protecting investment capital.*

In advertising its services to potential investors, IHC's website notes that the return on investment it offers "far exceeds traditional bank returns" and that "since its inception, IHC has continuously provided higher dividend to its members than announced by other housing cooperatives."

<sup>34</sup> As supported by *Levit's Kosher Food Inc. v. Levin et al.* [1999] 45 O.R. (3d) 147. As explained in our AFL, in the context of halal foods, it is the CRA's understanding that the halal certifier's role is to assist Muslim consumers to identify the foods that meet Islamic requirements, including ensuring that a producer uses religiously permitted ingredients, modes of preparation, and the proper equipment. Observant Muslims, therefore, rely on well trusted Islamic organizations to supervise and certify as halal the products they consume. As such, the process of supervision and certification of halal foods has been considered a charitable activity under the advancement of religion.

<sup>35</sup> There is no evidence in the audit documentation that the Organization undertook any activities in relation to the Housing Co-operatives as related to its certification or assurance that the housing scheme met halal standards.

purposes. It must be demonstrated that an organization's activities are public rather than private in character and that its resources will not be used to benefit a restricted or private group or membership.<sup>36</sup>

While the CRA recognizes that some private benefit may occur when a charity pursues its charitable purposes, such private benefit is only acceptable as long as it arises directly through the pursuit of its charitable purposes, and remains *incidental* to the achievement of those purposes. Ordinarily, a private benefit will be considered incidental where it is:

- (i) Necessary – Necessary means legitimately and justifiably resulting from:
  - (a) an action that directly contributes toward achieving a charitable purpose; or
  - (b) a required step in an action taken only to achieve a charitable purpose; or
  - (c) a required consequence or by-product of an action taken only to achieve a charitable purpose; or
  - (d) the operation of a "related business" as defined in paragraph 149.1(1) of the Act.<sup>37</sup>
- (ii) Reasonable – Reasonable means:
  - (a) related to the need and no more than is necessary to achieve the purpose; and
  - (b) fairly and rationally incurred (objectively defensible), and
- (iii) Not disproportionate to the public benefit achieved – Not disproportionate to the public benefit achieved means the public benefit must be predominant, being larger and more significant than the private benefit.

As previously outlined, the primary purpose of the Housing Co-operatives is to provide a vehicle through which members may purchase a house and share in the total income of the Housing Co-operatives in the form of dividends. Based on the information reviewed, it is apparent that the Housing Co-operatives are engaging in a commercial enterprise, the benefits of which are narrowly focused on their respective members. The activities conducted by the Housing Co-operatives principally confer a private benefit and any wider public benefit arising from a mortgage scheme based on religious financial principles is too remote or incidental to meet the public benefit requirement.

It remains our conclusion that by supporting the operations of the Housing Co-operatives, the Organization has failed to devote its resources to charitable activities carried out in furtherance of exclusively charitable purposes. The Organization has, therefore, ceased to comply with the section 149.1(1) of the Act for its continued registration. Such a failure is grounds for revocation pursuant to paragraph 168(1)(b) of the Act.

#### The issue of liability

In Appendix B of our AFL, which detailed our findings related to section 1.1.2, *The advancement of an unstated, non-charitable, collateral purpose*, the CRA stated that it is our opinion that the Organization has placed its own charitable resources at risk by assuming liability for the 40 houses it holds title to on behalf of the Housing Co-operatives. Our AFL noted that the issue of liability is one that the

<sup>36</sup> See *Gilmour v. Coats et al.*, *ibid.* note 28.

<sup>37</sup> 149.1(1) defines a "related business" as including a business that is unrelated to the purposes of the charity if substantially all persons employed by the charity or association in the carrying on of that business are not remunerated for that employment.

Organization was aware of since at least early 2008 and is one that, at least in the instance of ICHC and ACHC, the Organization had dedicated much effort and resources attempting to address.

While it did not contest the liability concerns accompanying its title holding agreements with the Housing Co-operatives, the Organization did contend that its documented attempts to transfer title to the residential properties to the Housing Co-operatives should be construed as an effort to "protect the charitable property of the [Organization]".<sup>38</sup> The Organization further "*submits that the board is continuing to take efforts to transfer title from the [Organization] to the Housing Co-operatives, but that this has become complicated due to an ongoing legal action against ISNA by the Housing Co-operatives.*"<sup>39</sup>

Despite all efforts, including the Organization's retention of legal counsel, to address the issue, the CRA notes that the Organization still finds itself in a position whereby it holds title to numerous residential properties on behalf of the Housing Co-operatives some eight years after the liability concern was first discussed during the Organization's March 29, 2008 Board of Director meetings.

Additionally, as documented in our AFL, the CRA has not determined that the Organization's previous efforts to extract itself from its relationship with ICHC/ACHC were motivated by a desire to address any liability concerns, rather than from a "falling-out" between the ICHC/ACHC and the Organization that resulted in the severance of ties in late 2007.

In this regard, we note that, despite its apparent knowledge of the liability inherent in the trust arrangement, the Organization failed to demonstrate any effort to "*protect the charitable property*" when it readily entered into its title holding arrangement with IHC on July 4, 2009, some 15 months after its Board of Directors' meeting minutes first record its knowledge of the liability inherent in its arrangement with ICHC/ACHC.<sup>40</sup>

#### 1.2.2 Failure to meet fiduciary responsibilities with respect to the investment of its charitable resources/ Failure to properly safeguard its charitable resources

<sup>38</sup> As submitted with Tab E, the Organization provided us with copies of minutes to its October 11, 2008 Board of Directors meeting, and to ISNA Canada's June 28, 2008 Board of Directors meeting, which document the Organization's legal efforts to remove its legal title to the properties it held on behalf of ICHC/ACHC. We note that minutes for ISNA's meeting record the next point of business as a discussion on the status of IHC.

*Since ISNA Canada has recently incorporated its 3<sup>rd</sup> Housing Coop to expand its Housing projects, Muratib Ali, Secretary of the ISNA Housing Co-operative Ltd. (IHC), and is recommended by its board, was accepted to represent this new Housing Coop on the CITF Board effective immediately. Ghulam Nabi Chaudhary made the motion which was seconded by Mohamed Bekkari.*

*It was emphasized that the Representative of the IHC is not a replacement for the Islamic Coop. Housing Corp. (ICH), but it was in addition of another member to the Majlis representing the 3rd Housing Coop of ISNA Canada. The position of ICHC Representative on the Majlis is considered vacant until the matter between the Housing Coops and ISNA Canada is resolved. It was also decided to amend the By-Law in order to accommodate the new Housing Coop, as well.*

<sup>39</sup> As submitted with Tab D of its representations, the Organization provided the CRA with copies of Certificates of Title, which indicate that the Organization has transferred to IHC title to the six properties it held in Edmonton, Alberta. As identified in our Table accompanying Appendix B of our AFL, the identified properties correspond to the following municipal addresses:

- 3328 – 25 Avenue
- 5940 – 10 Avenue.
- 7416-11 Avenue SW
- 17 - 8628 – 173 Avenue SW
- 606 Tamarak Road NW
- 211 – 57 Street SW.

<sup>40</sup> As also described in section 1.1.2 above.

The Organization's general ledger indicated that the Organization had total investments of \$270,850, at year-end 2009; and some \$189,750 with the Housing Co-operatives. The table below shows a balance amount for investment for each year-end for the period under audit:

Acct. No.	Investment Type	2007	2008	2009
<b>Housing Related:</b>				
	ISNA Housing (IHC) <sup>41</sup>		73,750	90,750
	Takaful <sup>42</sup> Re. ITS	19,000	19,000	19,000
	Takaful <sup>43</sup>	80,000	80,000	80,000
	<b>Housing Related, Total</b>	<b>99,000</b>	<b>172,750</b>	<b>189,750</b>
<b>Other:</b>				
	SSI	100	100	100
	Muneba Nasim Trust	60,800	60,800	60,800
	Muslim Health Care Fund	3,400	3,400	3,400
	Endowment Fund	6,500	6,500	6,500
	CITF T-Afsar	10,300	10,300	10,300
	<b>Other, Total</b>	<b>81,100</b>	<b>81,100</b>	<b>81,100</b>
	<b>Total Investments</b>	<b>180,100<sup>44</sup></b>	<b>253,850</b>	<b>270,850</b>

In the absence of documentation detailing the Organization's investment strategy, or any evidence that the Organization's investments are being made with a view as to the risk and return, the Organization's Board of Directors has failed to demonstrate that it has exercised due care of the charitable assets entrusted to them. In particular regard to its investments related to the Housing Co-operatives, it is the CRA's opinion that the Organization has breached its obligation of prudent investment, and failed to manage its financial resources in a manner suitable to the furtherance of its charitable purposes.

#### Organization's representations

1. With respect to the standard risk warnings of the Offering Statements for the investments in the Housing Co-operatives, the Organization submits that these risk warnings are a normal practice on all Prospectus, Offering Statements, and Offering Memorandum and are required by law in Ontario.
2. The Organization further states that the overlap in directors between the Housing Co-operatives and the Organization enabled the Organization to manage some of the risk associated with these

<sup>41</sup> Please note that IHC was incorporated in June 2008.

<sup>42</sup> It is our understanding that Takaful Canada's establishment was jointly sponsored by the Ansar group of companies (whose membership includes ICHC and ACHC) and ISNA. Takaful was operated by Mr. Pervez Nasim, with Dr. Ashraf as president. These individuals were Chairperson and Vice Chair respectively of both ICHC and ACHC. We have been informed that CITF investments in Takaful, ICHC, and ACHC were moved from one organization to another by Mr. Nasim. Therefore, the Organization's investments in Takaful were assumed to be an investment in ICHC or ACHC.

<sup>43</sup> See Footnote 52.

<sup>44</sup> The YE 2007 financial statements reported the total investment of \$201,600, however, on its YE 2008 financial statements, under comparative column of the Notes to Financial Statements, the investment amount for YE 2007 was revised to show the same \$180,100, which matches that of the GL amount as seen in the table above.

investments. The CRA cannot on the one hand say that the Organization had too much control over the Housing Co-operatives, but then say that it did not have enough control in order to manage the risk associated with these investments.

3. The Organization notes it restricts its investments to those which would be compliant with Shari'a law. As such, the Organization cannot ordinarily invest its funds in non-Shari'a compliant institutions.
4. The purpose of the investments was to hold funds raised across Canada until there were sufficient resources available for the construction or purchase of mosques or Islamic cultural centres. As such, notwithstanding the risks identified in the Offering Statements, the directors of the Organization have put the charitable property into prudent and appropriately secure investments.
5. The Organization states that the documentation cited by the CRA in establishing the fiduciary obligations of directors as related to investments does not have the force and effect of law and does not constitute the relevant case law of which directors should be aware. The standard of care for directors remains the common law subjective standard of care articulated in *Re: City Equitable Fire Insurance Company Limited.* [1925] 40 CH D 4.
6. Whether or not the directors failed to adhere to the 'prudent investment standard' under the *Trustee Act* (Ontario) is within the jurisdiction of the courts in Ontario and through the Ontario Public Guardian and Trustee through its *parens patriae* jurisdiction and not that of CRA as the regulator under the Act. At no point is any reference made to a section or regulation of the Act upon which these allegations are being judged. It is unclear under what jurisdiction these comments are provided from by CRA.
7. Further, the jurisdiction of the common law over charitable matters falls to the provinces in Canada. With regard to the Organization, its head office is located in Ontario and is under the jurisdiction of the Ontario Public Guardian and Trustee in accordance with the *Charities Accounting Act*.
8. In this regard, in demanding compliance with materials that are arguably outside the jurisdiction of the CRA, or at least venturing beyond the scope of providing assistance to charities in complying with best practices, the auditor would seem to be taking on a policing role that appears to be outside the role of the Charities Directorate.

#### CRA's Conclusion

The failure of the directors of a registered charity to meet their fiduciary responsibilities, including as related to investments, is *on its own*, not grounds for revocation and is not characteristically a concern that the CRA would weigh in on in its role as charities regulator. However, as a responsible regulator, the CRA does have an obligation to ensure that organizations granted the tax privileges of a registered charity are operating in a manner that complies with the requirements of registration. In such instances wherein failure to exercise fiduciary responsibilities results in undue loss of, or unacceptable risk to, charitable resources, a registered charity will cease to comply with the legislative and common law

requirements that all of its resources be devoted to charitable activities undertaken in furtherance of its charitable purposes, which is grounds for revocation under the Act.<sup>45</sup>

Regarding the Organization's representation that the "Risk Factors" detailed in the Housing Cooperatives' Offering Statements are a "normal practice on all Prospectus, Offering Statements, and Offering Memorandum and are required by law in Ontario", the CRA does not disagree. However, we would additionally note that, as described on the website of the Financial Services Commission of Ontario (FSCO), "every Offering Statement is **unique** and the information contained therein is **dependent on the individuality of the business enterprise** [emphasis added]." FSCO's website provides this further information:

*The co-operative sector submits Offering Statements to the Financial Services Commission of Ontario (FSCO) for receipting. The Superintendent of Financial Services may issue a receipt when satisfied the Offering Statement meets the Full, True and Plain disclosure standard.*

*Investor protection is FSCO's primary role. The Offering Statement received by an investor must be carefully crafted so that it is credible, clear, concise and easy to read from the investor's perspective resulting in a Full, True and Plain presentation that fully discloses any risks involved.<sup>46</sup>*

As detailed in our AFL, the Offering Statements of the Housing Cooperatives in which the Organization invested its resources identify risk factors whereby the Organization, as an investor, was advised that:

- there is no current or anticipated market for the shares being issued and purchasers may not be able to resell their shares;
- there is no certainty that the Co-operatives will be able to pay dividends;
- there is no assurance that Co-operatives will be able to redeem shares; and
- the inherent risk is so high that no one should invest any funds unless they can afford to lose their entire investment.<sup>47</sup>

While the Offering Statement is intended to provide prospective investors with the information needed to make an informed decision, the Organization failed to demonstrate that it had considered any of the

<sup>45</sup> In comments made at the May 23, 2014, Canadian Bar Association Charity Law Symposium, the Director General of the Charities Directorate, acknowledged that the "Constitution makes it clear that the responsibility for managing the operations of charities falls to the provinces and territories." However, she also observed that the "reality is that they [the provinces and territories] limited their involvement in regulating charities" and that the CRA has "become the *de facto* regulator by virtue of the federal government's taxation power and policy to provide tax incentives to support giving to charities."

<sup>46</sup> "Tips for Co-operatives Relating to Offering Statements" [http://www.fSCO.gov.on.ca/en/coops/Pages/offering\\_stmts.aspx](http://www.fSCO.gov.on.ca/en/coops/Pages/offering_stmts.aspx)

<sup>47</sup> For example, IHC's Offering Statement, dated September 15, 2010, cautioned potential investors in the preamble and under the heading called "Risk Factors," that:

- "Purchase of shares in such new ventures involves a high degree of risk, and subscribers should view this subscription as speculative and not invest any funds in this offering unless they can afford to lose their entire investment.
- There is presently no market for the shares being issued nor is a market expected to develop. Purchasers may not be able to resell shares.
- There is no certainty that the Co-operative will be profitable and able to pay patronage dividends or regular dividends on shares of the Co-operative.
- [T]here can be no assurance that the Co-operative will be able to redeem shares when so requested or when membership ceases."

described risks when it invested \$189,750 of its charitable resources with the Housing Co-operatives,<sup>48</sup> or that it contemplated or implemented any plan or strategy in order to mitigate the risks. Furthermore, the Organization failed to show how it made investment decisions, including: who made the investment decisions; what investment or financial criteria decisions were based on; the level of acceptable risk tolerance; the desired investment time horizon; or whether the investments were in fact being actively monitored on a regular basis.

The risk the CRA was considering in the context of the Organization's investments in the Housing Co-operatives was not one of poor return on investments, but rather the foreseeability of loss of charitable resources.<sup>49</sup> Based on our review of the identified risks, it appears reasonable to conclude that the Organization invested its charitable resources with the Housing Co-operatives, with the understanding that it was possible or even probable that its resources would never be recovered and therefore, would never be used in furtherance of its stated charitable purposes, including for the construction or purchase of mosques or Islamic cultural centres, as submitted by the Organization in its representations. **The Organization's directors in fact advised the CRA at the audit commencement interview that "it would be impossible" for IHC to redeem the Organization's investments, as IHC was "just not big enough."**

No documentation has been provided to the CRA that would substantiate the Organization's representations that the overlap in directors between the Housing Co-operatives and the Organization enabled the Organization to manage some of the risk associated with these investments. On the contrary, as touched on in section 1.2.1 above and in a number of sections of our AFL, it appears that the Organization's relationship with the Housing Cooperatives was structured in such a manner as to benefit the Housing Cooperatives **even to the potential detriment of the Organization**. Given this situation, and as also posited in our AFL, it does not appear unreasonable to conclude that the Organization's investment decision was motivated by a desire to benefit the Housing Co-operatives, rather than a return on investment.

While we recognize the Organization's representations that it has restricted its investments to those that are compliant with Shari'a law, this investment criterion does not absolve the Organization of its responsibility to protect its charitable resources from undue risk. Furthermore, a review of the records made available to the CRA provides no indication that alternative Shari'a-compliant investments were considered as a possibly less risk inherent and appropriate investment alternative to the Housing Co-operatives.

We do not disagree with the Organization's representations that the administration of the *Trustee Act* is rightly the jurisdiction of the Ontario Public Guardian and Trustee. The *Trustee Act*, however, establishes a statutory standard of prudent behaviour, which supplements the common law. As a corporation established and operated in Ontario, it is the standard that the Organization is expected to be aware of and to adhere to. It was, therefore, the one that the CRA chose to reference in our AFL in

<sup>48</sup> Of a total of \$270,850 of the Organization's total investments, as detailed in our AFL. We would note that the lack of demonstrated adherence to any sort of prudent investment rule applies to all of the Organization's investments. The documented risk associated with the investments made in the Housing Co-operatives, however, is of serious concern to the CRA and is being addressed in the context of the ITR.

<sup>49</sup> As stated in CRA's policy statement, CPS-019, *What is a Related Business?* "Charities need to invest their capital and any funds not required for their current operations. Charity law dictates that a charity's assets be managed so as to obtain the best return within the bounds of prudent investment principles." <http://www.cra-arc.gc.ca/chrts-gvng/chrts/policy/cps/cps-019-eng.html>

laying out our expectations of charities in regards to the prudent investment rule and the protection of charitable resources in furtherance of charitable purposes.<sup>50</sup>

As explained in our AFL, a charity registered under the Act is required to be *bona fide*, meaning that it must be established and operated to confer a tangible or objectively measurable benefit upon the public.<sup>51</sup> Registered charities receive privileged treatment under the Act. In addition to the income tax exemption that is also granted to non-profit organizations, registered charities are further afforded the advantage of being able to issue official donation receipts, whereby individual donors are eligible to receive tax credits for the contributions they make to registered charities.

As a result, the Canadian public contributes to every registered charity by virtue of the loss of tax revenue resulting from the income tax incentives that encourage charitable giving. The public, therefore, has a fundamental interest in ensuring that monies raised from the general public are used to fulfill their intended charitable purposes.

In this context, as a registered charity, the Organization accepted and continues to hold a public trust to maintain, preserve, develop, and use the resources entrusted to it in furtherance of its charitable purposes. It is the CRA's opinion that the Organization failed to demonstrate that it operated in the public benefit when it readily assumed, including in apparent disregard of the provisions of the relevant provincial legislation under which it was expected to operate, all associated risks and invested its charitable resources in the Housing Co-operatives.

The Organization's representations failed to demonstrate how the dedication of \$189,750 of its charitable resources in investment that the Organization knew it would likely be unable to redeem was undertaken in the best interests of the Organization, to the benefit of the general public and its donors, and in furtherance of its charitable purposes. It, therefore, remains our position that by placing its charitable resources at undue risk, the Organization failed to demonstrate that it devoted all of its resources to charitable activities undertaken in furtherance of its charitable purposes. Such a failure is grounds for revocation under paragraph 168(1)(b) of the Act.

### **1.3 Gifting to non-qualified donees/Failure to devote its resources to charitable activities carried on by the organization itself by demonstrating the necessary direction and control**

Our review of Organization's books and records indicate that, over the period of the audit, it gifted a total of \$20,215<sup>52</sup> to non-qualified donees, as follows:

Gifting to NQD	2007	2008	2009	TOTAL
(a) ISNA Human Development Institute	7,500	950		8,450

<sup>50</sup> As opposed to the similar standard laid out in, for example, the *Trustee Act* of Alberta, Newfoundland, Saskatchewan, or Prince Edward Island.

We do not believe that the standard established by the *Trustee Act* challenges or runs counter to the subjective standard of care laid out in *City Equitable Fire Insurance Company Limited*, which holds that a director "need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience."

<sup>51</sup> M. Chesterman, *Charities, Trusts and Social Welfare* London: Weidenfeld and Nicolson, 1979, p. 136; and see generally, *Gilmour v. Coax* et al. [1949] 1 All E.R. 848.

<sup>52</sup> Please note, as discussed in section 1.3 b) of our AFL, the nature of the resources gifted to the Brandon Islamic Centre and the Islamic Centre of Yellowknife includes resources other than funds. The total amount gifted, therefore, is greater than that reflected by this number.

(b) Brandon Islamic Centre and Islamic Centre of Yellowknife	6,146	919	7,065
	5,000	5,000	
Total	7,500	7,096	20,515

In the absence of documentary evidence demonstrating direction and control, it was our preliminary conclusion that the Organization has gifted its resources to non-qualified donees and operated in direct contravention to section 149.1(1) of the Act that requires that a charitable organization devote all of its resources to charitable activities carried on by the organization itself.

Section 149.1(2)(c) of the Act states that the Minister may, in the manner described in section 168, revoke the registration of a charitable organization where the organization 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.

#### Organization's representations

As pertains to the provision of funds to the ISNA Human Development Institute, the Organization stated that all of the directors of ISNA Human Development Institute were also directors of the Organization and that, as such, the Organization maintained full direction and control over ISNA Human Development Institute. The Organization further represented that ISNA Human Development Institute restricts its membership, in part, to those who are also members of the Organization.

As pertains to both the Brandon Islamic Centre and the Islamic Centre of Yellowknife, the Organization's representations were as follows:

1. It was the intention of the Organization that these Centres would be operated as the charitable activities of the Organization. However, as noted in the CRA's AFL, both organizations subsequently separately incorporated and have established separate Boards of Directors and governing documents. The Organization attempted to exercise direction and control over the operations of these organizations: for example, two or three of the Organization's directors were signing officers on the bank account for the Islamic Centre of Yellowknife and both Dr. Ashraf and Mr. Nasim served on its executive committee.
2. However, recognizing that it "*may have achieved this intent through other means*", the Organization states that "*it is prepared to undertake to:*"
  - *Have Brandon Islamic Centre and Islamic Centre of Yellowknife dissolve and transfer their assets to the [Organization] so that they can become the own activities of the [Organization]; or*
  - *Brandon Islamic Centre and Islamic Centre of Yellowknife will apply for charitable status in order to become qualified donees.*"

#### CRA's Conclusion

As indicated in our AFL, Subsection 149.1(1) of the Act stipulates that the resources of a charitable organization can only be properly applied in two ways: (1) on "charitable activities that are carried on by the organization itself"; and (2) on gifts to "qualified donees" as defined in the Act.

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.<sup>53</sup> 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.<sup>54</sup> However, in all instances, the charity must be able to substantiate that the activities involved are undertaken at its initiative and direction, and are conducted under its supervision and control. The charity must be the body that makes decisions and sets parameters on significant issues related to the activity on an ongoing basis. We refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation v. Canada*:

*Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities...*

(a) As pertains to the resources provided to the Human Development Institute

The Organization argues that it maintained direction and control over the funds transferred to the Human Development Institute (the Institute) because the Institute was "controlled" by the Organization. In support of this assertion, the Organization provided the following documentation:

- An undated document entitled "Human Development Institute List of the Directors", naming Dr. Imtiaz Ahmad, Mr. Syed M. Afaq Moin, and Dr. M. Ashraf, as the Institute's directors.
- A copy of the Institute's governing documents, including its By-Laws, of which Article V states that membership is "open to individuals who are members of ISNA-Canada Council and/or Canadian Islamic Trust Foundation"; and
- A document described in the Organization's representations as a "description of the purpose" of the Institute, but that rather appears to serve as a description or internal definition of the term "human development".

Documentation available to the CRA, does not confirm the Organization's assertion that "all the directors of ISNA Human Development Institute were also directors of the Charity". According to the information filed with the Organization's T3010s, the following individuals were its directors during the audit period:

	2007	2008	2009
Mohammad Khadim	X	X	
Mohammad Ashraf	X	X	X
Mohammad Bekkari	X	X	X
Gulam N. Chaudhury	X	X	X
Khalid Tarabain			X

<sup>53</sup> *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 *Bayit Lepletot v. Canada (Minister of National Revenue)*, (2006) FCA 128.

<sup>54</sup> As defined in CRA's Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada*, an intermediary is a person or a non-qualified donee that is separate from the charity, but that the charity works with to carry out its own activities.

A comparison of this information with the names of the Institute's directors as provided in the Organization's representations only identifies one common director, namely Dr. Mohammad Ashraf. Given this, it would appear improbable that the Organization exercised control and direction of the Institute, a separately incorporated organization, simply by virtue of a shared director.<sup>55</sup>

The CRA is not certain how Article V of the Institute's bylaws, which states that its membership, and not its Board of Directors, is "open to individuals who are members of ISNA-Canada Council and/or [the Organization]", can be interpreted or construed as a means whereby the Organization asserted direction and control of the Institute's activities.

The Organization has provided no additional documentation to establish that it met the statutory requirement that a charitable organization devote its resources to "charitable activities carried on by the organization itself" in relation to the Institute, including details as to the activities towards which its resources were dedicated, copies of operating agreements, any records demonstrating the charity's internal decision-making mechanisms as pertains to its relationship with the Institute, and records of any communications, policies or procedures.

(b) As pertains to the resources provided to the Brandon Islamic Centre and the Islamic Centre of Yellowknife

We acknowledge the Organization's representations regarding its "intent" to operate the Brandon Islamic Centre and the Islamic Centre of Yellowknife as its own charitable activities. However, the examples provided in support of this assertion pertain only to the Islamic Centre of Yellowknife and do not serve to demonstrate either of the Centres' activities as the Organization's own.

In response to the specific examples highlighted by the Organization, we note the following:

- Only one of the three directors identified as the signing officers for the Islamic Centre of Yellowknife's bank account was a director of the Organization during the audit period, namely Dr. Ashraf; and
- Only two of the six members and officers identified in the July 14, 2006 document listing the Islamic Centre of Yellowknife's Executive Committee members for 2006-2010<sup>56</sup> have been identified as – directors of the Organization during the audit period, namely Dr. Ashraf and Mr. Gulam N. Chaudhury.

Although not referenced in the main body of its letter, the Organization also provided copies of the following documents in Tab I of its representations:

- A Tax Arrears Statement dated June 2006 for the Yellowknife property addressed to the Organization's attention;
- A letter from the City of Yellowknife dated December 22, 2000, pertaining to the collection of unpaid utility bills similarly addressed to the Organization's attention;

<sup>55</sup> The Organization provided no additional documentation to substantiate its claim to "control" the Institute, including minutes of the Institute's Board of Directors' meetings that could indicate what role or level of participation the Organization may have had in the governances of the Institute.

<sup>56</sup> As provided in Tab I of the Organization's representations.

- A letter dated August 28, 2000, from the Organization to the [REDACTED], detailing the Organization's purchase of the property, and requesting tax exempt status for it;
- The Organization's Notification of Registration;
- An Offer of Purchase of \$143,000, signed April 8, 2000, for the Yellowknife property;
- An August 10, 2000 letter from a legal firm addressed to the Organization and confirming the purchase of the Yellowknife property;
- A July 28, 2000 facsimile of the Statement of Adjustments setting out the balance due at closing of the property and naming the Organization as the "Purchaser"; and
- A July 25, 2000 facsimile of a document entitled "Purchaser's warranty, representation and acknowledgement regarding goods and services tax payment and remittance", identifying the Organization as the "Purchaser" of the Yellowknife property.

We note that the CRA was aware that the Organization had purchased and retained ownership of the Yellowknife property. Our understanding in this regard is detailed in our AFL and was the basis of our concern that, in addition to the transfer of funds, the Organization appeared to otherwise be supporting the operations of the Islamic Centre of Yellowknife by gifting its resources "*in the form of the rent-free use of its properties – located at 834 10<sup>th</sup> Street, Brandon, Manitoba, and 4100 Franklin Avenue, Yellowknife, Northwest Territories – in support of the operations of these two centres.*"

The Organization's representations failed to demonstrate that it fulfilled the role of the principal undertaking its own charitable activities through the ISNA Human Development Institute, the Islamic Centre of Yellowknife, and the Brandon Islamic Centre. Consequently, it remains our conclusion that the Organization has gifted its resources to non-qualified donees and operated in direct contravention to subsection 149.1(1) of the Act that requires that a charitable organization devote all of its resources to charitable activities carried on by the organization itself.

Subparagraph 149.1(2)(c) of the Act states that the Minister may, in the manner described in section 168, revoke the registration of a charitable organization where the organization 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.

#### Proposed Amendment to Purposes

Conceding that "*it may have embarked upon charitable activities not strictly within the scope of the charitable purpose initially provided to the CRA, notwithstanding that it is the Charity's position that the purpose continues to be charitable*", the Organization proposed that it "*amend its charitable purposes in recognition of its main title-holding activities on behalf of other qualified donees.*"

If 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 expressed in section 1.1. However, as substantive concerns remain with respect to the Organization's activities

and operations constituting grounds for the revocation of the Organization, any amendment of the Organization's purposes is not considered to be an adequate resolution.

#### Refusal of Annulment

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

According to subsection 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 1.1.1 of this letter, it is our position that the Organization qualified for charitable registration at the time of its registration. The decision to register was a reasonable decision based on the information available to the CRA at the time. As such, we are of the opinion that the Organization was not registered in error.

We also considered if annulment could be granted 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. As is also described in section 1.1.1 above, the Organization has not shown, nor have we been able to identify, any changes to the law which would warrant its annulment. Accordingly, 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.

#### **2. Failed to Comply with or Contravened any of Sections 230 to 231.5 of the Act**

Subsection 230(2) of the Act requires that every registered charity keep books and records of account at an address in Canada recorded with the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration. A failure to maintain proper books and records in accordance with the requirement of the Act is itself sufficient reason to revoke an organization's charitable status.

## 2.1 Failure to maintain proper books and records

### 2.1.1 Properties held in trust

As previously noted, the Organization holds trust to numerous properties in two capacities: the first as related to its role as *waqf*; and the second as related to the provision of operational support to the Housing Co-operatives. The Organization failed to maintain proper books and records in relation to both, as follows:

- *As related to its role as waqf:* Upon CRA's request for a list of the names of all the organizations with which it had entered into waqf agreements, along with copies of all related documentation, such as waqf deeds/contracts, the Organization provided the CRA with a list of fourteen organizations, a blank sample copy of a trust agreement, and a signed copy of its agreement with the Halton Islamic Association, an Ontario based organization that had not been identified by the Organization on its list.<sup>57</sup>
- *As related to its activities undertaken on behalf of the Housing Co-operatives:* The Organization was unable to provide documentation pertaining to, or an accounting of, the number of properties it holds title to on behalf of the Housing Co-operatives.<sup>58</sup>

Therefore, it was our preliminary finding that the Organization failed to maintain proper books and records in that it does not have all of the documentation to account for the properties it holds title to. As a result, the CRA is unable to determine the completeness and accuracy of the Organization properties holdings, either as it relates to its activities undertaken as *waqf*, or in relation to the activities undertaken on behalf of the Housing Co-operatives.

### Organization's Representations

1. Citing the Federal Court of Appeals case, *Prescient Foundation v. Minister of National Revenue* (2013 FCA 120), the Organization reiterated paragraph 47 of the ruling, where the Court held that the Minister "must (a) clearly identify the information which the registered charity has failed to keep, and (b) explain why this breach justifies the revocation of the charity's registration," while asserting that the Organization provided the CRA with the information requested to the "best of its ability."
2. Again, citing *Prescient Foundation*, the Organization submitted that the onus lies with it concerning the books and records requirement under the Act, while raising an issue that the same case also "called into question [with respect to] revocation on the basis of inadequate books and records... when 'the Minister has less drastic administrative corrective measures or intermediate sanctions available to him...'" and listed the ranges of intermediate sanctions, such as formal notices, compliance agreement, or the suspension of receiving privileges under paragraph 188.2(2)(a) of the Act.
3. Nonetheless, as pertains to the properties it holds in trust in its capacity as *waqf*, the Organization provided copies of "further trust agreements in order to evidence that it has maintained adequate

<sup>57</sup> Please refer to Appendix C of the AFI for details.

<sup>58</sup> Please refer to Appendix B of the AFI for details.

*books and records with regards to the properties it holds in trust.”* Tab J of the Organization’s representations contains trust agreements for the Islamic Centre of Cambridge, the Kanata Muslim Association, the Muslim Community of Quebec, and the Association Culturelle Islamique de L’estrie.

4. As pertains to the properties it holds in trust on behalf of the Housing Co-operatives, the Organization stated that “[e]ach house has a separate Trust Agreement drawn up by legal counsel at that time. The reason that the [Organization] took title to these properties was because in the start-up phase of the Housing Co-operatives, the Housing Co-operatives had very few members in those provinces and the Housing Co-operatives were not extra-provincial registered in those provinces. As membership and home purchases increased in some provinces, the Housing Co-operatives were registered there and thus eliminated the need to hold the title in trust.”

#### CRA’s Conclusion

*As related to its role as waqf:* As documented in Appendix C of our AFL, the Organization holds title to 14 properties in its capacity as waqf.<sup>59</sup> In addition to the copy of trust agreement provided to the CRA in response to our original request at the time of the audit interview, the Organization has provided four more agreement for a total of five. Taking into consideration the trust agreements the CRA was itself otherwise able to obtain from the electronic documents copied from the Organization’s server, the Organization has failed to provide trust agreements for the following 7 properties:

- Islamic Centre of Toronto (Jami Mosque), 56 Boustead Avenue, Toronto, Ontario
- Islamic Centre of Canada, 2200 South Sheridan Way, Mississauga, Ontario
- Islamic Schools Association of Canada, 1525 Sherway Drive, Mississauga, Ontario
- Ottawa Islamic School, 10 Coral Avenue, Ottawa, Ontario
- Islamic Foundation of Toronto, 441 Nugget Avenue, Scarborough, Ontario
- Centre Cultural Islamique de la Mauricie, 3009 Boulevard de Forges, Trois Rivières, Quebec
- Muslim Community of Edmonton and Muslim House, 10721-86<sup>th</sup> Avenue NW, Edmonton, Alberta.

*As related to its activities undertaken on behalf of the Housing Co-operatives:* As detailed in Appendix B of our AFL, the Organization was unable to provide documentation pertaining to, or an accounting of, the number of properties it holds title to on behalf of the Housing Co-operatives. The CRA identified forty-four (44) properties that were located outside of the Provinces of Ontario and Quebec, which were held in trust by the Organization during the audit period. The Organization has not provided us with an accounting of the number of properties it held and was not able to provide a single agreement relating to these properties.

While the CRA agrees with the Organization’s submission, which states it is the responsibility of the Organization to comply with the books and records requirement under the Act, the fact remains that the Organization has yet to demonstrate that it adequately maintained proper records in both instances of the Organization’s property holdings—as related to its activities as waqf and to the activities

<sup>59</sup> In addition to these 14, it also holds title to the properties out of which the Brandon Islamic Centre and the Islamic Centre of Yellowknife operate. However, as previously discussed in our AFL, these properties are not held in trust, but were rather purchased by the Organization.

undertaken on behalf of the Housing Co-operatives. As such, we do not accept the Organization's claim that it maintained adequate books and records relating to its properties.

In regard to the ranges of "intermediate sanctions," it should be noted that the aggregate value of properties the Organization held or continued to hold in trust came to \$9,385,821, based on the property values indicated on the title search documents.<sup>60</sup> In addition, there was, as illustrated above, a significant non-compliance issue relating to the proper maintenance of books and records, or lack thereof, on these properties – especially those properties held on behalf of the Housing Co-operatives where the Organization failed to provide a single documentation to account for them – resulting in the CRA being unable to determine the completeness and accuracy of the property holdings by the Organization. Furthermore, the Organization failed to demonstrate through books and records that they were engaged in charitable activities in relation to the activities undertaken on behalf of the Housing Co-operatives.

Given the magnitude of the amount involved, that is over \$9.3 million, coupled with almost total lack of books and records on these properties, the Organization's failure to maintain proper books and records was determined to be significant and material enough that it warrants revocation.

In addition, the Organization's complete silence throughout its representations as to the number of properties it holds in trust outside of Ontario and Quebec vis-à-vis that of the CRA's presented listing of holdings and its failure to provide any listing of its own, or confirmation or counter-argument as to the number of properties in question, may suggest, rather strongly, that the Organization itself may not know the exact number of properties it held or continues to hold. If this is the case, the implication may be that the Organization may face even greater problems than just the failure to maintain books and records. The Organization has placed itself at risk as it lacks the operational information as fundamental as what it legally owns, and the extent of the liability it has assumed when in dealing with harm or damages as the legal owner of real properties.<sup>61</sup>

#### 2.1.2 Lack of supporting documentation to account for balance sheet adjustments with respect to the Islamic Centre of Canada (ICC) Project

The ICC Project relates to the acquisition of the 2200 South Sheridan Way property, and the subsequent construction and renovations done on the property. The ICC is a separately incorporated organization. The Organization considers it an affiliate of ISNA. The primary function of the ICC appears to be the management of 2200 South Sheridan Way facility, in Mississauga, Ontario, which houses a mosque, a high school, and a number of ISNA affiliate organizations, including for-profit Housing Co-operatives, and the Organization itself.

Reviewed records indicated that the above property was acquired "jointly by ISNA and Islamic Co-operative Housing Corporation (ICHC)" in 1996, while the legal ownership of the property was "taken in the name of CITF in Trust."<sup>62</sup> The Certificate of Registration for the property identifies the

<sup>60</sup> Out of the forty-four properties in question, nine of them did not have any property value attached to them. Thus, the \$9.3 million was based on only thirty-five properties, out of 45 in total. As such, the total value of those properties the Organization held in trust would certainly be much higher than \$9.3 million. Please refer to Appendix B, Schedule 0109-B *Properties Held in Trust* for the listing of individual property and its property value, per title search.

<sup>61</sup> As indicated in the meeting minutes of the Board of Directors, dated August 20, 2009, page 5 of the Appendix B of AFL, this type of risk did not remain hypothetical situations only. The minutes reported that the Organization was served a number of municipal tax notices from the City of Calgary and Land Transfer tax from the Province of British Columbia for the properties that were in default.

<sup>62</sup> According to the "Islamic Centre of Canada Construction Cost Investigation Report"

Organization as the legal owner of the property. Since then, the Organization has held a nominal title to the property as a trust.

In the course of the audit period, and in 2004, the Organization made a number of balance sheet adjustments with respect to the ICC Project in its reported financial statements, each time involving millions of dollars, undertaken with little or no supporting documentation, as follows:

- Year-end 2004: The Organization's financial statements reported an increase of an approximately \$4 million each in the asset and liability sections of the balance sheet relating to the ICC Project, from the previous year.
- Year-end 2007: The Organization reported the similar amounts being reduced for the same accounts that were the subject of an increase in year-end 2004, as its financial statements show a decrease of \$3.8 million and \$3.5 million for assets and liabilities, respectively.
- Year-end 2009: The Organization yet again revised the total ICC Project cost and determined it to be \$9,587,943, of which \$2,297,943 was either lacking supporting documentation, or the nature of such amount being unknown, unspecified, or unexplained.<sup>63</sup>

Therefore, it was our preliminary view that the Organization failed to maintain proper books and records to substantiate the adjustments made in the books of accounts, and that it made significant and material adjustments to its year-ends 2004, 2007, and 2009 financial statements without any supporting documentation.

#### Organization's Representations

The Organization's representation is silent on this particular issue, where it failed to maintain proper books and records to substantiate the adjustments made in the books of accounts.

#### CRA's Conclusion

The Organization failed to provide any information that would alleviate the non-compliance concerns with respect to the maintenance of proper books and records relating to the ICC Project. Nor did the Organization provide any indication as to how it intended to correct and resolve the issues relating to the cost of the ICC Project in its books.

Therefore, it is our view that the Organization has failed to meet the requirements set out in subsection 230(2) of the Act. The severity of the non-compliance in terms of the materiality of the amounts involved, was determined to be such that the Minister may revoke the registration of the Organization because it failed to comply with or contravened sections 230 to 231.5, pursuant to paragraph 168(1)(e) of the Act.

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<sup>63</sup> While close to \$2.3 million out of the total project cost of \$9,587,943 was identified as lacking documentation or the nature of its expenditures, the remaining amount, that is \$7,290,000 (\$9,587,943 – 2,297,943), is yet to be supported by evidentiary documents. The Organization failed to provide supporting documents for its reported total cost for ICC Project.

**3. Issued a Receipt for a Gift otherwise than in Accordance with the Act and the Regulations (Regulations 3500 and 3501, and 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 deliberately false information. 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 entered into a third-party receipting scheme with the Brandon Islamic Centre, and issued receipts in the amount of \$48,735 over the period under audit.<sup>64</sup>

Therefore, it was our preliminary view that the Organization issued donation receipts in contravention to the Act and Regulation 3501. Such a non-compliance practice is significant enough that, for this reason alone, it constitutes grounds for revocation pursuant to paragraph 168(1)(d) of the Act.

Alternatively, the Organization may be liable to pay a penalty of \$60,918, which is equal to 125% of the eligible amount stated on the receipt, i.e.  $\$48,735 \times 125\%$ , pursuant to subsection 188.1(9) of the Act.

**Organization's Representations**

The Organization stated that it had "ceased this practice since 2013."

**CRA's Conclusion**

Although the Organization stated that it had ceased the third-party receipting practice "since 2013", the magnitude of the amounts, or the proportion, involved vis-à-vis the total amounts the Organization received for those years cannot be overlooked. For the years reviewed under audit, that is, year-ends 2007, 2008, and 2009, the amount for which the Organization improperly received under the third-party receipting scheme accounted for, on average, about 43 percent of the total amount the Organization received throughout the audit period, with one particular year, where that percentage rose to 50% in year-end 2008.<sup>65</sup>

<sup>64</sup> \$16,050 in 2007, \$17,950 in 2008, and \$14,735 in 2009.

<sup>65</sup> Third-party receipted amount vs. Total Received:

Year-end	Third-party Received	Total Received per T3010	Third-party over Total Received
	(\$) (1)	(\$) (2)	[ (1)/(2) ]
2007	16,050	39,990	40%
2008	17,950	35,830	50%
2009	14,735	38,565	38%
Over-all	48,735	114,385	43%

Whereas the Organization does not dispute the audit finding that it issued donation receipts in contravention to the Act and Regulation 3501, when the Organization stated that it ceased the practice that was identified as non-compliance, 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.

#### **4. Failed to file an information return as required under the Act or its Regulations**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's taxation year, without notice or demand, file both a Registered Charity Information Return (T3010) with the applicable schedules. Form T3010 must be completed by a director, trustee or like official of the charity. By signing the Form T3010, the official certifies that "the information given on this form, the basic information sheet and any attachments is, to the best of my knowledge, correct, complete, and current."<sup>66</sup> The certification block also contains the warning "It is a serious offence under the *Income Tax Act* to provide false or deceptive information." A charity is not meeting its requirement to file an information return if it fails to ensure the accuracy of the information contained therein.

##### **4.1 Misstatement of the financial statements relating to a Trust Property (the ICC Project). Year-ends 2007 - 2009**

In addition to the issues discussed in section 2.1.2 regarding the lack of supporting documentation with respect to the reported costs of ICC Project, the re-characterization of the trust property (ICC Project) to long-term loans also raised significant concerns as the Organization failed to demonstrate how such property was converted to long-term loans.

Our audit revealed that the Organization has held a nominal title to the 2200 South Sheridan Way property as a trust since 1996, thereby, when requested, the Organization is obligated to return the property to its beneficial owners, that is, ICHC and ISNA. As such, the Organization booked such property as Trust Funds under the liabilities section of its balance sheet since the original entry, that is, year-ends 1996 through 2006.<sup>67</sup>

However, the Organization re-characterized such property as long-term debts payable to ISNA, ACHC and ICHC, and reported as such since year-end 2007, as follows:

<sup>66</sup> Under Section E, Certification, of T3010.

<sup>67</sup> The classification of the trust property as reported on the financial statements in the liabilities section of the balance sheet from the original entry of year-end 1996 through 2006:

<b>1996 - 1997</b>	<b>1998 - 2002</b>	<b>2003 - 2006</b>
<b>Liabilities - Trust Fund:</b> Contributions - Building	<b>Liabilities - Trust Fund:</b> Contributions - Building Contribution - ISNA in ICC Contribution - ICHC in ICC	<b>Liabilities - Trust Fund:</b> Contribution - ISNA in ICC Contribution - ACHC in ICC Contribution - ICHC in ICC

<b>Long Term Liabilities – Loans:</b> <sup>68</sup>	<b>2007</b>	<b>2008</b>	<b>2009</b>
ISNA	1,205,767	1,205,767	464,610
ACHC - Interest Free Loan	1,095,000	1,095,000	1,095,000
ICHC - Interest Free Loan	1,434,900	1,434,900	6,562,000
	<b>3,735,667</b>	<b>3,735,667</b>	<b>8,121,610</b>

In essence, the Organization reported that it now owes \$8.1 million to ISNA, ACHC, and ICHC in the form of long-term loans for the property it merely has held a nominal title. In contrast, the Organization's legal and financial obligations relating to the property – prior to the re-characterization of trust property to long-term loans – would have been fulfilled when the Organization simply returned the property to the beneficiary owners regardless of the value of the property at the time it was returned.

The Organization failed to demonstrate such conversion of a trust property to loans with documentary evidence.

Therefore, it was our preliminary understanding that the Organization made material misstatements in its financial statements when it reported that the Organization was responsible for long-term loans relating to a trust property, and as such, the Organization failed to file accurate Form T3010s for the periods under audit.

#### Organization's Representations

Although the Organization refers to its representations made under sections 2.1.2 above on this particular issue, none of the representations made under the aforementioned sections or any part of the representations specifically dealt with or addressed this particular issue.

#### CRA's Conclusion

In the absence of the Organization's response on this matter, it is assumed that the Organization accepts the audit findings without any disputes as laid out in the AFL. However, this silence elevates our concern, as the Organization has not provided any indication as to how it intends to correct and resolve this misstatement issue.

Due to the material amount involved, which is over \$8 million, and the significant risk of the loss of such charitable resources this particular misstatement poses, the Organization must address and resolve this non-compliance issue.

<sup>68</sup> The T3010s for the years subsequent to the audit period, including the latest year of filing for year-end 2012, report that such long-term loans have remained. The Organization's reported long-term loans, per the Organization's financial statements:

YE	2009	2010	2011	2012
ISNA	464,610	464,610	464,610	464,610
ACHC* - Interest Free Loan	1,095,000			
ICHC* - Interest Free Loan	6,562,000	7,657,000	7,657,000	7,657,000
	<b>8,121,610</b>	<b>8,121,610</b>	<b>8,121,610</b>	<b>8,121,610</b>

\*In YE 2010, \$1,095,000 of the loan amounts to ACHC appears to have been amalgamated into that of ICHC, thereby, increasing ICHC's receivable by exactly the same amount, as ACHC's was reduced to nil from YE 2009.

Therefore, it is our view that the Organization made material misstatements in its financial statements when it reported that the Organization was responsible for long-term loans relating to a trust property, and as such, the Organization failed to file Form T3010s for the period under audit.

#### 4.2 The nature of programs reported (section C, T3010)

The Organization appeared to have failed to accurately report to the CRA the nature of its programs in section C2 of its Form T3010s for the entire period under audit.<sup>69</sup> The Organization's Form T3010s consistently identified the following four programs:

- Help to build Islamic Centres and Mosques in Canada;
- Help to build Islamic Schools;
- Coordinating Islamic summer school and special educational workshops for adults;
- Organizing Islamic programmes to create better understanding between different faiths.

The CRA has not been provided with documentation to indicate that the Organization has undertaken activities in support of the programs identified in its T3010 Returns, although it could perhaps be argued that the first two were indirectly accomplished through its activities as a waqf.

Furthermore, it is our opinion that the Organization has failed to report the main program areas observed during the audit, namely: acting as a waqf by holding the properties of registered charities in trust; supporting the operations of the Housing Co-operatives by holding residential properties in trust; the apparent provision of Islamic funeral services at 2200 South Sheridan Way;<sup>70</sup> and its apparent operational oversight of the Islamic Centre of Toronto (Jami Mosque).<sup>71</sup>

#### The Organization's Representation

1. Alleging that the Organization has not ensured that it filed an accurate T3010 based upon its own description of its activities in the T3010 is manifestly unfair. T3010s are generally prepared with the assistance of accountants who normally recite the same description of activities that a registered charity has filed year over year.
2. It is not clear how acting as a waqf, with the intent to hold religious and educational properties in trust, is any different than helping to build Islamic centres, mosques, and schools in Canada. By holding these properties in trust for the benefit of the Muslim community, the Organization is in effect helping to establish these centres by preserving them and preventing them from being taken over by factional disputes.

<sup>69</sup> The instructions provided on the Form T3010 pertaining to section C2 read as follows: "Describe how the charity carried out its charitable purposes during the fiscal period. Give detailed information so a reader can clearly understand what the charity actually did to fulfill its mandate. Describe the charity's **ongoing programs** and **new programs** in the spaces provided below..." More detail, including example descriptions, as to this section is provided in CRA's guide "Completing the Registered Charity Information Return".

<sup>70</sup> Our understanding in this regard is not confirmed. Responsibility for the funeral services appears to be divided between ISNA and the Organization; the CRA, however, is unsure of the Organization's exact role.

<sup>71</sup> As determined by an overview of the minutes for the Organization's Board of Directors' meetings and as discussed in further detail in our letter pertaining to the operation of the ISNA, Islamic Services of Canada.

## CRA's Conclusion

We partially concede that programming related to the provision of help “*to build Islamic Centres and Mosques in Canada*” and “*to build Islamic Schools*” could be broadly interpreted to fall under the Organization’s role as waqf.<sup>72</sup> However, the Organization has failed to provide any documentation to indicate that it undertook activities related to the latter two programs recorded on its T3010s: the coordination of “*Islamic summer school and special educational workshops for adults*” and the organization of “*Islamic programmes to create better understanding between different faiths*.”

The Organization’s representations were silent to our concerns raised regarding T3010 reporting of its additional programming in relation to supporting the operations of the Housing Co-operatives by holding residential properties in trust; the apparent provision of Islamic funeral services at 2200 South Sheridan Way; and its apparent operational oversight of the Islamic Centre of Toronto (Jami Mosque).

Overall, we maintain our position that the description of activities provided by the Organization in section C2 of its T3010 failed to provide an accurate or complete picture of its programming, including as to the exact nature of the activities it has undertaken as waqf, which were focused on the largely passive undertaking of holding in trust properties beneficially owned by Islamic charities.

As stated in our AFL, the CRA’s publication, *Charities Connection*, explains that “[a] return that contains unnecessary or incorrect information, or that omits information, can give a false impression of a charity’s situation. Accuracy is crucial because the CRA uses the information to determine whether a charity is complying with its obligations under the Income Tax Act. The information on the return is also used by potential donors and the general public to evaluate a charity’s effectiveness and efficiency.”<sup>73</sup>

The provision of misleading information pertaining to an organization’s activities on its Form T3010 causes harm to the public and to the integrity of the registration system for charities by misleading, or misinforming, donors or potential donors.<sup>74</sup> There is significant harm associated with a deceptive or misleading statement, regardless of whether the charity’s conduct is intentional or negligent.

Regardless of whether the T3010 is completed by “accountants who normally recite the same description of activities that a registered charity has filed year over year”, as represented by the Organization, a registered charity is required to ensure that representations made by it, and those acting on its behalf, are fair, truthful, accurate, and complete.

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<sup>72</sup> As regards the programming identified in its Form T3010, the Organization’s directors explained during the audit commencement interview that it undertook “no direct activities of [this] nature”, but was rather “once removed.” A review of the Organization’s Board of Director meeting minutes for the periods under audit, would indicate that any of its activities undertaken in its capacity as waqf was limited to discussions around the advisability and approval of the sale of certain properties, not the provision of active or financial assistance to build Mosques or schools.

<sup>73</sup> *Charities Connection*, No. 6 – May 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/nwsltrs/cnncn06-eng.html>

<sup>74</sup> See also CRA’s Guidance, *Fundraising by Registered Charities*, for information on activities resulting in harm to the public interest in the context of misrepresentations and fundraising. <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/findrsng-eng.html>

### The Filing of an Incomplete or Inaccurate Form T3010

In addition to the above, the Organization made further representations questioning whether the CRA correctly applied paragraph 168(1)(c) of the Act. The Organization noted that “AFL does not allege that information returns were not filed, only that information returns were not accurately completed” and contented that:

*Since the information returns were filed in the prescribed form with the prescribed information, paragraph 168(1)(c) has no application to the [Organization]. Where an information return has been filed incomplete or where inaccurate information is included on the annual information return, the proper recourse of CRA is section 188.2 of the Act, which provides for a suspension of receiving privileges only. By indicating that the deficiencies alleged on the T3010s of the [Organization] constitute a failure to file the information return, the AFL is imposing additional requirements on the [Organization] which are not found in the Act.*

The Organization further stated that the Form T3010s were “prepared with the assistance of a professional accountant who reviewed the financial information provided by the [Organization] and completed the T3010 accordingly.” The Organization also claimed that the directors of the Organization “relied upon this professional advice and were not aware of the inaccurate completion of the T3010.”

The CRA agrees that the non-compliance findings relating to the failure to file an accurate or complete Form T3010, may additionally be addressed through the application of section 188.2. However, it should be noted that the section 188.2, or more specifically, subsection 188.2(2.1):

- came into force on Royal Assent in June of 2012, a period that is after the audit period for the Organization. Thus, this particular section could not have been applied to the Organization for the audit period ending in year-end 2009.
- is only one of legislative measures the CRA can employ for non-compliance relating to incomplete or inaccurate information on the returns. Other legislative measures the CRA may pursue include revocation pursuant to paragraph 168(1)(c) of the Act.

The Act requires the Organization to file “both an information return and a public information return for the year in prescribed form and containing prescribed information.”<sup>75</sup> The prescribed information is that which is demanded by the prescribed form. By failing to provide prescribed information, as illustrated in the numerous incidents of incorrect or incomplete information above, the Organization failed to file a return as required by the Act for the period under audit. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are sufficient basis for revocation under paragraph 168(1)(c) of the Act.<sup>76</sup>

The Organization’s representation that its Board of Directors “relied upon this professional advice [of an accountant] and were not aware of the inaccurate completion of the T3010”, appears to indicate that the Organization agrees with the CRA’s findings related to the inaccuracies on its Form T3010s.

<sup>75</sup> Subsection 149.1(14) of the Act.

<sup>76</sup> *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51.

Furthermore, the Organization's professed ignorance as to the inaccuracies on its filings, in itself, is not accepted as a mitigating factor for such incomplete returns, especially, when the returns were completed based on information provided by the Organization. As also explained above, its reliance on a professional accountant does not absolve the Organization of legal responsibility with respect to filing Form T3010s that are complete and accurate.

It is, therefore, our view that the Organization failed to file complete and accurate Form T3010s and thereby failed to meet the requirement to file a prescribed information return pursuant to subsection 149.1(14) of the Act. 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)(c) of the Act.

## ITR APPENDIX B

### 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 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.