



# International Civil Liberties Monitoring Group

## The CRA's Prejudiced Audits

Counter-Terrorism and the Targeting  
of Muslim Charities in Canada

Tim McSorley

International Civil Liberties Monitoring Group

May 2021

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## Executive Summary

While there has been much discussion and scrutiny of systemic racism, racial profiling and the overwhelming focus on Muslims in Canada's national security and anti-terrorism activities, Canada's work aimed at preventing terrorist financing has not been subjected to the same degree of examination. This is especially true when it comes to the Canada Revenue Agency's (CRA) activities, via its Charities Directorate and Review and Analysis Division (RAD), in preventing terrorist financing in the charitable sector.

This report demonstrates that a faulty and unsubstantiated national security "risk assessment" approach to the monitoring of terrorism financing in the charitable sector has led to Muslim charities in Canada being unduly targeted for surveillance, audits and revocation of their charitable status. We hope that our findings add to this important yet little studied aspect of counter-terrorism activity in Canada. In particular, we would like to recognize the recent publication of Nadia Hasan and Anver Emon's *Under Layered Suspicion*<sup>1</sup>, which presents three in-depth case studies of the audits of three Canadian Muslim-led charities and comes to similar conclusions as our own.

The September 11, 2001, terrorist attacks in the United States gave grounds for the Canadian government's creation of broad anti-terrorism policies which granted various departments, and particularly security agencies, sweeping new powers. Over the past two decades, these powers have been criticized for undermining rights, increasing secrecy, and broadening state surveillance programs. Researchers have also documented their use to target specific political or religious groups, particularly the Muslim community, along with Indigenous and other racialized communities.

The CRA also benefitted from this increase in mandate and powers, becoming a partner in the government's Anti-Money Laundering and Counter Terrorist Financing (AML/CTF) regime in 2001 with the passage of the *Anti-terrorism Act (ATA)*. This bill modified Canada's *Proceeds of Crime (Money Laundering) Act* to include terrorist financing, creating the new *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. To fulfill its duties under the *PCMLTFA* effectively, the CRA's Charities Directorate established the Review and Analysis Division (RAD) in 2003, charged with investigating terrorist financing in the charitable sector. The work of RAD has become an important, but little known, component of Canada's anti-terrorism financing apparatus.

In 2015, a significant update occurred when the Department of Finance released its first-ever National Risk Assessment (NRA) on money laundering and terrorist financing in Canada. This report concluded that 11 entities, composed of 10 terrorist groups and the broad category of "foreign fighters", had a nexus to Canada and posed a terrorist financing threat, although without publicly presenting the evidence for such conclusions. Nine of these entities were linked to extremist/militant Islamist groups and foreign fighters in Muslim countries. Importantly, all 11 were identified as being linked to racialized communities in Canada. Little public evidence was shared to demonstrate the

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<sup>1</sup> See Anver M. Emon & Nadia Z. Hasan, "Under Layered Suspicion: A Review of CRA Audits of Muslim-Led Charities" (2021), online (pdf): University of Toronto Institute of Islamic Studies <[https://uploads-ssl.webflow.com/6014cdeca65f7f2af7e18187/605eb346393ed260c23713e2\\_Under\\_Layered\\_Suspicion\\_Report\\_Mar2021.pdf](https://uploads-ssl.webflow.com/6014cdeca65f7f2af7e18187/605eb346393ed260c23713e2_Under_Layered_Suspicion_Report_Mar2021.pdf)>

basis for this determination, but it has proved to be the basis for a growing number of audits of charities. Further, the NRA has raised significant questions about the singling out of charities based in Muslim and other racialized communities for scrutiny.

Based on the NRA findings, the federal 2015 Economic Action Plan allocated increased investigative resources to the CRA to allow them to identify and mitigate issues of terrorist financing and money laundering. While RAD's focus was already on Muslim charities even before the release of the NRA, the report's findings triggered the CRA to further target Muslim charities. The new "risk-based approach" gave a rationale for singling out Muslim charities for, knowingly or unknowingly, supporting terrorism. While the NRA did not present any conclusive evidence to connect ISIS, Al-Qaeda, or other foreign terrorist groups to Muslim charities in Canada, the "nexus in Canada" asserted in the report helped create a bias against all Muslim charities: a presumption that Canadian Muslim charities must be monitored, and possibly audited, to verify no terrorist financing risks exist. This includes not only Muslim relief organizations operating internationally but also domestic Muslim organizations that operate mosques and provide local community services.

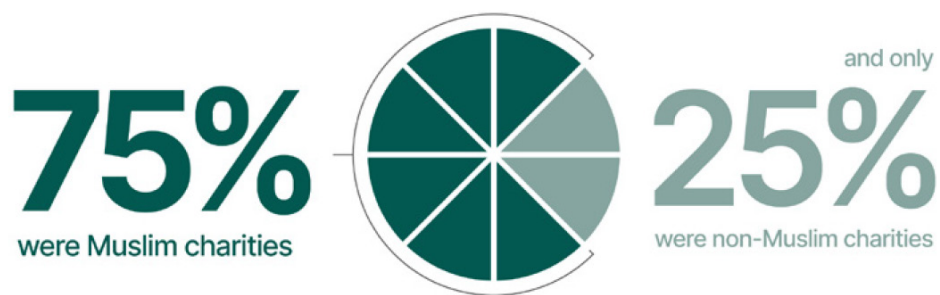
Over the past two decades, the CRA reports it has audited between 600 and 800 charities per year. The vast majority of these audits are selected at random, but other audits are based on the prerogative of the Charities Directorate, inspired by their own investigations and/or by complaints from the public. Based on this, between 2003 and 2015, the CRA would have audited approximately 8,400 charities. Of these, 335 charities saw their status revoked due to audit findings. Of these revocations, 8 were Muslim charities, accounting for 2.4% of all revocations. At the same time, Muslim charities made up only 0.47% of all charitable organizations in Canada in 2015<sup>2</sup>. Some may argue that this small number alone demonstrates no malfeasance. However, it is misleading. Distinction must be made between those randomly selected by the Charities Directorate and those specifically selected by RAD due to terrorist financing concerns.

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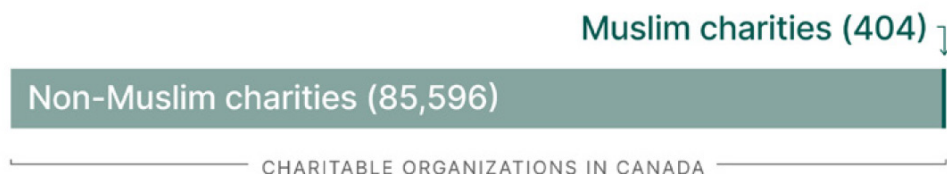
<sup>2</sup> Based on our calculation of 404 Muslim charities in Canada and 86,000 charitable organizations in Canada (2015). This is based on an analysis of the CRA charities database, online at: ... See also, Mark Blumberg, "Blumbergs' Snapshot of the Canadian Charity Sector 2015" (2017) at 1, online (pdf): Canadian Charity Law <[https://www.canadiancharitylaw.ca/uploads/Blumbergs\\_Canadian\\_Charity\\_Sector\\_Snapshot\\_2015.pdf](https://www.canadiancharitylaw.ca/uploads/Blumbergs_Canadian_Charity_Sector_Snapshot_2015.pdf)>.

According to statements by RAD officials, from 2008 to 2015 RAD completed audits of 16 charities, eight of which had their charitable status revoked. Of those eight, we have ascertained that six were Muslim charities, accounting for 75% of RAD revocations during this period. Two additional Muslim charities' statuses were revoked in that time period, but it is unconfirmed if they were audited by RAD.

## Of all RAD-based revocations between 2008-2015



## Despite representing only 0.47% of charities in 2015



Since 2016, while overall RAD revocation statistics are unknown, we have identified four Muslim charities that have seen their status revoked due to RAD audits, and that at least six other Muslim charities are under audit by RAD. This presents a significant increase in annual audits of Muslim charities by RAD, following the publication in 2015 of the NRA. Further, unlike during the first period, most of the Muslim charities undergoing audits during this period have been domestic charities, marking a significant shift in approach.

Ultimately, it can only be assumed that the vast majority of charities audited by RAD since 2015 are Muslim charities, given RAD is expected to follow the NRA's guidance regarding risks of terrorist financing that focuses almost exclusively on Muslim-linked entities or threats.

While a lack of transparency and independent review makes it impossible to pinpoint exact numbers, this data clearly demonstrates a specific focus on and singling out of Muslim charities since at least 2003.

Adding to the problematic nature of RAD audits is that they are undeclared. While no exhaustive or formal description of a RAD audit exists, our research has revealed several defining characteristics, including: revocation letters are redacted; audits take many years to complete; RAD teams are made of auditors as well as law enforcement and national security agents; RAD uses distinct practices including confiscation of electronics and files, extensive examinations, intelligence and surveillance, and digital audit of a charity's events/programming; and extensive budgets are allocated for travel domestically and internationally.

RAD revocations also typically receive more media attention, due to the high-profile allegations they contain. This often results in a greater impact on the organizations under audit by RAD than those charities facing a more standard audit, and has ripple effects on the Muslim charitable sector as a whole.

RAD does not work alone, and is a partner in the National Security Investigations (NSI) - Anti-Terrorist Financing Team with the Royal Canadian Mounted Police (RCMP). The Canadian Security Intelligence Service (CSIS) also works with RAD as it investigates charities as part of their anti-terrorism activities. RAD is also a part of a secondment program where employees from partner agencies are seconded to the CRA, and vice versa. While RAD exists within the CRA, it has many dotted lines to other federal agencies. This means that RAD audits may very well originate from a larger RCMP/CSIS investigation, without any disclosure to the organizations being investigated. Further concerns exist that complaints about terrorism from foreign governments may also lead to investigations and audits, again without transparency or examination of the goals and motives of filing such complaints.

Post-9/11 anti-terrorism legislation and policies, including the *PCMLTFA* and the 2015 NRA, have created an environment conducive to systemic racism, racial profiling, targeting and bias towards Muslim Canadians. Also, Canada's AML/CTF efforts are carried out as part of a broad, international counter-terrorist financing regime that itself has been criticized for hindering humanitarian work, particularly in Muslim countries with complex political situations. Further, the problems with this international regime along with pressure from other traditional allies of Canada to address "Islamic terrorism" have only increased with the growth of nationalist, anti-migrant and far-right governments in the past decade. These factors have resulted in years of structural Islamophobia in Canada's national security activities, including at the CRA, allowing bureaucrats and agents to use discretionary decision-making powers to target Muslim charities.

Along with this, the mandates of many of the charities we discuss is to address the very social issues that can lead to violence in society, by working to reduce social isolation and poverty, to build bridges between communities, to provide educational programs, and to deliver humanitarian assistance. By removing their charitable status and, in consequence, shuttering many of these organizations, the government is in fact undermining its own stated goal of increasing the safety and security of people in Canada.

Finally, like many federal agencies involved in national security, the CRA (and by extension RAD) have for many years operated without independent review or oversight of their activities. The nature of their work also means that much of what they do is kept secret. We would also argue that there have been little to no proactive efforts towards transparency with the charitable sector or with the



public. The creation of the National Security and Intelligence Committee of Parliamentarians (NSICOP) in 2018 and the National Security and Intelligence Review Agency (NSIRA) in 2019 has presented new opportunities for independent review, but this has yet to occur. In NSICOP's otherwise thorough review of the national security landscape in its first annual report, published in 2019, there was no mention of the CRA nor of RAD – a testament to how little is known about this component of Canada's counter-terrorist financing activities. Nor did the NSIRA examine RAD in its first annual report, published in 2020.<sup>3</sup> While it may be a future area of review for this nascent agency, there is no legislated mandate to do so. NSIRA is also empowered to accept complaints, but only in regards to CSIS, the Communications Security Establishment (CSE) and the RCMP; an individual or organization that wishes to file a complaint regarding the CRA's national security-related activities is not able to do so.

This lack of oversight not only allows RAD and the CRA to continue targeting Muslim charities, it also allows the CRA and its departments to act on intelligence that may be flawed, out of context, weak, politically motivated and/or out-dated. It can also result in prejudiced decisions being taken against Muslim charities without accountability or external review. It is essential that this lack of independent accountability be addressed.

Based on this, we are making the following recommendations:

1. That the federal government refer this issue to review by the National Security and Intelligence Review Agency (NSIRA) in order to examine the CRA's RAD processes overall, and specifically its selecting of Muslim charities for audit, to ensure organizations are not being targeted due to racial or religious prejudice. The review must investigate the source of past audits of Muslim charities, active audits of Muslim charities, and Muslim charities identified for audit.
2. That the Minister of National Revenue declare an immediate moratorium on the targeted audit of Muslim charities by RAD until the review has concluded. This does not preclude the audits of Muslim charities selected at random by the CRA outside of RAD.
3. That the Ministry of Finance revisit the anti-terror regulatory, policy and legislative landscape, particularly the 2015 NRA and its impact, particularly on the Muslim community.
4. That the federal government amend the NSIRA Act to allow for complaints from the public regarding the CRA's national security-related activities.
5. That NSIRA and the National Security and Intelligence Committee of Parliamentarians (NSICOP) coordinate to carryout regular reviews of the CRA's anti-terrorism activities – including the Charities Directorate and RAD – going forward.

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<sup>3</sup> National Security and Intelligence Review Agency, "2019 Annual Report" (Nov. 2020), online: *National Security and Intelligence Review Agency* <<https://nsira-ossnr.ca/html/2018-2019/index-eng.html>>.

## Introduction

In the wake of the attacks on the United States on September 11, 2001, and the so-called “War on Terror” that followed, Canada’s national security apparatus has focussed overwhelmingly on Muslims in Canada in their pursuit to prevent future terror attacks.<sup>4</sup>

The result is that the Muslim community has been surveilled, profiled, marginalized and borne the brunt of anti-terrorism laws and activities.<sup>5</sup> While it is imperative that the Canadian government act to protect the safety of the population, this overwhelming scrutiny has been driven by a problematic and unfounded equation of Muslims with terrorism, as well as a disproportionate focus on “Islamic terrorism,” that have both been motivated by, and helped to foment, Islamophobia and xenophobia.<sup>6</sup>

This issue has been explored in various areas, including immigration, policing and surveillance.<sup>7</sup> There have also been multiple reviews of Canada’s laws and policies in the prevention of terrorist financing, but there has been little examination of its impact on Muslims and Muslim organizations in Canada. This is despite prevention of terrorist financing being a key part of Canada’s anti-terrorism framework, and Canada being a leading player on this issue internationally.

This report aims to add to this important area of study. In particular, we would like to recognize the recent publication of Nadia Hasan and Anver Emon’s *Under Layered Suspicion*<sup>8</sup>, which presents three in-depth case studies of the audits of three Canadian Muslim-led charities and comes to similar conclusions as our own.

In this report, we raise deep, but perhaps unsurprising, concerns about the Canada Revenue Agency’s (CRA) monitoring of Canadian charities for terrorism financing activities. Overall, we find that like much of Canada’s national security apparatus for the past 20 years, there is a specific, unexamined, and unjustified focus on Muslim charities. This has led to extensive and damaging audits resulting in the penalizing and revocation of the charitable status of several leading Muslim charities in Canada. While the impact of the CRA’s activities are deep, they have mostly gone unnoticed and unchallenged due to secrecy, a lack of transparency and the absence of independent review.

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<sup>4</sup> See National Anti Racism Council of Canada, “Racial Discrimination in Canada” (February 2007) at 9, online (pdf): *National Anti Racism Council of Canada* <[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_NGO\\_CAN\\_70\\_8253\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_70_8253_E.pdf)>.

<sup>5</sup> *Ibid* at 13; See Tabasum Akseer, “Understanding the Impact of Surveillance and Security Measures on Muslim Men in Canada” (2018) at 2, Centre for International and Defence Policy Martello Papers Occasional Paper No 42, online (pdf): Queens University: <<https://www.queensu.ca/cidp/sites/webpublish.queensu.ca.cidpwww/files/files/publications/Martellos/Martello42EN.pdf>>.

<sup>6</sup> See Memon Hossain, “Words Matter - Canada Needs to Move Beyond Divisive Language” (19 Nov 2020), online: *National Newswatch* <[www.nationalnewswatch.com/2020/11/19/words-matter-canada-needs-to-move-beyond-divisive-language/#.YHkgWxRucq2](http://www.nationalnewswatch.com/2020/11/19/words-matter-canada-needs-to-move-beyond-divisive-language/#.YHkgWxRucq2)>.

<sup>7</sup> See Tabasum Akseer, “Understanding the Impact of Surveillance and Security Measures on Muslim Men in Canada” (2018), Centre for International and Defence Policy Martello Papers Occasional Paper No 42, online (pdf): Queens University: <<https://www.queensu.ca/cidp/sites/webpublish.queensu.ca.cidpwww/files/files/publications/Martellos/Martello42EN.pdf>>.

<sup>8</sup> Emon & Hasan, *supra* note 1.



While the lack of transparency makes it difficult to ascertain the scope of the issue, enough is known to demonstrate a troubling trend that must be addressed.

In particular, we find that:

- The Canadian government's risk assessment for terrorism financing in the charitable sector focuses almost exclusively on Muslim charities, and entirely on charities based in racialized communities, with little to no public substantiation of the risk;
- That this risk assessment is used to justify surveillance, monitoring and audits of leading Muslim charities on questionable grounds;
- That the CRA division carrying out these audits operates largely in secret, in tandem with national security agencies, with little to no accountability and no independent review;
- And that these policies have resulted in the revocation of the charitable status of Muslim charities operating both domestically and internationally, harming the sector and impacting the larger Muslim community in Canada.

The basis for these concerns is laid out in six sections:

First is an examination of the CRA's role in countering terrorist financing – and counter-terrorism activities more generally. This includes a review of Canada's risk assessment model, and the activities of the Review and Analysis Division (RAD) of the CRA.

Second is a detailing of the audits and status revocations of Muslim charities from 2003 to 2019, demonstrating a clear pattern of focus on Muslim charities. Third, we look at the question of transparency and accountability regarding the CRA's auditing of charities, and at RAD in particular.

Fourth, we discuss the impact that RAD reviews have had on Muslim charities, identifying for the first time the number of audits and revocations tied to RAD. In the fifth section, we place this in the context of structural and institutional Islamophobia within Canada's national security activities. Finally, in the conclusion, we present recommendations to address the pressing problems identified in the course of our research.

Canada's charity sector is a vital segment of Canadian society, providing much needed resources and support to communities across the country and internationally. The CRA's audit activities, though, have sent an alarming message to the Muslim community that it is not an accepted or welcome part of Canadian society, and have questioned the legitimacy of the community's philanthropy and philanthropic activities.

This report is based on extensive research of information available on the public record. It aims to answer the question as to whether the claims by Canada's Muslim community are valid and, if so, shed light on the political context and climate that has resulted in a biased targeting of Muslim charities.

At the core of this study is an urgent call for a thorough review of Canada's approach to anti-terrorist financing measures in the charitable sector. A lack of transparency and accountability has allowed

for the kinds of structural and institutional Islamophobia, and the associated violation of fundamental rights, that have been identified and denounced in other parts of Canada's national security apparatus to continue unchallenged within the CRA and its Charities Directorate. Our hope is that this report, in bringing these issues to light, will result in immediate action, and a deeper and more thorough examination of the problem by Canadian lawmakers and by national security review bodies.

Action on this is crucial. It is imperative to address and undo systemic racism, xenophobia and Islamophobia in Canada's pursuit of "national security." The profiling and targeting of the Muslim community is, in and of itself, deeply damaging and a violation of fundamental rights. Along with this, the mandates of many of the charities we discuss is to address the very social issues that can lead to violence in society, by working to reduce social isolation and poverty, to build bridges between communities, to provide educational programs, and to deliver humanitarian assistance. By removing their charitable status and, in consequence, shuttering many of these organizations, the government is in fact undermining its own stated goal of increasing the safety and security of people in Canada.

## Approach

The research in this report is based primarily on open source and publicly available documents, including government reports, appearances at Parliamentary committees, news coverage and journal articles. We also worked with impacted charities, discussing their audit experiences, examining revocation letters and speaking with their counsel. This was particularly important in assessing the scope and impact audits borne out of counter-terrorist financing concerns (even if those concerns were not the primary reason for revocation, nor, as we show, resulted in criminal charges of terrorist financing).

A significant challenge in this work, though, is the lack of transparency and secrecy that surrounds the CRA's work in countering terrorist financing in the charitable sector. This is emblematic of anti-terrorism activities in general, but we would argue goes even deeper in some ways due to a lack of the same level of external review faced by other departments. The result is that we are forced at times to demonstrate trends, to point out areas where details are not available, and to piece together what has been shared publicly. While our primary goal is for policy change, a key recommendation of this report is that there must be greater, dedicated review – and complaints – mechanisms that monitor and assess the CRA's work in this area, starting with an investigation which would fill the gaps that exist in the public record.

# Section 1: CRA and Counter-Terrorism

## 1.1: CRA's Role in Countering Terrorism

The September 11, 2001 (9/11) terrorist attacks in the United States of America created significant political, legal, philosophical and cultural changes. Immediately following the attacks, politics of fear and security emerged as Western countries began creating and implementing reactive legislation to

counter terrorism. Canada was not immune to these hastily drafted legislative responses, which continue to have severe impacts on civil liberties and human rights. On October 15, 2001, just weeks after 9/11, the Liberal government introduced Bill C-36, known as the *Anti-terrorism Act (ATA)*; by mid-December, it had received royal assent and became law.

In the decades since 9/11, the threat of domestic and international terrorism and how to counter both remained a top priority for Western governments, including Canada.<sup>9</sup> This focus has led to the creation of numerous over-reaching anti-terrorism policies<sup>10</sup>, building on the *ATA*, which grant the Canadian government departments and its security agencies sweeping powers, and have led to the proliferation of surveillance projects and programs that target specific political or religious groups.<sup>11</sup>

One such department is the CRA. Starting in the late 1990s, the international community began to identify terrorist exploitation in the non-profit and charitable sector as a potential risk.<sup>12</sup> As a result, governments, including Canada, have worked together to protect the charity registration system from being abused by individuals or groups with links to terrorism. The CRA became a partner in the government's anti-money laundering and anti-terrorist financing regime in 2001, with the passage of the *Anti-terrorism Act*.<sup>13</sup> The *ATA* amended the existing *Proceeds of Crime (Money Laundering) Act*, to become the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*.<sup>14</sup>

It is also important to note that Canada has participated in international efforts to curb money laundering and terrorism financing, through the country's membership in the Financial Action Task Force (FATF). The FATF was established by the G7 in 1989 to promote international standards for an anti-money-laundering system, with Canada as a founding member.<sup>15</sup> In October 2001, at a special meeting of the task force, the FATF expanded its mission beyond money laundering to include terrorist financing. The Task Force issued new international standards to combat terrorist financing and called on all countries to adopt and implement them.<sup>16</sup> Canada followed suit, integrating the FATF's recommendations into the *ATA* (which was introduced just a few days after

<sup>9</sup> See Public Safety Canada, *Building Resilience Against Terrorism: Canada's Counter-terrorism Strategy*, 2nd ed, Catalogue No PS4-104/2013E-PDF (Ottawa: Public Safety Canada, 2013) at 7-8.

<sup>10</sup> See International Civil Liberties Monitoring Group, "National Security Legislation Info Card 2001-2015" (2015), online: <https://iclmg.ca/issues/national-security-information-card-2001-2015>.

<sup>11</sup> See Jeffrey Monaghan, "Security Traps and Discourses of Radicalization: Examining Surveillance Practices Targeting Muslims in Canada" (2014) 12(4) *Surveillance & Society* 485 at 485.

<sup>12</sup> See House of Commons, *Terrorist Financing in Canada and Abroad: Needed Federal Actions: Report of the Standing Committee on Finance* (June 2015) (Chair: James Rajotte) at 18, online (pdf): <https://www.ourcommons.ca/Content/Committee/412/FINA/Reports/RP8048561/finarp13/finarp13-e.pdf>.

<sup>13</sup> See Senate of Canada, Standing Committee on National Security and Defence, *Evidence*, Issue 19 (1 June 2015) (Cathy Hawara), [sencanada.ca/en/Content/SEN/Committee/412/secd/19ev-52183-e](https://sencanada.ca/en/Content/SEN/Committee/412/secd/19ev-52183-e).

<sup>14</sup> See *An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism*, First Session, Thirty-seventh Parliament, 49-50 Elizabeth II, 2001, s.c. 2001, Chapter 41, online (pdf): [https://parl.ca/Content/Bills/371/Government/C-36/c-36\\_4/c-36\\_4.pdf](https://parl.ca/Content/Bills/371/Government/C-36/c-36_4/c-36_4.pdf).

<sup>15</sup> See Financial Action Task Force on Money Laundering, "History of the FATF", online: *FATF* <https://www.fatf-gafi.org/about/historyofthefatf/>.

<sup>16</sup> See Office of the Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons, Chapter 3: Canada's Strategy to Combat Money Laundering*, (Ottawa: OAG, April 2003), online: [https://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200304\\_03\\_e\\_12909.html](https://www.oag-bvg.gc.ca/internet/English/parl_oag_200304_03_e_12909.html).

the FATF's recommendations were issued)<sup>17</sup> and continuing to update terrorism financing rules to meet the standards developed by the FATF since then.<sup>18</sup>

To fulfill its duties under the *ATA* effectively, the Charities Directorate within the CRA established the Review and Analysis Division (RAD) in 2003.<sup>19</sup> The division's role is to "protect the integrity of the charity registration system against the threat of terrorism" including terrorist funding.<sup>20</sup> RAD takes a risk-based approach to detect, deter and respond to terrorist activity such as terrorist financing or links to it among Canadian charities.<sup>21</sup> The division's role is purely administrative and does not involve criminal investigations, but according to Cathy Hawara, former head of the CRA's Charities Directorate, it can also take steps to disrupt activities where there is a risk.<sup>22</sup> These disruption powers were not enumerated during Hawara's presentation to the Senate, nor could we find any clear public documentation of what these "disruption activities" would entail. However, based on this testimony and other sources, it is possible to infer two areas of disruption: First, that the act of rejecting an application for charitable status, or suspending or revoking a status that is in place, is considered a form of "disruption." Second, that the CRA actively works with the RCMP, CSIS and other government departments to support their own disruption activities.<sup>23</sup>

Based on our research, RAD has operated with little public presence since its inception in 2003.<sup>24</sup> The exception has been the 2015 and 2016 appearances of then-RAD director Alastair Bland before a number of Senate hearings to discuss the efforts of the CRA in combatting the financing of terrorism.<sup>25</sup> Unlike other anti-terrorism divisions, our experience points to RAD's existence not being widely known in the charity sector or in the public domain.

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<sup>17</sup> See Department of Justice, "About the Anti-terrorism Act" (last modified 26 Jul 2017), online: *Department of Justice* <<https://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html>>.

<sup>18</sup> See Department of Finance, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, (Ottawa: 7 February 2018), online: <<https://www.canada.ca/en/department-finance/programs/consultations/2018/canadas-anti-money-laundering-anti-terrorist-financing-regime.html>>.

<sup>19</sup> See Mark Blumberg, "CRA presentation to Finance Committee on Terrorism" (31 May 2015), online (blog): *Canadian Charity Law* <[www.canadiancharitylaw.ca/blog/cra-presentation-to-finance-committee-on-terrorism](http://www.canadiancharitylaw.ca/blog/cra-presentation-to-finance-committee-on-terrorism)>.

<sup>20</sup> *Ibid.*

<sup>21</sup> See Senate of Canada, Standing Committee on National Security and Defence, *Evidence*, Issue 2 (7 March 2016) (Cathy Hawara), online: <[sencanada.ca/en/Content/SEN/Committee/421/secd/02ev-52409-e](http://sencanada.ca/en/Content/SEN/Committee/421/secd/02ev-52409-e)>.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.* See also: Canada, Department of Finance, "Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada" (Ottawa: July 2015), online (pdf): <<https://www.canada.ca/content/dam/fin/migration/pub/mltf-rpcfat/mltf-rpcfat-eng.pdf>>; Department of Finance, *supra* note 18; International Monetary Fund, "Canada: Detailed Assessment Report On Anti-Money Laundering And Combating The Financing Of Terrorism" (September 2016) at 31, online (pdf): International Monetary Fund <<https://www.imf.org/external/pubs/ft/scr/2016/cr16294.pdf>>.

<sup>24</sup> For example, a search of the EUREKA database of more than 1,500 Canadian news publications from the year 2000 to present resulted in only two articles, both from 2016, which reference the Review and Analysis Division.

<sup>25</sup> Senate of Canada (7 March 2016) (Cathy Hawara), *supra* note 21.

“Unlike other anti-terrorism divisions, our experience points to RAD’s existence not being widely known in the charity sector or in the public domain.”

Crucial to RAD’s operation is information sharing with government agencies such as the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Services (CSIS), and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).<sup>26</sup> These information-sharing powers were broadened with the *Security of Canada Information Sharing Act (SCISA)*<sup>27</sup> passed in August 2015, and modified in 2019 to become the *Security of Canada Information Disclosure Act (SCIDA)*. Starting in 2015, this new regime classified the CRA as one of 17 government agencies authorized to receive information from all other government departments in order to assist it in exercising its “responsibilities [...] in respect of activities that undermine the security of Canada” including terrorism.<sup>28</sup>

While the reformed SCIDA attempted to address the numerous critiques of the original 2015 legislation, it maintained a new and broader definition to threats to the security of Canada, and sets a relatively low threshold for the sharing of information: simply that it would “**contribute** to the exercise of the recipient institution’s jurisdiction, or the carrying out of its responsibilities, under an Act of Parliament or another lawful authority, in respect of activities that undermine the security of Canada” (emphasis added).<sup>29</sup> Further, the Act does not place any restrictions or thresholds on the body receiving disclosure, so long as it is not personal information that is unnecessary for the execution of their activities. This creates a broad system of information disclosure from any other government department to the CRA, so long as it may “contribute” to their national security-related activities. While there are reporting requirements, including to national security review bodies, the lack of review of CRA’s activities means that little is known about how this information is or may be used.

However, even before these new information sharing practices were put in place, the CRA already received and shared information from national security partners, which it continues to use to assess the level of risk posed by an applicant or registered charity.<sup>30</sup> The CRA has also noted having embedded officers in CSIS, the RCMP and the Integrated Terrorism Assessment Centre (ITAC).<sup>31</sup> In a 2015 Senate meeting on national security, Hawara stated, “We have exchanges both with the service [CSIS] and with the RCMP, where we exchange staff to better understand each other’s mandates...we have officers currently seconded to CSIS and the RCMP. We do training together.”<sup>32</sup>

<sup>26</sup> Monaghan, *supra* note 11 at 492.

<sup>27</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

<sup>28</sup> See *Security of Canada Information Disclosure Act*, S.C. 2015, c. 20, s. 2.

<sup>29</sup> *Ibid.* at 5(1)(a)

<sup>30</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

<sup>31</sup> Monaghan, *supra* note 11 at 492.

<sup>32</sup> See Senate of Canada, Standing Committee on National Security and Defence, *Evidence*, Issue 18 (25 May 2015) (Cathy Hawara) <[sencanada.ca/en/Content/SEN/Committee/412/secd/18ev-52146-e](https://sencanada.ca/en/Content/SEN/Committee/412/secd/18ev-52146-e)>.

In a Senate meeting on national security the following year, Alastair Bland, then director of RAD, explained that audits are a team effort between these agencies: “investigative analysts and auditors and geopolitical analysts all work together on audits, as well as research analysts and risk analysts.”<sup>33</sup>

## 1.2: RAD, Charities and Terrorist Financing Audits

RAD operates in four areas:

- applications
- leads/tips
- audits and monitoring
- information sharing between national and international security agencies<sup>34</sup>

RAD conducts in-depth reviews of new applications based on the presence and extent of terrorist financing risks, reserving the right to deny applicants charitable registration based on the review.<sup>35</sup> About one percent of applications are deemed high risk and undergo a detailed review by the division.<sup>36</sup> Cathy Hawara, then head of the Charities Directorate, explained that the determination of whether an application is deemed high risk is based upon the nature of the charity’s activities and the charity’s proximity to terrorist-related threats both in Canada and abroad.<sup>37</sup> However, there is little public documentation that explains what the CRA deems to be “high risk” criterion that would trigger a RAD audit.

With regards to leads and tips, the division receives and processes leads related to the national security of Canada originating from a variety of external sources, including classified intelligence, the media and the public.<sup>38</sup>

There are several ways in which charities may come to RAD’s attention and become a focus for monitoring and audits. The division selects organizations “based on the potential risk posed to the charitable sector and the Canadian society as a whole.”<sup>39</sup> To determine this risk, the CRA again considers leads/tips from the media, classified intelligence, the public, and internal review of interrelated files and annual reporting by charities.<sup>40</sup> The CRA and RAD also review annual returns filed by charities and depending on the findings of the review and additional information gathering, RAD could decide to audit certain charities. “Charities have to file an annual return every year, and we review that. We do our own research in terms of open-source information that is available out

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<sup>33</sup> Senate of Canada (7 March 2016) (Alastair Bland), *supra* note 21.

<sup>34</sup> Blumberg, *supra* note 19.

<sup>35</sup> Senate of Canada (25 May 2015) (Cathy Hawara), *supra* note 32.

<sup>36</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

<sup>37</sup> *Ibid.*

<sup>38</sup> See House of Commons, Standing Committee on Finance, *Evidence*, 41-2, No 074 (26 Mar 2015) at 3 (Rick Stewart).

<sup>39</sup> Senate of Canada, (25 May 2015) (Cathy Hawara), *supra* note 32.

<sup>40</sup> *Ibid*; See Mark Blumberg, “CRA presentation to Finance Committee on terrorism” (31 May 2017), online: *Canadian Charity Law* <[www.canadiancharitylaw.ca/blog/cra\\_presentation\\_to\\_finance\\_committee\\_on\\_terrorism](http://www.canadiancharitylaw.ca/blog/cra_presentation_to_finance_committee_on_terrorism)>.



there, and we receive information from our partners as well. There is a range of ways through which we can identify charities,” explained Hawara to senators in 2015.<sup>41</sup>

It is unclear which verification procedures the CRA uses to assess data before making decisions. However, the reliance on public complaints, media reports and so-called “open source” intelligence raises deep concerns about accuracy and bias. Throughout the past 20 years, polls have shown an increasing and persistent level of anti-Muslim sentiment in Canada.<sup>42</sup> The number of right wing extremist groups in Canada has grown.<sup>43</sup> Far-right media, such as Rebel Media and Quebec’s “trash radio” have promoted anti-Muslim conspiracy theories.<sup>44</sup> Many of the personalities from these outlets were regularly featured in more mainstream media, including the Sun News chain and the National Post, cutting ties only after Rebel Media produced positive coverage of the neo-Nazi “Unite the Right Rally” in Charlottesville, VA, in 2017. However, since then, many have renewed ties with Rebel Media, or formed their own conservative and right wing media outlets that produce similar content.<sup>45</sup>

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<sup>41</sup> Senate of Canada (25 May 2015) (Cathy Hawara), *supra* note 32.

<sup>42</sup> See Mack Lamoreux, “Nearly Half of Canadians Have Negative Feelings Towards Islam: Poll” (17 Nov 2017), online: *Vice* <<https://www.vice.com/en/article/gyj97x/nearly-half-of-canadians-have-negative-feelings-towards-islam-poll>>; see Katie Dangerfield, “1 in 4 Canadians say it’s becoming ‘more acceptable’ to be prejudiced against Muslims: Ipsos poll” (21 May 2019), online: *Global News* <<https://globalnews.ca/news/5275557/1-in-4-canadians-acceptable-prejudice-against-muslims/>>.

<sup>43</sup> See, Barbara Perry, “The Threat of Right-Wing Extremism,” (13 September 2017), online: *Policy Options*, <<https://policyoptions.irpp.org/magazines/september-2017/the-threat-of-right-wing-extremism/>>; Enzo DiMatteo, “Canada’s right-wing extremism problem,” (27 Jan 2021), online: *Now Magazine* <<https://nowtoronto.com/news/donald-trump-and-the-rise-of-right-wing-extremism-in-canada>>; Terry Haig, “New research points to growth of right-wing extremism in Atlantic Canada” (17 December 2020), online: *Radio Canada International* <<https://www.rcinet.ca/en/2020/12/17/new-research-points-to-growth-of-right-wing-extremism-in-atlantic-canada/>>.

<sup>44</sup> See Rabbil Sikdar, “Rebel Media” (2019), online (pdf): *Faith Matters* <<https://www.faith-matters.org/wp-content/uploads/2019/03/Rebel%20Media%20Report%201032019.pdf>>; Catherine Solyom, “Mosque shooting anniversary: Quebec City trash radio is stronger than ever” (9 Feb 2019), online: *Montreal Gazette* <<https://montrealgazette.com/news/quebec/mosque-shooting-anniversary-quebec-city-trash-radio-is-stronger-than-ever>>.

<sup>45</sup> See Jonathan Goldsblie, “A Growing List Of People Who Have Renewed Ties With The Rebel” (14 Aug 2018), online: *Canadaland* <<https://www.canadaland.com/people-who-have-renewed-ties-with-the-rebel/>>; See PressProgress, “Journalists Across Canada are Alarmed by the Toronto Sun’s Hate-Mongering and Conspiracy Theories” (25 Jul 2018), online: *Press Progress* <<https://pressprogress.ca/journalists-across-canada-are-alarmed-by-the-toronto-suns-hate-mongering-and-conspiracy-theories/>>; See iPolitics, “The Rebel to Rabble Review: Investigating the Notre Dame blaze” (18 Apr 2019), online: *iPolitics* <<https://ipolitics.ca/2019/04/18/the-rebel-to-rabble-review-investigating-the-notre-dame-blaze/>>; See Davide Mastracci, “How The Rebel Infiltrated Postmedia and Conquered Canada’s Largest Newspaper Chain” (9 Sept 2019), online: *North99* <<https://north99.org/2019/09/09/how-the-rebel-infiltrated-postmedia-and-conquered-canadas-largest-newspaper-chain/>>.

Studies have demonstrated pervasive anti-Muslim bias in Canadian media by, for example, focusing disproportionately more on Muslim violence than similar acts by non-Muslims.<sup>46</sup> Others have shown that think tanks actively use mainstream media “as vehicles to promote their viewpoints and ideologies.”<sup>47</sup> For instance, a study by NewsWatch Canada on Canadian media concluded, “right-wing think tanks received a disproportionate amount of news coverage, more than three times as much as left-wing think tanks.”<sup>48</sup>

“Right-wing organizations have explicitly targeted progressive charities with complaints to the CRA and by spreading false allegations with the goal of triggering audits and possible revocations.”

Right-wing organizations have explicitly targeted progressive charities with complaints to the CRA and by spreading false allegations with the goal of triggering audits and possible revocations. One such example is the Ethical Oil Institute. Founded by then-Sun News Network commentator and eventual Rebel Media founder Ezra Levant, Ethical Oil published articles on its website, made statements before a House of Commons committee, pushed its messaging through mainstream media, and submitted lengthy complaints to the CRA in order to influence the agency’s decision on audits and whether to strip particular charities of their status.<sup>49</sup>

In other situations, the CRA has based decisions on questionable material circulated online. This was seen in the case of the Assalam Mosque revocation based on allegations of promoting hate and intolerance because of past, alleged statements of invited speakers. In the CRA’s revocation letter,<sup>50</sup> the agency relied on third-party hearsay account of an alleged, unauthorized broadcast as well as a doctored video by a right-wing Islamophobic group in the UK.<sup>51</sup> While the CRA did not have any

<sup>46</sup> Azeezah Kanji, “Framing Muslims in the “War on Terror”: Representations of Ideological Violence by Muslim versus Non-Muslim Perpetrators in Canadian National News Media” (2018) 9:9, 274 *Religions* at 4, online: <https://www.mdpi.com/2077-1444/9/9/274/pdf>.

<sup>47</sup> See Brent Stafford, “Think tanks in the news” (1 Apr 1997), online: *NewsWatch Canada* <[www.sfu.ca/cmns/research/newswatch/monitor/issue1.html](http://www.sfu.ca/cmns/research/newswatch/monitor/issue1.html)>.

<sup>48</sup> *Ibid.*

<sup>49</sup> See David Climenhaga, “Ethical Oil charity complaint sparks Alberta corporate complaint” (24 Aug 2012), online (blog): *Rabble.ca* <[www.rabble.ca/blogs/bloggers/djclimenhaga/2012/08/ethical-oil-charity-complaint-sparks-alberta-corporate-complaint](http://www.rabble.ca/blogs/bloggers/djclimenhaga/2012/08/ethical-oil-charity-complaint-sparks-alberta-corporate-complaint)>; see also Evan Solomon & Kristen Everson, “7 environmental charities face Canada Revenue Agency audits” (6 Feb 2014), online: *CBC* <[www.cbc.ca/news/politics/7-environmental-charities-face-canada-revenue-agency-audits-1.2526330](http://www.cbc.ca/news/politics/7-environmental-charities-face-canada-revenue-agency-audits-1.2526330)>.

<sup>50</sup> See Canada Revenue Agency, *Appendices to Ottawa Islamic Centre and Assalam Mosque Administrative Fairness Letter* (Ottawa: CRA, 2018), online: <[https://www.scribd.com/document/385843678/Cra-Audit?secret\\_password=xI3AG3aOxworLLomBh7U#download&from\\_embed](https://www.scribd.com/document/385843678/Cra-Audit?secret_password=xI3AG3aOxworLLomBh7U#download&from_embed), online>; See also: Stewart Bell, “Ottawa Mosque Loses Charity Status for Promoting ‘Hate and Intolerance’” (9 Aug 2018), online: *Global News* <<https://globalnews.ca/news/4373959/ottawa-mosque-charity-hate-intolerance/>>.

<sup>51</sup> See Andrew Russell, “Canadian Council of Imams Alleges ‘Islamophobia’ at CRA after Ottawa Mosque Loses Charity Status” (29 May 2020), online: *Global News* <<https://globalnews.ca/news/6992014/islamophobia-cra-muslim-leaders/>>; See Canadian Council of Imams, “Canadian Council of Imams Calls on the Federal Government to Investigate Islamophobic Audit Practices in the CRA’s Charities Directorate” (28 May 2020), online: Canadian Council of Imams

recording or transcript of what these invited speakers said while visiting the mosque, based on outside evidence that included the above examples, the CRA held that “the Organization may have allowed a number of its guest speakers to espouse views or opinions that are incongruent with the concept of public benefit as it is understood in charity law.”<sup>52</sup>

“What is known, however, is that the threshold of evidence a charity has to meet to come under RAD’s radar, subsequently be audited, and possibly face deregistration is quite low compared to seriousness of the accusations against it.”

When auditing charities, the CRA contends that it takes an education-first approach by providing the charity being audited with written details of the agency’s concerns and gives the charity an opportunity to respond.<sup>53</sup> However, we believe this is not necessarily true for RAD audits. The CRA has not clearly specified what triggers surveillance or, potentially, an audit by RAD. What is known, however, is that the threshold of evidence a charity has to meet to come under RAD’s radar, subsequently be audited, and possibly face deregistration is quite low compared to seriousness of the accusations against it. While a charity may be placed under the cloud of engaging in terrorist financing, the CRA’s decision to begin an investigation is at their discretion. There is no defined legal threshold, leaving it up to an analysis based on complaints, media articles and other public sources, which may lack in rigour or be based on questionable evidence. An audit can also be triggered based on “classified intelligence,” which would never be shared with the charity in question. The use of secret or unsourced intelligence also raises questions of provenance, motivation and, particularly troubling, quality. There is no opportunity for the organization concerned to fully challenge the intelligence being used, placing them at a distinct disadvantage.<sup>54</sup>

In addition to the lack of transparency on what triggers a RAD audit, a charity may also never be informed that the reason for the audit is suspicion of terrorist financing.

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<<http://canadiancouncilofimams.com/2020/05/27/canadian-council-of-imams-calls-on-the-federal-government-to-investigate-islamophobic-audit-practices-in-the-cras-charities-directorate/>> .

<sup>52</sup> Emon & Hasan, *supra* note 1 at 29.

<sup>53</sup> Senate of Canada, (25 May 2015) (Cathy Hawara), *supra* note 32.

<sup>54</sup> See House of Commons, Standing Committee on Finance, *Evidence*, 41-2, No 074 (26 March 2015) (Rick Stewart), online (pdf) at: <<https://www.ourcommons.ca/DocumentViewer/en/41-2/FINA/meeting-74/evidence>> .

According to Alastair Bland: “With the organizations that we look at and audit, we identify an unacceptable risk and go in and do our audit functions.... We do our best to articulate the terrorist financing connections, but sometimes we focus strictly on the rules themselves and don’t raise the terrorist financing issue.”<sup>55</sup>

“An audit and eventual revocation of a charity, then, can be carried out under the cover of non-compliance with basic rules or lack of ‘direction and control,’ and may never mention the terrorist links or financing concern RAD has with the charity.”

Even in a case of revocation, the charity may never fully know the accusations it faces. Bland states that only a few charities are told why their status is being revoked: “It is probably around half of them... where we will identify a very specific concern, outline the organizations that we believe they are in partnership with and why we believe those organizations are connected with terrorism.”<sup>56</sup>

An audit and eventual revocation of a charity, then, can be carried out under the cover of non-compliance with basic rules or lack of “direction and control,” and may never mention the terrorist links or financing concern RAD has with the charity. This obscures the nature of audits and renders it difficult, if not impossible, to adequately respond to the underlying concerns of the investigation.

Even if a charity is aware of the nature of the audit, the CRA can also withhold their evidence from the charity in question.<sup>57</sup> This again prevents charities from having a fair opportunity to respond to the CRA’s accusations.<sup>58</sup> This is troubling as it leaves the charity unable to defend or respond to the underlying concern that may or may not be substantiated and erodes a fundamental principle of the law, which is the ability of an individual (or in this case, organization) to know and meet the case being made against them.<sup>59</sup>

This use of “secret information” mirrors concerns of the use of “secret evidence” in other anti-terrorism proceedings, for example immigration security certificates and the Passenger Protect Program (also known as the No Fly List). In all these cases, the suspected individual or organization is denied access to the information used against them, meaning it cannot be challenged in a meaningful way.

This opens the door for tenuous links to be drawn based on supposition and not on fact. This is even more so in the case of charities, where the decisions are not being made by elected officials that

<sup>55</sup> Senate of Canada (1 June 2015) (Alastair Bland), *supra* note 13.

<sup>56</sup> *Ibid.*

<sup>57</sup> See Maria Kari, “Following the Money Trail: How Canada’s Anti-Terrorism Laws Impact Charities” (2018) 2 Man Pol’y Perspectives 10 at 13.

<sup>58</sup> *Ibid.*

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

may face a degree of scrutiny or accountability, nor made by the courts where there are rules around disclosure.

For example, Canadian charity law experts, Nancy E. Claridge and Terrence S. Carter, have pointed out that CRA "...has already demonstrated its inclination to use the... trial evidence and conclusions in its own audit process" from the controversial US court decision against the Holy Land Foundation, which presented a number of "troubling" aspects.<sup>60</sup> As Kari further describes, this case created a "seemingly far-fetched, tenuous, and rather weak trail leading from the pockets of Muslim American donors to alleged Palestinian terrorist operations conducted by Hamas," resulting in a questionable and "long-winding and all-encompassing money trail approach to demonstrate connections to terrorism."<sup>61</sup> Such tenuous links to terrorism, through several degrees of separation and complex relationships, were used in the cases of the International Relief Fund for the Afflicted and Needy-Canada (IRFAN-Canada)<sup>62</sup>, in which the CRA cited possible financing of Hamas in Gaza, and the Islamic Society of North America-Canada (ISNA Canada), in which the CRA cited possible financing of terrorism in Kashmir.<sup>63</sup> Further highlighting this long and tortuous (and arguably unfair) approach is the Ontario Superior Court of Justice's decision in *R. v. Ahmad*, which discusses the hypothetical applicability of the Criminal Code's "Participation in activity of terrorist group" offence to bookkeepers of Canadian charities whose resources may indirectly benefit foreign terrorists.<sup>64</sup>

RAD's monitoring function is not limited to reviewing annual reporting by identified charities but also extends to surveillance. "We do not just conduct audits, we also conduct surveillance. On an ad hoc basis, we examine the activities of various charitable organizations. The sector is vulnerable, but not all charitable organizations interest us with respect to this particular concern. The number is still quite small. In the context of our work, we are constantly gathering information and examining the activities and annual statements of organizations to determine where we need to concentrate our efforts in this respect," noted Hawara.<sup>65</sup> While the CRA is authorized to collect information in pursuit of its mandate and to ensure adherence to the law, the lack of clear and public guidelines around which sectors or charities are determined to be of "interest", as well as from where, from whom and how the information is collected raises serious concerns.

The grounds for denying an application for charitable status or, perhaps more importantly, to revoke the charitable status of an existing organization also lack clarity and rigour.

As Bland stated before the Senate, "Because we don't have to go to *mens rea*, it's not possible for us to know whether an organization is doing this on purpose with full intent and understanding or

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<sup>60</sup> Nancy E. Claridge and Terrance S. Carter "HLF Decision: Terrorist Financing Victory or Troubling Precedent for Charities" (2012) at 5, online (pdf): *Carters* <<http://www.carters.ca/pub/alert/ATCLA/ATCLA28.pdf>>.

<sup>61</sup> Kari, *supra* note 57 at 11-12.

<sup>62</sup> Emon & Hasan, *supra* note 1 at 81; See Yves Engler, "The Centre for Israel and Jewish Affairs: Stoking Islamophobia and Racism?" (11 Oct 2017), online: *Rabble* <<https://rabble.ca/blogs/bloggers/yves-englers-blog/2017/10/centre-israel-and-jewish-affairs-stoking-islamophobia-and-0>>; See Karin Brothers, "Listing of IRFAN-Canada as 'Terrorist' Bans Aid to Palestinians" (Aug 2013), online: *Washington Report on Middle East Affairs* <<https://www.wrmea.org/014-august/anada-calling-listing-of-irfan-canada-as-terrorist-bans-aid-to-palestinians.html>>.

<sup>63</sup> Kari, *supra* note 57 at 17.

<sup>64</sup> See *R v Ahmad*, [2009] OJ No. 6151 (QL) (ONSC) at para 81, CanLII 8474.

<sup>65</sup> Senate of Canada (7 March 2016) (Cathy Hawara), *supra* note 21.

they are simply being abused, whether it's wilful blindness or naïveté on their part.”<sup>66</sup> Moreover, Bland later explained that in many cases “at the end of the day it's not necessarily fair to identify those organizations as being involved in a criminal act of terrorist financing.”<sup>67</sup> This kind of reflective of “pretextual enforcement,” when investigators pursue one line of investigation as a pretext in order not to reveal the actual nature of the investigation or because the actual line of inquiry cannot be sufficiently proven, has been found to undermine accountability and transparency in law enforcement.<sup>68</sup>

“In practice, this means that a ‘reasonable suspicion’ of charitable funds possibly being used to finance terrorism, even if predicated upon untested secret evidence, is enough of a basis for the CRA to revoke charitable status.”

In fact, RAD contends that it is “not out to prove terrorist financing, which is a criminal offence”; instead they “raise concerns about connections to terrorism, but the administrative role in this is to look at the rules ... and if there is egregious non-compliance with those rules, then revocation is one of the tools ... at hand.”<sup>69</sup> RAD contends that they do not have to prove that funds raised by a charity were raised in fact for terrorist financing to strip said charity of its charitable status.<sup>70</sup> In practice, this means that a “reasonable suspicion” of charitable funds possibly being used to finance terrorism, even if predicated upon untested secret evidence, is enough of a basis for the CRA to revoke charitable status. Given this incredibly broad discretionary power, the question that then arises is, whom has the onus of proving the allegations of links to terrorist financing made against charities?

According to Hawara, “Our role is to oversee the registration system. So we can register, revoke or deny registration to organizations, and then we can share that information with our partners, including law enforcement through the RCMP. That could potentially be something that they would want to look into, but it will all depend on the circumstances of the case. Our authority is an administrative authority. Criminal liability, though, when a criminal offence has taken place, it is up to the law enforcement agencies to determine whether that threshold has been met and whether it should be pursued.”<sup>71</sup>

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<sup>66</sup> Senate of Canada (1 June 2015) (Alastair Bland), *supra* note 13.

<sup>67</sup> *Ibid.*

<sup>68</sup> Richman, D., & Stuntz, W. “Al Capone's Revenge: An Essay on the Political Economy of Pretextual Prosecution” (2005). *Columbia Law Review*, 105(2), 583-640, online: <<http://www.jstor.org/stable/4099318>>.

<sup>69</sup> Senate of Canada (1 June 2015) (Alastair Bland), *supra* note 13.

<sup>70</sup> Senate of Canada (7 March 2016) (Alastair Bland), *supra* note 19.

<sup>71</sup> Senate of Canada (25 May 2015) (Cathy Hawara), *supra* note 28.



As of writing, there is no clear evidence that any charities that had their charitable status revoked following a RAD audit have had any criminal or civil action taken against them, since the division's founding in 2003. When asked by the Senate in 2016 how many revocations the CRA made as a result of a court finding that terrorist activity has taken place by one of these registered charities providing charitable money, Bland responded none.<sup>72</sup>

“As of writing, there is no clear evidence that any charities that had their charitable status revoked following a RAD audit have had any criminal or civil action taken against them, since the division's founding in 2003.”

Even in the case of IRFAN-Canada, where the organization was listed as a terrorist entity by the then Public Safety Minister Steven Blaney, the organization, its board members, or staff have never had any criminal action taken against them in Canada or abroad.

### 1.3: The 2015 National Risk Assessment and “Nexus” to Terrorist Financing

Canada's anti-money laundering and counter-terrorist financing (AML/CFT) framework is established in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, and supported by other key statutes, including the *Criminal Code*. The Parliament of Canada undertakes a comprehensive review of the *PCMLTFA* every five years.<sup>73</sup>

The Canadian Government announced a series of measures to enhance the AML/CFT regime in its 2014 budget. As part of this, in 2015 the Department of Finance released its National Risk Assessment (NRA) of money laundering and terrorist financing in Canada, entitled the *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada Report*.<sup>74</sup>

The report determined that registered charities at higher risk of being involved in terrorist financing are those operating in close proximity to an active terrorist threat. It also found that registered charities that operate domestically, within a population that is actively targeted by a terrorist movement for support and cover, are also exposed to terrorist financing risks. Resources generated in Canada, the NRA states, may be transferred internationally to support terrorism if the organization does not exercise appropriate “direction and control” over the end-use of its resources. It concludes

<sup>72</sup> Senate of Canada (7 March 2016) (Alastair Bland), *supra* note 19.

<sup>73</sup> See House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward: Report of the Standing Committee on Finance* (Nov 2018) (Chair: Wayne Easter) at 9, online (pdf): <https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>.

<sup>74</sup> See Department of Finance, *supra* note 23.

that “the majority of the terrorist financing actors associated with the assessed terrorist groups have used registered charities” at one point.<sup>75</sup>

The risk assessment report further explains that the terrorist financing methods used in the majority of terrorist financing risk scenarios involving Canadian and foreign charities include diversion of funds, affiliation with a terrorist entity, abuse of programming, support of recruitment (organization-funded programs or facilities are used to create an environment which supports and/or promotes terrorism recruitment-related activities), and false representation and sham organizations under the guise of charitable activity, in which the organization or individual raises funds, promotes causes and/or carries out other activities in support of terrorism.<sup>76</sup>

The report also states that Canada, as of 2015, had listed 54 terrorist entities under section 83.05 of the *Criminal Code* and 36 terrorist entities under the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*.<sup>77</sup> Not all 90 listed terrorist entities pose a terrorist financing threat to Canada, they explain, since not all of these entities have financing or support networks in Canada. Conversely, an entity that poses a terrorist financing threat to Canada may not necessarily pose a terrorist threat to the country, or if so, the level of threat may not be the same.

After a thorough review of publicly available and classified information related to terrorist groups with a “Canadian nexus,” the terrorist financing threat was associated with 11 entities: 10 terrorist groups plus “foreign fighters.” This list is as follows:<sup>78</sup>

1. Al Qaeda in the Arabian Peninsula
2. Al Qaeda Core
3. Al Qaeda in the Islamic Maghreb
4. Islamic State of Iraq and Syria
5. Al Shabaab
6. Jabhat Al-Nusra
7. Hizballah
8. Hamas
9. Khalistani Extremist Groups
10. Remnants of the Liberation Tigers of Tamil Eelam
11. Foreign Fighters/Extremist Travellers (primarily related to conflicts in Afghanistan, Iraq, Somalia and Syria)<sup>79</sup>

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<sup>75</sup> *Ibid* at 64.

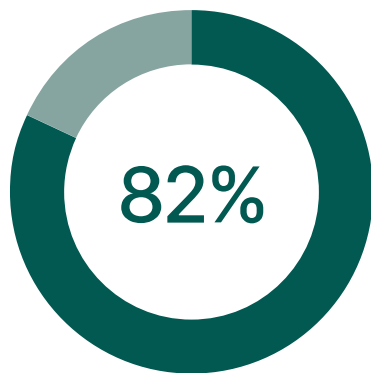
<sup>76</sup> *Ibid*.

<sup>77</sup> *Ibid* at 27 (While the number of entities listed under the UN regime has remained steady at 36, as of February 2021 there are 73 entities listed under the *Criminal Code*, to a total of 109. See: *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* at <<https://laws-lois.justice.gc.ca/eng/regulations/sor-2001-360/FullText.html>> and *Currently listed entities* at <<https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>>).

<sup>78</sup> *Ibid* at 28.

<sup>79</sup> Defined in the report as “those who travel abroad to support and fight alongside terrorist groups.”

As such, 82% (9 of 11) of Canada's identified terrorist financing threats were identified as coming from extremist/militant Islamist groups or foreign fighters related to Muslim countries. It is also important to note that the other two threats also originate in non-Western countries with complex political realities.



of Canada's identified terrorist financing threats were identified as coming from extremist/militant Islamist groups or foreign fighters related to Muslim countries.

Assessing the risk of terrorist financing in Canada is important. However, we question the approach taken in the 2015 risk assessment for several reasons.

First, the framing of the issue reflects the underlying problem with Canada's approach to anti-terrorism overall. It is predicated on Muslim or Islamic-based organizations and entities presenting a unique and overwhelming threat to Canadian society. In doing so, it both downplays the threat from other sources of violence – for example white supremacist violence – and also leads to the stigmatization and profiling of Muslim and Arab individuals and communities as presenting an overwhelming threat.

In focusing on the specific threat of "terrorism" – and in particular Islamic terrorism – and not, for example, the financing of violent and/or criminal organizations in general, the report establishes a unique category that creates the need for a greater degree of caution. However, the report does not make the case that terrorism financing is a significant problem in Canada, and in fact emphasizes that it is less of a problem than money laundering. In fact, in the six examples of terrorist financing risks that the report elaborates on, five are described as having "limited" support, "some" financing, "may" engage in fundraising, "small" numbers of supporters, or "fractured" support. This vague language also minimizes the scope of the issue, raising questions as to why it is seen as necessary to create a specific category, except for the fact that policy dictates that these groups be prioritized.

We recognize that the goal of the NRA is to identify “inherent risks” and not the scope of financing, but we question why there is a need to evaluate the risk from organizations that, from the limited information provided, do not have significant fundraising capacity in Canada?

“...research has shown that these links may often be built on questionable and tenuous links between organizations with various degrees of separation, and without consideration of the context of the activities.”

Second, while the factors used to evaluate risk are defined, the sources of information that lead to these conclusions are limited and vague, described simply as a “thorough review of publicly available and classified information related to terrorist groups with a Canadian nexus.”<sup>80</sup> As explained earlier, research has shown that these links may often be built on questionable and tenuous links between organizations with various degrees of separation, and without consideration of the context of the activities. When presenting an evaluation on such a sensitive issue as terrorism financing – particularly when it overwhelmingly implicates one community above all others and risks serious repercussions – it is incumbent that the analysis be bolstered by clear and rigorous research.

This lack of detail extends to the actual risk assessment charts included in the report. While the horizontal axis lists the identified entities from 1 to 8, with each being assigned a risk score, the report does not share which entity each number corresponds to. So, for example, the entity that presents the highest risk for terrorism financing for charities in Canada could be any one of the 11 listed. While a complete version of the chart would be available to some government employees who are cleared for access, it presents an incomplete and problematic picture to the public.<sup>81</sup>

“The result is that charities, based solely on the Muslim faith, are linked to threats of terrorist financing, with deep implications for how they are viewed by both the public and, we would argue, by charity regulators.”

While the report sets out to achieve a laudable goal in assessing the risk of misuse of the charitable sector, the exercise ultimately lends itself to prejudice against the Muslim community in Canada, and particularly Muslim charities. The result is that charities, based solely on the Muslim faith, are linked to threats of terrorist financing, with deep implications for how they are viewed by both the public and, we would argue, by charity regulators.

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<sup>80</sup> See Department of Finance, *supra* note 23.

<sup>81</sup> *Ibid.*

## 1.4: The 2016 Financial Action Task Force (FATF) Evaluation

In 2016 the Financial Action Task Force (FATF), an inter-governmental body with the purpose of setting standards and policies to combat terrorist financing and money laundering, completed its periodic evaluation of Canada's anti-money laundering and counter-terrorist financing measures. The organization based its findings in part on the results of the 2015 National Risk Assessment, discussed above.

The FATF report explains that charities are monitored and audited on a risk basis by RAD, but laments that "only a small percentage of charities have been inspected" and argues that Canada must carry out more inspections of charities. This is based on the NRA evaluating "the risk of misuse of charities as high."<sup>82</sup> While this is perhaps a reasonable reading of the NRA report, it ignores that this supports the greater scrutiny of Muslim and Muslim-linked charities in Canada, again based solely on their faith and community links, essentially engaging in the profiling an entire community of more than a million people. Once again, there is no recognition of the sensitive nature of such a conclusion, of the impact it can have on the Muslim community, nor of the need to reflect on the potential profiling or stigmatization that could arise from such increased scrutiny.

This also highlights, again, the problem of the risk-based model. While the FATF relies on the NRA's finding of "high risk" there is no determination regarding the actual scope of terrorist financing activities among charities in general, or Muslim-led charities in particular. The intense focus on these charities is based on the possibility of terrorist financing, and not evidence of its occurrence.

The report also confirmed that between 2008 and 2014, RAD completed 16 audits on the basis of national security concerns, with eight resulting in revocation of registration.<sup>83</sup> It must once again be noted that while the audits may have been based on national security concerns, none resulted in any charges of terrorist financing or terrorist activities being laid, either against individuals or against the organizations in question.

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<sup>82</sup> See Financial Action Task Force, "Anti-Money Laundering and Counter-Terrorist Financing Measures: Canada, Mutual Evaluation Report" (Sept 2016) at 11, online (pdf): *FATF* <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>>.

<sup>83</sup> *Ibid.*

## 1.5: Impact of the 2015 NRA and 2016 FATF Evaluation

Based on the NRA findings in 2015, the federal government's 2015 Economic Action Plan allocated increased investigative resources to various law enforcement and national security agencies to allow them to continue identifying and mitigating the issues of terrorist financing and money laundering, including the CRA.<sup>84</sup>

"In essence, the NRA and FATF direction triggered the CRA to target Muslim charities by adopting a 'risk-based approach' that was so broad and non-specific in its identification of risk that it extended to all Muslim organizations regardless of scope of work."

In essence, the NRA and FATF direction triggered the CRA to target Muslim charities by adopting a "risk-based approach" that was so broad and non-specific in its identification of risk that it extended to all Muslim organizations regardless of scope of work. This resulted in a significant increase in the number of audits and revocations of Muslim charities in Canada in the following years, with no outside review or oversight, transparency or accounting for RAD's activities.

## 1.6: Review and Analysis Division Inter-Agency Activity

RAD does not work in isolation, and its relationship to other federal agencies is not restricted to information sharing. The RCMP has an integrated model for responding to National Security Investigations (NSI), which forms part of the overall Public Safety Anti-Terrorism (PSAT) initiative. The NSI centrally coordinates and directs all national security investigations, intelligence and policy. The NSI includes a unit in Ottawa called the Anti-Terrorist Financing Team that consists of the RCMP and CRA. The team is responsible for (1) monitoring and coordinating major ongoing investigational projects related to terrorist organizations focusing primarily on their financial and procurement infrastructures and (2) liaising on a routine basis with partner agencies such as FINTRAC, CSIS and CRA Charities Directorate (primarily RAD).<sup>85</sup> According to the 2008 FATF evaluation of Canada, the RCMP maintains a summary of key activities and milestones, which includes the number of hours spent listing terrorist entities, and the number of charities deregistered.<sup>86</sup>

<sup>84</sup> Department of Finance, *supra* note 23 at 5.

<sup>85</sup> Financial Action Task Force (2016), *supra* note 82 at 92.

<sup>86</sup> See Financial Action Task Force, "Third Mutual Evaluation On Anti-Money Laundering And Combating The Financing Of Terrorism, Canada" (29 Feb 2008) at 53, online (pdf): *FATF* <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Canada%20full.pdf>>.



CSIS also plays a role in influencing RAD audits. The intelligence agency has expertise and capability to examine charities that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations. CSIS investigates charities as part of its terrorist investigations and will disclose information to the RCMP or other agencies in the same manner as for any other investigations. Additionally, the CSIS Financial Analysis Unit works closely with RAD in reviewing renewals and applications for charitable status. This unit, as the primary contact at CSIS, conducts the research related to the requests and formulates the response on behalf of the intelligence agency.<sup>87</sup>

“CSIS also plays a role in influencing RAD audits. The intelligence agency has expertise and capability to examine charities that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.”

There is also active information sharing between the CRA and relevant partners such as the RCMP and CSIS where there are concerns that a charity is engaged in providing support to terrorism. If the CRA encounters information that is relevant to a terrorism investigation when carrying out its regulatory duties, it shares that information with national security partners. In 2014-2015, the Charities Directorate shared information with domestic national security partners in support of their mandate in 47 cases. Similarly, during this same time frame the division received information from partners in 51 cases to assist with its analysis.<sup>88</sup>

In addition to the sharing of information, a secondment program has been instituted between the CRA and its partners. CRA employees are sent to work at the partner agencies and employees from the partner agencies are sent to work at the CRA.<sup>89</sup>

It is therefore apparent that RAD audits are not restricted to those selected by the CRA but may also originate from a larger RCMP and/or CSIS investigation. Moreover, the audits may possibly be part of a larger cross agency investigation. Individuals who are present onsite at audits are not limited to CRA auditors, but can include law enforcement and intelligence agents as well (although they may not be identified as such).<sup>90</sup>

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<sup>87</sup> *Ibid.* at 257.

<sup>88</sup> Financial Action Task Force (2016), *supra* note 82 at 71.

<sup>89</sup> *Ibid.*

<sup>90</sup> Senate of Canada (7 March 2016) (Alastair Bland), *supra* at note 21.

Audits may also originate from requests or complaints by foreign governments with regards to terrorism. The RCMP's national security branch in 2006 responded to 72 requests from foreign governments.<sup>91</sup> In the case of IRFAN-Canada and ISNA Canada audits, RAD relied on information from Israel and India respectively. The substantial bulk of evidence relied upon by the CRA in the case of IRFAN-Canada's revocation was from Israel and the United States. It is unclear how this information came into the CRA's possession. Furthermore, as of 2004 Israel had listed IRFAN-Canada as an unlawful association. This listing was eventually used as a central piece in the CRA's audit of IRFAN-Canada, even though it was disputed and arguably made on political grounds, especially given that the Palestinian Authority issued a certificate clearing the Canadian charity of wrongdoing.<sup>92</sup>

"It is therefore apparent that RAD audits are not restricted to those selected by the CRA but may also originate from a larger RCMP and/or CSIS investigation. Moreover, the audits may possibly be part of a larger cross agency investigation."

## Section 2: Audits of Muslims Charities

### 2.1: Anti-Terrorism Laws and Muslim Charities

Since 2001, legislation in Canada not only legitimized the creation of a security state targeting critics of the government, but it also created a heightened rhetoric of security and fear where the presence of Muslims is seen by the Canadian state "as the most potent problem facing the nation."<sup>93</sup> An example of this is that "violent Islamic extremism" continues to be listed as a leading threat to Canada's national security.<sup>94</sup> This legitimates the targeting of Canadian Muslim populations by the Canadian government for surveillance and criminalization.<sup>95</sup> As a result, even prior to the CRA's "political activities audits" scandal of 2012, Muslim charities were being disproportionately monitored and audited, leading to investigations, potential revocation of charitable status, and the possible freezing and seizing of assets. This in turn threatened possible bankruptcy, insolvency or

<sup>91</sup> Financial Action Task Force (2008) *supra* note 86 at 53.

<sup>92</sup> Emon & Hasan, *supra* note 1 at 81-82.

<sup>93</sup> See Shaista Patel, "The Anti-Terrorism Act and National Security: Safeguarding the Nation against Uncivilized Muslims" in Jasmin Zine, ed, *Islam in the Hinterlands: Muslim Cultural Politics in Canada* (Vancouver: UBC Press, 2012) 1 at 272.

<sup>94</sup> See Monaghan, *supra* note 7 at 486; see Azeezah Kanji, "Islamophobia in Canada: Submission to the UN Special Rapporteur on Freedom of Religion or Belief" (30 Nov 2020) at 5, online (pdf): <https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/Noor-ICLMG-ISSA.pdf>.

<sup>95</sup> Kari, *supra* note 57 at 10, 12-13.

complete shut down of these charities. While no criminal charges were laid, the spectre of criminalization and imprisonment remains a constant concern.

“As a result, even prior to the CRA’s ‘political activities audits’ scandal of 2012, Muslim charities were being disproportionately monitored and audited, leading to investigations, potential revocation of charitable status, and the possible freezing and seizing of assets.”

Furthermore, the 2001 *Anti-Terrorism Act* introduced the *Charities Registration (Security Information) Act* (CRSIA). This legislation allows the Canadian government to revoke the charitable status of a charity if either the Minister of Public Safety or Minister of Revenue have reasonable grounds to believe that the charity has or will support terrorist activity.<sup>96</sup>

Ironically, despite arguments about the degree to which charities in Canada pose a risk to terrorist financing, we have not been able to document a single use of the CRSIA. In the final report of the Air India inquiry, it notes that as of 2009 the CRSIA had never been used<sup>97</sup>; a survey of CRA reports, FINTRAC reports and news coverage does not reveal any use since then. Further, as University of Toronto law professor Kent Roach writes, “The Charities Registration (Security Information) Act emerges more as a similar symbol of disapproval of terrorism than as a device that will be used. The law responds to the offence caused by the fact that the Babbar Khalsa once had charitable status, but it creates a risk that the work of the vast majority of legitimate charities could be deterred by concerns about possible indirect involvement in terrorism financing.”<sup>98</sup>

The problem is that through its vague language and broad granting powers, anti-terrorism legislation is allowing the government of Canada to “forge connections between Canadian Islamic charities and foreign terrorist entities in a manner that is arbitrary, tenuous, and difficult to reconcile.”<sup>99</sup> For instance, this is evident in the case of IRFAN-Canada. In 2008, the CRA began investigating the charity based on allegations made by American prosecutors in 2007 that IRFAN-Canada had links

<sup>96</sup> *Charities Registration (Security Information) Act*, S.C. 2001, c. 41, s. 113 (Assented to 2001-12-24) at 4(1), online: <<https://laws-lois.justice.gc.ca/eng/acts/c-27.55/page-1.html>>.

<sup>97</sup> Commission Of Inquiry Into The Investigation Of The Bombing Of Air India Flight 182. (2010) *Air India Flight 182: A Canadian Tragedy. Volume 5: Terrorist Financing*. (Ottawa: Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182) at 217. online (pdf): <<https://secretlaw.omeka.net/items/show/72>>.

<sup>98</sup> See Kent Roach, “The Air India Report and the Regulation of Charities and Terrorism Financing” (2011) University of Toronto Law Journal 61 at 55. Note: Babbar Khalsa (BK) is a Sikh group whose main objective is the creation of Khalistan as a Sikh nation and its separation from India. Both CSIS and the RCMP believed the BK to be centrally implicated in the 1984 Air India bombing

<sup>99</sup> Kari, *supra* note 57 at 11.

to Hamas.<sup>100</sup> By 2011, the CRA had stripped the charity of its charitable status for “failure to maintain adequate records and accounts.”<sup>101</sup>

In 2013, the charity suspended its operations and in 2014 the government of Canada declared IRFAN-Canada a terrorist organization, announcing a further investigation of the charity by the RCMP.<sup>102</sup> As author Nick Ridley notes in his book, *Terrorist Financing: The Failure of Counter Measures*, the links to terrorist funding that the CRA connected to IRFAN-Canada can be seen as ‘long and tortuous.’<sup>103</sup> In its decision to revoke IRFAN-Canada’s charitable status, the CRA provided a series of charts meant to document the sheer number of links with several degrees of separation connecting IRFAN-Canada to Hamas. While they present it as a demonstration of nefarious association, it actually serves to effectively demonstrate the tenuous and insubstantial nature of a connection divided by multiple degrees of separation.<sup>104</sup>

“In its decision to revoke IRFAN-Canada’s charitable status, the CRA provided a series of charts meant to document the sheer number of links with several degrees of separation connecting IRFAN-Canada to Hamas. Instead, it served to effectively demonstrate the tenuous and insubstantial nature of a connection divided by multiple degrees of separation.”

Furthermore, IRFAN-Canada along with countless other Canadian charities that provide aid to Palestinian civilians in areas under Israeli military occupation faced strong opposition not only from pro-Israeli advocates and elites (who could very well have filed complaints with the CRA against the charities), but also by a pro-Israeli Canadian government.<sup>105</sup> Canadian charities, often Muslim charities, that provide aid to Palestinians in the occupied territories, more often face investigation, defunding, questionable audits, spurious allegations of terrorism, and forced closure.<sup>106</sup> Though this was particularly obvious under the Conservative government of 2006 to 2014, the foundations were laid under the previous Liberal government.<sup>107</sup>

<sup>100</sup> *Ibid* at 16.

<sup>101</sup> *Ibid*.

<sup>102</sup> See Jeremy Wildeman, “Undermining the Democratic Process: The Canadian Government Suppression of Palestinian Development Aid Projects” (2017) 2:1 Can J for Middle East Studies 1 at 25, online (pdf): [https://www.researchgate.net/publication/338195441\\_Undermining\\_the\\_Democratic\\_Process\\_The\\_Canadian\\_Government\\_Suppression\\_of\\_Palestinian\\_Development\\_Aid\\_Projects](https://www.researchgate.net/publication/338195441_Undermining_the_Democratic_Process_The_Canadian_Government_Suppression_of_Palestinian_Development_Aid_Projects).

<sup>103</sup> Kari, *supra* note 57 at 16.

<sup>104</sup> Emon & Hasan, *supra* note 1 at 81.

<sup>105</sup> Wildeman, *supra* note 102 at 1.

<sup>106</sup> *Ibid*.

<sup>107</sup> *Ibid*.

The targeting of Muslim charities has evolved beyond humanitarian and relief organizations that were assisting the needy in Palestine, to include other charities such as the case ISNA Canada. Despite its long-standing service to the Canadian Muslim community for over thirty years, in 2017 ISNA Canada's charitable status was suspended for a year. This was due again to what Ridley aptly describes as "long and tortuous" connections made between the charity and potential terrorist activity abroad.<sup>108</sup> The CRA conducted the audit in 2011, for the years 2007 to 2009,<sup>109</sup> and delivered the decision in 2017. In it, they state that ISNA Canada was fuelling the political efforts of terrorist organizations based in India across the borders of Kashmir to Pakistan to India.<sup>110</sup> These links are made through what can only be termed long and far-fetched connections. In reality, the organization's relief arm was providing aid in an area that is marked by decades-old political tensions. As noted in our analysis of the NRA, charities that operate in these complex situations are viewed as at risk, heightening the CRA's likelihood to decide to inspect, audit and possibly revoke charitable status.

## "Anti-terror laws have created traps for Muslim charities, built on guilt by association."

According to the government of Canada, stripping charitable status from organizations such as IRFAN-Canada (essentially shutting the organization down), and ISNA Canada were "clear example[s] of the various arms of government working together as partners to disrupt terrorism financing in Canada."<sup>111</sup> Some, however, have argued that it was a questionable process that essentially took away real programs from people in real need. Anti-terror laws have created traps for Muslim charities, built on guilt by association.<sup>112</sup> As counter-terrorism charity lawyers, Terrance S. Carter and Sean Carter write, the provisions in the anti-terrorism laws that impact charities "cast a significantly broad net in order to encompass any economic connection, however remote, with 'terrorist activity' or a 'terrorist group' as defined in section 83.01 of the Criminal Code."<sup>113</sup>

In 2015, Senator Grant Mitchell commented to his fellow Senators: "there is huge risk [to] some clandestine operation setting up a charity in Canada, presenting it to the CRA for authorization and therefore subjecting itself to all kinds of technical, intense review. Why would a charity that is going

<sup>108</sup> Kari, *supra* note 57 at 16.

<sup>109</sup> See Jesse McLean, "Star Investigation: Federal audit raises concern that Canadian charity funded terror" (25 Jul 2013), online: *The Star* <[www.thestar.com/news/canada/2013/07/25/star\\_investigation\\_federal\\_audit\\_raises\\_concern\\_that\\_canadian\\_charity\\_funded\\_terror.html](http://www.thestar.com/news/canada/2013/07/25/star_investigation_federal_audit_raises_concern_that_canadian_charity_funded_terror.html)>.

<sup>110</sup> See Stewart Bell, "CRA suspends, fines major Islamic charity over concerns it may have 'provided resources' to armed militants" (2 Oct 2018), online: *Global News* <[www.globalnews.ca/news/4490892/cra-suspends-fines-major-islamic-charity-over-concerns-it-may-have-provided-resources-to-armed-militants/](http://www.globalnews.ca/news/4490892/cra-suspends-fines-major-islamic-charity-over-concerns-it-may-have-provided-resources-to-armed-militants/)>.

<sup>111</sup> House of Commons, Standing Committee of Finance, *Evidence*, 41-2, No 74 (26 March 2015) at 08:50 (Stéphane Bonin), online (pdf): <<https://www.ourcommons.ca/DocumentViewer/en/41-2/fina/meeting-74/evidence>>.

<sup>112</sup> Kari, *supra* note 57 at 14.

<sup>113</sup> See Terrance S. Carter & Sean S. Carter, "Anti-Diversion Issues for Charities Operating Abroad" (29 Jul 2014), online (blog): *Carters* <<https://www.carters.ca/pub/alert/ATCLA/ATCLA37.htm>>.

to send money to a clandestine operation somewhere in the Middle East do that? Why would they subject themselves to that? Why wouldn't they just raise money?"<sup>114</sup>

Although this may be a risk for Muslim relief charities that have operations and connections abroad, why are Muslim charities such as the Ottawa Islamic Centre and Assalam Mosque that operate strictly in Canada with no connections to foreign organizations being audited by RAD for links to financing of terrorism?<sup>115</sup> The answer may rest in large part in the listing of Al-Shabaab as one of the 11 groups in Canada's NRA.

The Assalam Mosque serves a largely Somali Muslim community in Ottawa and in recent years the national security narrative has been that Somali Canadians are the target of recruitment for al-Shabaab as foreign fighters. This in turn suggests that while the revocation for Assalam Mosque was centered on radicalization, it is very possible that one reason the audit was initiated was over concerns around links between the Mosque and al-Shabaab.<sup>116</sup> Once again, we are presented with an example of an entire community being targeted based on questionable links to international organizations, as well as questions about the underlying motives and reasons for the audit of a Muslim charity.

## 2.2: Audits of Muslim Charities, 2003-2015 and 2016-2019

The CRA's website explains that charities are selected for audits for various reasons including the following:<sup>117</sup>

- random selection
- referral from another area of the CRA
- complaints from the public
- articles in the media or other publicly available sources
- review of specific legal obligations under the Income Tax Act
- information from their T3010 annual information return
- follow-up on a previous compliance agreement

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<sup>114</sup> Senate of Canada (1 June 2015) (Senator Mitchell), *supra* note 13.

<sup>115</sup> See Stewart Bell, "Ottawa Mosque Loses Charity Status for Promoting 'Hate and Intolerance'" (9 Aug 2018), online: *Global News* <<https://globalnews.ca/news/4373959/ottawa-mosque-charity-hate-intolerance/>>.

<sup>116</sup> Emon & Hasan, *supra* note 1 at 35.

<sup>117</sup> See Government of Canada, "The Audit Process for Charities" (last modified 24 May 2019), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/audit-process-charities.html>>.



Each year CRA audits between 600 and 800 charities, selected at random.<sup>118</sup> Based on this, between 2003 and 2015, we calculate that the CRA would have audited approximately 8,400 charities. Over that period, these audits resulted in the CRA revoking the charitable status of 335 charities.<sup>119</sup> According to our research, 8 of these 335 were Muslim charities, accounting for 2.4% of all revocations.<sup>120</sup> At the same time, Muslim charities made up only 0.47% of all charities in Canada in 2015.<sup>121</sup>

“...distinction must also be made between random audits selected by the Charities Directorate and targeted audits selected by RAD.”

The Ministry of Revenue and the CRA may argue that Muslim charities are randomly audited like others and there is no prejudiced selection of such charities, as evidenced by the small percentage of Muslim charities among those who have faced revocation.<sup>122</sup> However, this does not account for Muslim charities being over-represented in the percentage of charities whose statuses are revoked. Moreover, distinction must also be made between random audits selected by the Charities Directorate and targeted audits selected by RAD, using its “risk-based” approach for concerns of terrorism financing and money laundering.

Unfortunately, there is no information publicly available on the charities that have had their status specifically revoked by RAD, as the division performs its work in secrecy. Although all charitable status revocations are listed publicly, these listings provide no indication whether the charity was audited by RAD or was merely part of the general pool of charities randomly audited by the CRA. In reviewing the Standing Senate Committee on National Defence and Security hearing on June 1, 2015, however, it is evident that the CRA and RAD focus their attention on a specific community.

Hawara explained to Senators that, “under the leadership of Mr. Bland, quite a bit of work was done on a project to identify the vulnerabilities in the charitable sector. At a very high level, two really key factors that have an impact on the vulnerability of a particular charity were the nature of the activities it carries on and its proximity to a terrorist threat either here or abroad. Those were the organizations at highest risk.”<sup>123</sup> She goes on to explain, “more specifically, we found through the analysis of a number of case studies that the organizations that provide service-type activities...in close proximity

<sup>118</sup> See Mark Blumberg, “Registered Charities and CRA Charity Audits” (3 March 2019), online (blog): *Canadian Charity Law*: <<https://www.canadiancharitylaw.ca/blog/registered-charities-and-cra-charity-audits/>>; Government of Canada, “The audit process for charities” (24 May 2019), online: Canada.ca <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/audit-process-charities.html>>.

<sup>119</sup> See Government of Canada, “List of Charities” (accessed on 19 Apr 2021), online: *Government of Canada* <[https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request\\_locale=en](https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale=en)>.

<sup>120</sup> These were: IRFAN-Canada (2011), World Assembly of Muslim Youth (2012), World Islamic Call (2011), United Holy Land Fund (2011), ISNA Development Foundation (2013), Ghanaian Muslims Association Of Canada (2009) and Jaamia Al Uloom Al Islamiyyah Ontario (2012)

<sup>121</sup> See Qasqas, Blumberg, at *supra* note 2.

<sup>122</sup> *Ibid.*

<sup>123</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

to a terrorist threat were at higher risk of abuse by terrorist financing...But there could be regions in Canada where they are more active or close to a community that — [interrupted by member who tells her] Without naming any of the communities.”<sup>124</sup>

Based on the information above, combined with what we know of the federal government’s approach and focus in regards to terrorist financing, when Hawara refers to “*a community*” in Canada where terrorist threats are higher, it is reasonable to conclude that she is referring to the Muslim community.

Overall, RAD completed 16 audits of charities between 2008 and 2015, eight of which resulted in revocations.<sup>125</sup> There is no public information regarding the number of audits carried out by RAD from 2003 to 2008. The total number of RAD audits for 2016-2019 is not known, either, but Bland also explains that following funding increases in 2015, RAD projected carrying out ten audits per year, which can take two to three years to conclude.<sup>126</sup> Therefore, each year ten new audits are started before the ten from the previous year are concluded.<sup>127</sup>

To further demonstrate the disproportionate selection of Muslim charities, the practice of RAD and its selection of charities must be assessed in two separate windows: 2003-2015 (driven by post-9/11 anti-terrorism policies) and 2016-present (driven by the 2015 NRA).

## 2008-2015

During this period, eight charities saw their statuses revoked following RAD audits. Of those eight, we have ascertained that six were Muslim charities, totalling 75% of all RAD-based revocations between 2008 and 2015.<sup>128</sup> This is despite Muslim charities making up less than half a percent of charities in Canada.

These were:

- IRFAN-Canada (2011)
- World Assembly of Muslim Youth (2012)
- World Islamic Call (2011)
- United Holy Land Fund (2011)
- ISNA Development Foundation (2013)
- Islamic Shia Assembly of Canada (2016)<sup>129</sup>

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<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> Senate of Canada (7 March 2016) (Alastair Bland), *supra* at note 21.

<sup>127</sup> *Ibid.*

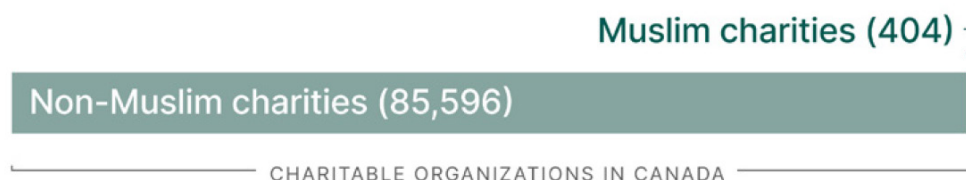
<sup>128</sup> See Government of Canada, “List of Charities” (accessed on 19 Apr 2021), online: *Government of Canada* <[https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request\\_locale=en](https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale=en)>. This list is based on cross-referencing public statements from RAD officials regarding the number of audits and revocations during this period, combined with an examination of charities who had their status revoked based on terrorist financing allegations, as well as the characteristics of their audits reflective of RAD’s investigatory techniques.

<sup>129</sup> ISAC’s audit began in 2011, and so was not influenced by the 2015 NRA. However, the revocation decision was only issued in 2016. See Anver M. Emon & Nadia Z. Hasan, “Under Layered Suspicion: A Review of CRA Audits of Muslim-Led Charities” (2021) at 42, online (pdf): University of Toronto Institute of Islamic Studies <<https://uploads->

## Of all RAD-based revocations between 2008-2015



## Despite representing only 0.47% of charities in 2015



Based on media reports and CRA's Notice of Intention to Revoke, these revocations did not demonstrate actual financing of terrorism. No charges were ever brought, including against IRFAN-Canada. In fact, despite being placed on the Terrorist Entities List, IRFAN-Canada has never been officially accused by the CRA or RCMP of knowingly and deliberately supplying funds or resources to Hamas or any other group for violent purposes.<sup>130</sup>

These RAD audits were conducted without clearly stating RAD's involvement; the revocation letters they issued were redacted; and charities did not know when audits actually began and then waited years before a final decision is made. All in all, RAD audits are secretive and lack both transparency and accountability.

While no exhaustive or formal description of a RAD audit exists, our research has revealed several defining characteristics, including:

[ssl.webflow.com/6014cdeca65f7f2af7e18187/605eb346393ed260c23713e2\\_Under\\_Layered\\_Suspicion\\_Report\\_Mar2021.pdf](https://ssl.webflow.com/6014cdeca65f7f2af7e18187/605eb346393ed260c23713e2_Under_Layered_Suspicion_Report_Mar2021.pdf).

<sup>130</sup> Karl Nerenberg, "Harper Government Answers Scorching Report by Crying 'Terrorist' (18 June 2015), online: *Rabble* <<https://rabble.ca/blogs/bloggers/karl-nerenberg/2015/06/harper-government-answers-scorching-report-crying-terrorist>>.

- Names of the auditors on the audit team;
- Size of the audit team;
- Distinct practices of the audit team (confiscation of electronics, confiscation of files, extensive examinations);
- Audit teams may include officers/agents and not simply auditors;
- Surveillance and intelligence practices;
- Digital/online audit of charity including events/programming;
- Lengthy multi-year audit timeline before a decision is issued;
- Extensive budget allocated for travel domestically and internationally as part of the audit.

We are also aware that two additional Muslim charities had their status revoked during this period, but it is unconfirmed if they were audited by RAD.<sup>131</sup> Further, beyond the revocations, one Muslim charity was fined and suspended.<sup>132</sup> It is possible that others may have been audited or received compliance agreements, but these are not publicly disclosed nor are charities inclined to share such information.

The six charities whose status was revoked by RAD represented an approximate \$6 million in cash and \$14 million in assets.<sup>133</sup> None have been criminally charged to date.

## 2016-2019

As noted above, in 2015 RAD's budget increased significantly and its resources allowed for the initiation of 10 audits per year. Statistics are not available to the public on total charities audited and total revocations by RAD during this period.

However, even without the availability of complete data, the numbers that are available are stark. In contrast to the total of six Muslim charities revoked between 2008 and 2015, there have been four Muslim charities revoked following RAD audits between 2016 and 2019. These charities are:

- Canadian Islamic Trust Foundation (2017)
- ISNA Islamic Services of Canada (2017)
- Ottawa Islamic Centre and Assalam Mosque (2018)
- Anatolia Cultural Foundation (2019)

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<sup>131</sup> See Government of Canada, "List of Charities" (accessed on 19 Apr 2021), online: *Government of Canada* <[https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request\\_locale=en](https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale=en)> (The following charities had their charitable status revoked but it is unknown if these revocations were conducted by RAD: Ghanaian Muslims Association Of Canada (2009) and Jaamiah Al Uloom Al Islamiyyah Ontario (2012)).

<sup>132</sup> See Stewart Bell, "CRA Suspends, Fines Major Islamic Charity Over Concerns it May Have 'Provided Resources' to Armed Militants" (1 Oct 2018), online: *Global News* <<https://globalnews.ca/news/4490892/cra-suspends-fines-major-islamic-charity-over-concerns-it-may-have-provided-resources-to-armed-militants/>>.

<sup>133</sup> See Government of Canada, Request Publicly Available Data from the List of Charities (Charities Listings) (Last modified: 14 Sept 2020), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/guidance-videos-forms/request-charities-listings.html>> (Based on T3010 data available online for each charity in the year prior to revocation).

It is also known that at least six Muslim charities are currently under audit by RAD. In all of these cases, we identified RAD audits based on the reasons given for audit and revocation, as well as the presence of defining characteristics as described above.

“Considering the direction of the 2015 Government NRA it can only be assumed that the vast majority of charities being audited by RAD are Muslim charities, and that all are charities based in and led by racialized communities.”

Most of the charities we have identified as undergoing RAD audits since 2016 are Muslim charities that carry out their activities within Canada. Given Hawara’s statements that audits take up to two to three years to complete, it is reasonable to expect a number of other audits to still be in the pipeline, leading to the possibility of more revocations to be announced in the coming years.

Additionally, considering the direction of the 2015 Government NRA and the 10 terrorist groups, plus foreign fighters, identified to have a nexus in Canada for terrorist financing, it can only be assumed that the vast majority of charities being audited by RAD are Muslim charities, and that all are charities based in and led by racialized communities.

## 2.3: “Public benefit” and audits of domestic Muslim charities

“One of the risks to the sector is abuse of programming...in terms of radicalization. In our examinations, we’ll have a look at the appropriateness of activities and whether those activities are supporting the charitable objectives. If they’re not, then we will deal with that,”<sup>134</sup> explained Alastair Bland, then director of RAD, at Senate hearings on Canada’s terrorism financing laws in 2015. According to him, local charities that do not have international ties remain a possible risk if their programming is contributing to radicalization in Canadian society. This is troubling, however, as neither the CRA nor RAD has issued clear guidance on this issue for organizations to follow.

In Canada, contemporary national security threats are increasingly framed around discourses of “radicalization” and “violent extremism.”<sup>135</sup> While the government has increased focus and funding for research and initiatives on counter-radicalization, definitions of what constitutes radicalization and how to address it remain contested. Further, while what is considered radicalization and extremism has recently grown to examine white supremacism and far right, for most of the past two decades it has been equated almost exclusively to notions of so-called “Islamic radicalization.” The result is that in the years since 9/11, security and media agencies have brought the use of

<sup>134</sup> Senate of Canada (1 June 2015) (Alastair Bland), *supra* note 13.

<sup>135</sup> Monaghan, *supra* note 11 at 485.

“radicalization” and “extremism” and their relationship to Islam into mainstream language, increasing fears and security concerns of “home-grown” or “domestic” terrorism in Canada.<sup>136</sup>

This disproportionately Muslim-centric narrative has sidelined efforts to address the rising threat of far-right violence. Addressing the United Nations Security Council following the 2017 Quebec City Mosque shooting, in which six Muslim men were murdered, and the 2019 Christchurch terrorist attack where 50 Muslims were murdered at two mosques, both perpetrated by white supremacists, Canada’s then-foreign affairs minister Chrystia Freeland stated that, “neo-Nazis, white supremacists, incels, nativists, and radical anti-globalists who resort to violent acts are a threat to the stability of my country and countries around the world.”<sup>137</sup> She added that such attacks “need to be at the top of our agenda when we talk about confronting terrorism.”<sup>138</sup>

Despite being unduly stigmatized by the mainstream terrorism narrative, Canadian Muslims and Muslim organizations have strongly condemned radicalism or radical thought and have worked diligently over the years since 9/11 to counteract radical extremism rather than working towards its popularity.<sup>139</sup>

“By targeting legitimate Canadian Muslim organizations that are providing concrete programs benefiting the community, the CRA is not only taking away necessary programming for the Canadian Muslim community, but it is also hindering its own efforts.”

It is problematic that the CRA and RAD both fail to delineate the criteria used to characterize programs as possible wellsprings of radicalization and failing to be in the “public benefit.” By targeting legitimate Canadian Muslim organizations that are providing concrete programs benefiting the community, including work that aids to promote inclusivity and counters radicalism, the CRA is

<sup>136</sup> *Ibid.*

<sup>137</sup> Carl Meyer, “Violent White Supremacists Threaten Canada’s Stability, says Freeland” (28 March 2019), online: *Canada’s National Observer*. <[www.nationalobserver.com/2019/03/28/news/violent-white-supremacists-threaten-canadas-stability-says-freeland](http://www.nationalobserver.com/2019/03/28/news/violent-white-supremacists-threaten-canadas-stability-says-freeland)>.

<sup>138</sup> *Ibid.*

<sup>139</sup> See e.g., National Council of Canadian Muslims, News Release, “NCCM Urges Canadian Muslims to Renew Efforts to Combat Radicalization” (4 June 2014), online: *NCCM* <[www.nccm.ca/nccm-urges-canadian-muslims-to-renew-efforts-to-combat-radicalization/](http://www.nccm.ca/nccm-urges-canadian-muslims-to-renew-efforts-to-combat-radicalization/)>; Marina Jiménez, “Canadian Imams to Condemn Terrorism” (21 July 2005), online: *The Globe and Mail* <[www.theglobeandmail.com/news/national/canadian-imams-to-condemn-terrorism/article1121857/](http://www.theglobeandmail.com/news/national/canadian-imams-to-condemn-terrorism/article1121857/)>; Muslim Association of Canada, Official Statement, “Statement Condemning the Terrorist Attacks on Christian Worshippers on Easter Sunday in Sri Lanka” (29 May 2019), online: *MAC* <<https://www.macnet.ca/2019/05/29/statement-condemning-the-terrorist-attacks-on-christian-worshippers-on-easter-sunday-in-sri-lanka/>>; Canadian Conference of Catholic Bishops & The Canadian Council of Imams, “Joint Statement by Canadian Conference of Catholic Bishops and the Canadian Council of Imams Condemning the Terrorist Attacks in Sri Lanka” (25 April 2019), online (pdf): *Canadian Conference of Catholic Bishops* <[www.cccb.ca/site/images/stories/pdf/Sri\\_Lanka\\_-\\_Joint\\_Statement\\_by\\_CCCB\\_and\\_Canadian\\_Council\\_of\\_Imams\\_-\\_EN.pdf](http://www.cccb.ca/site/images/stories/pdf/Sri_Lanka_-_Joint_Statement_by_CCCB_and_Canadian_Council_of_Imams_-_EN.pdf)>; Bill Graveland, “Canadian Imams Condemn Islamic State and its Supporters” (11 March 2015), online: *The Globe and Mail* <[www.theglobeandmail.com/news/national/canadian-imams-condemn-islamic-state-and-its-supporters/article23413832/](http://www.theglobeandmail.com/news/national/canadian-imams-condemn-islamic-state-and-its-supporters/article23413832/)>.

not only taking away necessary programming for the Canadian Muslim community, but it is also hindering its own efforts.

For example, in 2018, an Ottawa mosque, the Assalam Mosque and Ottawa Islamic Centre, had its charitable status revoked on allegations of promoting hate and intolerance.<sup>140</sup> According to the CRA, “the organization failed to devote all its resources to charity and allowed its resources to be used for activities that promote hate and intolerance” causing it to fail the CRA’s public benefit test.<sup>141</sup> The CRA argued that the mosque had speakers come to the mosque that at some point in their careers promoted hate. The CRA accused the Ottawa Islamic Centre, in part, of allegedly being a stage for radicalization.<sup>142</sup> A mosque administrator, Ali Abdulle, indicated that the allegations were a shock and the speakers had visited the mosque dating back to a previous administration, given that a new administration had been in place since 2013.<sup>143</sup> “We have been devastated,” he said. “It’s like an earthquake...the mosque resources [have] never been used for any hate or any promoting hate.”<sup>144</sup>

The mosque and Ottawa community have been greatly impacted by the allegations. The mosque and Islamic Centre offered several programs that not only supported the charitable objectives of the organization but also clearly served the public benefit. This includes providing funeral services, blood drives, food banks, marital counselling, in addition to being a place of worship, community building and creating bridges between the Muslim and non-Muslim communities in Canada.<sup>145</sup> Community members relying on such services are now at a loss. Ihsaan Gardee, former executive director of the National Council of Canadian Muslims, expressed in an interview his worry about the future of the mosque and the important services it provides.<sup>146</sup>

“Not only are Muslim organizations being targeted by the government with questionable and unfounded allegations of promoting radicalization, the process of an audit, and possible revocation, creates a chilling effect that can cripple the Canadian Muslim charitable community.”

Not only are Muslim organizations being targeted by the government with questionable and unfounded allegations of promoting radicalization, the process of an audit, and possible revocation, creates a chilling effect that can cripple the Canadian Muslim charitable community. These organizations rely on their charitable status for their survival, since without it they cannot raise the

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<sup>140</sup> See Matthew Kupfer, “Ottawa mosque loses charity status for promoting ‘hate and intolerance’ (10 Aug 2018), online: *CBC* <[www.cbc.ca/news/canada/ottawa/assalam-mosque-ottawa-charity-revoked-1.4780280](http://www.cbc.ca/news/canada/ottawa/assalam-mosque-ottawa-charity-revoked-1.4780280)>.

<sup>141</sup> *Ibid.*

<sup>142</sup> Emon & Hasan, *supra* note 1 at 31.

<sup>143</sup> Kupfer, *supra* note 140.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*



funds necessary to carry out their important work, both in the community but also as places of faith and worship.<sup>147</sup> If they close, many programs needed in the community would disappear. The result is the undermining the very idea of religious freedom in Canada.

Furthermore, as we have documented in other cases, when questioned regarding the basis for their allegations of “radicalization,” the CRA has responded instead by pointing to alleged problems with the organization’s books and the failure to file an information return.<sup>148</sup> While it is crucial that charities meet their administrative obligations, it raises the question of how many other organizations, if submitted to the same degree of undue scrutiny, would also demonstrate similar administrative lapses? As others have noted, meeting the regulatory requirements placed upon small and volunteer-lead charities is difficult at best, and that, upon scrutiny, many charities would likely be found to be non-compliant in various respects.<sup>149</sup>

## Section 3: Transparency & Accountability

In general, the CRA is recognized as operating at arms length and independently of the government. Yet there have been instances of concern around the auditing of charities that have raised questions regarding transparency and accountability. The concerns addressed in this report are not unique and, taken in context, reinforce the call for increased transparency and accountability of the CRA’s regulation of charities.

### 3.1: Political Activity Audits and the CRA

Key examples of this concern are the “political activities audits” that took place under the Conservative government from 2011 on. In 2012, the federal budget allocated an additional \$8 million dollars to the CRA to carry out these audits, with another eventual \$8 million being allocated in 2013–2014.<sup>150</sup> This decision to put \$16 million into increased audits was heavily criticized because it came at a time when significant government budget cuts were taking place, the CRA was cutting jobs, and tax evasion involving billions of dollars was taking place.<sup>151</sup> With these funds, the CRA was to conduct “political activity audits” of charities to ensure they were not spending more than ten percent of their expenditures on political activities or engaging in partisan work.<sup>152</sup> At the same time, then-

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<sup>147</sup> Kari, *supra* note 57 at 14.

<sup>148</sup> Kupfer, *supra* note 140.

<sup>149</sup> See Eleanor Burt and John Taylor, “Striking the Regulatory Balance in the Unique Case of the Voluntary Sector,” *Public Money & Management* 24, no. 5 (2004): 297–300, cited in Emon & Hasan, *supra* note 1 at 19.

<sup>150</sup> See Broadbent Institute, “Stephen Harper’s CRA: Selective Audits, “Political” Activity, and Right-Leaning Charities” (2014) at 2, online (pdf): *Broadbent Institute* <[http://d3n8a8pro7vhmx.cloudfront.net/broadbent/pages/16/attachments/original/1430005311/Stephen\\_Harper's\\_CRA.pdf?1430005311](http://d3n8a8pro7vhmx.cloudfront.net/broadbent/pages/16/attachments/original/1430005311/Stephen_Harper's_CRA.pdf?1430005311)>.

<sup>151</sup> *Ibid*, See Gareth Kirkby, *An Uncharitable Chill: A Critical Exploration of How Changes in Federal Policy and Political Climate are Affecting Advocacy-Oriented Charities* (Master of Arts in Professional Communication Thesis, Royal Roads University, 2014) at 5, online (pdf): <[http://garethkirkby.ca/wp-content/uploads/2015/08/G-Kirkby\\_UncharitableChill.pdf](http://garethkirkby.ca/wp-content/uploads/2015/08/G-Kirkby_UncharitableChill.pdf)>.

<sup>152</sup> See Sean Kilpatrick, “Left-leaning think tank accuses Canada Revenue Agency of only targeting left-leaning charities” (21 Oct 2014), online: *National Post* <<https://nationalpost.com/news/politics/left-leaning-think-tank-accuses-canada-revenue-agency-of-only-targeting-left-leaning-charities>>; see Kirkby, *supra* note 151 at 12.

Conservative leaders such as Joe Oliver, Natural Resources Minister, Peter Kent, Environment Minister, and Vic Toews, Public Safety Minister, began attacking environmental charities.<sup>153</sup> Environmental groups were accused of “money laundering,” of being “extremists” and a “top domestic terrorist threat,” of undermining Canada’s national economic interests, and were added to the government’s anti-terror strategy as a potential threat to national security.<sup>154</sup>

Around that time, Alykhan Velshi, a former Conservative staffer, joined Ezra Levant at Ethical Oil, a non-profit organization Levant established in 2011 to promote Canada’s oil sands. The organization then began making a series of complaints to the CRA about environmental organizations, demanding that they be audited; some of these letters were dozens of pages long.<sup>155</sup> Data suggests the complaints targeted organizations working directly or indirectly on energy issues.<sup>156</sup>

In 2014, communications scholar Gareth Kirkby conducted a study on the impact the CRA’s political-activity audits were having on the willingness of Canadian charities to engage in advocacy.<sup>157</sup> The study made headlines for its conclusion that the Harper era CRA’s aggressive use of political-activity audits had led to an “advocacy chill” amongst dozens of charities who feared that such audits would strip them of their charitable status.<sup>158</sup> One of the most shocking takeaways from the study pertained to the seemingly systematic manner in which environmental, human rights, and international development charities were targeted by CRA’s political-activity audits.<sup>159</sup> These categories of charities would draw the attention of CRA auditors, as they tended to have higher self-declared “political activities” than most other organizations.<sup>160</sup> As CRA staff dug through the files of said charities they often discovered a disproportionately large number of complaint letters, which demanded CRA audit these charities and revoke their charitable status.<sup>161</sup>

Lending credence to fears that the CRA’s political-activity audits were weaponized against critics of the Harper government’s policies is the fact that several environmental charities who had complaints on their CRA files all received complaints from the same source: Ethical Oil.<sup>162</sup> It should be noted that Ezra Levant not only wrote the book *Ethical Oil*, and was closely connected with Harper and the Conservative Party of Canada, he also used his television show to encourage the public to file complaints with the CRA against charities that did not fit the Conservative mandate.<sup>163</sup> Velshi, Levant’s collaborator on the Ethical Oil website and campaigns, was known for his ongoing close ties to the Conservative government, and later returned to politics as the director of issues

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<sup>153</sup> Broadbent Institute, *supra* note 150.

<sup>154</sup> *Ibid.*; see also Kirkby, *supra* note 151 at 1, 4.

<sup>155</sup> Kirkby, *supra* note 151 at 40.

<sup>156</sup> *Ibid.*

<sup>157</sup> The Canadian Press, “Study Cites ‘Chill’ from Tax Agency Audits of Charities’ Political Activities” (10 Jul 2014), online: CBC <<https://www.cbc.ca/news/politics/study-cites-chill-from-tax-agency-audits-of-charities-political-activities-1.2703182>>.

<sup>158</sup> *Ibid.*

<sup>159</sup> Kirkby, *supra* note 151 at 35.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.* at 40.

management in Prime Minister Stephen Harper's office.<sup>164</sup> The Ethical Oil organization continued to be managed by individuals close to, and to keep strong links with, the Conservative Party of Canada.<sup>165</sup>

It was no coincidence, then, that the first round of these 'political-activity' audits targeted environmental charities, all of which opposed the Harper government's energy policies.<sup>166</sup> Tides Canada Foundation, Tides Initiatives Society, Ecology Action Centre, Environmental Defence Canada Inc., and the David Suzuki Foundation were some of the organizations that were audited.<sup>167</sup> Slowly, the scope of charities being audited expanded to include anti-poverty, foreign aid, human rights, and religious groups.<sup>168</sup> Reports have placed political-activity audits between 52 and 60, including organizations like Amnesty International Canada and the Canadian Centre for Policy Alternatives (CCPA).<sup>169</sup> Funding cuts also began taking place for leading policy advocacy organizations, some with histories dating back ninety years.<sup>170</sup>

It was slowly becoming evident that CRA auditing practices were politically skewed as most charities that were being audited had, at some point, opposed or criticized Conservative government policy.<sup>171</sup> As Rick Smith, executive director of the Broadbent Institute explained, evidence emerged at the time that indicated the CRA was "less interested in compliance with the law than it is in politically-motivated retribution against the Harper government's critics."<sup>172</sup> The above suggests that the CRA Charities Directorate allowed its audit practices to be used as a politicized tool to exert pressure on particular segments of the charity sector.

The CRA has denied this, stating that the CRA does not consider the "political views of any charity"<sup>173</sup> when it makes its decision to audit a charity. However Cathy Hawara, then head of the Charities Directorate at the CRA, when questioned about the nature of audit selections, stated that, "We also gave consideration to... what you might call political leaning..."<sup>174</sup> She later retracted this statement explaining she had "mischaracterized" the CRA's selection process.<sup>175</sup> In part of her retraction, Hawara explained, the CRA seeks "balance" by targeting groups from all four charitable categories:

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<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> Kilpatrick, *supra* note 152; Broadbent Institute, *supra* note 150.

<sup>167</sup> See Dean Beeby, "Canada Revenue Agency's Political-Activity Audits of Charities" (5 Aug 2014), online: *CBC* <<https://www.cbc.ca/news/politics/canada-revenue-agency-s-political-activity-audits-of-charities-1.2728023>>.

<sup>168</sup> *Ibid.*

<sup>169</sup> See Broadbent Institute, *supra* note 150 at 2, 4; see Canada, Minister of National Revenue, *Report of the Consultation on the Political Activities of Charities* (report), (31 March 2017) at 9, online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/about-charities-directorate/political-activities-consultation/consultation-panel-report-2016-2017.html>>.

<sup>170</sup> Kirkby, *supra* note 151 at 1.

<sup>171</sup> See Mark Blinch, "CRA Denies Agency Audits Target Charities With Anti-Government Political Leanings" (3 Aug 2014), online: *National Post* <<https://nationalpost.com/news/canada/cra-denies-agency-audits-target-charities-with-anti-government-political-leanings>>.

<sup>172</sup> *Ibid.*

<sup>173</sup> Blinch, *supra* note 171.

<sup>174</sup> Beeby, *supra* note 167.

<sup>175</sup> *Ibid.*

advancement of religion, relief of poverty, advancement of education, and benefit to the community (a broad classification that includes human rights and environmental groups).<sup>176</sup>

Also concerning was the apparent one-sided nature of these audits. According to a study by the Broadbent Institute, nine right-wing charities that reported zero percent political activities to the CRA not only engaged in political activity but also engaged in prohibited partisan activities.<sup>177</sup> Another analysis of the same right-wing organizations demonstrated similar results.<sup>178</sup> Ironically, these charities have not reported experiencing political-activity audits.<sup>179</sup> All of this points to the conclusion that under the Conservative government, the CRA specifically investigated organizations that criticized the government while right-wing groups were not scrutinized.

Following the 2015 federal election, the new Liberal-led government promised to stop the harassment of charities, but changes were slow to come.<sup>180</sup> In July 2018, an Ontario court struck down the section of the Income Tax Act that limits a charity's political activity to just ten percent.<sup>181</sup> Since then, the CRA and an advisory group have begun work on new guidance for charities and political activities including amendments to direction and control rules, allowing an appeal process in the Tax Court of Canada, and creating a permanent policy in government for the charitable sector.<sup>182</sup> Senator Ratna Omidvar has raised concerns that current CRA guidelines and part of the Income Tax Act governing charities perpetuate systemic racism. In response, she has presented Bill S-222, the *Effective and Accountable Charities Act*, which would allow the charitable sector to enter into more equitable relationships with partners, reduce out-dated restrictions, and help weed out systemic racism, primarily by addressing long-standing issues of "direction and control."<sup>183</sup>

While these are positive developments that address some of the concerns raised in our research, it will not go far enough in tackling the lack of transparency and oversight that allows for the potential politicization of the charity review and audit process, particularly under the guise of addressing terrorism.

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<sup>176</sup> *Ibid.*

<sup>177</sup> Broadbent Institute, *supra* note 150 at 4, 9.

<sup>178</sup> See Press Progress, "Right-wing charities report zero political activity...again" (14 May 2018), online: *PressProgress* <<https://pressprogress.ca/right-wing-charities-report-zero-political-activity-again/>>.

<sup>179</sup> *Ibid.*; see Jeremy Wildeman, "Undermind the Democratic Process: The Canadian Government Suppression of Palestinian Development Aid Projects" (2017) 2 The Can J Middle E Stud at 26; Press Progress, *supra* note 171.

<sup>180</sup> See Dean Beeby, "CRA loses court challenge to its political activity by charities" (17 July 2018), online: *CBC* <[www.cbc.ca/news/politics/charity-political-audits-cra-lebouthillier-farha-poverty-environmental-gray-liberal-1.4750295](http://www.cbc.ca/news/politics/charity-political-audits-cra-lebouthillier-farha-poverty-environmental-gray-liberal-1.4750295)>.

<sup>181</sup> *Ibid.*

<sup>182</sup> See Canada, Report #1 of the Advisory Committee on the Charitable Sector: Towards a Federal Regulatory Environment that Enables and Strengthens the Charitable and Nonprofit Sector, (Ottawa: ACCS, January 2021), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector/report-advisory-committee-charitable-sector-february-2021.html>>.

<sup>183</sup> See Ratna Omidvar, Press Release, "The Effective and Accountable Charities Act Would Empower the Charitable Sector and Weed out Systemic Racism" (17 Mar 2021), online: *Ratna Omidvar* <<http://www.ratnaomidvar.ca/effective-and-accountable-charities-act-would-empower-the-charitable-sector-and-weed-out-systemic-racism/>>.

## 3.2: Accountability and RAD

Considering the extent of the powers granted to RAD and the role the division plays in the intelligence community, its access to information and ability to share this information, and its close interaction with other agencies, one would expect that the CRA would have a dedicated review body to ensure it is compliant with laws and regulations. This is not the case, however. As Hawara has explained, RAD and the CRA do not have “an oversight body like CSIS does” and “there is no equivalent of SIRC [Security Intelligence Review Committee] in the context of the CRA.”<sup>184</sup>

Recently, this has begun to change. Up until 2019, intelligence agencies in Canada had their respective oversight bodies: CSIS had SIRC; the Communications Security Establishment Canada (CSE) had the Office of the Communications Security Establishment Commissioner (OCSEC), and the RCMP had the Civilian Review and Complaints Commission.<sup>185</sup> No body, though, was empowered to review or receive complaints regarding the activities of the CRA, the Charities Directorate or RAD.<sup>186</sup> In 2019, with the adoption of the *National Security Act*, the new National Security and Intelligence Review Agency (NSIRA) was created, supplanting the review work of SIRC, the OCSEC and the CRCC (in relation to the RCMP’s national security activities).

While not dedicated to the CRA, it has the power to review all national security related activities, including those of the CRA. However, there is still no provision for individuals to file complaints regarding the CRA’s national security activities. This would be key in order to allow charities and their directors to take concrete action if they have concerns about the CRA’s approach to audits and countering terrorist financing. The CRA also does not currently figure into NSIRA’s proposed work plans, as described in the agency’s 2019 annual report.<sup>187</sup>

In 2018, the year before NSIRA was established, the government also created the National Security and Intelligence Committee of Parliamentarians (NSICOP). Composed of parliamentarians from various parties in both the House of Commons and Senate, it reviews legislation and policy, any activity related to national security, or any issue referred to it by a minister. In its first report, NSICOP identified the landscape of the intelligence community in Canada, but neither the CRA nor RAD was mentioned.

The result is that, despite these important changes, Canada’s national security and intelligence review mechanisms do not directly address the intelligence and surveillance role given to RAD.<sup>188</sup>

<sup>184</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

<sup>185</sup> See House of Commons, *National Security and Intelligence Committee of Parliamentarians Annual Report 2018* (April 2019) (Chair: Hon David McGuinty) at 3, 20, online (pdf): <[https://nsicop-cpsnr.ca/reports/rp-2019-04-09/2019-04-09\\_annual\\_report\\_2018\\_public\\_en.pdf](https://nsicop-cpsnr.ca/reports/rp-2019-04-09/2019-04-09_annual_report_2018_public_en.pdf)>.

<sup>186</sup> See Canada Revenue Agency, “Privacy Management Framework” (last modified: 30 Jan 2020), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/corporate/security/privacy-management-framework.html>> (While the Office of the Privacy Commissioner of Canada has powers to review the CRA’s activities, this would be focused on issues related to privacy and not issues related to audits or national security).

<sup>187</sup> National Security and Intelligence Review Agency, *supra* note 3.

<sup>188</sup> House of Commons, *supra* note 185.

“The result is that, despite these important changes, Canada’s national security and intelligence review mechanisms do not directly address the intelligence and surveillance role given to RAD.”

In testimony before the Senate in 2015, Hawara disputed the idea that CRA does not have independent oversight. “The institutions that would provide oversight to government operations generally absolutely continue to have oversight over our [CRA] work...the Privacy Commissioner, the Auditor General,” she stated. While this is true, it remains inadequate. For example, audits by the Office of the Privacy Commissioner (OPC) do not take place frequently, nor are they comprehensive reviews (being limited to issues of privacy). For instance, the last OPC audit took place in 2018<sup>189</sup>, and was preceded by one in 2010.<sup>190</sup> Without more regular review, systemic issues that allow for weak or incorrect information to be inappropriately shared and used across agencies or by other entities to render decisions are allowed to persist, and potentially harmful mistakes are not caught. This can in turn lead to substantial damage being done to organizations and the people involved in them, especially if allowed to persist over several years.

The dangers of the use of flawed information without review or oversight is exemplified by the 2002 case of Maher Arar. Arar, a Canadian, was imprisoned and tortured in Syria for ten months based on weak and inaccurate intelligence sent between Canadian and international security intelligence agencies without oversight.<sup>191</sup> Former Prime Minister Harper apologized to Arar in 2007 for Canada’s involvement, at the same time settling a civil suit Arar had filed against the Canadian government.<sup>192</sup> However, Arar’s name has been permanently associated with the terrorist allegations made against him due to negligence by the Canadian government and security agencies.<sup>193</sup>

In the same 2015 Senate Committee meeting, Hawara was asked, “Who reviews what you share when you share information? Who reviews the application of the caveats? Who does that from an objective, outside point of view so that we can be assured that, as good as the people are at the CRA, they’re not making a mistake without realizing they’re making a mistake”? Hawara, worrisomely, explained that the CRA does not in fact require any oversight, as “these decisions are taken at a senior level within my organization. We have a team that is trained to conduct in-depth analysis of

<sup>189</sup> See Auditor General of Canada, *2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada: Report 7 - Compliance Activities Canada Revenue Agency*, (Ottawa: OAG, 2018), online: *Office of the Auditor General of Canada* <[https://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201811\\_07\\_e\\_43205.html#](https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_07_e_43205.html#)>; see Auditor General of Canada, *2010 Fall Report of the Auditor General of Canada, Chapter 7 - Registered Charities - Canada Revenue Agency*, (Ottawa: OAG, 2018), online: *Office of the Auditor General of Canada* <[https://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201010\\_07\\_e\\_34290.html](https://www.oag-bvg.gc.ca/internet/English/parl_oag_201010_07_e_34290.html)>.

<sup>190</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

<sup>191</sup> See Penny Collette, “The Necessary Approach to National Security Oversight” (28 Apr 2019), online: *The Star* <[www.thestar.com/opinion/star-columnists/2019/04/28/the-necessary-approach-to-national-security-oversight.html](http://www.thestar.com/opinion/star-columnists/2019/04/28/the-necessary-approach-to-national-security-oversight.html)>.

<sup>192</sup> *Ibid.*

<sup>193</sup> See Colby Itkowitz, “From Tortured Terrorist Suspect to Entrepreneur: How this Canadian Father Got His Life Back” (27 Apr 2016), online: *The Washington Post* <[www.washingtonpost.com/news/inspired-life/wp/2016/04/27/from-accused-terrorist-to-canadian-entrepreneur-maher-arar-is-finally-getting-his-life-back/?utm\\_term=.9b022952e4b4](http://www.washingtonpost.com/news/inspired-life/wp/2016/04/27/from-accused-terrorist-to-canadian-entrepreneur-maher-arar-is-finally-getting-his-life-back/?utm_term=.9b022952e4b4)>.



every single disclosure. Currently under our authorities to share, every disclosure is looked at individually. The analysis is conducted and documented...and is signed off at the director level. We have built quite a bit of expertise in the last number of years..." Consequently, "people in the CRA...[are] making individual decisions...they can misunderstand and they can make mistakes...they are human."<sup>194</sup>

This is true, and is exactly why external bodies are required to review sensitive decisions or actions that operate with little transparency, and have great impact, oftentimes negatively, on Canadian organizations and the lives of the people connected to them. Not only does little to no oversight allow RAD and the CRA to continue its work without accountability, but it also allows the CRA to act on intelligence that may be flawed, out of context, weak, politically-motivated and out-dated; and make prejudiced decisions against certain charities without accountability.

"The Liberal government has made an effort to ensure that federal national security practices respect and safeguard the values, rights, and freedoms of Canadians by establishing new review bodies, but the important work of ensuring CRA and RAD's activities are scrutinized remains unaddressed."

The Liberal government has made an effort to ensure that federal national security practices respect and safeguard the values, rights, and freedoms of Canadians by establishing NSIRA and NSICOP, but the important work of ensuring CRA and RAD's activities are scrutinized remains unaddressed.<sup>195</sup> Two important steps could help to rectify this: First, that the government broadens NSIRA's legislation to allow it to accept complaints regarding the work of the CRA. Second, that NSIRA and NSICOP coordinate to ensure regular, ongoing reviews of the CRA's national security-related work.

## Section 4: Impacts of a RAD Revocation Decision

Canada's anti-terror legislation, regulations, policies and practices have granted the government and its agencies, including the CRA, broad powers to "collect evidence and build a case behind closed doors" which severely impedes "the ability of those charities facing deregistration to know

<sup>194</sup> Senate of Canada (1 June 2015) (Cathy Hawara), *supra* note 13.

<sup>195</sup> See Prime Minister of Canada, News Release, "Prime Minister announces new National Security and Intelligence Committee of Parliamentarians" (6 Nov 2017), online: *Justin Trudeau, Prime Minister of Canada* <<https://pm.gc.ca/en/news/news-releases/2017/11/06/prime-minister-announces-new-national-security-and-intelligence>>.



and meet the case against them.”<sup>196</sup> This unfair process hinders and undermines the charity’s ability to present a competent defense.

Moreover, given the severe impediments facing a charity’s ability to build an effective and complete case against the CRA’s allegations, charities are also likely to be unsuccessful in appealing revocations of their charitable status. Further diminishing a charity’s ability to successfully pursue administrative or judicial recourse is the reputational damage a charity endures once the CRA’s allegations of a charity’s connection to terrorism are circulated in the media. Once the media widely disseminates these alleged connections to criminality and terrorism, they become entrenched truths in the public eye, despite the concerns that the CRA often predicates said connections upon several degrees of separation, or the charity in question’s inability to effectively challenge the confidential information held by the CRA. Even if the accusations were correct, the lack of transparency and ability of a charity to counter the case brought against it undermines the process.

“Once the media widely disseminates these alleged connections to criminality and terrorism, they become entrenched truths in the public eye, despite the CRA often predicating said connections upon several degrees of separation.”

This not only creates a climate of fear for Muslim organizations but also deters donors who fear association with terrorist organizations, through vague and broad legislation, from donating to Muslim charities. As a 2012 Brookings Institute study reports, “donors who wish to support...charitable activities face a dilemma when assessing the qualifications of a particular charitable organization in what has been described as a ‘climate of fear’ [and] similarly, in reaction to their own changing regulatory obligations, financial institutions are increasingly risk averse in dealing with Muslim charities.”<sup>197</sup> In 2013, two years after CRA revoked the status of IRFAN-Canada, the Canadian Imperial Bank of Commerce (CIBC) informed the organization that it would be closing their accounts.<sup>198</sup> More recently ISNA-Canada, which has completed its one-year status suspension, was notified that its bank accounts would be closed as well. We have been informed by other Muslim charities that they are facing similar challenges with Canadian banks.

The fall-out from terrorism-related allegations are substantial: the impact can be felt across the entire Canadian Muslim community. If an organization’s charitable status is revoked, it will likely be forced to cease its operations, and both the organization and its members who are alleged to be

<sup>196</sup> Kari, *supra* note 57 at 13.

<sup>197</sup> *Ibid* at 14, citing Dean Dille and Elizabeth Ryan, “Developing New Mechanisms to Promote the Charitable Sector” (2012), online: *Washington, D.C.: Brookings Institution* <<https://www.brookings.edu/wp-content/uploads/2016/06/Charitable-web.pdf>>.

<sup>198</sup> See Peter Thompson, “Relief organization that allegedly supported Hamas suspends operations after CIBC closes bank account” (15 July 2013), online: *National Post* <<https://nationalpost.com/news/canada/relief-organization-that-allegedly-supported-hamas-suspends-operations-after-cibc-closes-bank-accounts>>.

connected to terrorism are tarnished for life, regardless of the lack of credibility and reliability behind the allegations.

## Section 5: Institutional and Structural Islamophobia

Canada's anti-terrorism legislation, the drive to increase government surveillance, and the conclusions of the 2015 National Risk Assessment and Canada's 2016 FATF review are part of a broader, government-wide focus that has created a favourable environment for racial profiling, targeting and bias towards Muslims. Institutional and structural Islamophobia consists of anti-Muslim racism and bias allowed and fostered by the state.

“While it may not be officially sanctioned by the government of Canada, the assertions and conclusions of government reports and directives have been implemented by agencies in a manner that targets and profiles Muslim organizations and communities, supports Islamophobia and has produced bureaucrats and agents who have become invested in these Islamophobic practices – whether they recognize them as prejudiced or not.”

While it may not be officially sanctioned by the government of Canada, the assertions and conclusions of government reports and directives have been implemented by agencies in a manner that targets and profiles Muslim organizations and communities, supports Islamophobia and has produced bureaucrats and agents who have become invested in these Islamophobic practices – whether they recognize them as prejudiced or not. This phenomenon is not new. Multiple scholars and advocates have researched and documented racial profiling by Canadian government agencies that target the Muslim community since 9/11, the start of the so-called “War on Terror” and the adoption of the *Anti-terrorism Act*.<sup>199</sup> But similar practices in the CRA have rarely been recognized due to a lack of transparency and independent review, a high level of secrecy, and the justified concern of those impacted that coming forward would do more to harm their reputation through association with “terrorism” than to alleviate the situation. Because of all this, it has been difficult to demonstrate a trend. However, there is now enough information to raise serious questions about the CRA's approach, and to demonstrate the urgent need to address a problematic trend.

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<sup>199</sup> National Anti Racism Council of Canada, *supra* note 4 at 9.

The 2015 NRA concluded that the central threat of terrorist financing in Canada comes from 11 entities, nine of which are Islamist-linked extremist/militants with ties to Muslim countries, all of which have a “nexus” to Canada. While neither the nature nor the scope of this nexus are explained or documented, it is used to argue that a subsection of the charity sector – charities that have been reviewed and approved by the CRA previously – requires special scrutiny for the purposes of preventing crime. The result is that the CRA has essentially defined their “faith” as a charity’s connection to, or propensity for, involvement in terrorist financing.

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The lack of explicit endorsement of targeting Muslim charities in the NRA and other anti-terrorism legislation does not mean prejudice and Islamophobia does not exist in agencies and regulatory bodies like the CRA or RAD. Governments and agencies across Canada have acknowledged that both unconscious bias and systemic racism are present and must be addressed. However, the manifestations of this bias often go unrecognized or unchecked. What we see in the charities sector is bureaucrats and agents using discretionary decision-making powers that are not well documented to target Muslim charities. The lack of any substantial checks and balances, for example an independent review of the CRA’s national security-related activities or the requirement to report publicly on their activities, allows systemic and institutional bias to go unaddressed. The fact that the 2015 NRA failed to recognize this issue served to compound the problem, and is emblematic of the issues with post-9/11 anti-terrorism legislation and directives. While more comprehensive review of the entire national security landscape via NSIRA and NSICOP provides an opportunity to better regulate this issue, the lack of explicit action regarding the CRA and counter-terrorist financing and the CRA either in legislation or in recent reviews means this issue will persist.

“What we see in the charities sector is bureaucrats and agents using discretionary decision-making powers that are not well documented to target Muslim charities.”

From the start, Canada’s “war on terrorism” and achieving its AML/CFT goals have been carried out in partnership with international partners and traditional allies, such as the United States and other Five Eyes partners (the UK, Australia and New Zealand). Also central to this work has been the policies and priorities of the FATF and UN mandates on countering terrorist financing. While international coordination is essential, the systems, policies and directions they present also exacerbate the issues we have identified with the CRA and RAD. For example, FATF supported Canada’s risk based approach (overall, and specifically in relation to charities) in its 2016 Mutual Evaluation Report of Canada, without raising concerns about establishing independent safeguards or accountability, despite acknowledging that lack of access to the classified version of Canada’s

NRA limited its review.<sup>200</sup> Others have documented how the global regime for counter-terrorist financing laws has had a detrimental impact on international humanitarian aid – carried out by charities – based on the lack of safeguards put in place internationally and trickling down to domestic legislation.<sup>201</sup>

The growing influence of the far right in the practices, policies, and direction of government institutions internationally poses a further concern.<sup>202</sup> While a change in administration in the United States may result in some policy shifts, anti-Muslim and xenophobic tendencies were emboldened and remain influential; in France, a new wave of Islamophobic policies are being adopted.<sup>203</sup> In February 2021, the UN Special Rapporteur on freedom of religion or belief issued a report stating that, “Following the terrorist attacks of 9/11 and other horrific acts of terrorism purportedly carried out in the name of Islam, institutional suspicion of Muslims and those perceived to be Muslim has escalated to epidemic proportions.”<sup>204</sup>

Arab regimes such as the United Arab Emirates, Saudi Arabia, and Egypt have also orchestrated Islamophobia campaigns to exert political influence on Western nations.<sup>205</sup> Arab and Muslim governments are:

“Fuelling anti-Muslim hate as part of their campaigns to fight dissent at home and abroad. By trying to justify repression and appease Western audiences, some of these regimes and their supporters have forged an informal alliance with conservative and right wing groups and figures in the West dedicated to advancing anti-Islamic bigotry. The field of counter extremism has been the ideal front for the regional governments’ preferred narrative: They elicit sympathy from the West by claiming to also suffer from the perfidies of radical jihadis and offer to work together to stem the ideological roots of the Islamist threat.”<sup>206</sup>

One example is the United Arab Emirates’ terrorism designation of North American and European Muslim organizations in an attempt to stem civil liberties outside of its borders.<sup>207</sup>

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<sup>200</sup> Financial Action Task Force, *supra* note 76 at 5, 14.

<sup>201</sup> See Phoebe Wynn-Pope et al, “Legislating Against Humanitarian Principles: A Case Study on the Humanitarian Implications of Australian Counterterrorism Legislation” (2016) Intl Rev Red Cross 97(897/898) 235 at 242, online (pdf): <[https://international-review.icrc.org/sites/default/files/irc\\_97\\_1-2-10.pdf](https://international-review.icrc.org/sites/default/files/irc_97_1-2-10.pdf)>.

<sup>202</sup> See Wael Haddara and Faisal Kutty, “The Far Right Threat to Government Institutions and Policy is Systemic” (9 Mar 2020), online: *The Hill Times* <<https://www.hilltimes.com/2020/03/09/the-far-right-threat-to-government-institutions-and-policy-is-systemic/238337>>.

<sup>203</sup> See RFI with Mike Woods, “French Senate approves toughened version of bill accused of stigmatising Islam” (13 April 2021), online: RFI <<https://www.rfi.fr/en/france/20210413-french-senate-approves-toughened-version-of-bill-accused-of-stigmatising-islam-religion-muslims>>.

<sup>204</sup> Ahmed Shaheed, *Report on Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief*, Special Rapporteur on Freedom of Religion or Belief, 46th sess, UN Doc A/HRC/46/30 (2021), online: UNHRC <<https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/HatredAndDiscrimination.aspx>>.

<sup>205</sup> See Ola Salem and Hassan Hassan, “Arab Regimes Are the World’s Most Powerful Islamophobes” (29 Mar 2019), online: *The Financial Post* <<https://foreignpolicy.com/2019/03/29/arab-regimes-are-the-worlds-most-powerful-islamophobes/>>.

<sup>206</sup> *Ibid.*

<sup>207</sup> Adam Taylor, “Why the U.A.E. is calling 2 American groups terrorists” (17 Nov 2014), online: *The Washington Post* <<https://www.washingtonpost.com/news/worldviews/wp/2014/11/17/why-the-u-a-e-is-calling-2-american-groups-terrorists/>>.

Systemic Islamophobia within Canada's government agencies and regulatory bodies is the result of legislation and directives, developed both domestically but also influenced by international frameworks and international affairs, in the ill-founded pursuit of the "war on terror."

"The lack of strong checks and balances, the persistence of rights-undermining legislation, the continued focus on Islamic-linked terrorism to the detriment of other threats, and a culture of secrecy all influence the practices of the CRA and RAD. This has resulted in the profiling and targeting of Muslim charities."

The lack of strong checks and balances, the persistence of rights-undermining legislation, the continued focus on Islamic-linked terrorism to the detriment of other threats, and a culture of secrecy all influence the practices of the CRA and RAD. This has resulted in the profiling and targeting of Muslim charities. The resulting harms to the charity sector and specifically Muslim charities only serve to undermine the goal of countering division and promoting safe, inclusive communities by reinforcing marginalization of these institutions.

## Section 6: Conclusion

The past two decades of anti-terrorism laws and policies in Canada have had a deep and significant impact on Muslim communities in Canada. While this has been extensively documented in terms of surveillance and profiling in criminal investigations, in immigration and in regards to travel, there has been little examination of its impact on the charitable sector. It is apparent, though, that the ongoing focus on Islamic-linked terrorism has also influenced the surveillance, investigation and auditing of Muslim charitable organizations.

There is an undeniable need for the Canadian government, via the CRA and other departments, to address and prevent the financing of violent and criminal organizations both in Canada and internationally. However, like other national security imperatives, a culture of secrecy and lack of transparency, and an unsupported focus on Muslim individuals and their communities, point towards a troubling trend of undue scrutiny, disproportionate sanctions and unfair and damaging consequences.

Arguably, these actions have undermined the government's own goals. By targeting Muslim organizations that have a significant and positive impact in their communities and that provide programs that potentially counter division, marginalization and even radicalization in Canadian Muslim communities, the government of Canada (via the CRA) is countering its own objectives of building a safer and more inclusive society. Rather than creating policies that impede the well-being and growth of the Canadian Muslim community through discriminatory surveillance and "disruption" programs based on secret "evidence," the Canadian government must focus on building bridges and investing in programming for Canadian Muslims and the Canadian Muslim community as a whole.

The issue, more importantly, is not simply the CRA and its targeted audit practices, but the larger issue of the Canadian government's violation of the principles of due process and the rule of law, and the stifling of a healthy civil society. When politically motivated audits were conducted in and around 2012, the government of Canada made it difficult for charities to provide much-needed resources to Canadians, and created an "advocacy chill," illustrating that those who "criticize the government may be subject to special scrutiny."<sup>208</sup> Many of these charities lost their funding, endured long and draining audits, and in several cases even lost their charitable status simply because their activities ran counter to government (and political) priorities – not because they engaged in criminal activity or abused the charity system. Muslim charities, many of which focus on services and humanitarian aid and do not involve themselves in political advocacy, face targeting due to their faith and the supposed "risk" that it entails. In this environment, Muslim charities are afraid to advocate or even speak up about the discrimination they face through CRA practices in anticipation of potential CRA reprisal and harm to their reputation among the public.

Key to this problem are the dangers inherent to a risk-based approach that emphasizes a disruption and "pretextual" enforcement rather than presenting clear accusations, transparent investigations and ensuring that all allegations are supported by strong evidence. The result is that charities are

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<sup>208</sup> Broadbent Institute, *supra* note 150 at 3; Kirkby, *supra* note 151 at 6.

unaware that they are even considered a risk, and find themselves entangled in a years long and costly investigation and audit without being clear on what they are accused of, and unable to clearly defend their work and, often, their reputations. As we have noted above, officials such as Alistair Bland of the Review and Analysis Division have clearly stated that charities may not know the actual reason why they are being audited, nor the information it is based on. And all of this, in the end, has not resulted in a single charge of terrorist financing or terrorism support being laid.

By continuing to perpetuate the decades long agenda of the “War on Terror” and secrecy and rights violations it entails, the Canadian government is allowing agencies, including but not limited to the CRA, to target specific parts of the charitable sector, primarily Muslim groups but also others based in racialized communities that are included in the “nexus” of terrorist financing. Guidelines and policies must change and the government of Canada must revisit the anti-terror regulatory, legislative and operational landscape. This includes revising the problematic 2015 NRA, increasing transparency, and providing clear oversight over the CRA and RAD’s activities. There must be independent review of the CRA’s approach to identifying and assessing charities at risk; its surveillance and information sharing with other domestic and foreign security agencies; and how it conducts audits.

To this end, we are suggesting the following recommendations:

1. That the federal government refer this issue to review by the National Security and Intelligence Review Agency (NSIRA) in order to examine the CRA’s RAD processes overall, and specifically its selecting of Muslim charities for audit, to ensure organizations are not being targeted due to racial or religious prejudice. The review must investigate the source of past audits of Muslim charities, active audits of Muslim charities, and Muslim charities identified for audit.
2. That the Minister of Revenue declare an immediate moratorium on the targeted audit of Muslim charities by RAD until the review has concluded. This does not preclude the audits of Muslim charities selected at random by the CRA outside of RAD.
3. That the Ministry of Finance revisit the anti-terror regulatory, policy and legislative landscape, particularly the 2015 NRA and its impact, particularly on the Muslim community.
4. That the federal government amend the NSIRA Act to allow for complaints from the public regarding the CRA’s national security-related activities.
5. That NSIRA and the National Security and Intelligence Committee of Parliamentarians (NSICOP) coordinate to carry out regular reviews of the CRA’s anti-terrorism activities – including the Charities Directorate and RAD – going forward.



# International Civil Liberties Monitoring Group

iclmg.ca

[national.coordination@iclmg.ca](mailto:national.coordination@iclmg.ca)

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