



REGISTERED MAIL

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BN885408849 RR0001
File #: 3001490

Attention: Mr. Terrance S. Carter

Subject: Notice of Intention to Revoke
International Relief Fund for the Afflicted and Needy – Canada

MAR 09 2011

Dear Mr. Carter:

I am writing further to our Administrative Fairness Letter (AFL) dated December 14, 2010, in which you were invited to submit any representations as to why the registration of the International Relief Fund for the Afflicted and Needy – Canada (IRFAN-Canada) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

Our letter asked that these representations be provided within 30 days and advised that, subsequent to that date, I would decide whether or not to proceed with revocation action. At your request, we subsequently extended the period during which such representations could be made to February 22, 2011.

We have carefully reviewed and considered all of the submissions made in your letter dated February 22, 2011. For the reasons set out in the attached Appendices A and B, it is our view that these representations do not provide sufficient reason why IRFAN-Canada's status as a registered charity should not be revoked.

We have responded in Appendix A to the representations in section A of your letter relating to what you have characterized as preliminary fairness concerns. Appendix B deals with the issues raised in sections B through G of your letter, much of which repeats arguments you have put forth in your section A. In summary, it is our view that there are insufficient grounds for any allegations of unfairness regarding the conclusions we have reached and that your

submissions do not substantively demonstrate that the reasons for revocation detailed in our AFL are unfounded.

Conclusion

On the basis of our audit, we have concluded that IRFAN-Canada has: ceased to comply with the requirements of the Act for its continued registration; failed to comply with or contravened sections 230 to 231.5 of the Act; issued a receipt for a gift or donation otherwise than in accordance with the Act and the Regulations or that contains false information; and failed to file an information return as required under the Act.

Our analysis of the audit information has led the CRA to believe that IRFAN-Canada provides support to Hamas, a listed terrorist organization. Our findings indicate that IRFAN-Canada provided over \$14.6 million in resources to operating partners that were run by officials of Hamas, openly supported and provided funding to Hamas, or have been listed by various jurisdictions because of their support for Hamas or other terrorist entities.

Consequently, and for each of the reasons set out in our letter dated December 14, 2010, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of IRFAN-Canada. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business Number
885408849 RR0001

Name
International Relief Fund for the
Afflicted and Needy - Canada

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

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. IRFAN-Canada's registration will be revoked on the date of publication, unless the Canada Revenue Agency receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that IRFAN-Canada must obtain this order to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

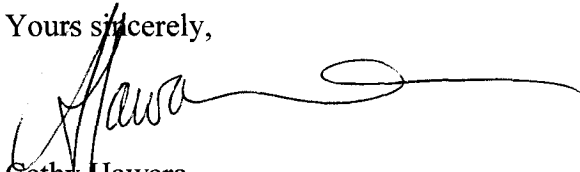
Consequences of Revocation

As of the effective date of revocation:

- a) IRFAN-Canada will no longer be exempt from Part I Tax as a registered charity and will no longer be permitted to issue official donation receipts. This means that gifts made to IRFAN-Canada would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, IRFAN-Canada may be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix C, attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at <http://www.cra-arc.gc.ca/charities>; and
- c) IRFAN-Canada will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, IRFAN-Canada may be subject to obligations and entitlements under the ETA that apply to organizations other than registered charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hawara', with a long horizontal flourish extending to the right.

Cathy Hawara
Director General
Charities Directorate

Attachments:

- Appendix A – Preliminary Fairness Concerns
- Appendix B – Areas of Non-compliance
- Appendix C – Relevant Provisions of the Act

APPENDIX A - PRELIMINARY FAIRNESS CONCERNS

From the outset, we would like to address the inaccurate statement on page 1 of your letter that “(a)t no point does CRA allege that the objects, programs or activities of IRFAN are not charitable”. On the contrary, based on the detailed evidence and the reasons provided in our AFL, it remains our view that IRFAN-Canada’s resources have not been devoted to activities that are charitable in law.

Your letter asserts that the AFL sent to IRFAN-Canada on December 14, 2010, reflects a fundamental lack of fairness on the part of CRA in dealing with your client and that, because of these fairness issues, the CRA should resolve any non-compliance concerns it may have by means of a compliance agreement rather than initiating revocation action. We have considered your representations in this regard and our comments are provided below.

1. Failure to Disclose and Impact on Evidentiary Burden

On page 2, your letter incorrectly alleges that our AFL “makes the unsubstantiated claim that CRA holds information concerning IRFAN and its alleged ties to terrorist organizations that, if disclosed, ‘would be injurious to national security or endanger the safety of any person’”. You have misread the relevant passage on page 13 of our letter. It makes no such claim. Our AFL is clear in stating that our position is based solely on taxpayer information and information available in the public domain.

Also on page 2 of your letter, you argue that the CRA has failed to establish the allegations set out in the AFL and that it should not proceed with revocation action “without clear and undisputable evidence of wrongdoing”, which you assert is not demonstrated in the AFL. You contest the credibility of the sources we have used and the relevance of information both from our previous audit of IRFAN-Canada and our past decisions relating to JFHS, whose operations were assumed by IRFAN-Canada in 2001. You also take issue with our reliance upon the similar fact evidence on which the Holy Land Foundation for Relief and Development (HLF) was convicted on charges of supporting Hamas as being “a judgment of a U.S. court that was arguably reached by means contrary to fundamental Canadian principles of due process and fairness and which is currently under appeal”. On the basis of all of these assertions, you point to the action taken by the Charity Commission for England and Wales in dealing with the Palestinians Relief and Development Fund (Interpal) as justifying a more lenient regulatory response than the revocation action proposed by our AFL.

We will address these points in more detail below. First, however, we would point out that the provisions of the *Income Tax Act* dealing with the registration and revocation of charities relate solely to the tax treatment of charities and their donors. In this regard, it is important to appreciate that the process in which we are engaged does not require the CRA to “show clear and undisputable evidence of wrongdoing” as a basis for revocation

action. It is the civil law standard of balance of probabilities that we are required to apply to an administrative decision taken in this context.

The CRA has audited your client and has reached findings we believe to be well-founded on the basis of your client's own records and publicly available information. We communicated these findings to your client in our AFL. At that point in the process, the burden shifts to a registered charity to demonstrate that we have erred and that the audit findings should therefore not result in revocation of its registration. We have now received and reviewed your submissions in this regard and do not believe that your client has met its onus to demonstrate that we have erred in the conclusions upon which our AFL was based.

We would also point out the issue of whether the CRA ignored its own guidelines by proceeding with revocation action instead of entering into a compliance agreement with a charity was considered in *International Pentecostal Ministry Fellowship of Toronto (IPM) v. The Minister of National Revenue*, where the Federal Court of Appeal ruled that the CRA's exercise of its statutory discretion to revoke registration is reviewable on a standard of reasonableness and that the decision it took to proceed with revocation action was "within the range of acceptable outcomes"¹ The CRA's published guidance on the application of sanctions clearly states that "the Act allows us to select the tool appropriate to the circumstances" and that, in serious cases of non-compliance, we are prepared to move directly to revocation.² We would also draw your attention to the decision in *Alliance for Life v. M.N.R.*, where the Court reviewed the requirements for upholding the rules of natural justice and fairness in the CRA's revocation process as first established in *Renaissance International vs. Minister of National Revenue*.³

With regard to the actions taken by the Charity Commission for England and Wales following its inquiry into Interpal, your submission fails to recognize fundamental differences between the legislative framework allowing for the registration of charities in Canada for purposes of the *Income Tax Act* and the much broader regulatory role of the Charity Commission for England and Wales.⁴ In the following passage from sworn testimony before the *Commission of Inquiry into the investigation of the Bombing of Air India Flight 182*, Mr. Kenneth Dibble,⁵ one of the Directors of Charity Commission, noted this difference, saying:

¹ *International Pentecostal Ministry Fellowship of Toronto (IPM) v. The Minister of National Revenue*, 2010 FCA 51, para 12. See also *Christ Apostolic Church of God Mission International v. M.N.R.* 2009 FCA 162

² Guidelines for applying the new sanctions, <http://www.cra-arc.gc.ca/chrts/plcy/nwsnctns-eng.html>

³ *Alliance for Life v. M.N.R.*, [1999] 3 F.C. 504 and *Renaissance International vs. Minister of National Revenue* [1983] 1 F.C. 860 (C.A.) and

⁴ Under the Charities Act 1993 and as amended by the Charities Act 2006, the Commission has the general function of promoting the effective use of charitable resources by:

- Encouraging the development of better methods of administration;
- Giving charity trustees information or advice on any matter affecting the charity; and
- Investigating and checking abuses.

www.charity-commission.gov.uk/About_us/About_the_Commission/commissioners.aspx

⁵ Mr. Kenneth Dibble is the Executive Director of Legal Services and Compliance with the Commission and has responsibility for the provision and overall management of the Commission's legal services and Compliance and Support function.

The second point I put down is an issue – it is not broadly understood beyond the jurisdiction – is that [in England and Wales] the registration of charities is a recognition of a legal status... If a body is a charity, it will be a charity irrespective of its registration with the Commission... So malpractice or lack of comparative [sic] in charities cannot be dealt with deregistration... In other jurisdictions, particularly [fiscally] based jurisdictions, a different approach may operate and that's another issue.

So lack of compliance does not equate to deregistration in any circumstances.

...

A charity can only be de-registered if it ceases in law to be a charity, or it has come to an end of its life, or is dissolved.

One exception to that is if the charity is actually a sham organization...but generally removal is not a compliance response or function. If a charity is committing breaches of trust, whether they are terrorist activities or otherwise, the remedy is to remove and appoint new trustees to make it run properly, it is not de-registration.

...many people have said to me why can't the Commission remove this charity from the register because of what it's done. And you can argue this is a weakness in our system. And the North American model, where there is a sort of an ability to remove the tax advantages or perhaps even de-registration of a non-compliant organization, is a shorter more effective and more resource-effective way of actually dealing with the problem...⁶

It is very important to take into account these differences in statutory responsibilities in looking at the actions of the Charity Commission with regard to Interpal and in understanding why it remains on the charity register in the U.K. despite the following concerns raised by the Commission's findings, which are indeed very similar to the CRA's audit findings regarding IRFAN-Canada:⁷

- “the inquiry identified four local partners funded by the Charity about which there were sufficient concerns about support for the Hamas Izz al-Din al-Qassem Brigades to require further investigation...the Inquiry established that the Charity did fund some of those local partners. The material provided seemed to indicate that certain local partners funded by the Charity promoted terrorist ideology or activities amongst their beneficiaries”;⁸

⁶ Appearance of Kenneth Dibble before the Commission of Inquiry into the investigation of the Bombing of Air India Flight 182, Tuesday, October 9, 2007, Volume 59.

⁷ Charity Commission, “Inquiry Report Palestinians and Development Fund (Interpal)

⁸ These partners were: the Jenin Charity Committee; the Hebron Charity Committee; the Al Islah Charitable Society in Ramallah; and the Al Tadhman Charity Committee. (IRFAN-Canada also provided funding to at least two of these same partner organizations.)

- “the trustees had accepted the responses from the local partners without adequate further investigation”;
- “the trustees should have acted with greater diligence to satisfy themselves that the local partners concerned were not directly or indirectly supporting the promotion of terrorist ideology or activities”; and
- “that the Charity’s continued membership in the Union for Good [Union of Good] was inappropriate, for the following reasons:
 - Designated entities have been amongst the Union for Good’s membership...;
 - The involvement of at least one designated entity in many of the projects coordinated through the Union for Good and supported by the Charity allowed a link to be made between the Charity and those designated entities; and
 - ...the risks to the Charity’s reputation arising through statements made by the President of the Union for Good at the time of its formation, which promoted violence as a legitimate form of resistance in support of the Palestinian cause...”

Your letter emphasizes the “very similar fact situation” between IRFAN-Canada and Interpal, but overlooks the important fact that Interpal has, since September 12, 2003, been listed in Canada as a terrorist entity under *The Suppression of Terrorism Regulations*, which implement in Canadian domestic law the binding elements of *United Nations Security Council Resolution 1373 (2001)*. In addition:

- The United States Treasury listed Interpal on its list of Specially Designated Global Terrorists under Executive Order 13224 on August 22, 2003 describing it as a “principle charity utilized to hide the flow of money to Hamas”; and
- The government of Israel listed Interpal as terrorist organization on January 17, 1998 pursuant to the *Defence (Emergency) Regulations (State of Emergency) 1945*.

2. Reliance on the Holy Land Foundation Trial

The verdict reached in the criminal prosecution of the Holy Land Foundation for Relief and Development (HLF) is a valid and binding decision of a court in a jurisdiction with a legal tradition that is very close to Canada’s own system of justice. It is entirely reasonable for the CRA to have taken into account evidence relied upon in that case, particularly given that there is an overlap in the relevant facts and there is independent evidence from our own files to show a relationship between HLF and JFHS, whose operations were later assumed by IRFAN-Canada, in the time-frame covered by the HLF

evidence.⁹ Furthermore, while we are satisfied that we have given proper consideration to the HLF evidence, we would also point out that it is by no means the sole basis for our position. As was the case in our previous audits of both JFHS and IRFAN-Canada, where we saw and provided evidence of your client's involvement with organizations linked to Hamas without the benefit of the HLF trial evidence, the weight of other evidence referred to in our AFL would have caused us to reach the same conclusions as to IRFAN-Canada's role in supporting organizations linked to Hamas even without reliance upon the HLF conviction in 2008.

With respect to the naming of IRFAN-Canada as an unindicted co-conspirator in the HLF trial and the July 1, 2009 sealing order of Judge Jorge A. Solis, we note that, contrary to the claims made on pages 4 and 19 of your letter, evidence submitted as Exhibits in the HLF case relating to meetings held by the members of the Palestine Committee during the 1993 Philadelphia Conference of the Muslim Brotherhood refer to a Canadian organization named Al Quds [Jerusalem] Committee for Human Services, to hearing "from our brothers in Canada" about "Jerusalem for Human Services", and to Abou Bassem, who speaks about that organization's fundraising efforts and its unsuccessful attempts to gain registration as a charity in Canada. Our analysis of the comments made by 'Abou Bassem' regarding his attempts to register his organization as a charity in Canada and the amounts his organization had raised as recorded in the wiretap transcripts correlates to details from our files regarding JFHS' application for registration and supports our position that Mr. Abdel Majid (also known as Abu Basem) took part in these meetings while serving as President of JFHS.

In his decision, Judge Solis stated that the Philadelphia Conference "essentially laid out the path that the Palestine Committee would take to accomplish its goal of supporting Hamas in the future" and in ruling that the Court found it appropriate to seal the entire list of unindicted co-conspirators but would not order the Petitioner's names expunged from any documents filed or produced by the government, stated:

Evidence presented in a public trial is inherently different from the Government publishing a list of persons alleged to be co-conspirators. The public may make its own judgement from evidence presented at trial. The evidence may be examined and conclusions can be drawn as to whether the evidence establishes what the government claims it does.¹⁰

As stated on page 2 of our AFL, the naming of IRFAN-Canada as an unindicted co-conspirator in the HLF case was one of two events which came to light during our current audit and which caused us to closely re-examine the validity of the representations and undertakings made by your client with respect to our findings in our previous audit, specifically its operations in association with organizations linked to Hamas. Judge Solis'

⁹ This evidence is highlighted in Appendices C and D of our AFL.

¹⁰ *United States of America v. Holy Land Foundation for Relief and Development et al*, Crim. No. 3:04-CR-0240-P Order

ruling suggests that it is not inappropriate or unfair for the CRA to examine and draw conclusions from these exhibits in the trial evidence.

Your letter also takes issue, on page 4, with the fact that the HLF trial relied on the “questionable scholarship” of Matthew Levitt. We note that Dr. Levitt served as deputy assistant secretary for intelligence and analysis at the U.S. Department of the Treasury from 2005 to early 2007.¹¹ He also served as a U.S. State Department counterterrorism advisor to the special envoy for Middle East regional security (SEMERS), General James L. Jones, who would go on to serve as the National Security Advisor under the Obama Administration.¹² In addition, he has provided analytical support for the Federal Bureau of Investigation’s counterterrorism operations, with a particular focus on terrorist fundraising.¹³ Dr. Levitt has also testified before the U.S. House of Representatives Committee on International Relations Subcommittee on the Middle East and Central Asia and the Subcommittee on International Terrorism and Non-proliferation.¹⁴

3. Revisiting Conclusions of the 2004 Audit

Your letter contends on page 4 that our “AFL improperly attempts to revisit the conclusions of the 2004 Audit conducted by the CRA in order to reinterpret the conclusions drawn by the previous audit, thereby establishing a pattern of illegal activity by IRFAN.”

As was noted in our correspondence to you dated May 6, 2009, January 18, 2010, April 6, 2010, and December 14, 2010, this audit was a follow-up to that previous audit concluded in 2004. The CRA’s 2004 audit of IRFAN-Canada’s operations¹⁵ raised a

¹¹ The Washington Institute for Near East Policy, Matthew Levitt Expert Biography: <http://www.washingtoninstitute.org/templateC10.php?CID=5> [Levitt Biography]; U.S. Department of the Treasury Press Center, Remarks by Assistant Secretary for Terrorist Financing Patrick M. O’Brien (2/27/2008): <http://www.treasury.gov/press-center/press-releases/Pages/hp481.aspx>; U.S. Department of the Treasury Office of Terrorism and Financial Intelligence Fact Sheet (4/22/2006): http://www.treasury.gov/press-center/press-releases/documents/tfi_factsheet.pdf

¹² Levitt Biography, *supra*;

The White House, Remarks by National Security Advisor James L. Jones at the Washington Institute for Near East Policy (4/21/1010): <http://www.whitehouse.gov/the-press-office/remarks-national-security-advisor-james-l-jones-washington-institute-near-east-poli>

¹³ Levitt Biography, *supra*; FBI Law Enforcement Bulletin, Vol. 78 No. 8 (August 2009)

¹⁴ “Iranian State Sponsorship of Terror: Threatening U.S. Security, Global Stability, and Regional Peace”, Testimony of Matthew A. Levitt, Joint Hearing of the Committee on International Relations Subcommittee on the Middle East and Central Asia, and the Subcommittee on International Terrorism and Non-proliferation, United States House of Representatives (2/16/2005)

¹⁵ Our 2004 audit was limited to the 2002 fiscal year.

number of non-compliance issues, such as whether it was funding non-qualified donees¹⁶ rather than conducting its own charitable activities. Of particular concern, however, was that a significant number of organizations with which IRFAN-Canada maintained partnerships in program delivery were alleged to have direct ties to Hamas, a listed entity under the *Criminal Code of Canada*.¹⁷ IRFAN-Canada represented to the CRA at that time that “...it never knowingly dealt with Hamas, nor with organizations known or credibly alleged to be controlled or directed by Hamas...”¹⁸ IRFAN-Canada also maintained that it “...was not aware of credible allegations of connections by any of the organizations with which it worked to Hamas nor did it have prior knowledge of the materials containing such allegations until provided by the CRA...”, but did not dispute the evidence the CRA provided to it from publicly available records alleging that many of the organizations which received its funds had close ties to Hamas.

The agreement for IRFAN-Canada’s continued registration was premised on these representations and on its assurance that to “...avoid future dealings and misapplication of resources to unlawful organizations...”, it would implement strong due diligence procedures, such as conducting background checks, and monitoring on a regular basis for any news reports dealing with closures of NGOs or listings of unlawful associations.¹⁹ It specifically undertook that “...due diligence and legal counsel will be taken prior to entering into further agreements with foreign organizations and existing arrangements will be reviewed and possibly amended...”. In order to comply with subsection 230(2) of the Act, this information must be available for examination in IRFAN-Canada’s books and records. To this end, IRFAN-Canada also agreed to ensure that its books and records would be improved to “follow proper corporate procedures and create the necessary documentation to reflect the same” and to institute “...improved communication and accounting procedures to better reflect the actual activities that it carries on itself and how it co-operates with other Canadian registered charities, including the transfer of assets.”

On December 21, 2004, we advised IRFAN-Canada that the CRA would allow it to maintain its registration on the strength of these representations and undertakings. Our letter specifically advised IRFAN-Canada that it could expect a future audit to follow up on its undertakings with respect to the adverse findings of that audit.

The CRA has a responsibility to ensure that organizations which have been granted the tax privileges of a registered charity are operating in a manner that complies with the requirements for such registration, particularly when there is a history of compliance

¹⁶ The term “qualified donee” is defined in subsection 149.1(1) as meaning a donee described in any of paragraphs 110.1(1)(a) and (b), and subsection 118.1(1) of the ITA. Within Canada, the term “qualified donee” generally refers to other Canadian registered charities or other organizations that are similarly able to provide donation receipts for income tax purposes to Canadian donors. Outside Canada, the only organizations that are qualified donees under the ITA are the United Nations and its agencies, certain universities outside Canada ordinarily attended by Canadian students, and charitable organizations outside of Canada to which Her Majesty in Right of Canada has made a gift within the previous two years.

¹⁷ Hamas (Harakat al-Muqawama Al-Islamiya) was listed as a terrorist entity effective November 27, 2002. For more information please see <http://www.publicsafety.gc.ca>

¹⁸ IRFAN-Canada’s November 19, 2004 letter.

¹⁹ IRFAN-Canada’s November 19, 2004 letter.

concerns. In the case of IRFAN-Canada, our current audit findings and other information that came to light during the course of our audit made it essential to consider the veracity of its 2004 representations in regard to those findings in assessing whether its undertakings had been fulfilled.

4. General Misunderstandings of Key Concepts

The CRA has not brought into question any of the five pillars of Islam, the religious obligation of zakat within the Islamic faith, the role of zakat committees within Islamic and particularly Palestinian societies, and is aware that the concept of martyrdom has wide and varied meaning within a number of religious traditions. Neither has it allowed the broader understanding of these concepts to obscure certain facts that are relevant in this particular case.

For example, we have not, as you imply on page 5 of your letter, contended that all Palestinian zakat committees are Hamas-controlled. We have, however, taken into consideration evidence that certain specific zakat committees are or were affiliated with Hamas, including the listing or designation of those committees by other jurisdictions as terrorist entities and relevant extracts from transcripts of the 1993 Philadelphia Conference meetings of the Palestine Committee attended by Mr. Abdel Majid (also known as Abu Basem).

An understanding of the background to these meetings is important. During the first Palestinian *intifada* in the late 1980s and early 1990s, the Muslim Brotherhood formed Palestine Committees in countries around the world where it had a presence, directing them to provide financial and political support to the nascent Islamic Resistance Movement ('Hamas'), which itself evolved from the Brotherhood's Gazan membership.

As Hamas opposed the signing of the 1993 Oslo Accords between Israel and the Palestinian Liberation Organization, the Philadelphia Conference (held in the same year) discussed how Hamas' supporters in the Muslim Brotherhood's North American Palestinian Committee would continue their aid to the movement without appearing overtly aligned with an organization now opposed to the American-backed peace process.

As Judge Solis noted, the discussions outlined the means by which North American charitable institutions could continue to support Hamas in a more covert fashion by donating funds to organizations in the Occupied Territories that were themselves aligned with the movement, acting in effect as intermediaries. As a part of this scheme, participants listed such groups and the degree of Hamas alignment and support within them.

The following extracts from the wire-tap transcripts of the Palestine Committee meetings attended by Mr. Abdel Majid (Abu Basem) while he was President of JFHS reflect the views of various speakers concerning the situation in the West Bank and Gaza in terms of Hamas-affiliated organizations:

...If we speak in general terms about our organizations in the [Gaza] Sector, they are limited and I will try to mention them quickly. The main organization and which is known to belong to us is Islamic University in the Gaza Sector...Number two, the Islamic Complex which was founded in 1973 and licensed in 1976. The Complex' activities at that time were more inclusive. The Islamic Society which was founded in 1976. Al Salah Society in the [Gaza] Sector...The Young Muslim Women Association and then Al Wafa Society for Seniors Care, The Orphans House, **some of the Zakat committees**, some public service institutions which obtained new licenses such as Justice and Law Institution which cares for the prisoners. In the West Bank...**Nablus Zakat Committee** in Nablus which was founded in 1976. It is very advanced in comparison with other committees. For instance, they have over 1,000 orphans, over 2,200 families which are sponsored monthly, they have investment activities and other activities. But, when we speak about it as a Zakat committee we tie it to us...We then come to the main activity which is the **Zakat committee in Jenin**, for instance, and elsewhere. In Jenin, the Zakat Committee there has built a hospital which is really ours, for the Islamists either in management or in the teams working in it. In Jenin, there is a large Islamic school and there is an orphans' centre. Tulkarem are now about to start building a hospital affiliated with the **Zakat committee**. In Qalqilia, we have the Legal Institute for Studies...The Ramallah region really has some noticeable activity for our organizations and, particularly, the activity of the Zakat committee. We could say that the **Ramallah Zakat Committee is ours**, including its management and officers...

The speaker goes on to outline a strategy for using these, and many other organizations he has identified, to serve the Muslim Brotherhood and Hamas in undermining the Oslo Accord.

...The negative aspects of the past phase, our brothers are: number one, being run by exposed persons. The Complex, Yasin; the Islamic Society, Al Koka; the center which was established in Nablus for research is directed by Mousa Al Akhtal; the Scientific Medical Society in Ramallah is directed by Dr...(unintelligible). All of these people, my brothers, are exposed characters. Therefore, even if the organization sailed for a while, it will be hit later...

Suggestions and general recommendations: one, the role of the deportees²⁰. They might have an organizational role which would be a nucleus for political activism. Carrying out practical activities...Number

²⁰ See, in this regard, Appendix C and the Link Analysis Chart 2 in Appendix G of our AFL relating to the 1992 deportation to Lebanon and the subsequent role played by deportees in as key Hamas organizers and leaders.

two, developing the role of the 1948. These people can plan an effective role in the coming stage. One, taking advantage of humanitarian organizations in order to gain the legal status to work in Gaza and Jericho...Number four, protecting the organizations, registering them under trusted names. Registering the organizations under the names of trusted names and not letting them be public organizations which could be nationalized...Number four or five is protecting achievements which we achieved in the past period. Existing organizations here should be tied to Islamic institutions abroad such as the Fund and others. Writing contracts..., writing contracts rendering the ownerships of these organizations to the organizations abroad and bringing these documents when needed...

This theme is picked up by another speaker:

...We have Zakat committees and existing organizations doing Dawa'a work in addition to relief work. Therefore, we must support them...The last issue which needs a quick look is the issue our brother and some of the brothers spoke about is that we could use an official cover such...(unintelligible), insurance and stuff. Therefore, I wrote about a point which should be taken into consideration which is making available an official U.S. cover representing the Islamic community in general terms, you see? This way, we can visit Palestine not as Holy Land Foundation because the Holy Land Foundation is stamped already as...er, whatever. So, if we collected a group of representatives from Islamic organizations...and formed an official delegation representing the Islamic community in America and announced in a studied format that we will be going to the Occupied Territories and Gaza in particular, you see, to provide assistance to Islamic foundations which are already established [there]. This will achieve more than one goal; first, we exhibit the existence of an Islamic concern for the cause even though it is...(unintelligible), secondly, we give an official cover for the existing organizations in case they got dissolved or if the [Palestinian Liberation] Organization wanted to dissolve these organizations or shut them down...It also gives a future cover to provide these organizations with money...It is possible to adopt a new way relating to the second point or the last point I mentioned which is that HLF or the Holy Land Foundation, the charity work in general, work with some of the large Islamic organizations...to adopt specific projects with the HLF to serve the issue of expanding the official cover in America, to have the Islamic Palestinian community in America and the Arabic [community] adopt a project, for instance, for a lab in the Islamic University...etc...These are some of points I wanted to focus on regarding charity work which is based in America...²¹

²¹ Government Exhibit Philly Meeting – 13 3:04-CR-240-G, U.S. v. HLF, et al.

As the information previously provided to you with our AFL reflects, and as shown in Table 1 below, in addition to providing funding directly to the Holy Land Foundation, JFHS and subsequently IRFAN-Canada entered into partnership arrangements to provide project funding to many of the organizations identified in these discussions by the Palestine Committee as belonging to Hamas.

Name of Organization	JFHS Funded	IRFAN-Canada Funded
Islamic University in the Gaza Sector		
The Islamic Complex		
The Islamic Society		
Al Salah Society in the Gaza Sector	√	√
The Young Muslim Women Association	√	
Al Wafa Society for Seniors Care	√	
The Orphans House	√	√
Justice and Law Institution		
Nablus Zakat Committee	√	√
The Islamic Solidarity clinic		
Solidarity Charitable Society		
Zakat committees in Jenin	√	√
Legal Institute for Studies, Qalqilia		
Al Aqsa Organization		
Islamic Sciences and Culture Society	√	
Ramallah Zakat Committee	√	√
Islamic Charitable Society	√	√
The Patient's Friends Society		
Al Ahli Hospital	√	√
Young Men Muslim Association		
Beni-Naeem Society		

On page 5 of your letter, you argue that zakat committees have long been regulated by the Palestinian National Authority, which required their registration with the Ministry of Awqaf, and that the Ministry of Awqaf is responsible for approving the election of each of the members of the zakat committee, as justification for your contention that it is illogical that “a Fatah-controlled Ministry would permit the appointment of a majority of Hamas sympathizers to the zakat committees”. However, after outlining the role of the Ministry of Awqaf in the registration of zakat committees, the source you have cited in this respect goes on to state:

A key question is to what extent the zakat committees are ‘affiliated’ with Hamas...The most serious, first-hand, unbiased data publicly available to date is contained in an International Crisis Group report

(ICG 2003). This suggests that some organizations in the Territories such as the Islamic Association (as-Mujamma' al-Islami) in Gaza are strongholds of Hamas, but that otherwise the concept of affiliation is problematic and a matter of degree. Some zakat committees are popularly seen as loosely affiliated politically with Hamas, some with Fatah, some are independent...²²

On this same point, the second authority you cite says:

...Hamas and Fatah, which emerged as political adversaries from the first Intifada, both have an important religious Muslim constituency, and both movements have origins in the Muslim Brotherhood...Control over the zakat committees is thus appealing for both.

...

All interlocutors agreed that Fatah controlled a minority of zakat committees.

...

Although the PA was aware that a majority of zakat committees were closer to the Muslim Brotherhood (i.e. Hamas and some religious members of Fatah) than to the PA (and the parts of Fatah which are leading it), it adopted a *laissez-faire* strategy and registered the zakat committees at the Ministry of Awqaf and Religious Affairs, as it hoped that this would increase the popular legitimacy of the PA and ultimately Fatah....

Zakat committee members and employees were still politically closer to (and sometimes even controlled by) Hamas and the local governments than to the PA, but now religious people from Fatah were on the committees and participated in decisions.

Some of the religious members in Fatah started to sympathize with their religious colleagues from the Islamic opposition in some of the zakat committees; and their loyalty to Fatah, or at least to the wings of Fatah which were dominating the PA, became weak...According to PA officials and Fatah members, many of those religious Fatah members in the zakat committee remained members of Fatah, but 'were effectively working for Hamas'.²³

The same author reports that, in 2007, the PA emergency cabinet dissolved zakat committees in ninety-two West Bank towns and villages and appointed eleven new central committees, one for each West Bank governorate:

²² Jonathan Benthall, "The Palestinian Zakat Committees 1993-2007 and Their Contested Interpretations", Geneva: Program for the Study of International Organizations Occasional Paper 1/2008, at 15.

²³ Emanuel Schaublin, "Role of Governance of Islamic Charitable Institutions: The West Bank Zakat Committees (1977-2009) in the Local Context", a Paper prepared for the Centre of Conflict, Development and Peacebuilding, Geneva, at 52 and 53.

A newly established central Zakat Fund, based at the Ministry of Awqaf, controls and co-directs these committees under the tight rule of the Fatah-controlled PA... Currently (2009), Fatah controls the Ministry of Awqaf and the zakat committees in the West Bank, while Hamas controls the Ministry of Awqaf and zakat committees in the Gaza Strip.²⁴

As your letter notes on page 4, the Qur'an identifies eight eligible uses to which zakat funds can be applied, one of which is indeed to provide aid to the poor. Zakat collected for another of these purposes, *feesabeelillah* or *fi-sabilillah*,²⁵ which translates as 'in the cause of Allah', is accepted as having a variety of interpretations. A report prepared for the President of the Security Council United Nations explains:²⁶

...*Feesabeelillah* is used to describe money spent in fighting for the cause of Allah (Jihad).

Jihad refers to striving for excellence on one of several levels. The first involves individual efforts, spiritual and intellectual, to become a better Muslim. The second addresses efforts to improve society. The third and last level, or "holy war," involves self-defense or fighting against oppression.

The personal Jihad states that the most excellent jihad is that of the soul. This jihad, called the *Jihadun-Nafs*, is the intimate struggle to purify the soul of satanic influence – both subtle and overt. It is the struggle to cleanse one's spirit of sin. This is the most important level of Jihad.

The verbal Jihad is based of Prophet words that "The most excellent jihad is the speaking of truth in the face of a tyrant". He encouraged raising one's voice in the name of Allah on behalf of justice.

Finally, physical Jihad is combat waged in defense of Muslims against oppression and transgression by the enemies of Allah, Islam and Muslims. We are commanded by Allah to lead peaceful lives and not transgress against anyone, but also to defend ourselves against oppression by "fighting against those who fight against us". This "jihad with the hand" is the aspect of jihad that has been so profoundly misunderstood in today's world.

²⁴ *Supra*, at 9 and 10.

²⁵ *Fi-sabilillah*, or *feesabeelillah* translates as "The cause of Allah", one of a number of possible uses of zakat set out in the Koran.

²⁶ Brisard, Jean-Charles. "Terrorism Financing: Roots and Trends of Saudi Terrorism Financing – A Report Prepared for the President of the Security Council" (United Nations). December 19, 2002. Available at <http://www.investigativeproject.org/documents/testimony/22.htm> (February 1, 2011). Pg. 13.

According to Al Azhar's Islamic Research Academy, the concept of Jihad refers to the "defense of the nation against occupation and the plunder of its resources". But it does not cover the killing of innocent people, the elderly, women, and children which is forbidden in Islam. The teachings of Islam also forbid the destruction of buildings and establishments not connected with a specific battle. The statement drew a distinction between violence perpetrated by oppressors who have no respect for what is sacred and violence as a legitimate defense launched by the weak to win their rights.

There is a clear distinction between the Koran's concept of a defensive Jihad and the usurped form of offensive Jihad developed by several scholars, including Omar Abu Omar (aka Abu Kutada), Al-Qaida principal in the UK, who influenced a trend to support those "fighting in the cause of Allah" (the Mujahideen), thus justifying Zakat for illegitimate violence against peaceful nations.

In January 2002, for example a conference of Islam's Ulema religious scholars in Beirut, Lebanon, clearly stated in its final statement that:

"Hezbollah in Lebanon, Hamas, Islamic Jihad and all resistance forces vividly express the will of the nation. They constitute the first line in the defence of peoples and states and their rights, causes and sanctities. Through their jihad and mujahidin, they represent the honour, pride and dignity of Muslims everywhere and reflect the human ambitions of all oppressed peoples in the world. If the masters and protectors of the Zionist entity in the US administration are targeting the resistance because it poses a real threat to this entity, we view this resistance as the noblest and most sacred phenomenon in our contemporary history."

Over the time, this legal religious duty has been usurped and abused by terrorists and their supports...

An illustration of how this interpretation of "the cause of Allah" is used to justify support for fighters in the cause of Allah (Mujahidin) can be found in guidance on the question of whether a Muslim is "allowed to spend some of the money of Zakat (obligatory charity) on his journey to take part in Jihad in the Cause of Allah" provided by an influential Sunni religious scholar, Dr. Yusuf al-Qaradawi, on the popular Islamic web portal he co-founded, IslamOnline.net:²⁷

²⁷ According to The 500 Most Influential Muslims, First Edition, 2009, published by The Royal Islamic Strategic Studies Centre, The Prince Alwaleed Bin Talal Centre for Muslim-Christian Understanding, at the Edmund A. Walsh School of Foreign Service, Georgetown University. Sheikh Dr. Yusuf Al Qaradawi is a leading scholar for the global Muslim Brotherhood movement and host of 'Ash-Shariah wal-Hayat' on Al Jazeera that is watched by an estimated 40 million viewers worldwide.

The meaning of Jihad in our present time particularly refers to striving to liberate Muslim lands from the grip of the disbelievers who usurped them and imposed on them their own laws in lieu of Divine Law. Those disbelievers may be Jews, Christians or both or even pagans, who follow no particular religion at all. Disbelievers are all alike.

Capitalists, Communists, Westerners, Easterners, People of the Book and pagans are by no means different from one other. They should all be fiercely fought if they attempt to occupy any part of the Muslim land. This duty falls on those closest to the occupied land, who should be aided by those closest to them, who, in turn, ought to be aided by those closest to them, till it becomes incumbent on all Muslims to take part in Jihad.

Muslims have never been more severely afflicted than they are nowadays. Many of their lands have been captured by the disbelievers, on top of which is Palestine that has fallen victim to corrupt Jews. Similarly, Kashmir has been dominated by pagan Hindus. Chechnya and other Islamic states have fallen in the grip of pagan tyrannical communism.

Retrieving these lands, freeing them from the clutches of atheists and their twisted laws is the joint responsibility of all Muslims. Declaring Jihad to save our land is an Islamic obligation.

If war is waged anywhere to achieve this goal, namely to free the occupied lands of the laws and the tyranny of disbelievers, it is undoubtedly a case of Jihad for the sake of Allah. It thus needs to be financed from the money of Zakah, the amount of which is to be decided based on the total sum of the charity, the requirements of Jihad as well as the degree of the need of other potential recipients of the charity. This is all to be decided by reliable scholars, if they are to be found.”²⁸ [Emphasis added]

It should be noted that Dr. Al-Qaradawi is President of the Union of Good. As indicated on page 15 of our AFL, JFHS was a founding member in the Union of Good, and IRFAN-Canada has continued association with and/or resourcing of Union of Good members as its operating partners. The United States Treasury has designated the Union of Good, identifying it as an “organization created by Hamas leadership to transfer funds to the terrorist organization”. In its designation it describes the Union of Good as an organization that: “acts as a broker for Hamas by facilitating financial transfers between a web of charitable organizations... The primary purpose of this activity is to strengthen Hamas' political and military position in the West Bank and Gaza, including by: (i) diverting charitable donations to support Hamas members and the families of

²⁸ Available at <http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-AskScholar/FatwaE/FatwaE&cid=1119503543548> (February 2, 2011)

terrorist operatives; and (ii) dispensing social welfare and other charitable services on behalf of Hamas”.

The Hamas Charter itself leaves no doubt that it is concerned with jihad and martyrdom “for the sake of Allah”. This is reflected throughout the document. For example, Chapter One, Article 8 states its motto as being “Allah is its Goal. The Messenger is its Leader. The Quran is its Constitution. Jihad is its methodology, and Death for the sake of Allah is its most coveted desire”. Chapter Three, Article 15, declares that Jihad for the Liberation of Palestine is Obligatory. Article 18 enjoins women to train their children for “the *Jihadic* role that awaits them”. Chapter Four, Article 30 calls upon authors, scholars, and others to contribute in their own way to the Movement’s goals, saying “Jihad is not only carrying weapons and confronting the enemy. The good word, excellent article, beneficial book, aid, and support...is a Jihad for the sake of Allah. *He who provided equipment to a fighter in the way of Allah, then he fought and he who remained behind (to look after the) family of the fighter in the way of Allah, in fact fought in the way of Allah (Abu Dawad and Tirmithi)*”.²⁹

The Movement’s embrace of the concept of martyrdom “for the sake of Allah” is clearly reflected in the closing salutation, “It is Jihad, a victory or a martyrdom”, which routinely appears at the end of Hamas communiqués and political statements.³⁰ The Al-Qassam Brigades, the militant wing of the Hamas movement, maintain a professional website with a detailed list of ‘martyrs’ glorifying their accomplishments.³¹ The vast majority of the martyrs profiled on the site were killed by Israeli forces or died in suicide bombings (‘martyrdom operations’).

We note that, as part of the HLF trial, a number of martyr posters found at zakat committees in the West Bank also funded by both JFHS and IRFAN-Canada were presented into evidence.³² The posters are clearly associated with Hamas (the movement’s logo and that of its militant wing, the Al-Qassam Brigades are featured upon them), and parallel the language found on the martyrs page of the Al-Qassam Brigades website.

For example, a poster found at the Jenin Zakat Committee glorifies the death of Mahmoud Ali Alhilwa, “Leader of Martyr Ez Al Dean Al Qasam Phalanx In the Jenin Camp Who was martyred in the battle defending the Jenin Camp on 4/10/2002”. A Hamas postcard with the pictures and personal history of two Hamas suicide bombers was found at the Nablus Zakat Committee. It announces their martyrdom with the message: “The mujahid martyr, Hashem Al Najjar...The date and time was 1/1/2001, making himself an exploding bomb to shred the bodies of the Jews in Netanya...The

²⁹ Charter of the Islamic Resistance Movement (Hamas) of Palestine, Journal of Palestine Studies XXII, no. 4 (Summer 1993), pp.122-134 [This charter was translated by Muhammad Maqdsi for the Islamic Association for Palestine, Dallas, Texas, in 1990.]

³⁰ “Palestinian Religious Terrorism: Hamas and Islamic Jihad”, Yonah Alexander, Transnational Publishers, Inc., Ardsley, NY, 2002

³¹ www.qassam.ps/martyrs.html (Accessed 2011-03-04)

³² Such materials were found at the zakat committees in Nablus, Tulkarm, and Jenin as well as the Islamic Charitable Society of Hebron. See HLF exhibits: Nablus Zakat 1-5, ICS Hebron 8-11, #006-0055-56, Jenin Zakat 4-5, and Tulkarm Zakat 1-4, 6, 7, 9, and 10).

mujahid martyr Hamed Abu Hijla...chose the area of Mahoula as a target for his bombs on 26 Ramadan...”.

In our view, an appreciation of all of these facts relating to the key concepts of zakat, zakat committees, and usage of the term martyrs is necessary to a complete understanding of the proper ethnocultural context for our concerns with regard to the findings of our audit.

5. Guilt by Association/Confidentiality Issues re Povrel Jerusalem Fund for Human Services

Your letter contends on page 5 that “the CRA has attempted to circumvent the ITA confidentiality provisions in order to reconstruct history and re-visit conclusions previously made by the CRA with regard to JFHS...” and that “(m)ost of the allegations in the AFL against IRFAN – which are primarily “guilt by association” allegations – cannot be established without first demonstrating that IRFAN is in fact the JFHS in disguise.” Your letter repeats these assertions on page 7 under the heading “Confidentiality Issues re Povrel Jerusalem Fund for Human Services”.

The CRA has neither circumvented nor breached the confidentiality provisions of the Act. We would draw your attention to paragraph 241(4)(a) of the Act, which permits the CRA to “...provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act...”. In our view, the disclosure in our AFL of information relating to JFHS’ application for charitable status was necessary in order to provide IRFAN-Canada with a fair opportunity to be aware of and respond to the case to be met.

This is because it remains our view that IRFAN-Canada and JFHS joined operations, at least in part, to overcome the CRA’s refusal to grant JFHS registration by arranging for its activities to be assumed by IRFAN-Canada, which was in a better position to raise funds because it had already obtained registered status.

This view is based on the resolutions jointly adopted by JFHS and IRFAN-Canada on February 24, 2001, most importantly the following text from the Resolutions passed by JFHS and IRFAN-Canada respectively:

WHEREAS THE BOARD of directors of Povrel Jerusalem Fund for Human Services [**POVREL**] is desirous of consolidating the efforts of the Corporation with another Corporation for the fund raising in fulfillment of its aims and objective;

AND BECAUSE THE International Relief Fund for the Afflicted and Needy (Canada) [**IRFAN**] is a charitable corporation with similar aims and objectives as Povrel;

AND WHEREAS it is prudent and advisable for **POVREL** to join forces with **IRFAN** as its operation is broader in scope and incorporates the kinds of works **POVREL** has been doing;

The Board of Directors convened this day, now resolves

....

2. That **POVREL** take steps to wind up its activities and pay off its outstanding financial obligations and transfer the residue of any monies in its bank accounts of **IRFAN**;

.....

4. That **POVREL** cease all active operations as a corporation from and after the 31st day of March, 2001...

WHEREAS IT IS UNDERSTOOD that Povrel Jerusalem Fund for Human Services [**POVREL**] wishes to cease all of its activities and turn its assets and use of the name Jerusalem Fund to **IRFAN**, The Board of Directors of **IRFAN** meeting this day have resolved that:

1. **IRFAN** enter an agreement with Povrel Jerusalem Fund for Human Services [**POVREL**] to assume and carry out all the current pursuits and activities of Povrel and such purposes will lease all physical assets of Povrel for the sum of \$1.00.
2. **IRFAN** will carry on fund-raising events under the name of Jerusalem Fund for Human Services but acknowledges that the name of the said fund is owned by **POVREL**. In consideration of Loans and gifts from **POVREL**, the Board of **IRFAN** assume the Lease of Premises at Unit 204, 2465 Cawthra Road, Mississauga, Ontario L5A 3P2 and will pay rents and obligations to such tenancy.
3. The Board will enter into an employment contract with Mr. Rasem Abdel-Majid appointing him to the position of manager and chief executive office of **IRFAN** with terms of employment to be set out in a separate letter...

The CRA has not, as your letter suggests on pages 5, 6 and 18, erroneously concluded that a “merger or amalgamation of the two organizations occurred in either a legal or any other sense”. Our AFL makes reference, on page 3, to “the 2001 consolidation of JFHS and **IRFAN**-Canada’s operations”. On page 1 of Appendix C, we refer to the point at which JFHS’ “operations were merged” with **IRFAN**-Canada, and on page 5 to the fact that “On February 24, 2001, **IRFAN**-Canada and JFHS passed resolutions consolidating their operations”, with **IRFAN**-Canada agreeing “to carry out all of the ‘current pursuits and activities’ of JFHS”.

It is, in our view, undeniable that the operations of the two entities were merged, or consolidated, in the plain meaning rather than the legal sense of those terms. Regardless of the fact that JFHS maintained its legal status as a corporation, its operations were assumed by IRFAN-Canada and key operational personnel. Their operations were “merged” in the sense of having been combined, united, or joined together. We note, in fact, that the term “merged” also appears in the e-mail exchange referenced in our letter to IRFAN-Canada on July 23, 2004, in which Nadeem Siddiqui, a Director of IRFAN-Canada, responds to a query from another Board member, Mohamed Khadim, on April 3, 2001, saying:

...JFHS is basically being merged into irfan. Which means we should still be able to use jfhs’ name for activities as long as we note “jfhs, a division of irfan Canada”...pls clarify. Jfhs has a certain amount of goodwill attached to the name which we do not wish to lose. Also we shd be able to use the jfhs.ca website etc...

On the basis of the consolidation of the operations of JFHS and IRFAN-Canada as a consequence of the February 24, 2001 resolutions, it remains our view that all of the information related to JFHS’ application to register as a charity is relevant to the subsequent operations of IRFAN-Canada and therefore to our current audit findings, particularly as they relate to the pattern of funding and association with organizations tied to Hamas the CRA had repeatedly identified to JFHS as a barrier to its registration as charity.

6. Fighting Terrorism at the Expense of International Humanitarian Law

This section of your letter, which starts on page 6, contains a number of suppositions and conjecture relating to broad policy matters such as whether there is an inherent conflict between anti-terrorism provisions adopted by Western governments and the principles of international humanitarian law. You are entitled to your views on these matters. However, our AFL concerned audit findings relating to a particular registered charity, IRFAN-Canada, and sought a substantive response to the specific concerns detailed in our letter.

APPENDIX B - AREAS OF NON-COMPLIANCE

Your letter suggests on page 7 that, apart from the fairness concerns you have raised, “the specific allegations raised by the CRA do not warrant the action being taken by CRA”. This submission is based on a CRA presentation made to the Ontario Bar Association. You suggest that except for the allegations of terrorist support in your client’s case, the areas of non-compliance our AFL outlines are comparable to those identified in the presentation as being standard areas of non-compliance encountered by the CRA and therefore should be remedied by means of a compliance agreement rather than revocation action.

We would refer you again to the Federal Court of Appeal’s ruling in *International Pentecostal Ministry Fellowship of Toronto (IPM) v. The Minister of National Revenue*¹ and to the CRA’s published guidance on the application of sanctions, which clearly states that “the Act allows us to select the tool appropriate to the circumstances” and that, in serious cases of non-compliance, we are prepared to move directly to revocation.² In addition, we would point out that the purpose of a compliance agreement is to obtain a charity’s undertaking to correct non-compliance and that your client gave such undertakings to the CRA in respect of essentially the same issues of non-compliance following our audit of its operations in 2004.

As detailed below, your representations have not overcome the evidence provided in our AFL that IRFAN-Canada continues to be in serious non-compliance with core requirements of the Act, and our view that these reasons are of sufficient concern to now warrant revocation of its registration:

Issue 1: Failed to comply with or contravened any of sections 230 to 231.5 of the Act

a. Failure to maintain books and records in accordance with the Act

Subsection 230(2) of the Act requires that every registered charity keep books and records of account at an address in Canada recorded with the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration. Records kept outside of Canada and accessed electronically from Canada are not considered to be records in Canada for purposes of this requirement. Moreover, as required under subsection 230(4.1) of the Act, if electronic records are maintained they must be made available to the CRA in an electronically readable format.

The CRA is not expecting a standard of perfection in this regard. However, your representations do not overcome the significant deficiencies regarding books and records

¹ 2010 FCA 51, Docket: A-215-08

² Guidelines for applying the new sanctions, <http://www.cra-arc.gc.ca/chrts/plcy/nwsnctns-eng.html>

noted in our April 6, 2010, Notice of Suspension and the additional concerns raised on pages 5 and 6 and in Appendix E of our AFL, in that:

- in spite of its 2004 undertakings,³ IRFAN-Canada did not regularly maintain books and records in Canada, as demonstrated by the need to generate and obtain agency agreements and other records from its funding recipients outside Canada immediately prior to our on-site visits,⁴
- the history of the CRA's attempts to obtain books and records needed to conduct our audit, as reflected in our letters of February 29, 2008, August 26, 2008, February 2, 2009, May 6, 2009, and January 18, 2010, documents that a large volume of the records required for audit were not on hand for inspection because they were not maintained in Canada;
- the areas in which IRFAN-Canada's funding recipients operate did not unduly impede their ability to provide documentation to IRFAN-Canada once a request was actually made to them to do so;
- IRFAN-Canada was unable to provide remote access to electronic records maintained outside Canada at the time of our audit and failed to provide these records in an electronically readable format as required by the Act. The CRA's guidance on this topic makes it clear that it is the responsibility of the taxpayer who wishes to maintain electronic records to direct questions concerning the types of electronic formats that are compatible with CRA software to the nearest tax services office;
- the customized donation software program (the DDS system) used by IRFAN-Canada cannot be relied upon because of a user's ability to delete records and to create duplicate receipts, and due to bugs in the system which can result in omissions in sequential receipting and incorrect dating of receipts. It is a serious concern that these deficiencies allow for receipts to go unaccounted for and allow for the possibility of donations to be claimed more than once. Your representations have not established that the missing tax receipts were not issued. The onus is on a charity to demonstrate that the receipting system it uses has sufficient integrity to prevent such abuses of the tax measure;

³ At the conclusion of our 2004 audit, IRFAN-Canada undertook to take "corrective measures to improve its practices and to be in compliance with all applicable legal requirements", and acknowledged that "the members, directors and officers are now better informed of their respective roles and duties and have undertaken to follow proper corporate procedures and create the necessary documentation to reflect the same." In this regard, our December 19, 2004, letter advises IRFAN-Canada that it should retain its records in accordance with the Information Circular 78-1 OR3 *"Books and Records Retention/Destruction"*, which clearly outlines the requirement to maintain books and records in Canada.

⁴ Our April 30, 2010, letter to IRFAN-Canada provided a list of books and records that it was required to have available for inspection during our visit to its Mississauga office from May 25 to May 28, 2010. Specifically, we requested that IRFAN-Canada make available:

- A complete record of each project conducted during the audit period. This should include all related supporting documentation such as correspondence, invoices, and receipts to demonstrate how IRFAN-Canada carried out each project.
- Originals or certified copies of all agency or other agreements under which intermediaries (individuals or organizations) are involved in carrying on activities on behalf of IRFAN-Canada.

- the DDS system lacks adequate control measures.⁵ While you have represented that a hard-copy backup is maintained for every receipt issued, our auditors did not observe any procedures in place to verify the DDS information or to reconcile donation data to bank deposits, nor have you provided any evidence to show that hard-copy documents are used in this manner; and
- regarding your representation that 7,029 records were deleted intentionally from the DDS system, we would comment that this contradicts the information provided to the CRA in your client's certified questionnaire response dated May 27, 2010, which responds to the question "Describe the charity's financial control procedures" by stating "No receipts records are deleted in system."

It remains our position that IRFAN-Canada failed to maintain books and records in accordance with subsections 230(2) and 230(4.1) of the Act. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(e) of the Act.

b. Failure to provide books and records

Subsection 231.1(1) of the Act permits the Minister to "inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books and records of the taxpayer" for any purpose related to the administration or enforcement of the Act. The CRA's publication entitled "Acquiring Information from Taxpayers, Registrants and Third parties" further describes these requirements.

Contrary to your assertions, IRFAN-Canada's failure to provide and allow inspection and examination of books and records has been a pervasive problem throughout our audit. This issue was thoroughly documented in our April 6, 2010 Notice of Suspension as well as in our AFL. Your representations do not sufficiently address IRFAN-Canada's failure to meet this requirement.

For example, we do not accept your representation that the undisclosed meeting minutes referenced on page 10 of your letter did not "fall within the scope of the documents requested" by the CRA. We would point out that our February 2, 2009 letter requested that IRFAN-Canada provide the CRA with a "copy of all minutes of meetings". In our view, this request cannot properly be interpreted as excluding all meetings other than those of the board of directors. We would also point out that IRFAN-Canada has never provided the CRA with any information pertaining to the meetings of its foreign advisory council despite our having identified to IRFAN-Canada that this documentation was critical to our audit.⁶

⁵ Access by multiple users, and the program itself is not password protected.

⁶ As noted in our January 18, 2010, Notice of Proposal to Suspend Receipting Privileges.

With regard to your representations that the information contained in folders marked “Meeting Minutes”, “My Beloved Palestine” and “My Beloved Lebanon” located on the computer of IRFAN-Canada’s Secretary/Treasurer, Mr. Kaoud, it is our position that documents located on the computer of the charity are considered to be related to the operations of the charity. CRA was not asking for access to the personal computers of the directors and CRA auditors are entitled to presume that the information located on the premises of a charity and used for its purposes are to be made available for inspection. Whether such information is relevant to the audit is for the CRA to determine. The courts have recognized that the relevance of documents requested by an official can be difficult to determine until the official has had an opportunity to examine them.⁷ We note, in this regard, that the majority of IRFAN-Canada’s funding recipients are located in Palestine and Lebanon, suggesting to us that these folders are relevant to IRFAN-Canada’s operations. The explanation you have given as to the contents of the Meetings Minutes folder (i.e., board of director meeting minutes from 2003 to 2010, advanced agendas soliciting feedback for future meetings, modified minutes of meetings after review by members of the board of directors) confirms the relevancy of this folder to our audit. Accordingly, it is our position that the CRA should not have been denied access to documents contained in these folders.

We have also considered your representation that the contents of Mr. Abdel-Majid’s computer and e-mails not provided to the CRA contained solicitor-client or litigation privileged information. We do not dispute that, as General Manager of IRFAN-Canada, Mr. Abdel-Majid’s computer records are likely to have included some documents that were subject to solicitor-client or litigation privilege. However, as General Manager, it is also reasonable to assume that his desk-top computer would also have many records pertaining to the daily operations of IRFAN-Canada over and above the 300 photographs and the incoming e-mails from other IRFAN-Canada employees in Canada and overseas provided to us. It does not seem likely, for example, that his e-mail records would not contain any responses to incoming e-mails and documents related to the 300 photographs, or that other types of documents relating to IRFAN-Canada’s operations over the past five years would not also be kept in his computer records.

Your further representation in this regard is that “Mr. Abdel-Majid’s preferred form of permanent note-taking is by hand, as for example his discussions with the Ramallah office, which are recorded in a coiled notebook which was shown to CRA and relevant excerpts from which were provided during the audit”. In fact, our auditors copied this notebook in its entirety, which consists of approximately 50 pages of brief, point-form notes, which arguably does not seem sufficient for over five years of operations, and which appears to pertain only to projects funded in the West Bank. In other words, we were not provided with similar discussion records for projects funded in other regions and countries, including the Gaza Strip, Afghanistan, Pakistan, and Lebanon.

Your representation that IRFAN-Canada, its officers, directors, and agents have always acted in good faith with CRA throughout the three-year duration of the audit does not

⁷ The Queen v. *McKinlay Transport Ltd* (90 DTC 6243), *AGT Limited v. Canada* (97 DTC5189), and *Redeemer Foundation v. Canada (National Revenue)*, [2008] SCC 46

acknowledge that this three-year time-frame was largely due to the considerable resistance we encountered in our ongoing attempts to obtain books and records. This is reflected in the extensions and delays to our current audit and the pattern of omissions and inaccurate representations in IRFAN-Canada's dealing with the CRA detailed in our Notice of Suspension dated April 6, 2010. We would remind you that IRFAN-Canada not only failed to provide records when requested to do so, but in key instances admitted their existence only after their discovery by the CRA became apparent. As recorded in our April 6, 2010 letter, IRFAN-Canada's representations regarding outstanding records were misleading, in some cases inaccurate, and changed as our analysis of the information contradicted some of its original representations.

Regarding your suggestion that our request to access computer records in IRFAN-Canada's Mississauga office, where the corporate records of the organization are kept, was "impromptu" in nature and done without prior notice to the organization, we would point out that our April 30, 2010 letter provided IRFAN-Canada with written notification of our intent to conduct an audit and inspection at that site on the mutually agreed upon dates of May 25 to May 28, 2010. Our letter advised IRFAN-Canada "to have its books and records available for inspection".⁸ We provided IRFAN-Canada with guidance as to the type of records we would be auditing and our request did not in any way limit the generality of the information and documentation requested or the format in which the documents would be reviewed. With the increased prevalence of electronic record-keeping by all types of taxpayers, it is becoming a routine practice for CRA auditors to review and capture records kept in electronic form.

It remains our position that IRFAN-Canada failed to provide books and records in accordance with subsection 231.1(1) of the Act. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(e) of the Act.

Issue 2: Ceased to comply with the requirements of the Act for its continued registration.

a. Gifting to Non-Qualified Donees/Lack of Direction and Control over Resources

A registered charity is not permitted to make gifts to non-qualified donees. Subsection 149.1(1) of the Act requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself." Subsection 149.1(6) provides that a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that in any taxation year it disburses not more than 50% of its income for that year to qualified donees.

⁸ The definition of a "record", as found under subsection 248(1) of the Income Tax Act, includes: an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other things containing information, whether in writing or in any other form...

Except where a charity gifts its funds to a qualified donee, the CRA requires it to show that it effectively directs and actually controls its own activities on an ongoing basis, including situations in which a charity carries out its activities through an intermediary such as an agent.⁹ The Federal Court of Appeal has confirmed that a charity working with an intermediary must have control over the activities carried out on its behalf, and over the use of its resources.¹⁰ In particular, these cases highlight that the relevant issue to be determined in regard to this requirement is not only whether resources are being devoted to activities which the law regards as charitable, but whether funds transferred to a non-qualified donee are, in reality, devoted to activities being carried on by the charity itself. As noted in *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, “the Minister is entitled to insist on credible evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself.”¹¹

We maintain the position that IRFAN-Canada’s records did not establish its ongoing direction and actual control over the use of its resources. It is clear from the e-mail correspondence referenced on pages 9 and 10 of our AFL that, in preparation for our on-site visits, it was necessary for IRFAN-Canada to put in place documentation purporting to establish numerous agency agreements and MOUs, in some cases as many as five years after the project had been funded. This was more than a case of missing or misplaced documentation. As indicated in our AFL, control and direction of resources must amount to more than the exercise of signing and collecting documentation post-facto if there is to be any meaning to the statutory requirement that a charitable organization is to devote its resources to “charitable activities carried on by the organization itself”. Your representation that it was necessary in many cases to obtain evidence of direction and control over resources by the signing of these agreements post-facto because of the difficulties in this respect that will arise in conflict zones is not plausible in our view, as discussed in section 1.a above. We would add that you have not provided any evidence in support of this blanket assertion to show that there were particular occurrences of conflict that interfered with IRFAN-Canada’s ability to communicate with and receive documentation from recipient organizations located in the many regions to which IRFAN-Canada’s funds were sent.

Your representation that, following the closure of our previous audit, IRFAN-Canada has implemented practices and procedures in order to exercise control over resources by instituting a Memorandum of Understanding and Project Agreement/Service Agreement/Agency Agreement for each project is not supported by the current audit findings or your February 22, 2010 submission. Concerning the 30,000 receipts for orphan sponsorship payments you have highlighted, we would comment that these documents represent only a single project for each year. Our audit findings, as supported by the documentation contained in Appendix E of our AFL, revealed that the records

⁹ CRA Publication entitled “Canadian Registered Charities Carrying Out Activities Outside of Canada”.

¹⁰ *The Canadian Committee for the Tel Aviv Foundation v. Canada* (2002 FCA 72), 2002-03-01, *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)* (2002 FCA 323), 2002-09-13, and *Bayit Lepletot v. Canada (Minister of National Revenue)* (2006 FCA 128), 2006-03-28

¹¹ *supra*

necessary to support ongoing direction and control over the use of project funding transferred to non-qualified donees was deficient in at least 40 percent of IRFAN-Canada's project records.

The fact that Mr. Abdel-Majid has visited organizations in Lebanon receiving IRFAN-Canada's resources is not enough to demonstrate that IRFAN-Canada was, in fact, exercising the control and direction it claims.¹² We note that there is no evidence of his having visited other locations such as the West Bank and Gaza, in spite of the fact that the majority of IRFAN-Canada's funding is sent to organizations in these areas.

Finally, as noted on page 10 of our AFL, IRFAN-Canada's failure to maintain control over its foreign bank accounts was admitted by its representation, in response to our letter of May 6, 2009, that it "...has no direct knowledge or recollection of transfers from the Arab Bank to Hapoalim Bank". Our review of IRFAN-Canada's foreign bank accounts revealed that, until January 2007, none of IRFAN-Canada's Canadian directors or employees maintained any signing authority over its offshore bank accounts. IRFAN-Canada deposited in excess of one million dollars into these accounts in 2005 to 2006 alone, yet exercised no oversight over these resources. As the account statements were not maintained in Canada, IRFAN-Canada was not even in a position to monitor the use of these funds.

It remains our position that IRFAN-Canada has ceased to comply with the requirements of the Act by gifting to non-qualified donees in contravention of subsection 149.1(1) of the Act, which stipulates that a charitable organization must devote its resources to charitable activities carried on by the organization itself. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(b) of the Act.

b. Activities Contrary to Public Policy

It is well established at law that purposes which offend public policy are not charitable.¹³ Canadian public policy in the area of financing of terrorism is found in the preamble to the *Anti-terrorism Act*, in Part II.1 of the *Criminal Code* and in the purposes and principles (section 2) of the *Charities Registration (Security of Information) Act*. These provisions recognize that depriving terrorist organizations of access to funds is a fundamental tool in undermining terrorist activities as it weakens their supporting logistical and social infrastructures.¹⁴ In this regard, it is very clear that Canada's commitment to combating terrorism extends to preventing organizations with ties to terrorism from benefiting from the tax advantages of charitable registration.

¹² *The Canadian Committee for the Tel Aviv Foundation v. Canada* (2002 FCA 72), 2002-03-01

¹³ See *Everywoman's Health Centre Society (1988) v. (Minister of National Revenue)* [1992] 2 F.C. 52 and *Canadian Magen David Adom for Israel v. Canada (Minister of Revenue)* 2002 FCA 323

¹⁴ See Background: Terrorist Financing, Government of Canada's Air India Inquiry Action Plan in Response to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.
<http://www.publicsafety.gc.ca/media/nr/2010/nr2010207-3-eng.aspx>

Your representations on page 19 attack the credibility of our backgrounder on Hamas as having relied on misinformed propaganda and as containing factual errors, which you have not identified. You contend, furthermore, that these errors have “either the intention or the result of misrepresenting Hamas’ alleged connections with global terrorism”.

We would remind you that the Government of Canada regards Hamas as a terrorist entity and has listed it as such under the provisions of the *Criminal Code* in accordance with UN Resolution 1373 (2001).¹⁵ Information pertaining to this listing posted on the website of the Department of Public Safety and Emergency Preparedness provides the following description of the basis for this listing:

Hamas, the Arabic acronym for the group Harakat Al-Muqawama Al-Islamiya, which also means “Zeal”, is a radical Sunni terrorist organization that developed from the Palestinian branch of the Muslim Brotherhood in 1987. It uses political and violent means to pursue the goal of establishing an Islamic Palestinian state in Israel. Since 1990, Hamas has been responsible for several hundred terrorist attacks against both civilian and military targets. Hamas has been one of the primary groups involved in suicide bombings aimed at Israelis in the course of the intifada that started in September 2000.

Under Canadian law, a terrorist group means a listed entity or an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity. As such, there is no basis under Canadian law to contend that support provided to Hamas for humanitarian purposes can be distinguished from support provided for its political and terrorist activities. Moreover, as highlighted in Appendix F to our AFL, it is well documented that the delivery of social and humanitarian services is an integral part of Hamas’s operational strategy to fulfill its political goals.

Your representations point to the decision in *Toronto Coalition to Stop the War v. Canada (Minister of Public Safety and Emergency Preparedness)* as a basis for arguing that the CRA is wrong to suggest that IRFAN-Canada’s actions have been contrary to public policy.¹⁶

The decision under review in that case is distinguishable from the determination of a regulatory status conferred by the *Income Tax Act*, where grounds for revocation of a charity’s registration may be based on a failure to act for charitable purposes as evidenced (on a balance of probabilities) by a breach of public policy.. You will note that the *Toronto Coalition* judgement deals with the admissibility provisions of the *Immigration and Refugee Protection Act* (IRPA) as well as the elements necessary to

¹⁵ Resolution 1373 states, in part, “Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism...Decides that all States shall: (a) Prevent and suppress the financing of terrorist acts;... 2. Decides also that all States shall: (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts ...(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens...”

¹⁶*Toronto Coalition to Stop the War v. Canada (Minister of Public Safety and Emergency Preparedness)* [2010] F.C.J. No. 1092

ground criminal liability for financing of terrorism offences in the *Criminal Code*. As such, the court emphasized that a high level of *mens rea* was required. The context of charity revocation is, as noted above, materially different.

Comments in the *Toronto Coalition* decision related to “membership” should also be read as limited to the interpretation of the specific section in IRPA (section 34), which was under discussion in that case. CRA does not allege that the charity is a “member” of Hamas, but rather that they are part of the international effort to support it.

Your reliance on the *Toronto Coalition* decision is, therefore, misplaced as the case is distinguishable and is limited to the specific IRPA/criminal liability context. Of note as well is that the majority of the judgement is *obiter dicta*, as the Court dismissed the judicial review on the basis that no formal decision had been made by the Ministers.

You wrongly suggest that the position the CRA has taken with regard to your client’s status under the *Income Tax Act* must be taken as meaning that it is the CRA’s position that the delivery of humanitarian services in the Occupied Territories constitutes support for Hamas, and as such our proposal to revoke IRFAN-Canada’s registration places Canada in clear conflict with its well-established international obligations concerning human rights and humanitarian principles. This is a complete misconstruction of our AFL.

Your representations confirm that IRFAN-Canada acted contrary to public policy when it had dealings with the Ministry of Telecommunications and Information Technology (MTIT) while it was under the control of Hamas. You have justified these dealings by saying that it was necessary for IRFAN-Canada to deal with the Ministry in order to provide humanitarian relief. We would refer you to the documents entitled “Canadian Policy on Key Issues in the Israeli-Palestinian Conflict” available on the website of the Department of Foreign Affairs and International Trade. This policy statement emphasizes that, while Canada continues to support and respond to the humanitarian and development needs of the Palestinian people, it has no contact with Hamas and other listed entities in the region. This was also clearly stated in the Government of Canada’s announcement following the Palestinian Legislative Council’s approval of the formation of a Hamas-led government in March 2006 that “Canada will have no contact with the members of the Hamas Cabinet”.¹⁷ We would reiterate that while you are entitled to your point of view on these matters, our AFL concerns specific audit findings in the particular case of your client.

It remains our position that IRFAN-Canada has ceased to comply with the requirements of the Act by contravening the requirement in subsection 149.1(1) that its resources be devoted to activities that are charitable in law. This constitutes sufficient reason to revoke IRFAN-Canada’s status as a registered charity under paragraph 168 (1) (b) of the Act.

¹⁷ Joint Statement by Minister Mackay and Minister Verner on New Palestinian Government and Assistance to the Palestinian People, March 29, 2006 and Update: Canadian Aid Programs in the West Bank and Gaza, April 1, 2006

c. Links to Hamas/Absence of Due Diligence

While there is no express due diligence requirement under the Act, all registered charities are expected to take the necessary steps to ensure compliance with the requirements for registration. Due diligence measures are simply a matter of good governance practice that can, if conscientiously and genuinely implemented, serve to lessen the risk that a charity's resources will be used in a manner that could result in revocation of its registration. This would include ensuring that a charity does not operate in association with individuals or groups that are engaged in terrorist activities or that support terrorist activities.

We would remind you that at the conclusion of our previous audit, IRFAN-Canada represented that *"it never knowingly dealt with Hamas, nor with organizations known or credibly alleged to be controlled or directed by Hamas"*, but did not dispute the evidence the CRA provided to it from publicly available records alleging that many of the organizations which received its funds had close ties to Hamas.

As a result of that audit, IRFAN-Canada undertook that, in order to *"avoid future dealings and misapplication of resources to unlawful organization"*, it would implement strong due diligence procedures, such as conducting background checks, and monitoring on a regular basis for any news reports in local Arabic and Hebrew newspapers for any news dealing with closures of NGOs or Committees.

Our audit closure letter dated December 21, 2004 advised that *"the test of IRFAN's due diligence will be that it does not find itself without such prior knowledge in the future"*.

You have not provided any new evidence that IRFAN-Canada conducted due diligence activities in any meaningful way and your representations do not overcome our audit findings in this regard as reflected in our AFL on pages 15 through 21 and in Appendices C, G and H.

On the contrary, your representations demonstrate that the due diligence measures IRFAN-Canada claims to have implemented have not prevented its association, since 2004, with 15 organizations linked to Hamas. Our AFL reports on pages 2 through 6 of Appendix G that IRFAN-Canada provided approximately \$14,629,000 in resources to organizations that are run by members of the Hamas government, openly support and provide funding to Hamas, have been raided or listed as unlawful organizations in Israel for affiliation to Hamas, or have had their bank accounts seized for connections to Hamas. The following examples where IRFAN-Canada has again claimed that it had no knowledge of the facts set out in our AFL highlight CRA's findings that IRFAN-Canada's due diligence measures have been inadequate and call into question the meaningfulness of its 2004 undertakings:

- IRFAN-Canada was not aware of the relationship between the Orphanage Committee of Ramallah and El-Bireh and the Ramallah Zakat Committee;

- IRFAN-Canada was not aware of the raids on the Al Muntada At-Tahqafi Cultural Forum and the involvement of its West Bank office Manager, Khaled Abu-Kaff, as a Director of the Forum;
- IRFAN-Canada was not aware of the raid of the Al Khansaa Women's Association by Israeli officials or its listing as an unlawful association;
- IRFAN-Canada was not aware of the confiscation of the El Lid (Al Lod) Charitable Society's bank account by Israeli authorities "as part of the struggle against financing of terrorism";
- IRFAN-Canada was not aware of the confiscation of the Tubas Charitable Society's bank account by Israeli authorities "as part of the struggle against financing of terrorism";
- IRFAN-Canada was not aware of the listings of the International Islamic Charitable Organization in Kuwait as an unlawful organization in its own right and as part of the Union of Good;
- IRFAN-Canada was not aware of the Jamaat-i-Islami Pakistan's announcement that it had provided funding to Hamas through its Al-Khidmat Foundation.

Your letter suggests that much of the information regarding these organizations we have been able to find in public sources would not have been openly known in the West Bank and Gaza communities where these organizations operated nor widely referred to by Palestinians. This is contradicted by the 2003 International Crisis Group (ICG) report referenced in Appendix A above in relation to zakat committees. The report notes that:

Palestinians interviewed by ICG stated that the Hamas affiliation of a particular relief organization, pre-school education centre, *zakat* committee or mosque is generally a matter of common knowledge so that people can state with some assurance that "this mosque is Hamas" and that one is not.¹⁸

Even if this were not the case, however, your representations provide no reason why IRFAN-Canada's officials based in Canada would not have been able to access such publicly available information, including information regarding its own listing as an unlawful organization in Israel.

We also note that IRFAN-Canada has represented, as evidence of its due diligence measures, that it ceased its intended funding agreement with the Arab Medical Union "...following due diligence investigations that revealed findings that were potentially adverse, including the relationship to the Union of Good" because of the Union of Good's links with Hamas. At the same time, your letter is silent with respect to the fact that JFHS was a founding member of the Union of Good and that many other organizations to which IRFAN-Canada has provided resources or has travelled to discuss partnership arrangements with are also members of the Union of Good. This would include the Zakat Fund - Lebanon, the Islamic Medical Association - Lebanon, the Qatar Charity, and the Sheikh Eid al Thani Charitable Association.

¹⁸ International Crisis Group: "Islamic Social Welfare Activism in the Occupied Palestinian Territories: A Legitimate Target?", April 2, 2003

In its 2004 undertakings, IRFAN-Canada stated that the process agreed upon to handle the distribution of aid to orphans would be to use local banks. In October 2005, a change to these procedures was made without consulting with the CRA and IRFAN-Canada arranged to make payments for orphan sponsorship through the Ministry of Telecommunications and Information Technology (MTIT). These payments continued to be made to the MTIT when it came under the control of Hamas following the January 2006 elections. Your representations in this regard are inaccurate in many respects. For example:

- Following the legislative elections of January 2006, Hamas (Change and Reform) formed a government in which the Hamas-appointed Cabinet included Jamal al-Khadary as the Minister of Telecommunications and Information Technology. He served in this post until the appointment of Yousef al-Mansi.¹⁹
- Yousef al-Mansi, a Hamas member, served as the MTIT Minister in the National Unity Government, which was in place from March 17, 2007 to June 14, 2007.²⁰ We would point out that the source you cited as evidence that Mr. Al-Mansi was not connected to Hamas, in fact states that he is a Hamas Minister.²¹
- In June 2007, after Hamas was removed from government in the West Bank, Yousef al-Mansi remained the Hamas Minister of Telecommunications and Information Technology in the Gaza Strip.²²

As noted in Appendix G of our AFL, IRFAN-Canada provided funding totalling \$589,664 to the Ministry between January 2006 and June 2007.

Our AFL noted in Appendix H that IRFAN-Canada has now opened an office in Gaza, indicating a shift in its operational focus in favour of Hamas-controlled territory. Your letter fails to respond to our due diligence concern as to how, in this context, it has ordered its affairs in such a way as to comply with Canadian law and policy regarding Hamas.

With regard to both due diligence and the issue of absence of control over resources in IRFAN-Canada's offshore bank accounts, your explanation of the reasons for IRFAN-Canada's continued employment of Mr. Abu Kaff in the light of the serious issues raised on pages 10 and 11 of our AFL does not appear to us to have been reasonable or prudent in the circumstances either in terms of protecting the charity's assets or its reputation against concerns about links to Hamas.

Finally, regarding your claim that the evidence we have provided showing links between JFHS and HLF (in Appendix C of our AFL) appears to be based upon a single donation to HLF while it was a registered U.S. charity ignores the source documentation

¹⁹ See <http://www.presidency.ps> and <http://imeu.news/printer00764.shtml>

²⁰ See <http://www.presidency.ps>, <http://www.iperi.org/files/pacabinet-march07.html> and <http://www.miftah.org/Display.cfm?DocId=14189&CategoryId=4>

²¹ www.miftah.org/Display.cfm?DocId=14189&CategoryId=4

²² See www.mtit.gov.ps

referenced in Appendix C and information provided in the letters we attached to our AFL in Appendix D.

In summary, you have not provided evidence or any substantive basis to suggest that our audit findings do not support the conclusion we have reached that IRFAN-Canada is part of an international effort to support Hamas. Specifically, your representations do not refute the evidence we have shown that:

1. at their earliest inception, HLF and JFHS were in close communication, their identities and operations overlapped, and they were part of the North American network established by the Muslim Brotherhood's Palestine Committees to support Hamas;
2. comparisons to the facts given in evidence in the HLF trial in the United States, and in the Al Aqsa Foundation judgement in Germany affirm that key international partners of JFHS and IRFAN-Canada have been found to be part of the worldwide financing structure for Hamas providing funds to many of the same recipient organizations in the West Bank and Gaza, together with the listings by various jurisdictions of these partners as terrorist organizations;
3. there is a past pattern of JFHS and IRFAN-Canada funding organizations that have been recognized as having links to Hamas and, despite its 2004 undertakings, IRFAN-Canada has continued to provide approximately \$14.6 million in resources to organizations with ties to Hamas;
4. JFHS was a founding member in the Union of Good, and IRFAN-Canada has continued this association with and/or resourcing of Union of Good members as its operating partners;
5. IRFAN-Canada has been listed as an "unlawful association" by the Israeli Government since December 30, 2004; and that
6. IRFAN-Canada's operations reflect and contribute to the overall goals, objectives, and principles of Hamas as stated in its charter.

It is our position that IRFAN-Canada has ceased to comply with the requirements of the Act by contravening the requirement in subsection 149.1(1) that its resources be devoted to activities that are charitable in law. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(b) of the Act.

d. Public Benefit Test/Deceptive Fundraising

Public benefit is at the heart of every inquiry into an organization's claim to charitable status under the Act. Deceptive fundraising practices cause harm to the public and to the integrity of the registration system for charities by deceiving donors or potential donors

and by impairing the fundraising efforts of other charities. There is significant harm associated with a deceptive or misleading statement, regardless of whether the charity's conduct is intentional or negligent. A registered charity should ensure representations made by it, and those acting on its behalf, are fair, truthful, accurate, and complete.²³

IRFAN-Canada denies that it intentionally deceived donors or misrepresented its fundraising, and states that the funds raised ostensibly for disaster relief for Tsunami 2004, South Asia Earthquake 2006, Indonesia Earthquake 2006, Bangladesh Cyclone 2007, Burma Cyclone 2008, Pakistan Earthquake 2008 and Indonesia Earthquake 2008 have yet to be allocated for their intended purposes because a reliable and reputable partner had not been found. We have reviewed your representations on this matter and it remains our view that IRFAN-Canada engaged in deceptive fundraising.

For example, IRFAN-Canada's on-line solicitation for "Helping the victims of the recent disaster across South Asia" states:

On Saturday, October 08, 2005, a powerful 7.6-magnitude earthquake near the Pakistan-India border that reduced villages to rubble, triggered landslides and flattened an apartment building... We, at the International Relief Fund for the Afflicted and Needy (IRFAN-Canada), feel compelled to lend a helping hand to those suffering as a result of this devastating earthquake. The number of homeless continues to rise and there is an even greater need to cover the necessities of life such as, shelter (tents, blankets), food clean water and medicine.

Therefore, IRFAN-Canada is accepting donations to help the victims of the earthquake. Your assistance is needed NOW rather than later.

Another example is the "Urgent Appeal to Help the Victims of the Myanmar (Burma) Cyclone", which stated:

Myanmar (Burma), located in Southeast Asia, was hit by the Cyclone Nargis, which is estimated to be much greater than the Tsunami. Since Saturday May 3rd, 2008, as reported by the Burmese state media, the cyclone left tens of thousands dead; many more missing; and over one million homeless...Resources such as clean water, shelter, and medicines are urgently needed.

The International Relief Fund for the Afflicted and Needy (IRFAN-Canada) has established the Myanmar (Burma) Cyclone Relief Fund to help the victims and families.

Please donate generously and help the victims of Myanmar (Burma).

²³ Fundraising by Registered Charities (CPC-028) as found on our website www.cra.gc.ca/charities.

These solicitations conveyed a sense of urgency and immediacy and indicated to prospective donors that IRFAN-Canada intended and was in a state of readiness to provide immediate relief to disaster victims. In our view, this was deceptive and misleading fund-raising. There is no evidence that IRFAN-Canada used the funds raised for these purposes. In fact, our audit established that over \$580,000 in donations raised for specific disaster relief projects was co-mingled in IRFAN-Canada's general operating fund.

Our audit evidence includes the fact that IRFAN-Canada made the following misrepresentation to the public by its distribution of a 2006 Calendar claiming on the *Dear Subscribers & Donors* page that:

...through your generous donations, IRFAN-Canada was able to complete a wide range of Projects and programs, as summarized below:

...

- Emergency Projects Emergency Relief to the earthquake and Tsunami victims in Sour East Asia and Pakistan/India borders.

The audit evidence does not support your representation that disaster relief funds were segregated and reserved for future use. This is reflected in the fact there is no reference in IRFAN-Canada's audited financial statements to any reserved "fund" or "restricted" amount dedicated to a future use in these specific disaster relief areas, as would be required by generally accepted accounting principles. The fact that the DDS system tracked these donations by campaign ID indicates only that IRFAN-Canada was able to determine the total amounts raised as a result of these fund-raising campaigns and does not establish that they have been reserved for those uses.

You suggest that IRFAN-Canada's failure to spend all funds received from these disaster relief campaigns is entirely consistent with other aid organizations and point in this regard to an article concerning Tsunami funds collected by the Red Cross. In contrast to IRFAN-Canada's situation, however, the Red Cross was already on the ground in Sri Lanka and was immediately mobilized to provide Tsunami relief. The article reports, and financial statements publicly available on its website confirm, that the Red Cross has kept tsunami relief funds segregated and invested, and that its relief efforts will continue over the next decade, including the construction of six million housing units.

You have not provided any representation regarding IRFAN-Canada having falsely reported to the CRA in section C5 of the Registered Charity Information Returns (T3010) that it made disbursements "for programs the charity managed directly, outside of Canada" in regions and countries for which we were unable to verify any transfers of resources, such as Sri Lanka and Indonesia. As noted in our AFL, this also resulted in IRFAN-Canada misrepresenting to the public its actual program work.

It remains our position that IRFAN-Canada has ceased to comply with the requirements of the Act by undertaking deceptive fundraising practices. Such practices lack the necessary public benefit to meet the requirement in subsection 149.1(1) that a charity's

resources be devoted to activities that are charitable in law. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(b) of the Act.

Issue 3: Issued a receipt for a gift or donation otherwise than in accordance with the Act and the regulation or that contains false information

a. Improper Receipting

Regulations 3500 and 3501 of the Act set out the requirements for registered charities with respect to the issuing of official donation receipts. These core requirements are also described in Interpretation Bulletin IT-110R3 "Gifts and Official Donation Receipts". The Government of Canada considers contraventions of these requirements to be serious enough to warrant various penalties or sanctions as set out in subsections 188.1(7) to 188.1(10) and 188.2(1) of the Act. In addition, improper receipting of gifts or donations may, on its own, result in the revocation of registered status under paragraph 168(1)(d) of the Act.

IRFAN-Canada has acknowledged that its receipting practices are not fully in compliance with Regulations 3500 and 3501 of the Act.

You advised on page 17 of your letter that the practice of creating donation receipts in the DDS system without a donor's name was "an unfortunate and unforeseen error related to the input of anonymous donations into the account" and that "the system would occasionally print a receipt". With regard to duplicate receipts having been issued with the same serial number, you contend that it is "a minor problem and the charity now recognizes the need to change their procedures." You have also acknowledged that IRFAN-Canada "needs to provide more detail" with respect to providing a description for in-kind donations.

Improper procedures for duplicate receipting and the recording of anonymous donations create possibilities for invalid donation entitlements to be claimed. IRFAN-Canada did not provide any documentary evidence to support its claim that anonymous donation receipts were not issued and only kept on file.

You have not commented on IRFAN-Canada's practice of issuing donation receipts to individual taxpayers for donations made from the inventory of a commercial entity, which contravenes Regulation 3501(1)(g) of the Act and is an abuse of IRFAN-Canada's authority to issue tax receipts as a registered charity. This false receipting practice improperly allows the individual to claim tax relief to which he or she is not entitled. We note that receipts totalling over \$96,000 were issued in this manner during the audit period.

These issues are over and above the integrity problems relating to the DDS system outlined in section 1.a of this Appendix.

It is our position that IRFAN-Canada has issued a receipt for a gift or donation otherwise than in accordance with the Act and its regulations or that contains false information. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(d) of the Act.

b. Third Party Receipting

Our audit findings indicated that IRFAN-Canada issued receipts on behalf of the Guyana Islamic Trust (GIT), an unregistered organization domiciled outside Canada. Your letter defends this receipting arrangement by referring to IRFAN-Canada's financing of previous projects with the Guyana Islamic Relief Organization (GIRO), which you have said is the humanitarian wing of the Guyana Islamic Trust (GIT). You state that a memorandum of understanding and project agreements existed between IRFAN-Canada and GIRO before 2007 under which Ramadan and Zabeeha Food Packages were provided to GIRO.

We note, however, that this is one of the projects for which IRFAN-Canada obtained post-facto documentation in preparation for our audit visit, as documented by an e-mail sent to the GIRO on May 17, 2010 in which IRFAN-Canada sought the following documentation:

Br. Zaman/Br. Khan;

We need the below documents urgently, by this Thursday, for our audit, your cooperation is greatly appreciated:

2005 Zabeheh/Ramadan need a report on each project

2006 " " " " " " " "

2007 Zabeheh report missing

2008 Zabeheh signed agreement needed – see attached, pls email signed page

2008 Ramadan signed agree. Needed – see attached, " " " need report

It is our view that this e-mail establishes that, contrary to your representations, the memorandum of understanding and project agreements cannot be relied on to indicate that IRFAN-Canada was involved in conducting its own activities through GIRO.

Moreover, e-mails between IRFAN-Canada and GIT concerning their funding arrangement contradict your representations that the funds in question were raised for a Zabeeha (Zabiha) project and, in addition, do not establish any degree of ongoing direction and control over funds transferred from IRFAN to GIT. On the contrary, they support our view that IRFAN-Canada's actions were limited to providing support to GIT for that organization's fundraising efforts in Canada by allowing contributions made to GIT to be receipted for tax purposes. On the basis of the evidence we have seen, it seems clear that the receipted funds were never intended to be used for activities carried on by

IRFAN-Canada and that it acted as a conduit in processing tax-receipted donations for GIT.

The following are the relevant e-mail exchanges found in IRFAN-Canada's records:

- September 12, 2007, E-mail from GIT to IRFAN
Subject: RE Salaams, "Salaams. Based upon prior discussions- IRFAN would facilitate GIT's Ramadhan collection in Canada. Br. Shazad Khan is our representative going to Canada"
- September 14, 2007, E-mail from IRFAN to GIT
Subject: Re: Salaams, "...we can supply u with 5 receipt booklets by this Monday, the 17th,... A. Br. Khan mentioned that u have an event this coming Sunday, if u want someone to come representing IRFAN, we can try to arrange that..."
- February 25, 2008, E-mail from GIT to IRFAN
Subject: Extremely Urgent, "...Extremely Urgent update on status of transfer of Funds for the GIT."
- March 5, 2008, E-mail from GIT to IRFAN
Subject: Extremely Urgent-Br.Abu Basem, "After my discussion with you today a report of same was given to the Murshid. The Murshid has expressed his deepest dissatisfaction in the way the matter has been dealt with regarding the transfer of funds...The Murshid is requesting that the funds be immediately sent through same manner in which Zabiha funds were sent to GIRO quite recently. The GIT does not have any report of projects to send.
- April 14, 2008, E-mail from IRFAN to GIRO
Subject: money transfer, "Please find attached our 1st instalment; we will be following up. This money must be spent on humanitarian relief. We are looking forward to your report."
- April 16, 2008, E-mail from GIRO to IRFAN
Subject FW: money transfer, "We wish to inform you that we have received transfer to Guyana Islamic Trust...to be used for humanitarian relief work."

It remains our position that IRFAN-Canada has issued a receipt for a gift or donation otherwise than in accordance with the Act and its regulations or that contains false information. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168(1)(d) of the Act.

Issue 4: Failed to file an information return as and when required under the ITA or a Regulation

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

IRFAN-Canada officials certified that the information contained in the returns filed by it for 2005, 2006, 2007, and 2008 were correct and complete.

IRFAN-Canada did not respond to the concern noted on page 25 of our AFL that monies received and not deposited would go undetected in IRFAN-Canada's books and records. The CRA auditor was unable to reconcile the information generated from IRFAN-Canada's DDS system and its inventory sheets with revenue reported on its T3010s and audited financial statements. IRFAN-Canada did not comment on the variances between revenue reported on its donation software program and revenues reported as income.

You have denied that IRFAN-Canada intended to provide false or deceptive information on its T3010 and have advised that it has engaged an outside auditor to review these returns with a view to responding to the errors we have identified in the AFL. We understand that the representations your letter provides are based on that auditor's review.

Our AFL provided a listing of 23 audit findings based on the sample review of IRFAN-Canada's financial records against its T3010 returns. We have considered your representations regarding these 23 sample items and would advise that we:

- accept IRFAN-Canada's representation regarding line 4820 of the 2005 and 2006 T3010s;
- acknowledge IRFAN-Canada's agreement that 11 line items²⁴ were incorrect for various reasons including; an unaudited receipt figure was used, a former employee had made the error, items were mistakenly reported on the wrong lines, and, in one case, a typographical error was made;
- recognize that IRFAN-Canada has not understood how to report against lines 4890 and 4891 of the 2009 T3010; and

²⁴ 2005 – Lines 4100, 4150, 4500, 4630, and 5000; 2006 – Lines 4500, 4650, and 4890; 2007 – Lines 4500, 4510, and 4890.

- reject the remaining seven²⁵ representations because supporting documentation was not provided and/or our audit findings provide evidence to the contrary. For example,
 - we indicated to you that there was a discrepancy of \$876,891 for *total gifts from other registered charities* as reported on line 4510 of the 2005 T3010. Our audit findings determined that this difference arises because of IRFAN-Canada's failure to report an additional \$ 938,283 in gifts-in-kind as reported on its inventory sheets and, further, that this basis for the discrepancy was acknowledged in an internal e-mail. This contradicts your explanation that this discrepancy is due to "a difference between store book/ledger and financial statement figures was only past and present market value figures"; and
 - you have not provided any evidence to show that the \$125,000 set aside for Irfan Syed in Trust was used for a charitable program, although it was closed out as a project expense and reported as such on line 4890 of the 2008 T3010.

It remains the CRA's position that IRFAN-Canada has improperly certified that it has filed returns that are correct and complete and therefore has not met the requirement of the Act to file a prescribed information return. This constitutes sufficient reason to revoke IRFAN-Canada's status as a registered charity under paragraph 168 (1) (c) of the Act.

²⁵ 2005 – Lines 4510 and 4890; 2006 Line 4510, 4700, and 4840; 2008 – Lines 4500 and 4890.

APPENDIX C - RELEVANT PROVISIONS OF THE ACT

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation; or
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

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

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

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

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

168(4) Objection to proposal or designation

A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Section 188: Revocation tax

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

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

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

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

$$A - B$$

where

A is the total of all amounts, each of which is

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

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

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

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

188(1.2) Winding-up period

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

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

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

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

188(4) Idem

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

188(5) Definitions

In this section,

“net asset amount”

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

$A - B$

where

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

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

“net value”

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

$A - B$

where

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

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

Section 189**189(6) Taxpayer to file return and pay tax**

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

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

189(6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period exceeds
 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

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

- (a) the consideration given by the person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

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