



**REGISTERED MAIL**

Your file

Our file

December 14, 2010

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BN: 885408849

File No: 3001490

Attention: Mr. Terrance S. Carter

Dear Mr. Carter

**Re: Audit of Registered Charity: International Relief Fund for the Afflicted and Needy (Canada)**

This letter is further to our audit of the books and records of your client, the International Relief Fund for the Afflicted and Needy-Canada (IRFAN-Canada), by the Canada Revenue Agency (CRA). The audit related to the operations of the registered charity for the period from January 1, 2005 to December 31, 2009 inclusive.

We have now completed our review of the audit materials. We have identified serious non-compliance with core requirements of the *Income Tax Act* (Act) and its *Regulations* for maintaining charitable status in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference(s)
1.	Failed to comply with or contravened any of sections 230 to 231.5 of the Act. (Page 4)	230 (2), 230(4.1), 231.1(1), 168(1)(e)
2.	Ceased to comply with the requirements of the Act for its continued registration. (Page 7)	149.1(1), 149.1(6), 168(1)(b)
3.	Issued a receipt for a gift or donation otherwise than in accordance with the Act and the regulation or that contains false information. (Page 22)	118.1(1), 168(1)(d), Regulation 3500, Regulation 3501
4.	Failed to file an information return as required under the Act. (Page 24)	149.1(14), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide IRFAN-Canada with the

opportunity to provide reasons why its status as a registered charity should not be revoked on those grounds.

## Background

As you know, this audit was a follow-up to a previous audit concluded in 2004.<sup>1</sup> That audit raised a number of non-compliance issues, such as whether IRFAN-Canada was operating in contravention of the Act by funding non-qualified donees rather than conducting its own charitable activities. Of particular concern, however, was that a significant number of foreign organizations with which IRFAN-Canada maintained partnerships in program delivery were alleged to have direct ties to Hamas, a listed terrorist organization.<sup>2</sup>

IRFAN-Canada was given the benefit of the doubt and allowed to maintain its registration at that time on the strength of its representations that "...it never knowingly dealt with Hamas, nor with organizations known or credibly alleged to be controlled or directed by Hamas..."<sup>3</sup> It also provided a written undertaking that it would no longer operate in a way that would put its resources at the disposition of organizations linked to Hamas, or any other terrorist entity. To that end, it also gave the CRA 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.

Notably, while IRFAN-Canada maintained at that time 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...", it 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 noted in our January 18, 2010 Proposal to Suspend Receipting Privileges of IRFAN-Canada, two subsequent events which came to light during our current audit underscored the need for the CRA to closely re-examine the validity of these representations.<sup>4</sup> First, on December 30, 2004, immediately following the closure of our previous audit, IRFAN-Canada was itself declared an "unlawful association" by the Israeli Minister of Defence.<sup>5</sup> Second, court documents released during the successful 2008 conviction in the United States of the Holy Land Foundation for Relief and

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<sup>1</sup> Appendix A - Correspondence relating to the CRA's audit of IRFAN-Canada's 2002 fiscal year

<sup>2</sup> 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>

<sup>3</sup> IRFAN-Canada's November 19, 2004 letter (See Appendix A)

<sup>4</sup> Appendix B - Correspondence relating to CRA's suspension of IRFAN-Canada's receipting privileges

<sup>5</sup> Pursuant to the *Defence (Emergency) Regulations (State of Emergency) 1945*

[www.justice.gc.ca/imm/immigration/Hon/Terrorist+Organizations.htm](http://www.justice.gc.ca/imm/immigration/Hon/Terrorist+Organizations.htm) and [www.mod.gov.il/pages/general/terror.asp](http://www.mod.gov.il/pages/general/terror.asp)

Development (HLF) on terrorist financing charges named IRFAN-Canada on a list of unindicted co-conspirators considered to be “entities that are and/or were part of the Global Hamas financing mechanism”.<sup>6</sup>

Our findings in this audit also caused us to re-examine the significance of another important matter in relation to both IRFAN-Canada’s past and present operations, and the veracity of its 2004 representations. In February 2001, IRFAN-Canada assumed the activities and pursuits of Povrel Jerusalem Fund for Human Services (JFHS). A chronology of events leading to the convergence of the two organizations is outlined in Appendix C – Additional Background Information. We have looked again at all of the information relating to the application for registration made on behalf of JFHS, its operational relationship with HLF, the leadership role of Mr. Abdel-Majid in both organizations, the concerns we communicated to JFHS concerning its partnerships with organizations alleged to have close ties to Hamas, and specific references in its fundraising materials which had further caused us to believe that it was operating as part of the world-wide support network for Hamas.<sup>7</sup> Appendix D – Correspondence Relating to JFHS’ Application for Charitable Registration - contains letters documenting these concerns.

In retrospect, three matters of relevance to interpreting the findings of our current audit stand out:

- the strong indicators that JFHS acted as HLF’s counterpart in Canada,<sup>8</sup>
- the fact that the 2001 consolidation of JFHS and IRFAN-Canada’s operations was not reported to the CRA, leading us to consider the strong possibility that this exercise was intended to circumvent the CRA’s refusal to grant JFHS registration as a charity; and
- a persistent pattern of partnerships and associations with organizations tied to Hamas.

It is worthy of note that of the seven recipients of funding we identified to JFHS in 1998 as being of concern because of their links to Hamas, three were again found in 2004 to be among the eleven recipients of funding we identified to

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<sup>6</sup> In *U.S.A. v. HLF*, the Government named the “Jerusalem Fund aka IRFAN” as “Unindicted Co-conspirators”, Government’s Trial Brief, “Attachment A,” dated May 29, 2007, *United States of America v. Holy Land Foundation for Relief and Development et al*, Criminal Action No. 3:04 – CR – 240 – G ECF. Following the declaration of a mistrial on October 22, 2007 by His Honor Chief Judge A. Joe Fish, (the “First Trial”), a Superseding Indictment was filed May 29, 2008 pursuant to which a re-trial commenced on September 15, 2008, (the “Re-trial”). In preparation for the re-trial, the Government filed a Supplemental Trial Brief dated September 12, 2008, which supported the earlier Brief’s filed in the First Trial. In this correspondence, all other references to HLF court documents will refer to document numbers or exhibits filed in the re-trial and available at <http://www.txnd.uscourts.gov/judges/hlf2.html>

<sup>7</sup> Mr. Abdel-Majid (also known as Abu Basem) was an incorporating director and President of JFHS and the Executive Director, Vice-President and General Manager of IRFAN-Canada beginning in 2001 and throughout the audit period.

<sup>8</sup> JFHS funded many of the same partner organizations as the HLF, maintained close relationships with the HLF and its directors, provided funding to the HLF in support of its programs, used HLF orphan sponsorship forms, and together with HLF was originally known as “the Occupied Land Fund” (See Appendix C - Additional Background Information).

IRFAN-Canada as having ties to Hamas. Our current audit of IRFAN-Canada has revealed its association, since 2004, with fifteen organizations which we have documented as having ties to Hamas.

Our comprehensive analysis of the current audit findings, conducted in light of the 2004 audit, and our re-examination of our file materials relating to the application for registration of JFHS leads us to conclude that we can no longer accept the veracity of IRFAN-Canada's 2004 representations or rely upon its commitment to honour its due diligence undertakings.

### **Current Audit - Identified Areas of Non-Compliance**

On February 29, 2008, the CRA advised IRFAN-Canada of its intent to conduct a follow-up audit to commence on March 6, 2008. As documented in our letters of January 18 and April 6, 2010, the commencement of the audit was significantly delayed at IRFAN-Canada's request and our audit activities were subsequently severely impeded because IRFAN-Canada failed to maintain books and records in Canada, failed to provide books and records essential to our audit, and failed to comply with a requirement to provide document and information. These contraventions of subsections 230(2), 231.1(1), and 231.2(1) of the Act resulted in a one-year suspension of IRFAN-Canada's receipting privileges as a registered charity, beginning April 13, 2010.

During this period of suspension, the CRA has continued its audit of IRFAN-Canada. Further onsite visits were made to IRFAN-Canada's Ottawa office on May 17, 2010, and to its Mississauga office during the week of May 25 to May 28, 2010.

Our audit findings outlined below represent the most serious areas of non-compliance with the Act and its Regulations arising from this audit

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

It is important to note that the examples documented below are contraventions of sections 230 to 231.5 of the Act which have been identified through our analysis of audit documentation following our April 6, 2010 Notice of Suspension. They are additional grounds for revocation over and above those previously identified in our Notice of Suspension, all of which remain, in our view, valid grounds for revocation.

##### **1.1 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.<sup>9</sup> As noted below, IRFAN-Canada has not met either of these requirements.

Our audit has clearly established and IRFAN-Canada has acknowledged that it did not regularly maintain books and records in Canada relating to disbursements to its foreign office and projects outside of Canada for which it provided funding. As detailed in section 2.1 below, IRFAN-Canada's records show that it generated and obtained this information from its contacts outside Canada only after the CRA identified the nature of the records it required for audit purposes.

IRFAN-Canada maintains a separate record of its finances for activities conducted by its Ramallah office using a program called Bisan Systems. These records are stored on an off-shore server in Ramallah. During the audit, the CRA requested access to these records and IRFAN-Canada represented that it was unable to access the server from Canada. As a result of IRFAN-Canada's failure to maintain these records in Canada or to make them accessible from Canada, the CRA was unable to conduct a review of IRFAN-Canada's electronic records in its Ramallah office. We note, however, that Bisan Systems' own website indicates that accounting and management systems do allow for records to be viewed remotely.<sup>10</sup> Further, while IRFAN-Canada provided<sup>11</sup> the CRA with a PDF copy of accounting records from its foreign office, a document in this format does not meet the requirement under the Act to provide records in an electronically readable format, which is needed to allow the CRA to perform essential audit techniques such as verifying entries.<sup>12</sup>

In addition, IRFAN-Canada's electronic books and records did not comply with paragraph 230(2)(c) as they were deficient with respect to its customized software program for recording donations and issuing tax-receipts. IRFAN-Canada's software program lacked adequate control measures, and the data from this system could not be relied upon for reporting because it does not maintain accurate and reliable electronic records in accordance with CRA policy.<sup>13</sup> For example, audit findings reveal that 7,029

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<sup>9</sup> **Electronically readable format** means information supported by a system capable of producing accessible and useable copy. If requested by CRA officials, you must be able to decrypt or unlock password-protected records and provide us with a copy of your electronic records in a useable format. **Useable format** means that the electronic records can be processed and analyzed with CRA software. The useable copy of the electronic records must be in a non-proprietary, commonly used data interchange format, which is compatible with software used by the CRA. These requirements are further described in the CRA publications, *Keeping Records RC4409*, *IC 78-10R5 Books and Records Retention/Destruction*, and *IC 05-1 Electronic Record Keeping*.

<sup>10</sup> [www.bisan.com/accountingEN.html](http://www.bisan.com/accountingEN.html)

<sup>11</sup> Fiscal periods ending for 2007, 2008 and 2009

<sup>12</sup> A PDF copy is not usable because the records cannot be processed and analyzed with CRA software

<sup>13</sup> The program can be accessed by three different computers and is not password protected



sequential records were missing, 1,518 duplicate receipts were generated, and there were 97 missing tax receipt numbers.<sup>14</sup>

## **1.2 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.

The CRA’s review of audit information collected since IRFAN-Canada’s suspension has revealed the existence of additional books and records which were not disclosed to the CRA as previously requested. For example, in response to the CRA’s request to provide copies of all minutes of meetings, IRFAN-Canada had provided the CRA with records for only seven meetings held by the charity from January 1, 2005 to December 31, 2009.<sup>15</sup> Our analysis of electronic records collected during the CRA’s May 2010 visit to IRFAN-Canada’s Mississauga office, revealed the existence of another 28 meetings held by IRFAN-Canada for which records were not disclosed to the CRA.<sup>16</sup> In addition, the CRA auditor requested, but was refused access to, a folder marked “Meeting Minutes” found on the computer of IRFAN-Canada’s Secretary and Treasurer, Mr. Sami A. Kaoud.

As explained in our Proposal to Suspend Receipting Privileges dated January 18, 2010, a review of meeting minutes is an essential component of a charity audit.<sup>17</sup> We again note that IRFAN-Canada has never provided any meeting minutes for its foreign advisory committee, whose deliberations would have been key to a complete understanding of its operations in the West Bank and Gaza, or for any of its teleconference meetings.

Mr. Kaoud also refused to allow the CRA to examine folders named My Beloved Palestine and My Beloved Lebanon claiming that these folders were of a personal nature.

The CRA auditors also requested access to electronic files located on

<sup>14</sup> The customized program creates a sequential record for each entry. The audit found that 7,029 records were deleted.

<sup>15</sup> Board of Director Meetings were held on April 6, 2005, December 19, 2006, December 21, 2006, March 31, 2007, September 8, 2007, August 17, 2008 and April 19, 2009. IRFAN-Canada also represented that all of its teleconference meetings pertained to discussions about its website.

<sup>16</sup> Records collected from the computer of administrative support staff, \_\_\_\_\_, at IRFAN-Canada’s Mississauga office.

<sup>17</sup> *Income Tax Regulation* 5800(1) requires a registered charity to retain copies of any record of the minutes of meetings of its executive or members for at least two years beyond the date on which its registration is revoked.

Mr. Abdel-Majid's computer. These files were extremely relevant to our audit because Mr. Abdel-Majid has played a crucial and leading role in the activities and decision-making processes of IRFAN-Canada and its predecessor JFHS.<sup>18</sup>

While Mr. Abdel-Majid and Mr. Naseer Syed, the IRFAN-Canada legal advisor who was present throughout our May 2010 audit visit to the organization's Mississauga office, agreed to allow the CRA to copy and review electronic files from Mr. Abdel-Majid's computer, Mr. Syed insisted on first screening all files and e-mails to ensure that they did not contain any solicitor-client or otherwise privileged documents. Our auditors were not given the opportunity to determine the original number of records contained on Mr. Abdel-Majid's computer, but following Mr. Syed's review the CRA discovered that all document files, with the exception of photographs, had been removed under a claim of privilege. Further, the only e-mail records that remained were internal communications sent from other IRFAN-Canada offices. There are instances where it would appear that communication records have been omitted, leaving us without information needed for audit purposes. For example, on August 18, 2009, Mr. Abdel-Majid received two e-mails from the Al-Ihsan Charitable Society<sup>19</sup> in Hebron (forwarded to him from IRFAN-Canada's main email account), requesting financial assistance.<sup>20</sup> The Al-Ihsan Charitable Society was listed in Canada in October 2005 pursuant to the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*. We note that Mr. Abdel-Majid forwarded one of these e-mails to an unknown recipient on August 25, 2009. The removal of Mr. Abdel-Majid's forwarding e-mail from the records disclosed to us leaves us unable to determine IRFAN-Canada's actions with respect to this funding request. However, our previous audit findings establish that the Al-Ihsan Charitable Society had previously received financial assistance from IRFAN-Canada.

We find it difficult to accept that the entire content of Mr. Abdel-Majid's computer, with the exception of approximately 300 photographs and e-mails received from IRFAN-Canada offices, would be subject to a valid claim of either solicitor-client or litigation privileged information within the limits described in the CRA's publication entitled "Acquiring Information from Taxpayers, Registrants and Third Parties".<sup>21</sup>

Given all of these circumstances, it is the CRA's view that IRFAN-Canada has not met its requirement to allow proper inspection, audit, and examination of its books and records.

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<sup>18</sup> The operations of the two organizations were consolidated in February 2001 (see Appendix C Additional Background Information)

<sup>19</sup> The Society, also known as El Ehssan Society, has offices in Hebron, Gaza, Bethlehem, Jenin, Ramallah, Dulkarm and Lebanon. See below, Section 2.5 Absence of Due Diligence

<sup>20</sup> The e-mails were forwarded to [abubasem@irfan.ca](mailto:abubasem@irfan.ca) from [info@irfan.ca](mailto:info@irfan.ca)

<sup>21</sup> For example, "an executed contract, a corporate minute book, a closing book, the books and records of a business are all examples of documents that would not generally be covered by privilege. The purpose of the litigation privilege is to create a 'zone of privacy' in relation to pending or apprehended litigation." See too, reference to "CRA's Approach to Privileged Documents" in Carters ca, Charity Law Update, October 2010

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

Subsection 149.1(1) of the Act requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself”. There are two key aspects to this definitional requirement: an organization’s activities must be charitable at law and it must devote its resources to the conduct of its own charitable activities. Our findings regarding IRFAN-Canada’s non-compliance with these requirements are dealt with below under the headings:

- Gifting to Non-Qualified Donees/Lack of Direction and Control Over Resources
- Activities Contrary to Public Policy
  - Links to Hamas
  - Due Diligence
- Public Benefit Test
  - Deceptive Fundraising

### **2.1 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.<sup>22</sup> 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.

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.<sup>23</sup> The Federal Court of Appeal has confirmed that a charity working with an intermediary must have control over the activities carried out on its behalf, and over the use of its resources.<sup>24</sup> When a registered charity merely transfers its resources to another entity that is not a qualified donee, and fails to maintain effective direction and actual control over those resources, the charity has, in effect, made a gift to

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<sup>22</sup> The term qualified donee is defined in subsection 149.1(1) of the Act to mean an organization to which Canadian taxpayers may directly make charitable gifts, or gifts to the Crown, which can be claimed when filing their income tax returns. Within Canada, the term “qualified donee” generally refers to other Canadian registered charities and municipalities. Outside Canada, the only organizations that are qualified donees under the Act are the United Nations and its agencies, certain universities outside Canada ordinarily attended by Canadian students, and charitable organizations outside Canada to which Her Majesty in Right of Canada has made a gift within the previous two years.

<sup>23</sup> CRA Publication entitled “Canadian Registered Charities Carrying Out Activities Outside of Canada”

<sup>24</sup> *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



a non-qualified donee. This contravenes the purpose and intent of the charitable registration provisions of the Act.

At the time of our 2004 audit, IRFAN-Canada was warned of our concern that many of its funding arrangements with partners appeared to contravene the requirements of the Act.<sup>25</sup> Before that, our letters to JFHS had extensively discussed its funding of non-qualified donees as one of the barriers to its registration.<sup>26</sup> On each occasion, our warnings were conveyed to Mr. Adbel Majid, who had been responsible for JFHS's operations and then took over as general manager of IRFAN-Canada when it assumed the activities of JFHS in 2001. Despite these warnings, our current audit findings indicate that IRFAN-Canada does not maintain ongoing direction and actual control over many of the projects for which it provides funding.<sup>27</sup>

IRFAN-Canada records show that it has distributed approximately \$19 million in Canadian funds and \$17 million in gifts-in-kind from January 1, 2005 to December 31, 2009, for a variety of projects outside of Canada. However, IRFAN-Canada's documentation relating to these projects was in many cases an after-the-fact paper exercise, as evidenced by its efforts to collect documentation for the express purpose of our audit.

On December 11, 2008, our auditor visited IRFAN-Canada's Mississauga office and identified over 20 projects funded by it that we wished to examine during our next audit visit. Our review of IRFAN-Canada's e-mail records revealed that immediately following that visit, it sent requests to its Ramallah office asking that funding recipients sign agency agreements and provide documentation as evidence of IRFAN-Canada having exercised its responsibility to direct, control, and supervise the use of its resources. The same scenario was repeated in preparation for our audit visit in May 2010. Within the two weeks prior to our visit, agency agreements and project documentation were urgently requested from recipients for project requests funded in 2005, 2006, 2007, and 2008. Our review of IRFAN-Canada's records show that, in May 2010, it e-mailed its contacts in recipient organizations to initiate the signing of agency agreements and to obtain photographs<sup>28</sup> and reports on the projects supported by IRFAN-Canada's funding in order to have this documentation in place for the CRA audit visit which began on May 25, 2010. It is clear, however, that the concept of maintaining direction and control over the use of an organization's 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".

<sup>25</sup> CRA letter dated July 23, 2004 to IRFAN-Canada (See Appendix A)

<sup>26</sup> CRA's letters to JFHS dated March 23, 1998, March 1, 1999 and July 17, 2000 (See Appendix D)

<sup>27</sup> For example, IRFAN-Canada's major partner in Gaza, Ard El Insan notes, on its website [www.ardelinsan.org](http://www.ardelinsan.org), that it carried out projects such as the Iftar food basket, school bags which were financed by IRFAN-Canada

<sup>28</sup> With respect to pictures containing displays of IRFAN's banner, we would comment that this type of reporting should still be accompanied by source documents to support the purchase of goods. We would also make the observation that pictures could easily be taken of the same project scenario with the only change being that of the banner of another organization being displayed

Appendix E contains records of the e-mails IRFAN-Canada sent to its Ramallah office and contacts in other organizations in order to generate and gather records that it had not maintained in Canada in relation to the use of funds it had transferred to non-qualified donees.

IRFAN-Canada also transferred gifts-in-kind to non-qualified donees valued at more than \$17 million. CRA's guidance on "Canadian Registered Charities Carrying out Activities Outside of Canada" permits such transfers in very limited circumstances as a matter of administrative tolerance. However, charities wishing to avail themselves of this policy are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities or that support terrorist activities. We have been able to establish that \$13 million transferred to other organizations in the form of gifts-in-kind was provided to organizations which we have been able to document from public records as having ties to Hamas.<sup>29</sup>

IRFAN-Canada and its directors also failed to demonstrate that adequate internal control mechanisms over the use of its resources had been established both in Canada and abroad.<sup>30</sup> 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 off-shore bank accounts with the Arab Bank, the Housing Bank for Trade and Finance, Cairo Amman Bank and the Hapolim Bank. IRFAN-Canada deposited in excess of one million dollars into these accounts in 2005 and 2006 alone, yet exercised no oversight or control 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.

IRFAN-Canada's failure to maintain any 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 Arab Bank to Hapoalim Bank..." We note that funds transferred from the Arab Bank to the Hapoalim Bank were in fact misappropriated by Mr. Khaled Abu Kaff, IRFAN-Canada's West Bank office manager, who had signing authority for all of the organization's off-shore accounts. Information provided by IRFAN-Canada indicates that Mr. Abu Kaff misappropriated in excess of \$100,000 of the charity's resources from January 2005 to July 2006.<sup>31</sup> Our audit found that IRFAN-Canada knew of this misappropriation of funds as early as August 2006,<sup>32</sup> and was also aware at that point of Mr. Abu Kaff's involvement with the

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<sup>29</sup> As outlined under the headings Links to Hamas and Due Diligence

<sup>30</sup> In accordance with Section 5200 of the Canadian Institute of Chartered Accountants (CICA) Handbook, internal control comprises the plan of the organization and all the co-ordinate systems established by management to assist in achieving management's objective of ensuring, as far as practical, the orderly and efficient conduct of its business, including the safeguarding of assets, the reliability of accounting records and the timely preparation of reliable financial information

<sup>31</sup> Our current audit of IRFAN-Canada covers January 2005 to December 2009. IRFAN-Canada's Board of Director meeting minutes from December 19, 2006, note that Mr. Abu Kaff had been misappropriating funds for the past two and a half years. It is not known how much money Mr. Abu Kaff may have misappropriated prior to 2005

<sup>32</sup> This was acknowledged in minutes from a December 19, 2006 Board of Directors meeting

Al-Muntada Al-thaqafi (Cultural Forum), an organization raided by Israeli authorities in March 2006 because of its links to Hamas.<sup>33</sup> Yet no serious steps were taken by IRFAN-Canada to restrict Mr. Abu Kaff's access to its resources even when Mr. Abdel-Majid and Mr. Syed travelled to Jordan in September 2006 to meet with him and to assess what actions should be taken to limit damage to IRFAN-Canada in the light of the raid having exposed his direct relationship with Mr. Ahmed Attoun, a senior member of the Hamas government, through their joint control over the Cultural Forum. Mr. Abu Kaff's employment with IRFAN-Canada was not terminated until April 2007 and, oddly, he retained signing authority over four of IRFAN-Canada's accounts until January 2008.

The minutes from IRFAN-Canada's December 19, 2006 Board of Directors meeting state that "financial controls are put in place to prevent any future misappropriation of funds by IRFAN-Canada employees. Any cheque issued by the Ramallah office needs to be countersigned by Rasem Abdel-Majid in Canada." However, our analysis of the cheques issued by IRFAN-Canada's Ramallah office after December 19, 2006, did not reveal any instances where Mr. Abdel-Majid co-signed cheques issued by its Ramallah office.

### **2.3 Activities Contrary to Public Policy**

It is well established at law that purposes which offend public policy are not charitable.<sup>34</sup> Canada's public policy recognizes 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.<sup>35</sup> 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.

As detailed in our Proposal to Suspend Receipting Privileges dated January 18, 2010, Canada has implemented the binding elements of Resolution 1373 of the United Nations Security Council and has ratified the United Nations *International Convention for the Suppression of the Financing of Terrorism*. The preamble to the Convention recalls General Assembly Resolution 51/210, which calls upon all States:

3 (d) To investigate, when sufficient justification exists according to national laws, and acting within their jurisdiction...the abuse of organizations, groups or associations, including those with charitable, social or

<sup>33</sup> See Appendix G for CRA findings linking the Cultural Forum and Mr. Abu Kaff to Hamas

<sup>34</sup> See *Everywomen'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

<sup>35</sup> See Backgrounder 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/mcdia/nr/2010/nr2010207-3-eng.aspx>

cultural goals, by terrorists who use them as a cover for their own activities; and

3 (f) to take steps to prevent, and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals...

Canada's commitment to combating terrorism is also reflected in its membership in the Financial Action Task Force (FATF).<sup>36</sup> The FATF is an intergovernmental policy making body, comprised of over 30 countries, that has a ministerial mandate to establish international standards for combating money laundering and terrorist financing. Over 180 jurisdictions have joined the FATF or an FATF-style regional body, and committed at the ministerial level to implementing the FATF standards and having their anti-money laundering (AML)/counter-terrorist financing (CTF) systems assessed. The FATF has adopted nine recommendations on combating the financing of terrorism, including Special Recommendation VIII which states that countries should take measures to ensure that charities cannot be misused:

- by terrorist organizations posing at legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

However, the clearest expression of Canada's public policy in this regard is found in the *Charities Registration (Security Information) Act*, which was enacted to "demonstrate Canada's commitment to participating in concerted international efforts to deny support to those who engage in terrorist activities, to protect the integrity of the registration system for charities under the *Income Tax Act* and to maintain the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate exclusively for charitable purposes".<sup>37</sup> This Act lays out the process to be used to protect sensitive security or criminal intelligence information where that information must be relied upon to show that there are reasonable grounds to believe:

- (a) that an applicant or registered charity has made, makes or will make available any resources, directly or indirectly, to an entity that is a listed entity as defined in subsection 83.01(1) of the *Criminal Code*;
- (b) that an applicant or registered charity made available any resources, directly or indirectly, to an entity as defined in subsection 83.01(1) of the *Criminal Code* and the entity was

<sup>36</sup> "What is the FATF?" [www.fatf-gafi.org/documents/57/0.3343\\_en\\_32250379\\_32235720\\_34432121\\_1\\_1\\_1\\_1.00.html](http://www.fatf-gafi.org/documents/57/0.3343_en_32250379_32235720_34432121_1_1_1_1.00.html) accessed on December 9, 2010

<sup>37</sup> *Charities Registration (Security Information) Act*, Section 2 (Purpose and Principles)

at that time, and continues to be, engaged in terrorist activities as defined in that subsection or activities in support of them; or

- (c) that an applicant or registered charity makes or will make available any resources, directly or indirectly, to an entity as defined in subsection 83.01(1) of the *Criminal Code* and the entity engages or will engage in terrorist activities as defined in that subsection or activities in support of them.<sup>38</sup>

Where, on the other hand, it is not necessary to rely on information which, if disclosed, “would be injurious to national security or endanger the safety of any person” to establish that an organization has acted in a manner that is contrary to this expression of Canada’s public policy prohibiting registered charities from making resources available to terrorist entities, it is equally valid to refuse or revoke registration using the provisions of the *Income Tax Act*.

Many of the policy and guidance statements for charities published on the CRA website call attention to the need to observe Canada’s laws and public policy in this regard. For example, our publication entitled “CRA Guidance- Activities Outside of Canada” warns:

Charities have to remember their obligations under Canada’s anti-terrorism legislation. As with all individuals and organizations in Canada, charities are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities, or that support terrorist activities.<sup>39</sup>

Hamas was listed as a terrorist entity under the *Criminal Code* on November 27, 2002 and remains listed today. Information pertaining to this listing posted on the website of the Department of Public Safety provides the following description:<sup>40</sup>

**Hamas (Harakat Al-Muqawama Al-Islamiya) (“Islamic Resistance Movement”)**

**Description**

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.

<sup>38</sup> *Charities Registration (Security Information) Act*, Section 4

<sup>39</sup> CRA Guidance – Canadian Registered Charities Carrying Out Activities Outside of Canada

<sup>40</sup> <http://www.publicsafety.gc.ca>

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.

The Department of Foreign Affairs "Canadian Policy on Key Issues in the Israeli-Palestinian Conflict" states that "Canada has listed Hamas...and other groups as terrorist organizations in accordance with *UN Resolution 1373 (2001)* and Canadian legislation. The Government of Canada has no contact with these groups."<sup>41</sup> Following Hamas' January 2006 successful election campaign, the Canadian government reiterated<sup>42</sup> that "The stated platform of this government has not addressed the concerns raised by Canada and others concerning non-violence, the recognition of Israel, and acceptance of previous agreements and obligations, including the Roadmap for Peace. As a result, Canada will have no contact with members of the Hamas cabinet and is suspending assistance to the Palestinian Authority".<sup>43</sup>

As highlighted in Appendix F, 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. We therefore do not accept claims that support provided to Hamas can be distinguished from the political and terrorist activities that led to it being listed by Canada and other nations. It is to be noted that Canada's position with regard to the designation of Hamas as a listed entity does not set this facet of its operations apart from the organization as a whole. Indeed, the definition of a terrorist group under section 83.01 of the *Criminal Code* makes it clear that, under Canadian law, an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity will be regarded as a terrorist group.

It should also be noted that revocation of an organization's registration as a charity under the *Income Tax Act* is a civil, and not a criminal, matter. Consequently, the tests to be met in determining whether a registered charity has used its resources in a manner that offends public policy do not require proof of a necessary mental element (i.e. the necessity to establish knowledge, intent, purpose or wilfulness). Nevertheless, the evidence we have accumulated through our current and previous audits and upon which this letter is based show, in our view, a marked persistence in aiding groups connected to Hamas, the existence of institutional links between IRFAN-Canada and key members within the organizational structure of Hamas, and an intent to contribute to the success of

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<sup>41</sup> Department of Foreign Affairs and International Trade website <http://www.international.gc.ca>

<sup>42</sup> Joint Statement by Minister Mackay and Minister Verner on New Palestinian Government and Assistance to the Palestinian People, March 29, 2006,

<sup>43</sup> While Canada suspended assistance to the Palestinian Authority in January 2006, Hamas was removed from the Palestinian government in June 2007, following its takeover of the Gaza Strip, and a new Palestinian government was established in the West Bank under President Mahmoud Abbas. The current Palestinian Authority government in the West Bank has no links to Hamas, and has clearly stated its commitment to non-violence, previous peace agreements and obligations, recognition of Israel, and a negotiated two-state solution. Canada is currently working closely with the Palestinian Authority and has a \$300 million dollar development program focussing on security sector reform and Rule of Law.



Hamas by enhancing its ability to engage in its cause in the manner expressly contemplated by the Hamas charter.

## 2.4 Links to Hamas

Our analysis of the information gathered from the documents acquired during our audit of IRFAN-Canada, along with those retrieved from open sources, our previous audit of IRFAN-Canada and documents filed in relation to JFHS' prior application for registration, has led the CRA to believe that IRFAN-Canada is an integral part of an international fundraising effort to support Hamas. The analysis that has led to CRA's position includes:

1. The clear evidence that, 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. (See Appendix C – Additional Background Information)
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 affirming 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. (See Appendix G – Tab 3)
3. JFHS and IRFAN-Canada's past pattern (from 1992 to 2002) of funding organizations that have been recognized as having links to Hamas, together with our current audit findings which reveal that – despite its 2004 undertakings – IRFAN-Canada has continued to provide funds to Hamas-controlled Ministries in the West Bank and Gaza as well as to organizations that have ties to Hamas. Our audit findings indicate that, for the period under review, IRFAN-Canada has provided approximately \$14.6 million in resources to organizations with ties to Hamas. (See Appendix G - Tabs 1, 2, 4 and 5)
4. JFHS' status as a founding member in the Union of Good,<sup>44</sup> and IRFAN-Canada's continued association with and/or resourcing of Union of Good members as its operating partners.<sup>45</sup> The United States Treasury has designated the Union of Good, identifying it as an "organization created by Hamas leadership to transfer

<sup>44</sup> <http://www.web.archive.org/web/20021217011104/www.101days.org>

<sup>45</sup> Other sources indicate that IRFAN-Canada was also listed as a Union of Good member in 2004. See Intelligence and Terrorism Information Center at the Center for Special Studies (C S S), "IRFAN: A Hamas front organization operating in Canada to enlist financial support for Hamas institutions in the Palestinian Authority-administered territories", November 2004  
[www.terrorism-info.org.il/malam\\_uultimedia/html/final/eng/sib/11\\_04/irfan.htm](http://www.terrorism-info.org.il/malam_uultimedia/html/final/eng/sib/11_04/irfan.htm)

funds to the terrorist organization”.<sup>46</sup> 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 terrorist operatives; and (ii) dispensing social welfare and other charitable services on behalf of Hamas”. (See Appendix G – Tab 1, 3 and 5)

5. IRFAN-Canada's listing as an “unlawful association” by the Israeli Government on December 30, 2004.
6. The overall goals, objectives, and principles of Hamas as stated in its charter. (see Appendix F – Links to Hamas)

In addition, we have translated a number of promotional fundraising videos created by IRFAN-Canada that were obtained during the May 2010 visit to IRFAN-Canada's Mississauga office. These videos contain images and commentary which we find to be overwhelmingly political in content, generally inconsistent with the pursuit of charitable objectives, and intended to be supportive of Hamas messaging. Consistent with the central themes of the Hamas Charter, they demonize Israel, characterize the Arab-Israeli conflict as a religious war, appeal for all Arab and Muslim nations to join in the struggle against Israel, and glorify martyrdom. For example:

- The video *gaza ebadh* depicts the bodies of several children shrouded in green flags bearing the logo and slogan of Hamas; commentary in the film characterizes the Israelis as “mass murderers” who deliberately and repeatedly target entire families and attempted to “erase” the people of Gaza through “mass annihilation”.
- The video *gaza msajed*, contains commentaries and interviews repeatedly characterizing Israeli actions as being a religiously-motivated attack on the entire Arab nation and Islam itself. Indeed, some of these comments are made during an interview conducted in the making of the video with Dr. Taleb Hammad Abu Shaar, the Minister of Religious Affairs in Gaza's Hamas-controlled government.
- The *gaza.ebadh* video contains interviews that describe the effects of the war on the family of the Zeitoun neighbourhood in Gaza, many of whom were injured or killed during Israeli military activity on January 4, 2008. Later in the film, images of five members of the family are prominently displayed on a ‘martyr’ poster bearing the logo of Palestinian Islamic Jihad (PIJ).<sup>47</sup> Publicly available statements made by PIJ claim that at least one of the family members displayed on the poster, , was involved in militant activities against Israeli forces in the Zeitoun area on the date in question. Other

<sup>46</sup> [www.treasury.gov/offices/enforcement/key-issues/protecting/union\\_of\\_good.shtml](http://www.treasury.gov/offices/enforcement/key-issues/protecting/union_of_good.shtml)

<sup>47</sup> The Palestinian Islamic Jihad (PIJ) is listed as a terrorist entity in Canada effective November 20, 2002

videos obtained from IRFAN-Canada, such as *gaza press* and *IRFAN FILM\_Arabic* also feature images of martyrs and interviews with their surviving family members.

## **2.5 Absence of Due Diligence**

A registered charity should conduct meaningful due diligence on all aspects of its operations, including its partners in program delivery, in order to prevent the charity's resources from being used in a manner that would contravene Canadian law and the charity's requirements for ongoing 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.

Due diligence is not merely a question of checking lists. As our audit closure letter of December 21, 2004 commented, "whatever authority is responsible, listings procedures will never keep up with the capacity of terrorist groups to restructure their support networks, nor will they be able to keep track of small local entities associated with terrorist groups."

As our December 21, 2004 letter also points out, we would expect a Canadian organization that carries out operations internationally – particularly in concert with partner agencies in unstable and strife-torn regions of the world – to be in a very good position to be aware, from its own local knowledge and on-the-ground contacts, whether particular NGOs active in the region are aligned or connected with groups that are engaged in terrorist activities as that term is understood in Canadian law.

There are, of course, many resources publicly available to charities, including some produced by the CRA, to help Canadian charities identify vulnerabilities to terrorist abuse.<sup>48</sup> However, the suggestion in your October 8, 2010 letter that Canada or any other country could mandate an approved set of due diligence procedures for charities that would be effective in combating terrorist financing is overly simplistic and does not fully grasp the dynamics involved in the use of charities in the support networks of terrorist groups. It is for this reason that, as your letter notes, "The U.S. Anti-terrorist Financing Guidelines: Voluntary Best Practices for U.S.-based Charities ... clearly indicates that adherence to these guidelines is insufficient in and of itself to protect charities from abuse by terrorist organizations or terrorist activities."

We have considered IRFAN-Canada's 2004 undertakings and the submissions you made in your letter dated October 8, 2010 concerning the anti-terrorism due diligence procedures carried out by IRFAN-Canada. In this regard, in November 2004,

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<sup>48</sup> See for example, the following CRA publications available on our website [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)

- Guidance – Canadian Registered Charities Carrying Out Activities Outside Canada
- Checklist for Charities on Avoiding Terrorist Abuse
- Charities in the International Context

IRFAN-Canada submitted proposals for due diligence procedures related to its claim that:

...IRFAN 'never knowingly dealt with Hamas, nor with organizations known or credibly alleged to be controlled or directed by Hamas. IRFAN also 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 CRA' (emphasis added).

Our letter of December 21, 2004 to IRFAN-Canada commenting on IRFAN-Canada's submission to us on its proposed due diligence procedures warned that "(t)he test of IRFAN's due diligence procedures will be that it does not find itself without such prior knowledge in the future." We would point out in this regard that all of the information referenced above under the heading Links to Hamas, and in Appendix G attached, was found in publicly available sources readily accessible to anyone undertaking due diligence searches on these organizations. Much of this information would, in our view, have been openly known in the West Bank and Gaza communities where these organizations operated.

While we acknowledge that IRFAN-Canada has written procedures for due diligence in the form of Schedule E, Amended Schedule E, Agency Agreement Article 4 and Agency Agreement Schedule B, our review of IRFAN-Canada's actions in relation to these procedures found no supporting documentation to suggest that it ever implemented due diligence procedures in any meaningful way. Appendix H notes the deficiencies and contradictions we found in regard to IRFAN-Canada's due diligence undertakings.

It is telling that IRFAN-Canada's due diligence procedures appear to have been implemented and produced only in response to its interaction with the CRA. For example, less than one week before our May 2010 site visit to IRFAN-Canada's Mississauga office, it created due diligence spreadsheets relating to three organizations in an apparent attempt to demonstrate and document its due diligence efforts.<sup>49</sup> Prior to this point, no due diligence spreadsheets existed. Moreover, the record indicates that IRFAN-Canada's due diligence exercise did not find any adverse information in relation to these organizations. However, our performance of the same internet search process resulted in the display, within the first ten websites listed, of references to the 2004 confiscation by Israeli security forces of the Arab Bank accounts of one of these organizations as "part of the struggle against financing terrorism".<sup>50</sup>

Even more telling is evidence uncovered during our current audit showing that IRFAN-Canada knowingly maintained operational partnerships with organizations which the CRA had previously identified to it as being linked to Hamas. The example below of the Ramallah Zakat Committee illustrates this point.

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<sup>49</sup> The date the spreadsheet was created was determined by using the properties feature of the documents

<sup>50</sup> A Google search on the names of many of these organizations produces adverse information in the first ten hits

IRFAN-Canada and its General Manager, Mr. Rasem Abdel-Majid, were informed on numerous occasions by the CRA that the Ramallah Zakat Committee was alleged to be controlled by Hamas. For example,

- The CRA advised Mr. Abdel-Majid in March 1998, when he was President and General Manager of JFHS, that the Ramallah Zakat Committee was alleged to be controlled by Hamas.<sup>51</sup>
- In July 2004, the CRA again advised Mr. Abel-Majid and IRFAN-Canada that the Ramallah Zakat Committee was alleged to be controlled by Hamas.<sup>52</sup>

In November 2004, IRFAN-Canada advised the CRA that it had “ceased all activities” with the Ramallah Zakat Committee in November 2003.<sup>53</sup> This representation is contradicted by the following evidence:

- In May 2004, the Ramallah Zakat Committee sent a facsimile to IRFAN-Canada containing details regarding an orphanage project being funded by IRFAN-Canada.
- In December 2004<sup>54</sup> IRFAN-Canada received another facsimile from the Ramallah Zakat Committee detailing its project proposal.
- In a February 20, 2006 e-mail, the Ramallah Zakat Committee suggested that its representative, Mr Othman Abu Hania, come to IRFAN-Canada’s office in Mississauga to “visit your organization for representing their project of orphanage school in Jerusalem and North West villages of Jerusalem”.<sup>55</sup>
- In January 2007, IRFAN-Canada provided funding for projects of the Ramallah Zakat Committee.

During the CRA’s January 2009 site visit to IRFAN-Canada Mississauga office, IRFAN-Canada represented that it regularly conducted due diligence on its partner the “Orphanage Committee of Ramallah & El-Bireh.”<sup>56</sup> However, IRFAN-Canada failed to disclose to the CRA that this Committee is actually controlled by the Ramallah Zakat Committee. It was only through the CRA’s analysis of the facsimile number and letterhead used by the Orphanage Committee of Ramallah & El-Bireh that it became apparent that this Committee is under the control of the Ramallah Zakat Committee.

The Ramallah Zakat Committee was listed by the Government of Israel as an unlawful association in February 2002.<sup>57</sup> Four former members of the Ramallah Zakat Committee are now key members of the Hamas government.<sup>58</sup> In the HLF terrorist

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<sup>51</sup> CRA letter to the JFHS dated March 23, 1998 (Appendix D)

<sup>52</sup> CRA letter to IRFAN-Canada dated July 23, 2004 (Appendix A)

<sup>53</sup> IRFAN-Canada letter to the CRA dated November 19, 2004 (Appendix A)

<sup>54</sup> One month after the closure of our previous audit

<sup>55</sup> E-mail dated February 20, 2006 from Rayal El-Abassi (Project Director for the Ramallah Zakat Committee) to IRFAN-Canada

<sup>56</sup> IRFAN-Canada Amended Schedule E, dated January 14, 2009

<sup>57</sup> [www.justice.gov.il/MOJEng/Halbanat+Ilon/Terrorist+Organizations.htm](http://www.justice.gov.il/MOJEng/Halbanat+Ilon/Terrorist+Organizations.htm) and [www.mod.gov.il/pages/general/terror.asp](http://www.mod.gov.il/pages/general/terror.asp)

<sup>58</sup> Mahmoud Musleh, Fadel Hamdan, Mahmud Rumah and Ibrahim Said Hassan Abu- Salem have all been identified as members of the Hamas government’s Legislative Council

financing case, United States federal prosecutors identified the Ramallah Zakat Committee<sup>59</sup> and its directors as part of " Hamas' social infrastructure in Israel and the Palestinian territories."

In all of these circumstances, to suggest that the Ramallah-based office of IRFAN-Canada would not have been aware of the Ramallah Zakat Committee's association with Hamas strikes us as being implausible.

In another case where IRFAN-Canada's efforts to undertake meaningful due diligence procedures clearly were less than adequate, we have documented that IRFAN-Canada's West Bank Office Manager, Khalid Abu-Kaff, and a senior Hamas figure, Mr. Ahmed Attoun, together served on the eight-member board of directors of the Al-Muntada Al-thaqafi (The Cultural Forum), an organization which was raided by Israeli authorities in March 2006 because of its links to Hamas. Mr. Abu-Kaff had served as a director of the organization since its inception. At the time of the raid in March 2006, Mr. Attoun was President of the organization and was already serving as a Change and Reform (Hamas) representative to the Palestinian Legislative Council. Immediately following the Israeli raid, IRFAN-Canada provided funding to the organization to refurbish its premises and office equipment. Mr. Attoun was arrested in June 2006 and in February 2008, the Cultural Forum was shut down by the Israeli police who stated that the organization was "run by Hamas activists, financed by the Islamic group, and actively recruits people to its ranks".<sup>60</sup>

These examples and others, including payments made directly and indirectly to Hamas-controlled ministries, call into question whether IRFAN-Canada had any real commitment to, or intention of, undertaking meaningful due diligence with regard to its funding of partner organizations.<sup>61</sup>

As referenced in section 2.1 above, our audit findings also reveal that IRFAN-Canada failed to demonstrate adequate due diligence in its distribution of approximately \$13 million in gifts-in-kind.

A significant concern with regard to the absence of due diligence also arises in regard to IRFAN-Canada's direct transfer of gifts-in-kind and wire transfers to finance the purchase of goods. Transactions of this nature have been identified as a method of hiding illicit terrorism financing transactions under the cover of legitimate business (i.e. trade-based money laundering).<sup>62</sup> Our concern in this regard is heightened by the fact that

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<sup>59</sup>See for example the following HLF court documents relating to the Ramallah Zakat Committee: Palestinian Authority-8, Palestinian Authority-9, Ramallah Zakat Acct-2, Infocom Search 16, 32 and 63, Payments to Ramallah Z, Ramallah Zakat Summary, Government Exhibit 003-0007, and the Watson Memo

US federal prosecutors also successfully argued that several of HLF and IRFAN-Canada's previous partners also formed part of Hamas' social infrastructure, such as the Orphan Care Society Bethlehem, Jenin Zakat Committee, Al-Salah Association Gaza, Toulkarim Zakat Committee, the Qalqilia Zakat Committee and the Nablus Zakat Committee

<sup>60</sup> "Gov't shuts down E. J'lem religious center, calls it Hamas front", Associated Press, February 5, 2008

<sup>61</sup> See Appendix G – Links to Hamas

<sup>62</sup> According to The Money Trail: Finding, Following, and Freezing Terrorist Finances (Matthew Levitt and Michael Jacobson) Policy Focus #89, November 2008, The Washington Institute for Near East Policy



Abu Aker for Export and Marketing, a commodities firm based in Gaza and identified as having taken part in such schemes, was used by IRFAN-Canada, through the auspices of its Gaza partner, Ard El Insan, to purchase goods for Ramadan food packages in a scenario that is strikingly similar to Abu Aker's involvement in such alleged trade-based money-laundering schemes.<sup>63</sup> Abu Aker is also reported to have facilitated trade-based money laundering involving the El Ehssan Charitable Association, an organization that was also the recipient of goods forwarded to it by IRFAN-Canada in 2002 (through an intermediary) and with which IRFAN-Canada has maintained contact even since its listing under Canada's *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*.<sup>64</sup>

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. In IRFAN-Canada's case, the results of our 2004 audit made it very apparent that added measures were necessary to ensure that its funds were not being improperly used to support organizations involved with Hamas. It is clear, however, that whatever due diligence measures its claims to have undertaken did not, in fact, prevent it from making its resources available, directly or indirectly, to Hamas or to groups and individuals operating in support of Hamas. It is our view that, in so doing, it has engaged in activities that are contrary to public policy and therefore has ceased to comply with the requirements under section 149.1 of the Act for its registration as a charity.

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"A particularly effective method of hiring illicit transactions under the cover of legitimate business is by engaging in money laundering through trade. Such a tactic eschews the actual transfer of funds by buying and transferring commodities, such as food or other goods. Such goods can be sent even to internationally sanctioned countries under the guise of humanitarian support. Once they have entered the country, the goods can either be sold directly for cash or transported to a third country for sale. A prominent example of suspected trade based money laundering reportedly involves the Committee for Palestinian Welfare and Aid (CBSP), a French charity designated as a Hamas front organization by the United States. According to the Wall Street Journal, the CBSP cooperated with the Pro-Palestinian National Association of Moderation and Development to finance food aid to the Palestinian territories, selecting the local Palestinian company Abu Aker for Export and Marketing to handle the logistics of trade on the ground. Abu Aker was contracted to deliver "lentils, jam jars and macaroni from the U.S." and was able to show a receipt for the goods and pictures of "vegetable oil and other foodstuffs" being delivered to a large refugee camp in Gaza during the Ramadan holiday in 2005."

(Note: The Committee for the Palestinian Welfare and Aid (CBSP) is also known as Comité de Bienfaisance et de Secours aux Palestiniens. CBSP previously formed a funding partnership with JFHS in distributing aid to Palestinian organizations. See Appendix C – Additional Background Information.)

<sup>63</sup> The Wall Street Journal reports that, "In December 2005, the firm was banned from doing business in Israel due to its alleged role in funding terrorism." Trade becomes route for money tied to terrorism. Illicit Commodity Deals are Hard to Spot, Trace, A Trail of Sugar to Gaza July 2, 2007 (Glenn R. Simpson and Benoit Faucon)

<sup>64</sup> See above Section 1.2 Failure to Provide Books and Records regarding e-mails sent to Mr. Abdel-Majid from the Al-Ihsan Charitable Association

## **2.5 Public Benefit Test/ Deceptive Fundraising**

The issue of 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. Because of this harm, fundraising activities involving misrepresentations are damaging even when the misrepresentation is not illegal or fraudulent. 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.<sup>65</sup>

Our audit review indicates that IRFAN-Canada misrepresented its fundraising efforts relating to victims of natural disasters from January 1, 2005 to December 31, 2008.<sup>66</sup> IRFAN-Canada made appeals to the general public through disaster-specific pledge forms and on its website for donations to the following disaster relief projects: Tsunami 2004, South Asia Earthquake 2006, Indonesia Earthquake 2006, Bangladesh Cyclone 2007, Burma Cyclone 2008, Pakistan Earthquake 2008, and Indonesia Earthquake 2008. IRFAN-Canada collected \$581,653.92 for these appeals.<sup>67</sup> The audit found that these funds were instead co-mingled with IRFAN-Canada's general operating revenues and distributed to regular funding recipients to sponsor their ongoing programs and activities predominately in the West Bank and Gaza.

IRFAN-Canada also appears to have falsely reported to the CRA in section C5 of the Registered Charity Information Returns (T3010) that it had 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. This also resulted in IRFAN-Canada misrepresenting to the public its actual program work.<sup>68</sup> For example, IRFAN-Canada's 2006 T3010 states, at section C5, that it operated in Sri Lanka and Indonesia. However we were unable to verify any resources being allocated to these countries through our review of the general ledger accounts, which are set up according to the project title, and IRFAN-Canada's own annual summaries of programs and projects.

### **3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and Regulations or that contains false information (Paragraph 168(1)(d) of the Act)**

The Act and its Regulations 3500 and 3501 set out the requirements for registered charities with respect to the issuing of official donation receipts and allows for various penalties or sanctions set out in subsections 188.1(7) to 188.1(10) and 188.2(1) of the

<sup>65</sup> Fundraising by Registered Charities (CPC-028) as found on our website [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)

<sup>66</sup> We also note that IRFAN-Canada appears to have continued this practice into 2010 with fundraisers for Haiti and Turkey earthquakes

<sup>67</sup> This amount is based on IRFAN-Canada's customized donation software program itemized by "Campaign\_ID"

<sup>68</sup> The general public relies on information from the Registered Charity Information Returns (T3010) posted on the CRA website

Act. In addition, it should be noted that improper receipting of gifts or donations is considered serious enough that it may, on its own, result in the revocation of registered status under paragraph 168(1)(d) of the Act. These requirements are also described in Interpretation Bulletin IT-110R3 Gifts and Official Donation Receipts.

The audit reveals that IRFAN-Canada issued donations receipts in direct contravention of Regulation 3501 of the Act as follows:

<b>Regulation 3501(1) Every official receipt issued by a registered charity organization shall contain a statement...</b>	<b>Observed Non-Compliance</b>
(e.1) where the donation is a gift of property other than cash (i) the day on which the donation is was received, (ii) a brief description of the property	Official receipts totalling \$441,867.77 were issued for property without providing a brief description on the receipt; rather, "In-kind" was used to describe all gifts of property.
(g) the name and address of the donor including, in the case of an individual, his first name and initial	A review of receipts tabulated from IRFAN-Canada's customized donation software program revealed that official donation receipts were generated without the name of the donor.  Official receipts totalling \$96,329.95 were issued to individual taxpayers instead of the legal entity that donated the gift. <sup>69</sup>
<b>Regulation 3501(4)</b>	
An official receipt issued to replace an official receipt previously issued shall clearly show that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued	IRFAN-Canada's policy is to issue a duplicate receipt with the same receipt number. <sup>70</sup> IRFAN-Canada issued approximately 130 duplicate receipts totalling \$150,000 between January 1, 2008 and December 31, 2009.

### 3.1 Third Party Receipting

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

The purpose of the registration scheme for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts. The

<sup>69</sup> Limited

<sup>70</sup> IRFAN-Canada policy *Search for a Tax Receipt or Acknowledgment Letter* under "Steps for Editing a (sic) Old Tax Receipt or Transferring it"

integrity of the scheme is seriously breached when an unregistered organization arranges with a registered charity for the use of the registered charity's registration number to provide tax relief for donations that are not made to that registered charity. A registered charity may not issue receipts for gifts intended for another unregistered organization, or allow non-registered organization to use its charitable registration number.

Our audit findings indicate that IRFAN-Canada facilitated the fundraising efforts of an unregistered organization domiciled outside of Canada by allowing it to use IRFAN-Canada's authority to issue official donation receipts in direct contravention of the Act and its Regulations. IRFAN-Canada's e-mails document that it entered into an arrangement to assist the Guyana Islamic Trust with its fundraising efforts in Canada by providing the Trust with five temporary receipt books and subsequently issuing official donation receipts for gifts intended for the Guyana Islamic Trust.<sup>71</sup> It is apparent in various e-mails sent to IRFAN-Canada, where the Guyana Islamic Trust pressured IRFAN-Canada to "immediately" transfer funds to its accounts, that the Guyana Islamic Trust felt entitled to these funds through prior arrangement.

#### **4. Failed to file an information return as and when required under the Act or a Regulation (Paragraph 168(1)(c) of the Act)**

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 its requirement to file an Information Return if it fails to ensure the accuracy of the information contained in its Return.

Our audit findings indicate that IRFAN-Canada failed to exercise due care with respect to ensuring the accuracy of its information returns and filed improperly completed T3010s for the fiscal periods ending 2005-12-31 to 2009-12-31. A sample of the inaccuracies and discrepancies observed by the CRA regarding IRFAN-Canada's T3010 reporting can be found at Appendix I.

The CRA conducted an audit of the accuracy of the T3010s by completing a verification of the organization's books and records pertaining to its financial transactions. The CRA was unable to reconcile line items from the T3010s with those

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<sup>71</sup> E-mails dated September 12 and 14, 2007 between IRFAN-Canada and Guyana Islamic Trust (GIT) "IRFAN would facilitate GIT's Ramadhan collection in Canada" "I have talked to Abu Basem, and we can supply u with 5 receipt booklets"

reported on IRFAN-Canada's financial statements.<sup>72</sup> Furthermore, a detailed review of the journal entries and ledger accounts revealed additional reporting errors. These errors resulted in inaccuracies in the financial statements and the financial information on IRFAN-Canada's T3010.

Of particular concern is IRFAN-Canada's inaccurate reporting of its revenue. Our review indicated that there were large variances between what was reported on the T3010s and IRFAN-Canada's records.<sup>73</sup> IRFAN-Canada represented that it updates its accounting system each month with its deposits. However, it fails to reconcile the data from its customized donation software program against its deposits.<sup>74</sup> As a result, IRFAN-Canada does not have a control measure in place to ensure accurate reporting of revenue. We would comment that while reconciling revenue to a bank statement may verify deposits made, it does not provide the detailed reporting of revenue sources required for the T3010, nor does it ensure that all revenue is reported. This means that there is the possibility that monies received and not deposited would go undetected.

IRFAN-Canada also represented that it does not issue manual donation receipts and that all of its donation receipts are issued through a customized receipting program.<sup>75</sup> The program is also used to record unreceipted revenue and donation receipts for gifts-in-kind.<sup>76</sup> Therefore, it would be reasonable to expect that the customized program used to track donations would reconcile with the amounts reported on IRFAN-Canada's T3010s. However, the CRA auditor was unable to reconcile the information generated from IRFAN-Canada's customized donation software program and its inventory sheets with revenue reported on its T3010s and financial statements.

Consequently, it is our view 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.

## **5. Conclusion**

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

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<sup>72</sup> It is our understanding that IRFAN-Canada does not complete a schedule to balance its financial statements to its T3010. An e-mail from [redacted] of Kutum & Associates seems to contradict this in that it states that "We prepare expenditure allocation sheet from financial statement and then we entered the allocation figures in the T3010." However, the CRA was not provided with the expenditure allocation sheet.

<sup>73</sup> Data from the Customized Donation Software Program and Inventory Sheets

<sup>74</sup> Simply Accounting

<sup>75</sup> May 27, 2010 Mississauga interview, Question 11, Does the charity issue manual receipts? Response "No"

<sup>76</sup> Gifts in kind from other registered charities were recorded on inventory sheet. The customized software program did not identify gifts from other registered charities, however, it did allow for "Y" receipt issued and "N" no receipt issued

### **The Organization's Options:**

The consequences to a registered charity of losing its registration include:

1. The loss of its tax exempt status as a registered charity, which means that it would become a taxable entity under Part I of the Act unless, in the opinion of the Director of the applicable Tax Services Office, it qualifies as a non-profit Society as described in section 149(1)(l) of the Act;
2. Loss of the right to issue official donation receipts for income tax purposes, which means that gifts made to it would not be allowable as a tax credit to individual donors as provided at section 118.1(3) of the Act, or as a deduction allowable to corporate donors under section 110.1(1)(a) of the Act; and
3. The possibility of a tax payable under Part V, section 188(1) of the Act.

If you wish to present any reasons why the Minister of National Revenue should not revoke the registration of the Society in accordance with subsection 168(2) of the Act, you are invited to submit your representations **within 30 days from the date of this letter.**

Subsequent to this date, the Director General of the Charities Directorate will decide whether or not to proceed with the issuance of a Notice of Intention to Revoke the registration of IRFAN-Canada in the manner described in section 168(1) of the Act.

Yours sincerely,  
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Charities Directorate  
Place de Ville, Tower A  
320 Queen Street W.  
Ottawa ON K1A 0L5

cc.  
Naseer (Irfan) Syed  
Kutty, Syed & Mohamed  
Barristers & Solicitors  
80 Corporate Drive, Suite 302  
Toronto, ON M1H 3G5



## **Attachments**

Appendix A - Correspondence relating to CRA's audit of IRFAN-Canada's 2002 fiscal year

- Tab 1 – CRA letter to IRFAN-Canada dated July 23, 2004
- Tab 2 – IRFAN-Canada letter to the CRA dated November 19, 2004, including Resolutions Consolidating JFHS and IRFAN-Canada
- Tab 3 – CRA letter to IRFAN-Canada dated December 21, 2004

Appendix B - Correspondence relating to CRA's suspension of IRFAN-Canada's receipting privileges

- Tab 1 – CRA Notice of Intent to Suspend dated January 18, 2010
- Tab 2 – Mr. Carter's Response to the Suspension Notice dated February 24, 2010
- Tab 3 – CRA's Suspension Notice dated April 6, 2010

Appendix C – Additional Background Information

Appendix D – Correspondence Relating to JFHS' Application for Charitable Registration

- Tab 1 – JFHS Letters Patent
- Tab 2 – CRA letter to JFHS dated March 23, 1998
- Tab 2 – CRA letter to JFHS dated March 1, 1999
- Tab 3 – JFHS letter to the CRA dated March 19, 1999
- Tab 4 – CRA letter to the JFHS dated July 17, 2000

Appendix E – Record of E-mails relating to IRFAN-Canada's attempt to acquire documents prior to CRA visits

- Tab 1 – 2008 E-mails to IRFAN-Canada's Ramallah office
- Tab 2 – 2010 E-mails to IRFAN-Canada's Funding Recipients

Appendix F – Backgrounder on Hamas

Appendix G – Links to Hamas

- Tab 1 – Chart 1: IRFAN-Canada and JFHS Ties to Hamas
- Tab 2 – Chart 2: JFHS and IRFAN-Canada links to Hamas Government Officials and Organizations
- Tab 3 – Table 1: Pattern of Fund Recipients Chosen by IRFAN-Canada, JFHS, HLF, and other organizations
- Tab 4 – Table 2: JFHS and IRFAN-Canada Associated to Individuals Identified in the HLF Trial Documents
- Tab 5 – Copies of Related Designations

Appendix H – Due Diligence Findings

Appendix I – Inaccuracies observed on IRFAN-Canada's T3010