

**ONTARIO
SUPERIOR COURT OF JUSTICE**

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*

BETWEEN:

MUSLIM ASSOCIATION OF CANADA

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a day to be set by the registrar

- In person
 By telephone conference
 By video conference

at Osgoode Hall, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE

WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date

: April 11, 2022

Issued by _____
Local registrar

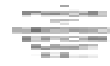
Address of court office 393 University Avenue
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Toronto, ON

TO: **ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
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Toronto, ON M5H 1T1

APPLICATION

1. The applicant Muslim Association of Canada (“MAC”) makes application for:
 - (a) a remedy under section 24(1) of the *Charter of Rights and Freedoms* to remedy the infringement of MAC’s rights under sections 2(a), 2(b), 2(d) and 15 of the *Charter of Rights and Freedoms*, specifically:
 - (i) an order directing the Canada Revenue Agency (“CRA”) to terminate the present Audit (as that term is defined below), with liberty to commence a fresh audit on a basis that does not infringe MAC’s rights under sections 2(a), 2(b), 2(d) and 15 of the *Charter of Rights and Freedoms*;
 - (ii) in the alternative, an order directing the CRA to complete the Audit in a manner that does not infringe MAC’s rights under sections 2(a), 2(b), 2(d) and 15 of the *Charter of Rights and Freedoms*;
 - (iii) if necessary and if sought, an interim and interlocutory injunction enjoining the CRA from proceeding with the Audit pending the determination of this application;
 - (b) costs of this application; and
 - (c) such further and other relief as this Court considers just.

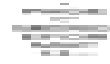




2. The grounds for the application are:

MAC

- (a) MAC is a Canadian faith-based charitable organization. It is the largest grass-roots Muslim organization in Canada.
- (b) MAC was established on August 8, 1997. On January 1, 1999, MAC was granted charitable status under the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp.). MAC is dependent upon charitable status to obtain the funding it requires for its mission of advancement of religion, specifically Islam.
- (c) MAC's charitable purpose is to foster and promote a moderate, balanced view of Islam in Canada, and to provide services and programs for the education and personal development of Canadian Muslims. To achieve these goals, MAC works with groups from different religious, ethnic, and racial backgrounds to build communities and strengthen neighbourhoods across the country.
- (d) MAC's mission is to "establish an Islamic presence in Canada that is balanced, constructive, and integrated, though distinct, in the social fabric and culture of Canada."
- (e) A particular goal is to develop youth who reject the false tension between being Canadian and being Muslim. Through education and youth programming, MAC aims to cultivate an enriched learning atmosphere that fosters academic excellence, leadership, and Islamic values, and that



encourages young Muslims to make meaningful contributions to Canadian society.

- (f) MAC's understanding of Islam represents the mainstream understanding of Islam that is adopted by the vast majority of Muslims. It is distinct because it adds a strong emphasis on pushing outwards with activism for social justice and societal reform.
- (g) MAC currently has 13 local chapters across Canada, operates 20 mosques and community centres, and provides educational and support services for approximately 55,000 Canadians each week through its 15 community centres, 10 full-time schools, 20 weekend schools, and four child care centres, serving approximately 150,000 Muslim Canadians in a typical year.
- (h) However, MAC is at risk of having its charitable status revoked as a result of an audit by the CRA. Revocation or sanction by the CRA would be devastating to MAC, its stakeholders, beneficiaries, and the Canadian Muslim community as a whole.

The Audit

- (i) In 2014, a number of website blog posts and media articles spread misinformation about Canadian Muslim organizations, including MAC. These posts and articles were connected with a small number of Islamophobic individuals, who do not rely on accredited academic

sources but rather on their own unsupported opinions, which they then attempt to amplify by citing each other as supposed authorities.

- (j) Despite the highly questionable provenance of the website blog posts and media articles, the CRA's Review and Analysis Division, which is responsible for delivering the Agency's mandate under the *Anti-Terrorism Act*, S.C. 2001, c. 41 apparently took the articles seriously and initiated an audit of MAC and its charitable status (the "**Audit**").
- (k) The Audit was commenced in late 2015 and lasted approximately 13 months. MAC has fully cooperated with the Audit. It has turned over more than 90,000 internal MAC documents to the CRA, including emails and financial records. It has also permitted the CRA to conduct on-site reviews of MAC's operations, and MAC executives have sat for lengthy interviews with CRA investigators. In total, the CRA extracted 746 gigabytes of data, including 1 million financial transactions from 2012 to 2015, 181 gigabytes of email data (from 415,847 emails), and 63,523 files.
- (l) The Audit has been tainted throughout by systemic bias and Islamophobia. Facts which are innocuous, and that would be regarded as such for a faith-based organization of a religion other than Islam, have been taken as a basis for suspicion of MAC and its activities. Wholly inaccurate inferences have been drawn, including unfounded suspicions that MAC may be subject to foreign control, and unfounded suspicions

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that MAC and individuals associated with MAC may have ties with foreign entities that the CRA takes issue with – all because MAC is a Muslim organization. The Audit would never have been approached in the way it has been had the organization in question been a Jewish organization, a Christian organization, a Hindu organization, or an organization affiliated with any other major world religion.

- (m) The CRA released the results of the Audit on March 17, 2021 in a 150 page document “Administrative Fairness Letter” (the “**AFL**”).¹ The Audit did not uncover any evidence that MAC is involved in terrorist financing or affiliated with terrorist organizations. However, the AFL is nonetheless replete with innuendos and guilt-by-association allegations that MAC “may” or “appears to” have connections with foreign entities. The AFL also alleges that MAC supports activities such as youth programs and religious celebrations which (according to the CRA) are more social than religious and therefore outside the bounds of MAC’s stated charitable purpose. The AFL reflects the Islamophobic thought of the website blog posts and media articles that appeared in 2014, and ignores a vast body of expert analysis in legitimate academic literature. The AFL also reflects an attitude that MAC must conform to Western liberal thought about religion rather than its own beliefs in Islam, and an attitude that association as

¹ The AFL is not currently a public document. MAC will be seeking a sealing order from the Court with respect to the AFL because its inclusion in the public record would pose a serious risk to an important public interest, specifically privacy defined in reference to dignity.

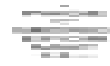
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practised by MAC is inappropriate because it does not conform to a Western liberal model.

- (n) The AFL threatens revocation of MAC's charitable status or sanctions. Since the Audit was conducted in an unconstitutional manner, a remedy under the *Charter of Rights and Freedoms* – including if necessary an interim and interlocutory remedy pending the hearing of this application – is warranted to prevent the Audit from going any further.

Infringement of MAC's section 15 rights

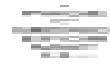
- (o) The Audit is state action. CRA's conduct of the Audit, both in purpose and in effect, creates a distinction based on enumerated grounds (specifically race, national or ethnic origin, and religion), and imposes burdens and threatens to deny a benefit (specifically charitable registration) in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.
- (p) Among other things:
- (i) The AFL alleges that there are links between MAC and individuals affiliated with foreign organizations. Any religious organization will maintain contacts and engage in correspondence, meetings, conferences, visits with individuals around the world belonging to the same denomination. But in the case of MAC, the CRA perceives such perfectly normal interactions as sinister,



deceptive, and evidence of MAC furthering the goals of a foreign organization. Unlike non-Muslim religious organizations, the CRA appears to set a standard for MAC of requiring complete isolation from the rest of the world.

- (ii) The AFL delegitimizes mainstream balanced Islamic work and instead endorses far-right rhetoric that the majority of mosques and Islamic institutions are associated with radicalism and terrorism. This belief is rooted in the idea that Muslims hold a fundamental allegiance to someone else or something else located elsewhere in the world.

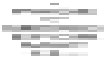
- (iii) Of the tens of thousands of emails reviewed in the Audit, the AFL points to a grand total of *four* unsolicited conference invitations sent to MAC by mass email transmissions (none of which were responded to) as alleged evidence that MAC “receives regular invitations from a senior member of the Muslim Brotherhood, for apparent Muslim Brotherhood conferences with Muslim Brotherhood leaders from all over the world”, and as alleged evidence that “leadership of the Muslim Brotherhood appears to exhibit some authority” over MAC. Aside from being absurd logic, these allegations reflect systemic bias. It would be unthinkable to conclude that questionable unsolicited emails to a Jewish or a Christian or a Hindu religious organization could be taken as evidence that the organization has improper foreign ties



or is subject to improper foreign control. Yet for a Muslim organization, such innocuous events are regarded by the CRA as nefarious.

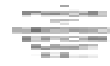
- (iv) The AFL characterizes a retreat organized by MAC's board of directors in 2015 as alleged evidence of MAC being concerned that it was undertaking activities that were contrary to public policy or could be branded as supporting terrorist activity. In fact, the retreat was a discussion of MAC's Islamic presence in the face of the Islamophobic website blog and media reports that were present at the time. What was a responsible exercise in managing reputational risk to MAC is, as a result of the systemic bias underlying the Audit and the AFL, perceived as a nefarious consciousness of guilt.

- (v) The AFL takes issue with MAC's interactions with the Turkish Embassy to Canada to invite them to community events, but ignores other examples of interactions between MAC and foreign embassies in an apparent effort – again reflecting the systemic bias underlying the AFL – to suggest there is improper Turkish influence over MAC. This approach also ignores the fact that many non-Muslim faith-based charities regularly interact with foreign embassies.

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- (vi) The AFL alleges that MAC engages in activities contrary to public policy, even though MAC, in carrying out these activities, follows the position of the Government of Canada.

Infringement of MAC's section 2(a) rights

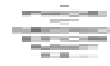
- (q) The Audit is state action. MAC sincerely possesses beliefs and believes in practices that have a nexus with the Muslim religion. The Audit interferes, in a manner that is non-trivial or not insubstantial, with MAC's ability to act in accordance with that practice or belief.
- (r) Among other things:
- (i) The AFL takes issue with MAC's practice of allowing its facilities to be used by community groups. Unlike places of worship for other religions where congregations attend once per week, mosques have congregations attending five times a day, with additional prayers on specific other days of the week and special occasions. Furthermore, MAC's facilities are not solely mosques, but also community centres operated in accordance with MAC's purposes. In order to advance its religious purposes, MAC's practice is to allow members and adherents who are associated with external organizations to meet in MAC facilities in compliance with the *Income Tax Act*. The AFL takes this practice as MAC being supportive of other organizations that use MAC's



facilities. Such a restriction infringes on MAC's ability to use its religious facilities in the manner in which it wishes to use them in order to advance Muslim faith.

- (ii) The AFL takes issue with MAC for purchasing and renovating buildings for the purpose of generating rental income (among other things). This allegation fails to give effect to the Islamic concept of waqf. Waqf is a special kind of philanthropic deed in perpetuity. It involves designating a fixed asset to produce a financial return or provide a benefit. The revenue or benefit generated then serves the community beneficiaries. A waqf has served educational, health and other social needs, such as alleviating structural causes of poverty. It is a central concept in Islamic history. It is integral to MAC for the exercise of Islam, and is being restricted by the Audit and the AFL.

- (iii) The AFL alleges that statements made by an Imam in a MAC mosque "may displace the public benefit in part because of his statements on how women should be treated". The AFL takes certain statements out of context in a manner that promotes stereotypes and misconceptions about how women are treated in Islam, and presumes that Western liberal views of spousal relationships are the standard of moral progress by which all faiths must be evaluated and to which they must conform.



Infringement of MAC's section 2(b) rights

- (s) The Audit is state action. It prevents MAC, along with its current and former directors, employees, members, volunteers and invited speakers from freely expressing their views on various issues – including political views – in their social networks and in public forums without the threat that MAC will have its charitable status revoked.
- (t) This restriction cannot be justified in a free and democratic society. MAC should not have to choose between been a registered charity, and allowing its directors, employees, members, and invited speakers from expressing their views on social, cultural, religious, and other issues.

Infringement of MAC's section 2(d) rights

- (u) The Audit is state action. The Audit interferes with MAC's right to join with others and form associations.
- (v) Among other things:
 - (i) The AFL taints MAC and its members by association with groups that use MAC's facilities. This not only violates freedom of association, but is also illogical. For example, the AFL takes an incident on January 25, 2014 in which a Canadian human rights organization requested that community members joining a car rally event meet at the parking lot of a MAC facility (the Rahma Mosque in Edmonton). No MAC facilities (aside from meeting in

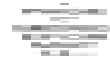
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the parking lot) were even used, yet the AFL takes this incident as alleged evidence of MAC's support for other registered Canadian entities.

- (ii) The AFL alleges that MAC has failed to comply with the requirements of the *Income Tax Act* because certain of its members, in their personal capacities, participate in non-charitable political activities. The CRA, by threatening to revoke MAC's charitable status on the basis of the personal activities of certain of its members, violates the freedom of association MAC. It makes MAC's status as a registered charity conditional on its members not engaging in other, lawful and permissible activities in their personal lives.

Other grounds

- (w) MAC relies on sections 2(a), 2(b), 2(d) and 15 of the *Charter of Rights and Freedoms*.
- (x) MAC relies on Rule 14.05(3)(g.1) of the *Rules of Civil Procedure* as authority to proceed by way of application where the relief sought is a remedy under the *Charter of Rights and Freedoms*.
- (y) MAC will also rely on such further and other grounds as counsel may advise and this Court may permit.



3. The following documentary evidence will be used at the hearing of the application:

- (a) the affidavits of Yaser Haddara and Professor Anver Emon; and
- (b) such further and other materials as counsel may advise and this Court may permit.

April 11, 2022

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MUSLIM ASSOCIATION OF CANADA
Applicant

and

ATTORNEY GENERAL OF CANADA
Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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