

UPDATE ON CHARTER CHALLENGE

Introduction

MAC's charter challenge was heard in the Ontario Superior Court of Justice on April 4 and 6.

"Imagine if a black charity was selected based on KKK statements and the CRA relied on work from David Duke, an American radical right, neo-Nazi, and longtime Klan leader to support its audit findings."

This is exactly how MAC's lawyer summed up the situation in his closing statement. You would think it would not happen, in Canada, in 2023. But that is exactly what CRA considers appropriate and reasonable in dealing with Muslim charities.

How did we get here?

Almost Eight years ago the CRA contacted MAC to inform them they would be auditing the organization. MAC had no reservations and welcomed the audit. An audit is an expectation of any charity - a simple review of the association's financial records and controls. But this audit quickly turned out to be something much more sinister. It was described at the time by lawyers with extensive experience as unprecedented and a witch-hunt. As the audit progressed, it became clear to MAC that there was a deep undercurrent of Islamophobia within the CRA, and that this bias was affecting the way the audit was being conducted. Auditors were searching desks and closets, downloaded over 1 million financial transactions, and took 181 Gb of email data accounting for almost 500,000 emails. This went on for 13 months.

After five years of limbo the CRA sent MAC "preliminary" findings. The CRA's "findings" sounded suspiciously like right-wing extremist anti-Muslim discourse. Equally shockingly, the "findings" were based on weak and unsubstantial information. Of the hundreds of thousands of emails reviewed in the Audit, the CRA found a grand total of four unsolicited conference invitations sent by mass email transmissions, which CRA alleged was evidence that there are links between MAC and foreign entities. None of these emails were ever replied to, but that didn't seem to matter to CRA. The audit team relied heavily on biased and Islamophobic sources to justify unreasonable allegations that would never be applied to any other faith or social group. The audit attempted to police the Islamic faith by defining what is and what is not religious activity.

At the end of it all the CRA threatened to revoke MAC's charitable status, and to sanction MAC with a fine of 1.3M of the community's money.

MAC and our lawyers were shocked, but cooperated and submitted over a thousand pages of evidence in response to every single allegation.

MAC raised concerns about both the rampant Islamophobia and the complete lack of credible evidence to support allegations with the Director General of the Charities Directorate, but the CRA was uncooperative. In its public statements, the CRA claims that their first approach to charities after an audit was education. MAC offered to enter into an agreement with CRA similar to what any other charity

would be offered, but the CRA refused. The only option open to MAC was to file a charter challenge to stand up for the rights of Canadian Muslims.

The Charter Challenge - MAC's Arguments

MAC's submissions divided the facts into three categories: (1) how MAC was selected for audit consideration; (2) the CRA's initial research before they began the audit of MAC; (3) the findings of the audit.

MAC's lawyers presented a strong case and demonstrated that:

1. The CRA's selection of MAC for audit (the audit referral analysis also known as a risk assessment), its 13-month audit, and its preliminary findings report (the Administrative Fairness Letter) were biased and tainted with Islamophobia.
2. The CRA relies on Islamophobic, non-expert sources such as various extremist blogs that have long been discredited as part of a self-amplifying islamophobic network. The CRA also relied on 4 retracted articles originally appearing in the Toronto Sun journalist; and on commentary from Islamophobic sources including Jonathan Halevi, a retired lieutenant-colonel and intelligence officer with the Israel Defense Forces, and who was involved in the creation of a [misleading translation](#) of a Toronto imam's prayer. The "experts" CRA cite include [Lorenzo Vidino](#), who promotes conspiracy theories about the Muslim Brotherhood and has been exposed as a tool for [smear](#) campaign against Muslims, to the point where other academics are [refusing](#) to be associated with him; and Tom Quiggin, a self-appointed Islamic extremism expert who alleges widespread links between Canadian Muslim civic organizations, including charities, and terrorist organizations around the world. Quiggin is also a discredited former military intelligence officer most recently known as one of three named leaders of the Truckers Convoy in 2022.
3. The CRA's AFL was full of broad brush allegations and inflammatory language of terrorism without any substantial evidence or details, which was over and over again challenged by the judge and MAC's legal team. This type of language is not only inaccurate but also feeds into harmful stereotypes and fuels anti-Muslim sentiment.
4. The CRA evaluates how Muslims practice Islam through a Protestant-Christian lens to conclude that Islamic religious activities are not "sufficiently religious." For instance:
 - a. The CRA alleges that MAC activities, such religious Eid celebrations, are not religious but rather social. Imagine an audit concluding that a Christian charity could not hold Christmas celebrations .
 - b. The CRA alleges that MAC's sports, social, and recreational activities directed at youth do not provide a charitable benefit. Imagine an audit concluding that churches, synagogues, or Sikh Gurdwaras could not hold youth activities.
 - c. The CRA takes concern with MAC's EMAAN achievement scholarships for youth because the award night included a dinner program.

These findings, like many others, are not only absurd and lack substantial evidence, but also highlights the unfair treatment and discrimination that Muslim organizations face when audited by the CRA. It is

clear that the CRA's audit was conducted with a predetermined bias against MAC and the wider Muslim community.

MAC's lawyers demonstrated how the Audit infringed sections 2(a) (freedom of religion), 2(b) (freedom of expression), 2(d) (freedom of association) and 15 (equality) of the Charter of Rights and Freedoms.

The Judge's Remarks

The judge expressed concerns on the factual evidence the CRA presented and whether RAD and the CRA used a proper methodology in identifying MAC as a risk for terrorist financing. The judge was critical of many of the unsubstantiated risk indicators identified by RAD.

The judge stated that the CRA would need to provide more than just a "bald allegation" that some of MAC's financial transactions were suspicious. The judge also noted that he would not think that the accumulation of real estate would be suspicious for a growing organization that is dedicated to building mosques.

After hearing from both MAC and the CRA, the judge would determine whether the CRA's selection of MAC, its method of assessing risks, the audit itself, and the preliminary findings are rooted in Islamophobia and violate Charter rights.

The judge explained that this case will end up turning upon the detail that the CRA used to identify MAC as a risk. If the CRA cannot show sufficiently detailed evidence of risk, then it looks like MAC was picked simply because it is a Muslim charity.

The judge estimated a timeline of 4-5 months to issue his decision.