



REGISTERED MAIL

Our file

October 4, 2010

MacNeill Edmundson
Professional Corporation, Chartered Accountants,
82 Wellington Street,
London, Ontario.
N6B 2K3

Account No 894381573RR001

File No 0867036

Attention: Joelle Beech, CGA

Dear Ms. Beech:

Re: Audit of World Islamic Call Society

This letter is further to our office audit of the books and records of the **World Islamic Call Society**, (Society) formerly known as the Islamic Call Society of London, by the Canada Revenue Agency (CRA). The audit related to the operations of the registered charity for the periods January 1, 2006 to December 31, 2008 inclusive.

The CRA audit identified specific areas of serious non-compliance with core requirements of the *Income Tax Act* and its *Regulations* for maintaining charitable status in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to meet the definition of a charitable organization under the Act	149.1(1) and 168(1)(b)
2.	Private Benefit to a Director	149.1(1)(b) and 168(1)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Society with the opportunity to provide representations as to why its registration should not be revoked on those grounds.

Identified Areas of Non-Compliance:

1. Failure to meet the definition of a charitable organization under the Act

The Act under paragraph 149.1 (1)(a) defines a “charitable organization”, in part, as an organization whether or not incorporated...

- (a) all the resources of which are devoted to charitable activities carried on by the organization itself;...

Our audit of the Society has revealed that it does not meet this requirement.

The Society acts at the direction of, and receives all of its funding from, the Libyan-based World Islamic Call Society (WICS-Libya), an organization founded by Muammar al-Qaddafi (Gadhafi)¹ in 1972 whose objects and activities² are not confined to the advancement of religion as that term is understood under Canadian law.

According to various sources, WICS-Libya is operated under the control of the Government of Libya and funded by allocations made by Muammar al-Qaddafi (Gadhafi) from “the Jihad Fund”.³ An affidavit and the Plea Agreement filed in the successful U.S. conviction of Abdurahman Muhammad Alamoudi in 2004 on charges of wilfully attempting to violate U.S. economic sanctions against Libya imposed because of Libya’s involvement in terrorist bombings and the downing of Pan Am Flight 103 over Lockerbie, Scotland, attest to the use of the WICS-Libya’s network to move funds on behalf of the Libyan government in violation of the sanctions against Libya.⁴

¹The 500 Most Influential Muslims 2010, Publisher, The Royal Islamic Strategic Studies Centre, page 78 ranked 27.

² WICS-Libya archived webpage, Society’s Objectives, January 24, 2001, <http://web.archive.org/web/20010411183659/www.islamic-call.org/object.htm> , accessed 2010-06-22.

³ WICS-Libya archived webpage, General Information about the World Islamic Call Society, January 24, 2001, <http://web.archive.org/web/20010411182358/www.islamic-call.org/object.htm>.

⁴ Documents related to the conviction of Alamoudi:

- Affidavit of Brett Gentrup, Special Agent, ICES refer to paragraphs 40 to 54 inclusive;
- Plea Agreement between Alamoudi and US District Court, refer to paragraph 16, and Statement of Facts, paragraph 8, and;
- Department of Justice news release titled: U.S. Announces Plea in Terrorism Financing Case, July 30, 2004.

Dr. Abdul Rahman Al Amoudi (Alamoudi) is named as council representative for the United States at the the Congress of the World Islamic Call Society held in Jakarta, Indonesia, September 18-21, 2000. WICS-Libya archived webpage, Final Communique, Resolutions and Recommendations of the 6th General Congress of the World Islamic Call Society, Fifth Session. <http://web.archive.org/web/20020223224902/www.islamic-call.org/r> ... accessed 2010-09-09

In this regard, we note also that a document published on the WICS-Libya website, "Cable to the Leader from the 5th Conference of Islamic Call",⁵ reports that the participant delegates sent a cable to the Revolution's Leader (i.e. al-Qaddafi) following the conclusion of the Islamic Call Conference in Tripoli which read:

(Translated from Arabic)

The Muslim World conference (sic), represented by its ministers, ulama, and doat, on the land of Jamahiriya,⁶ convening from all corners of the world on the land of Jamahiriya, in order to renew their support for Islam and reaffirm their confidence in your historic leadership, declared to the whole world:

- *Their insistence on continuing the Jihad and the struggle against the forces of tyranny and imperialism.*
- *Rejecting and condemning the unjust sanctions imposed on the Great Jamahiriya in a bid to halt its honourable commitment to support Islam's causes and its suppressed peoples, and their commitment to breaking up the stranglehold placed on the Muslim worldto (sic) prevent its development and to plunder its resources.*

The Islamic Call Conference, in its fifth session, puts all the resources of the Muslim people at your disposal to reinforce your Jihad so that the Islamic fronts may be integrated to support the right and subdue falsehood.

We pledge to you that we shall stand firmly until victory is achieved; shall sacrifice until martyrdom; and shall act relentlessly in order to establish the strength of our Ummah. We shall gain the upper hand and shall liberate oppressed humanity from the evils of tyrants and transgressors.

The Islamic Call Conference condemns the greed of imperialist crusaders states and calls upon the peoples and states of the Muslim World to revolt against oppression and unjust international sanctions, paving the way for

⁵ WICS-Libya archived webpage, 5th General Conference Reports, titled: Cable To The Leader From The 5th Conference Of Islamic Call; <http://web.archive.org/web/20011225051825/www.islamic-call.org/> . Accessed 2010-09-20.

⁶ "Jamahiriya" is a term Col. Mu'ammar al-Qadhafi coined to refer to Libya and which he defines as a "state of the masses" governed by the populace through local councils. U.S. Department of State, Background Note: Libya, Profile, Government, February 1, 2010, <http://www.state.gov/r/pa/ei/bgn/5425.htm> . Accessed 2010-09-08.

the Islamic will that seeks the welfare of both our Muslim World and the whole of humanity.

May Allah bless your Jihad and keep Great Jamahiriya as a bastion for Islam and a fortress for the Muslims.

The document then goes on, *inter alia*, to salute “*the Jihad of the Palestinian Muslim people*” and to reassert “*...its firm commitment to supporting Jihad until the whole of Palestine; from the Jordan River to the Mediterranean is liberated...*” and to applaud “*...the rejection by both Syria and Lebanon of policies of normalization with Israel...*”, to express support for “*...the just cause of Muslims of the Southern Phillippines and their right to self-determination...*”, “*the importance of giving the Kashmiri Muslims the right to self-determination...*”, and “*...the Jihad of the Chechen Muslims against the unjust Russian invasion...*” calling upon “*...all Islamic nations, organizations and institutions to support the Jihad of our brothers in Chechnya and preserve their Islamic identity...*”.⁷

Just as this document pledges, it is clear from the Alamoudi plea agreement that WICS- Libya and its network has been used as a front to disguise the true origin and destination of funds in an effort to circumvent sanctions against Libya.

It is also clear from this document that the purposes with which WICS- Libya is concerned, and which in turn direct the purpose and operation of the Society, extend to political causes and goals that cannot be reconciled with the concept of charity under Canadian law.

As confirmed in your letter of January 14, 2010 with regard to our audit findings for the Society, “(T)he only income that was received into the organization was from their main office in Libia”. The letter explains that “(T)he main office in Libia provides funding to the London office in order to continue promoting the Islamic culture”. This is the only source of funds received by the Society for the years under audit and appears to be the only source of funding since the Society’s inception.

Our audit indicates that the Society has not conducted any substantive charitable activity during the entire three years under audit. In fact, the minutes of the annual meetings purportedly held in January of 2007, 2008 and 2009 bear no specific date, are essentially identical from year to year, and are not signed by the board of directors. The minutes fail to report on activities undertaken by the Society in the previous year or to outline any activities it plans to undertake in the upcoming year other than recommending

⁷ WICS-Libya, archived webpage, 5th General Conference Reports, 3 – General Recommendations, <http://web.archive.org/web/20030905222941/www.islamic-call.org/> . Accessed 2010-09-20.

the continued support of the "International Islamic Relief Fund, known as IDRF"⁸. However, we note that no donations were made to IDRF for the period under review.

The audit found that the majority of 2006, 2007, and 2008 expenditures made by the Society were for office rent, administrative expenses, and telephone expenses. The rent is paid to its Chairman/President Assem Fadel, and has been since June 2001 when it appears the office was moved to 106 Kent Street, London, a property which Mr. Fadel owns. Mr. Fadel also has a cellular phone paid for by the Society, in addition to a telephone line installed at the Kent Street property. These rent and phone expenses alone represent 52%, 70%, and 77% of the total expenses incurred by the Society for the years 2006, 2007, and 2008 respectively. The financial statements filed with the Society's 2009 information returns indicate that all of its expenditures are administrative in nature, and that 78% of these expenditures were for telephone and office rental. We note, in particular, that the \$9701 the Society has reported in section D4 of the return as the amount it has spent on charitable programs comprises the amounts paid for rent and telephone expenses.

Based on our audit findings and the 2009 return filed, it is our view that the Society's resources are being primarily devoted to administrative expenses. For this reason, and because there is no evidence of any substantial charitable activity being conducted, it is our view that the Society's resources are not being devoted to "charitable activities carried on by the organization itself" and that it therefore does not meet the definition of a charitable organization under the Act.

In reaching this view, we have also examined the Society's past operations to assess whether there are circumstances that should inform our understanding of the Society's present operations. An analysis of our file indicates a pattern of non-compliance in years prior to the audit in that the Society's operations have primarily consisted of acting at the direction of WICS-Libya to transfer funds through Canada to specific groups and individuals.⁹ These transactions contravened the requirements of the Act that a charitable organization devote its resources to its own charitable activities or make gifts only to organizations that are 'qualified donees' as defined under the Act. In addition, some of these groups and individuals are alleged to have been involved in terrorism.

⁸ It is noted that the IDRF website lists Assem Fadel as its representative in London, Ontario.
http://idrf.com/index.php?opiton=com_content&task=view&id=359&Itemid=148

⁹ Letter from the Society signed by Mr. Assem Fadel September 16, 1992, Re: Islamic Call Society of London.

For example, according to the 1999 T3010 form titled: "Registered Charity Information Return", filed with CRA, the Society reported expenditures totalling \$350,135.60 made to the following organizations and individuals:

Masj Al-Isslam	Toledo, Ohio, USA	\$5,000.00
Ghada Adu Damous	Chicago	\$20,000.00
Robert Crane Centre for Public Res	Springfield, Virginia	\$52,720.00
Fatiman Kurdi	Chicago	\$25,000.00
Islamic Political Council	Washington, DC	\$46,101.40
Al-Muslimeen	Trinidad/Tobago	\$170,814.20
Arab American Inst.	Washington DC	\$500.00
MISR Iran Development Bank (Ibrahim Ali Rabu)	Giza, Egypt	\$30,000.00

For 1998, the Society reported disbursements of \$216,735.41 to:

Islamic Political Action Council	\$184,235.41
Y. Abu Bakr	\$10,000.00
Toledo University	\$20,000.00
H. Salmat	\$2,500.00

The amounts above represent 82% and 99% of the Society's total disbursements made for the years 1998 and 1999 respectively. None of these organizations or individuals is a qualified donee; therefore, the Society was not entitled to provide funding to them under the conditions of its registration as a charity under the Act.

We note, in particular, the amounts of \$10,000 disbursed to Y. Abu Bakr in 1998 and the amount of \$170,814.20 to Al-Muslimeen in 1999.¹⁰ Our research indicates that the Jamaat al Muslimeen, led by Imam Yasin Abu Bakr is alleged to have had links with Muslim radical groups in Iran and Libya, that on July 27, 1990, the Jamaat al Muslimeen attempted to overthrow the government of Trinidad and Tobago with the intention of establishing an Islamic republic, and that "Reports indicated, in particular, that covertly supplied Libyan money and arms had significantly encouraged the attempted take-over".¹¹ More recently, the Jamaat al Muslimeen has been implicated in the alleged plot to attack

¹⁰ We note the 6th General Congress of The World Islamic Call Society, Fifth Session, held in Jakarta, Indonesia, September 18-21, 2000, the Congress of the World Islamic Call Society names Imam Yasin Abu Bakr as council representative for Trinidad. WICS-Libya archived webpage, Final Communique, Resolutions and Recommendations of the 6th General Congress of the World Islamic Call Society, Fifth Session. <http://web.archive.org/web/20020223224902/www.islamic-call.org/r> ... accessed 2010-09-09

¹¹ Islam and Islamic Groups, A worldwide reference guide, Edited by Farzana Shaikh, ISBN 0-582-09146-2, and Associated Press article, Trinidad To Probe Coup Attempt By Islamic Group, July 22, 2010.

the John F. Kennedy international Airport by blowing up a jet fuel supply.¹²

In hindsight, given the plea admissions of Abdurahman Muhammad Alamoudi, the Society's own correspondence¹³, and its 1998 and 1999 information returns showing that funds were transferred to individuals and groups in the United States and the Caribbean as directed by the Society's head office in Libya, it is our strong view that transactions conducted through Canada were directed by WICS-Libya to move monies into the U.S. and elsewhere in violation of sanctions imposed on Libya.

2. Private Benefit to a Director

The Act under paragraph 149.1 (1)(b) defines a "charitable organization", in part, as an organization whether or not incorporated...

- (b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof,

The office and general administration of the Society appears to be controlled solely by Mr. Assem Fadel, who has been a director since the Society's inception. The income being deposited into the Society's bank account originates from WICS-Libya and transferred through Mr. Assem Fadel's own personal bank account. The explanation for this given to the auditor is that the funds received from WICS-Libya are in U.S. dollars and for this reason are deposited into Mr. Fadel's personal US dollar account. The Society then uses these funds to pay office expenses, primarily rent on office space that Mr. Fadel personally owns, expenses for his cellular phone, and the Society's phone line installed in the building Mr. Fadel owns. The account payable in the amount of \$29,266.00 (as of December 31st, 2008) represents monies reportedly owed to Mr. Assem Fadel and has been on the books for a number of years. However, no documentation was provided to the auditor in support of this liability.

It is our view that these circumstances make part, if not largely all, of the income of the Society payable to and otherwise available for the personal benefit of Mr. Fadel, and that the Society's operations therefore contravene the requirements of the Act for the Society's continued registration.

¹² Associated Press article, 4 indicted in terror plot to blow up JFK airport, June 29, 2007, and U.S. Department of Justice press releases, Four Individuals Charged in Plot to Bomb John F. Kennedy International Airport, dated June 2, 2007 and American and Guyanese Citizens Convicted of Conspiracy to Launch Attack at JFK Airport, August 2, 2010

¹³ Letter from the Society signed by Mr. Assem Fadel September 16, 1992, Re: Islamic Call Society of London, and letters from MacNeill Edmundson, Re: World Islamic Call Society, January 14th, 2010 and April 8, 2010.

Conclusion:

On the basis of the information we have examined, it is our view that the Society does not meet the definition of a charitable organization under the Act in that it is not operated exclusively for charitable purposes and has not devoted all of its resources to charitable activities carried on by it. Moreover, the Society's resources are available for the personal benefit of the Director who controls its operations. For these reasons, and for each of these reasons alone, it is the view of the CRA that the Society's registration should be revoked under paragraph 168(1)(b) of the Act.

In reaching this position, we have looked at both the organization's present and past operations and believe that, on a balance of probabilities, it is logical and reasonable to assume that the Society was established and sought registration in order to support the non-charitable goals and operations of its parent organization, WICS-Libya, an organization operated on behalf of the Government of Libya, and that the Society's primary function has been to operate at the direction and on behalf of WICS-Libya.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the A/Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above that you wish us to consider within 30 days from the date of this letter. After considering the representations submitted by the Society, the A/Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- No compliance action necessary;
- The issuance of an educational letter;
- Resolving these issues through the implementation of a Compliance Agreement; or

- The minister giving notice of its intention to revoke the registration of the Society by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us. If you have any questions or require further information or clarification, please do not hesitate to contact us at [REDACTED].

Yours sincerely, [REDACTED]

[REDACTED]
Charities Directorate
Place de Ville, Tower A
13th floor,
320 Queen Street,
Ottawa, On
K1A 0L5

Telephone: [REDACTED]
Facsimile: [REDACTED]
Internet: www.cra.gc.ca



REGISTERED MAIL

World Islamic Call Society
106 Kent Street
London ON N6A 1L1

BN: 894381573 RR0001
File #: 0867036

Attention: Mr. Fadel

**Subject: Notice of Intention to Revoke
 World Islamic Call Society**

FEB 23 2011

Dear Mr. Fadel:

I am writing further to our letter dated October 4, 2010 (copy enclosed) in which you were invited to submit representations as to why the registration of the World Islamic Call Society (Society) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered the written response dated December 16, 2010 received from your authorized representative at MacNeill Edmundson Professional Corporation. For the reasons set out in Appendix A, these representations do not overcome the issues raised by our audit findings.

Conclusion

On the basis of our audit, we have concluded that the Society has ceased to comply with the requirements of the Act for its continued registration as it has failed to meet the definition of a charitable organization under the Act by failing to conduct any substantive charitable activity during the three years under audit. It has also provided a private benefit to a Director by making all revenue of the Society available for the personal benefit of Mr. Fadel.

In reaching this position, we have looked at both the Society's present and past operations and believe that the Society was established and sought registration in order to support the non-charitable goals and operations of its parent organization, WICS-Libya. An analysis of our file indicates a pattern of non-compliance in years prior to the audit in that the Society's operations primarily consisted of acting at the direction and on behalf of WICS-Libya to transfer funds through Canada to specific groups and individuals.

Consequently, and for each of the reasons set out in our letter dated October 4, 2010, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Society. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business Number	Name
894381573 RR0001	World Islamic Call Society London ON

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

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

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

Please note that the Charity must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation

As of the effective date of revocation:

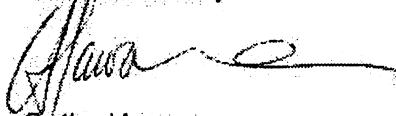
- a) the Society will no longer be exempt from Part I Tax as a registered charity and will no longer be permitted to issue official donation receipts. This means that gifts made to the Society would not be allowable as tax credits to

individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively.

- b) by virtue of section 188 of the Act, the Society may be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix B, attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at <http://www.cra-arc.gc.ca/charities>; and
- c) the Society will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Society may be subject to obligations and entitlements under the ETA that apply to organizations other than registered charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- Appendix A - CRA Position on Representations
- Appendix B - Relevant Provisions of the Act
- CRA letter dated October 4, 2010

c.c.: Jim MacNeill

MacNeill Edmundson, Professional Corporation, Chartered Accountants
82 Wellington Street
London ON N6B 2K3

APPENDIX A

CRA Position on Representation

Issue 1: Failure to meet the definition of a charitable organization under the Act

Our audit findings indicate that the Society has not conducted any substantive charitable activity during the entire three years under audit. This is evidenced by the administrative nature of the total expenditures of the Society and a review of the minutes of the Society's annual meetings, which bear no specific date, are essentially identical from year to year, are not signed by the board of directors, and fail to report on activities undertaken by the Society in the previous year or to outline any activities it plans to undertake in the upcoming year.

Our file review has also revealed that the Society acts at the direction of, and receives all of its funding from, the Libyan-based World Islamic Call Society (WICS-Libya), an organization founded by Muammar al-Qaddafi (Gadhafi) in 1972 whose objects and activities are not confined to the advancement of religion as that term is understood under Canadian law. The purposes with which WICS-Libya is concerned, and which in turn direct the purposes of the Society, extend to political causes and goals that cannot be reconciled with the concept of charity under Canadian law.

As a result, it is our view that the Society does not meet the definitional requirement in paragraph 149.1(1)(a) of the *Income Tax Act*, that all of its resources be devoted to charitable activities.

Society's Representation

The Society claims that the "expenses of the organization are legitimate expenses that are required to carry on the work", and that "it is not unusual for any charitable organization to require office space, a telephone line and to reimburse cellular telephone costs for when the only employee is not around." The Society has also submitted a copy of a letter from the Ontario Deputy Minister of Correctional Services and an undated article from The London Free Press concerning Mr. Fadel.

CRA's Response

The Society has not provided any documentation that overcomes the evidence of its operating under the direction of WICS-Libya, nor has the Society provided evidence of any substantial charitable activity being conducted by it. The three documents provided relate to the activities of Mr. Fadel as the President of the [REDACTED] or simply as a community volunteer. They do not provide any evidence of activities undertaken on the part of the Society. It therefore remains our view that the audit has established that the Society fails to meet the definition of a charitable organization under the Act.

Issue 2: Private Benefit to a Director

The office and general administration of the Society appears to be controlled solely by Mr. Fadel, who has been a director since the Society's inception. The income being deposited into the Society's bank account originates from WICS-Libya and is transferred to it through Mr. Fadel's own personal bank account. The Society then uses funds received from WICS-Libya to pay office expenses, primarily rent on office space that Mr. Fadel owns, expenses for his cellular phone, and the Society's phone line installed in the building Mr. Fadel owns. These circumstances make all of the income of the Society available for the personal benefit of Mr. Fadel, thereby contravening the requirements of the Act for the Society's continued registration.

Society's Representation

The Society states that "The expenses of the organization are legitimate expenses that are required to carry on the work of the charity and are not personal to Mr. Assem Fadel" citing as authority, *The Royal Trust Company v MNR 57 DTC 1055*. The Society also suggests that the CRA has "concluded that since you are of the view that the organization does not meet the requirement portion of the definition of a charitable organization found in paragraph (a) then the organization must be in violation of (b) of that same definition."

CRA's Response

Paragraphs 149.1(1) (a) and (b) of the Act are two distinct and separate definitional requirements for a charitable organization to maintain its registered status. In this regard, the Society has also failed to demonstrate to the CRA that its resources are not made available for the private benefit of its director.

While it is not unusual for any charitable organization to require office space, a telephone line, and to reimburse cellular telephone costs, there is no evidence in this case that the Society has carried on any charitable activities to which those costs can be related. The evidence does, however, establish that monies for the operations of the Society are paid into Mr. Fadel's bank account by WICS-Libya, are then transferred to the Society, and then paid back to him in the form of rent for premises he owns. It is our view that these circumstances contravene the requirement of the Act that no part of the income of a registered charity be available for the personal benefit of those responsible for controlling its affairs.

The court case cited in your response to our letter of October 4, 2010, stands for the proposition that if an outlay or expense is made or incurred by a taxpayer in accordance with the principles of commercial trading or accepted business practice and it is made or incurred for the purpose of gaining or producing income from his business its amount is deductible for income tax purposes. We do not see this case as having application to determining compliance with the Act's prohibition against private benefit in the context of the operations of a registered charity.

As a result, it remains our view that, contrary to paragraph 149.1(1)(b) of the Act, the income of the Society is largely available for the personal benefit of Mr. Fadel.

APPENDIX B

Relevant Provisions of the Act

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

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

149.1(4.1) Revocation of registration of registered charity

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

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

Section 168: Notice of intention to revoke registration

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

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

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

168(2) Revocation of Registration

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

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

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168(4) Objection to proposal or designation

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

Section 172: Appeal from refusal to register, revocation of registration, etc.

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

Where the Minister

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

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4);
 - (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1);
 - (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11);
 - (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
 - (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,
- as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

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

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

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

188(1.1) Revocation tax

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

$$A - B$$

where

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

- (a) the fair market value of a property of the charity at the end of that taxation year;
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (d) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

- (a) a debt of the charity that is outstanding at the end of that taxation year;

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

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

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

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

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

188(4) Idem

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

188(5) Definitions

In this section,

"net asset amount"

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

$A - B$

where

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

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

"net value"

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

$A - B$

where

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

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

Section 189

189(6) Taxpayer to file return and pay tax

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

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

189(6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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