

Ontario Superior Court Findings Echo IIS Report ‘Under Layered Suspicion’

October 5, 2023

On September 13, 2023, the [Ontario Superior Court ruled](#) against intervening in Canada Revenue Agency’s (CRA) audit of the Muslim Association of Canada (MAC)*.

MAC raised a *Charter* challenge against the CRA on the grounds of violating religious freedom and non-discrimination.

Muslim communities in Canada have long (but quietly) been concerned about CRA’s audit practices. In March 2021, the Institute of Islamic Studies (IIS) at the University of Toronto published a report, “[Under Layered Suspicion](#)”, which was the direct result of a Social Sciences and Humanities Research Council (SSHRC) Partnership Engagement Grant with the National Council of Canadian Muslims (NCCM). The report found patterns of bias in evidence selection and interpretation across three case studies of CRA audits of Muslim-led charities.

In this latest decision, Justice Markus Koehnen raised concerns about the CRA’s approach to Muslim charities, which echo the report’s findings. Below are two themes that reverberate in the Ontario Superior Court decision:

1. **‘Under Layered Suspicion’ identified how auditors conflated the name of a domestic charitable organizations with the name of a foreign organization, and conclude therefrom the domestic charity necessarily supports the foreign organization.**

In the *MAC case*, the court recognized that MAC’s alleged commitment to the religious ideology of the “Muslim Brotherhood” is different from supporting “a Muslim Brotherhood” organization abroad.

“To the extent that some of the religious philosophy of the Muslim Brotherhood might also be reflected in the political party of the same name, I very much doubt that a Christian church would have its charitable status revoked if it made statements that were similar to ones made by certain Canadian political parties to promote greater social or economic equality.” – Justice Markus Koehnen

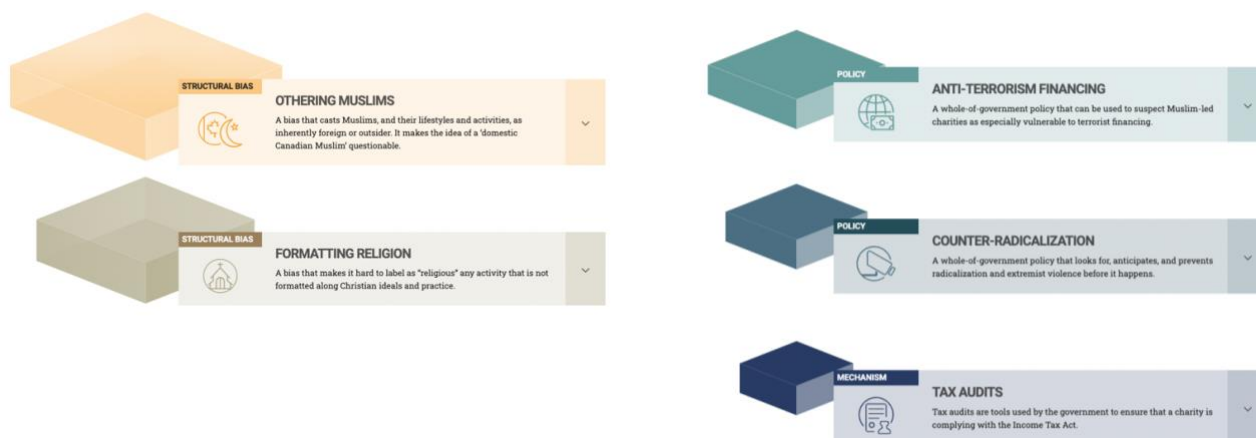
2. **‘Under Layered Suspicion’ showed that auditors held to an unfounded distinction between religious activities and non-religious activities of a Muslim-led charity organized to advance religion as a charitable purpose.** In one example, the research report provided an example of the CRA’s suspicion of a Muslim-led charity that organized its Eid festival on a day that was not the formal date of Eid.

The Ontario Superior Court was troubled by the CRA’s determinations of MAC’s Eid celebrations, its youth and children programming, and its usage of property as falling outside the scope of “advancing religion”.

“It is difficult to understand how makeup classes, sugar shacks, puppet shows, ski trips, dodgeball, movie and karaoke nights, ping-pong, air hockey tables, or “a play mat with toys for smaller children” relate to terrorism. Once again, I would be surprised if a church or synagogue had its charitable status revoked because it offered any of these activities.” – Justice Markus Koehnen

“I again find myself asking whether CRA would revoke the status of a Christian charity because it organized Christmas parties or Thanksgiving dinners or whether it would revoke the status of a Jewish charity because it organized Seders or Succoth dinners for new immigrants.” – Justice Markus Koehnen

‘Under Layered Suspicion’ illustrated how layers of systemic biases (Othering of Muslims, Formatting of Religion) and whole-of-government policies (Anti-Terrorism Financing, Counter-Radicalization) manifest themselves in the mechanism of tax audits, which may be directed unfairly towards Muslim-led charities. The Ontario Superior Court’s decision supports the existence of these layers and echoes the concerns of many Muslim communities about the CRA’s audit practices.



A visual metaphor representation of layers of suspicion from infographic of Under Layered Suspicion (2021).

The alignment between the Court’s reflections on the factual record, and *‘Under Layered Suspicion’* case-study driven analysis, show the importance of calibrating academic research with the lived experiences of communities in Canada. The [IIS aims to continue these types of projects](#) – by centering critical research on Islam and Muslims in Canada – to support the collective work of ensuring an inclusive democracy.

**The IIS recognizes Professor Anver M. Emon (Director of the IIS and co-author of ‘Under Layered Suspicion’) acted as expert witness in Muslim Association of Canada v. Attorney General of Canada.*