



**Canadian Muslim Public Affairs Council (CMPAC)**  
**Consultation Submission on Strengthening**  
**Canada's Anti-Money Laundering and Anti-Terrorist Financing**  
**Regime**

August 1, 2023

## **Executive Summary:**

This submission presents a set of comprehensive recommendations aimed at improving Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime process, particularly in relation to the impact on the Muslim community and the Muslim charitable sector.

The recommendations emphasize the need for acknowledgement, engagement, and systemic reform to ensure a fair and equitable regulatory environment for all charitable organizations. The first recommendation draws attention to the existing protocols under the National Inherent Risk Assessment (NIRA) framework, and urges the 2023 NIRA to explicitly acknowledge the adverse impacts on the Muslim charitable sector resulting from the 2015 NIRA. By recognizing the specific challenges faced by Muslim charities, including reputational damage and financial exclusion, the 2023 NIRA can demonstrate a commitment to learn from past mistakes and work towards inclusivity.

The second recommendation calls for proactive engagement with the charitable sector, particularly the Muslim charitable sector, to seek feedback and input on the impacts of the AML/ATF regime on the sector's activities. This inclusive consultation process can help identify missed opportunities for improvement and address the concerns and needs of the sector.

The third recommendation advocates for dedicated language addressing systemic discrimination including systemic issues that arose from the 2015 NIRA. By providing a clear roadmap for action, the Department of Finance can help rebuild trust and ensure a fair regulatory environment for all charitable organizations.

Next, we recommend a comprehensive reassessment of the risk level of the charitable sector based on outcomes over the past eight years. Taking into account the absence of evidence linking charities to terrorist financing and the overall compliance track record of the sector, this reassessment can ensure the regulatory framework aligns with actual risks.

The fifth recommendation emphasizes the importance of clearer guidance on striking the balance between disruptive activities and vulnerabilities within the charitable sector. By recognizing various vulnerabilities and distinguishing unintentional from willful funding of terrorism, the AML/ATF regime can address risks without impeding the work of legitimate charities.

Furthermore, our submission recommends reevaluating the risk assessment methodology to include not only inherent risk but also the likelihood of occurrence and the effectiveness of mitigating measures. This approach will provide a more accurate perspective on potential threats and vulnerabilities.

In response to the proposed establishment of the Canada Financial Crimes Agency, we recommend that this agency oversee the monitoring and investigation of terrorism financing in the non-profit sector, replacing the Review and Analysis division of the CRA. This dedicated agency, along with an independent commission, can address the failures of the current regulatory model including the disproportionate targeting of Muslim charitable organizations, and rebuild trust with the charitable sector.

Finally, we recommend an independent review of the impact that the Anti-Terrorism Financing regime has had on the Muslim community, in an effort to inform a balanced and human rights driven approach going forward.

By implementing these recommendations, Canada can create a more effective and inclusive process, ensuring a fair and equitable regulatory landscape for all charitable organizations, while effectively addressing the risks of terrorism financing.

### **About The Canadian Muslim Public Affairs Council**

The Canadian Muslim Public Affairs Council (CMPAC) is a non-profit advocacy organization that combats structural Islamophobia by mobilizing communities, engaging decision makers, and shaping public policy. Our work towards structural change is research backed and community driven.

CMPAC has actively addressed issues affecting the Muslim community by participating in policy consultations and submitting evidence and testimonies on significant matters. For instance, CMPAC has contributed to discussions on Bill C-20, which pertains to the establishment of the Public Complaints and Review Commission and amendments to relevant Acts and statutory instruments.

The organization also engages on international levels, submitting reviews to the UN Security Council's Counter-terrorism Executive Directorate (CTED) to ensure Canada's adherence to the UN's counter-terrorism resolutions.

Additionally, CMPAC has actively participated in the Senate of Canada's standing committee on human rights review, focusing on Islamophobia in Canada and providing valuable insights to inform policy decisions.

The organization's influence is evident in media contributions, where it has brought critical policy discussions to the forefront. CMPAC has addressed topics such as systemic Islamophobia, the need for political inclusivity to win over diverse communities, and the rise of Islamophobia during the COVID-19 pandemic.

Examples include:

The Liberal government must rid the country of systemic Islamophobia

<https://policyoptions.irpp.org/magazines/november-2021/the-liberal-government-must-rid-the-country-of-systemic-islamophobia/>

Issam Saleh: The Conservatives cannot afford to alienate Muslims if they hope to win next time around

<https://nationalpost.com/opinion/issam-saleh-the-conservatives-cannot-afford-to-alienate-muslims-if-they-hope-to-win-next-time-around>

When it comes to Islamophobia, doublespeak seems to be the order of the day

<https://www.thespec.com/opinion/contributors/2021/06/14/when-it-comes-to-islamophobia-doublespeak-seems-to-be-the-order-of-the-day.html?rf>

Islamophobia is on the rise during COVID-19

<https://policyoptions.irpp.org/magazines/october-2020/islamophobia-is-on-the-rise-during-covid-19/>

### **Purpose of the Submission**

CMPAC's submission to the Department of Finance serves to improve Canada's national security regime and its efforts to combat terrorism financing. As an organization dedicated to addressing issues that impact Canadian Muslims, particularly in relation to systemic Islamophobia as a result of legislation, policy, regulations, and actions of agencies such as the CRA, RCMP, and CSIS, CMPAC recognizes the significance and relevance of this consultation.

CMPAC has conducted a thorough review of the consultation paper, and through this submission, aims to provide valuable feedback on specific areas that warrant further consideration. By actively participating in the public consultation process, CMPAC intends to contribute its insights and expertise to ensure that the proposed legislation is effective, fair, and respects the rights and interests of Canadian Muslims.

Given the involvement of CMPAC's members in matters related to law enforcement, national security, and community advocacy, the organization's submission carries significant importance. The feedback provided by CMPAC offers a unique perspective informed by its in-depth understanding of the challenges and concerns faced by the Canadian Muslim community as it relates to terrorism financing.

Through this submission, CMPAC seeks to ensure that the voices and perspectives of Canadian Muslims are taken into account in the development of legislation that directly impacts their communities.

### **Confidentiality**

CMPAC grants consent to the Department of Finance to publish its submission, either in its entirety or partially, for public disclosure. However, CMPAC requests to be informed before any such publication takes place. This approach ensures transparency while respecting CMPAC's right to be notified prior to the public release of its submission.

## **Recommendations:**

### **1. Acknowledging the Impacts of the 2015 NIRA in the 2023 NIRA:**

The 2023 NIRA should explicitly acknowledge the adverse impacts and consequences resulting from the 2015 NIRA on the Muslim charitable sector. This acknowledgement should recognize the specific challenges faced by Muslim charities, including reputational damage, financial exclusion, and restrictions on individuals associated with these charities. By acknowledging these impacts, the 2023 NIRA can demonstrate a commitment to learning from past mistakes and working towards a more equitable and inclusive regulatory framework.

### **2. Re-engaging the Charitable Sector for Feedback:**

The Department of Finance should proactively re-engage with the charitable sector, particularly the Muslim charitable sector, to seek feedback and input on the 2023 NIRA and on the AML/AMF regime broadly. This engagement should go beyond a few select charities and aim for a comprehensive and inclusive consultation process. By actively seeking feedback and considering the insights and experiences of diverse stakeholders, the Ministry can identify missed opportunities for improvement and ensure that any resulting frameworks are updated to effectively address the concerns and needs of the sector.

### **3. Dedicated Language on Systemic Discrimination:**

The Department of Finance should include dedicated language addressing the existing systemic discrimination present in the investigation of the Muslim charitable sector that arose from the 2015 NIRA, and has persisted through the targeting of the Research and Analysis Division of the CRA. This language should acknowledge the negative impacts on the Muslim charitable sector and outline specific measures that will be implemented to mitigate the risks of such discrimination recurring. By explicitly recognizing the need to address systemic discrimination and providing a clear roadmap for action, the government can help rebuild trust and ensure a fair and equitable regulatory environment for all charitable organizations.

### **4. Reassessing the Risk Level of the Charitable Sector:**

The Department of Finance should conduct a comprehensive reassessment of the risk level of the charitable sector based on the outcomes of the past eight years. This reassessment should take into account the absence of evidence linking charities to terrorist financing, the outcomes of CRA audits, and the overall track record of the sector in complying with regulatory requirements. By reassessing the risk level, the Ministry can ensure that the regulatory framework aligns with the actual risks posed by charitable organizations and avoids disproportionately burdening Muslim charities.

### **5. Providing Guidance on the Balance of Disruptive Activities:**

The AML/ATF regime should offer clearer guidance on striking the balance between disruptive activities and vulnerabilities within the charitable sector. This guidance should recognize that certain vulnerabilities may exist due to factors beyond the control of charitable organizations, such as

geographical location or the nature of their work. It should also distinguish between the range of possibilities from unintentional vulnerabilities to willful funding of terrorism. By providing explicit direction on this balance, the government can establish a more consistent and equitable approach in addressing risks without unduly impeding the work of legitimate charitable organizations. A more collaborative working relations with charitable organizations along with a focus on education will result in more effective operations and reduce unintentional vulnerabilities to funding of terrorism.

#### 6. Re-evaluate final risk and stop publishing inherent risk

To improve the effectiveness and accuracy of the Anti-Money Laundering and Anti-Terrorism Financing regime, it is recommended to re-evaluate the risk assessment methodology. Instead of solely publishing inherent risk, the revised NIRA should present a comprehensive evaluation of the final risk. This evaluation must take into account not only the inherent risk but also factors such as the likelihood of occurrence and the effectiveness of existing mitigating measures in reducing the overall risk level. By incorporating these additional elements, the revised risk assessment will offer a more nuanced and realistic perspective on potential threats and vulnerabilities. It will enable a more thorough understanding of the actual risks faced by different sectors, including charities, and provide a more reliable basis for decision-making and resource allocation. Furthermore, an important finding to record for use is the finding of no-risk or no-suspicious activities. If the process can provide some form of pre-clearance or green flags, it will help increase the efficiency, and reduce the risk of vulnerabilities.

#### 7. Replace the Review and Analysis Division with the Establish the Canada Financial Crimes Agency

To strengthen Canada's national security regime and improve the effectiveness of combating terrorism financing in the non-profit sector, it is essential to reevaluate the current approach. Delegating the mandate to supervise the charitable sector to the CRA's Review and Analysis Division (RAD) has proven unsuccessful, leading to unfair targeting and damaging the reputation of specific communities within the sector<sup>1</sup>. Therefore, the establishment of a dedicated agency, like the Canada Financial Crimes Agency, with specialized resources and expertise, is recommended to oversee the monitoring and investigation of terrorism financing. Additionally, to ensure impartiality and transparency, the supervisory role of the charitable sector should be segregated from the CRA and placed under the jurisdiction of an independent commission, following successful models implemented in other countries. By implementing these reforms, Canada can rebuild trust with the charitable sector, address the findings of the FATF, and create a more effective and equitable system for combating terrorism financing in non-profit organizations.

#### 8. Investigating Systemic Bias and Unintended Consequences in the AML/ATF sector

The government should undergo a thorough investigation of the impact and negative consequences of Anti-Money Laundering and Terrorist Financing protocols on the Muslim Charitable Sector and the broader Muslim Community. While there are numerous accounts of these impacts, it is incumbent upon

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<sup>1</sup> Anver Eamon, University of Toronto & Nadia Hasan, National Council of Canadian Muslims' report Under Layered Suspicion, lays this out in a comprehensive case study, <https://www.layeredsuspicion.ca/>

the government to account for and document these impacts, to build a comprehensive understanding of what needs correction and prevention going forward. Without this systematic review, existing biases against Muslim organizations will continue to pass through renewals as it has done so in the NIRA, in the Review and Analysis Division, and as it easily could in new regulatory bodies and policies.

The Financial Action Task Force's Recommendation 8 lays out a framework to review the unintentional consequences of existing regulatory frameworks, and the fundamental changes needed to correct these harmful impacts. Actively soliciting feedback from impacted communities should be a critical element of this process. To this end, the government ought to specifically seek out Muslim community stakeholders and proactively engage in understanding their perspectives.

## Chapter 2: Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada

### Overview of the 2015 National Inherent Risk Assessment (NIRA)

Canada's 'Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada' published in 2015<sup>2</sup> highlights that Canadian charities can be vulnerable to being misused for terrorist financing purposes due to its inherent characteristics. These include that charities can be exploited for terrorist financing for several reasons. One significant vulnerability is that charities are accessible to a large number of supporters, which can make it easier for terrorist organizations to solicit donations. In addition, the ease by which charities can transfer funds abroad, combined with the inherent difficulties of monitoring overseas charitable activities, makes it more challenging to ensure that funds are not diverted for terrorist or extremist purposes.

Specifically:

- One of the primary reasons for charities being targeted for terrorist financing is their accessibility to a large number of potential donors. Terrorist organizations can leverage this vulnerability by using their extensive networks to solicit donations under the guise of charitable giving. The report notes that terrorist organizations may use a façade of legitimate charitable activities to raise funds, and this could lead to large sums of money being diverted for other purposes.
- Another vulnerability identified in the report is the potential for foreign charities to be exploited by terrorist organizations, particularly in conflict zones, where charities may inadvertently provide support to terrorist groups under the guise of humanitarian aid.

The assessment identified a number of TF scenarios involving charities that include diversion of funds, affiliation with a terrorist entity, abuse of programming, support of recruitment, and false representation of an organization. It claims that diversion of funds is the most common.

It explains that the Canada Revenue Agency has a role to play in investigating and disruption by "detecting charities that are at risk and ensuring that they are not being abused to finance terrorism."

The assessment report suggests that the overall risk of terrorist financing vulnerability involving charities in Canada is assessed as high and that there are specific vulnerabilities that need to be addressed. These include the potential for charities to be used as a conduit for terrorist financing, the risk of foreign charities being exploited by terrorist organizations, and the difficulty of monitoring the use of charitable funds overseas.

The assessment suggests that the vulnerabilities exist primarily with registered charities engaged in "service" activities that operate in close proximity to an active terrorist threat. This encompasses registered charities that operate both in high-risk jurisdictions, including in areas of conflict with an

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<sup>2</sup> 2015 NIRA

<https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html>



active terrorist threat, as well those that operate domestically, but within a population that is actively targeted by a terrorist movement for support and cover.

According to the assessment, the highest risk identified was associated with 10 groups, out of which 8 were identified as groups with a resemblance to Muslim organizations located abroad. The assessment further notes that these groups have connections or links to Canada.<sup>3</sup>

The assessment also concludes, without evidence, that the majority of the terrorism financing actors associated with the assessed terrorist groups have used registered charities.

Furthermore, the assessment identifies 10 countries that are considered to be high-risk for terrorist financing. Of these 10 countries, 8 are Muslim-majority countries.<sup>4</sup>

Additionally, the assessment recommends that regulators and law enforcement agencies should take a risk-based approach to monitor the activities of charities and develop measures to prevent terrorist financing. Ultimately, creating an effective framework to identify and prevent terrorist financing in charities will be essential to mitigate this risk.

## **Problems with the 2015 NIRA**

### Open Source Reporting

The assessment states its conclusions about terrorist financing actors and their links to Canada is based partially on open source reporting, which means that it is not solely based on intelligence. This makes it difficult to assess the accuracy of the assessment. Furthermore, the assessment does not provide any evidence to support its claim that Muslim countries are more likely to be used to finance terrorism.

### Disproportionate Risk to the Muslim Community

The assessment's focus on Muslim groups and Muslim countries has led to concerns in the Canadian charitable sector that the 2015 NIRA has led to unfairly targeting of Muslim charities. In fact, evidence has come to light that Muslim charities have been disproportionately audited by the CRA for terrorism financing. In 2021 the University of Toronto's Institute of Islamic Studies and the International Civil Liberties Monitoring Group both published independent reports that the CRA was disproportionately auditing Muslim charities with biased and prejudiced audits.

As well, the assessment's focus on Muslim groups has raised concerns that the Government of Canada is not doing enough to protect Muslim charities from unfair scrutiny and systemic discrimination. Since the

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<sup>3</sup> Table 2

Terrorist Financing Threat Groups of Actors

Al Qaeda in the Arabian Peninsula, Al Qaeda Core, Al Qaeda in the Islamic Maghreb, Al Shabaab, Hamas, Foreign Fighters/Extremist Travellers, Hizballah, Islamic State of Iraq and Syria, Jabhat Al-Nusra, Khalistani Extremist Groups, Remnants of the Liberation Tigers of Tamil Eelam

<sup>4</sup> Afghanistan, Egypt, India, Lebanon, Pakistan, Palestinian Territories, Somalia, Sri Lanka, Syria, Turkey, United Arab Emirates and Yemen

findings came to light, the Government of Canada has not taken any action to halt activities that have resulted in the discriminatory practice, and instead has mandated a review by the Ombudsperson that has failed. This has been followed by a review by the National Security Intelligence Review committee.

### Consequences

The 2015 NIRA has had significant repercussions on Muslim charities. It has led to disproportionate revocations of Muslim charities by the CRA. It has also led to further detrimental impacts on these organizations, particularly in terms of their ability to access banking services and financial support, which is crucial for their operations. This is especially true in the context of humanitarian relief efforts where funding is sent abroad. This financial exclusion can severely hinder their capacity to provide crucial aid and support to vulnerable communities in need.

Furthermore, the consequences of revocation extend beyond the organizations themselves. When a charity's status is revoked, it can have far-reaching implications for individuals associated with the charity, including restrictions on their involvement in charitable activities, travel, or their personal access to banking. Moreover, media coverage of these revocation decisions can lead to reputational damage, perpetuating negative stereotypes and impacting the public perception of Muslim charities as a whole.

These outcomes create a troubling cycle of challenges for Muslim charities, exacerbating the already existing barriers they face in fulfilling their missions and serving their communities.

### **Overview of the 2023 National Inherent Risk Assessment (NIRA)**

In March 2023 the Ministry of Finance published the 'Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada,'<sup>5</sup> which outlined the Government of Canada's view on the risk of terrorism financing (TF) involved with charities.

The updated assessment continues to consider charities as a high vulnerability and indicates that charities are susceptible to abuse for terrorism financing due to their potential to be exploited by individuals or groups with malicious intent. The risk is higher when funds are transferred or received in cash or other non-transparent methods without adequate due diligence.

The updated assessment, in contrast to the 2015 assessment, introduces concern with the non-profit sector in addition to registered charities. Non-profit organizations are not regulated by the CRA.

Also, the updated assessment has extended the list of entities to 17 groups, of which 8 are Muslim like groups. The assessment has introduced a number of white supremacy and far-right groups.<sup>6</sup>

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<sup>5</sup> 2023

<https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html>

<sup>6</sup> Table 2: Terrorist Financing Threat Groups of Actors:

Muslim: Al Qaeda in the Arabian Peninsula, Al Qaeda Core, Al Qaeda in the Islamic Maghreb, Al Shabaab, Hamas, Hayat Tahrir Al-Sham, Hizballah, Islamic State in Iraq and the Levant (ISIL)

## **Problems with the 2015 NIRA**

### Mitigating Systemic Discrimination Due to Canada's NIRA

The 2015 NIRA primarily focuses on the risks associated with money laundering and terrorist financing in Canada, without explicitly addressing the issue of systemic discrimination. It highlights the vulnerabilities within Canadian sectors that can be exploited for illicit activities, but does not prescribe specific measures to combat discrimination against particular communities.

While the 2023 NIRA represents an update to its predecessor, it still falls short in fully acknowledging and addressing the systemic discrimination that has resulted from the implementation of the 2015 NIRA. Although it does not explicitly recognize the discriminatory effects of the previous NIRA, it does make certain statements that distinguish it from the 2015 report.

The updated 2023 NIRA emphasizes the importance of not using the assessment of terrorist financing threats as a basis for discriminatory behavior or actions towards specific communities in Canada or abroad. It underscores the need to consider measures taken by government and private sector entities on a case-by-case basis, recognizing that many Canadians maintain legitimate ties to communities around the world. The report acknowledges that these relationships, in and of themselves, are not indicative of terrorist financing or money laundering activities.<sup>7</sup>

However, it is important to note that while the 2023 NIRA acknowledges the existence of risks, it does not go far enough in prescribing concrete measures to proactively detect, disrupt, and remedy discrimination against specific communities. It falls short of addressing the underlying issues that have perpetuated systemic discrimination within the regulatory framework.

To effectively mitigate systemic discrimination, it is crucial for the 2023 NIRA to be updated to explicitly recognize the historical impacts and unintended consequences of the 2015 NIRA and ensure that measures are in place to prevent discriminatory practices. This includes implementing comprehensive and inclusive risk assessment methodologies, engaging with affected communities, and actively working towards creating an equitable and fair regulatory environment.

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Others: Aryan Strike Force (ASF), Atomwaffen Division, The Base, Blood & Honour (B&H), Combat 18 (C18), Extremist groups supporting violent means to establish an independent state within India, Russian Imperial Movement, Three Percenters, Proud Boys

<sup>7</sup> This assessment of terrorist financing threats is based on threat groups identified by the United Nations Security Council as well as a careful review of intelligence and information from Canadian security and intelligence agencies. In no instance should it be used as a basis or justification for discriminatory behavior or action toward specific communities in Canada or abroad. Measures taken by government or private sector entities to mitigate risks related to terrorist financing should be considered on a case-by-case basis and recognize that many Canadians have ties to communities around the world which they maintain, and that while there are risks, these relationships are not, in and of themselves, a vector for terrorist financing and money laundering.”

“However, the government recognizes that many Canadians have ties to communities around the world which they maintain, and that while there are risks, these relationships are not, in and of themselves, evidence of terrorist financing and money laundering.”

## Risk Level of the Charity Sector Must be Re-assessed

The 2015 NIRA made a significant claim that the majority of terrorism financing actors associated with assessed terrorist groups have utilized registered charities. However, in the period between 2015 and 2023, the Canada Revenue Agency (CRA) has not presented any concrete evidence to substantiate the allegation that a charity has indeed funded terrorism. Even in cases such as IRFAN Canada, where there were allegations of possible funding of Hamas, and ISNA, where there were allegations of possible funding of Jamaat-e-Islami, (and a few others) the CRA has not been able to establish that these charities or their board and executive members were involved in terrorist financing. Moreover, the RCMP has not concluded any investigations or brought charges against charities or their affiliated individuals for terrorism financing.

The absence of conclusive evidence linking Canadian charities to terrorism financing over the past eight years challenges the assertions made in both the 2015 and 2023 NIRAs. The lack of concrete cases and findings raises questions about the credibility and validity of the claim that charities are being exploited for terrorist financing purposes.

Given the absence of evidence connecting terrorism financing to the charity sector, there is a compelling need to re-assess the risk level assigned to charities within the 2023 NIRA. It is crucial to approach the assessment with a balanced and evidence-based perspective, taking into account the actual realities and proven instances of terrorist financing rather than relying on generalized assumptions or perceived risks.

There is an apparent inconsistency between Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy 2023-2026<sup>8</sup> and the 2023 NIRA. The government's strategy document states that the assessment of terrorist financing is based on a thorough examination of evidence and intelligence from Canadian security and intelligence agencies, focusing on threat actors identified by the United Nations Security Council and listed as terrorist entities in Canada. It further indicates that there is a low prevalence of sophisticated and organized terrorist financing networks in the country, with most activities involving individuals making direct financial contributions or joining such groups abroad. Given this assessment, it raises questions as to why the 2023 NIRA highlights the presence of these actors in Canada and underscores a high risk within the charitable sector. Clarification is needed to reconcile these contrasting perspectives and ensure coherence within the overall anti-terrorism financing framework.

It is important for the Ministry of Finance to provide transparency regarding the evidence and information that supports the claim made in the NIRAs regarding the risk level of charities in relation to terrorism financing.

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<https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-strategy-2023-2026.html>

### Canada is the only country that assesses inherent risk

Among the members of the FATF, Canada stands out as the sole country that publishes an "inherent" risk assessment. In contrast, other states gauge their vulnerabilities by considering the effectiveness of the mitigating measures implemented by supervisors and agencies.

The United States takes a unique approach by not only publishing its final risk assessment after factoring in all mitigating measures but also recognizing the crucial role that charities play in countering terrorism. The US acknowledges the valuable contributions of charities in preventing radicalization to violence and violent extremism. While some charities and nonprofit organizations (NPOs) have been misused to facilitate terrorist financing, the US Treasury and other government agencies emphasize that the majority of these organizations comply fully with the law. Furthermore, they recognize that not all tax-exempt charitable organizations pose the same level of terrorist financing risk, and the vast majority of US-based tax-exempt charities face minimal or no risk of being exploited for such purposes. For charities operating in high-risk jurisdictions, the US risk assessment acknowledges that many reputable and legitimate organizations in this sector implement a range of risk-mitigation measures, including due diligence, governance, transparency, accountability, and other compliance protocols, even during crisis situations.<sup>9</sup>

In contrast, Canada's 2023 NIRA fails to acknowledge the mitigating measures implemented by charities.

The United Kingdom's approach to risk assessment involves an initial stage of analyzing data to identify existing risks, assess the likelihood of their materialization, understand their potential impact, and evaluate the effectiveness of mitigating measures. This evaluation encompasses all sectors, activities, or products and considers risk factors categorized under vulnerability, likelihood, and mitigation.<sup>10</sup>

Regarding the sources of terrorist funding, the UK risk assessment reveals that methods such as fraud, abuse of mechanisms like student loans, and misuse of the charitable sector are far less prevalent. The scale of known abuse for terrorist financing within the UK charity sector is relatively low compared to the overall size of the sector.

In Canada, the guidance provided to supervisors based solely on inherent risk has proven problematic, leading to the disproportionate targeting of Muslim charities by the CRA. This issue warrants attention and consideration to ensure fair and equitable treatment of all charitable organizations.

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<sup>9</sup> <https://home.treasury.gov/system/files/136/2022-National-Terrorist-Financing-Risk-Assessment.pdf>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945411/NRA\\_2020\\_v1.2\\_FOR\\_PUBLICATION.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf)

### Lack of Stakeholder Consultation

Since 2021, the Muslim charitable sector in Canada has raised concerns regarding the 2015 NIRA, which has garnered significant attention from the media and calls for reform. The Ministry of Finance communicated that it was undergoing a process to update the NIRA. However, the process of developing the updated NIRA lacked comprehensive and meaningful stakeholder consultation, particularly within the Muslim community, resulting in an outcome that fails to effectively mitigate the consequences of the 2015 NIRA.

While the Ministry of Finance may have sought feedback from a select number of charities, the consultation process did not reflect a genuine and inclusive exercise that adequately captured the diverse perspectives and experiences of the Muslim charitable sector as a whole. This limited engagement with stakeholders has raised questions about the fairness and thoroughness of the process, and its ability to address the nuanced challenges faced by Muslim charities.

The rushed timeline set by the Financial Action Task Force (FATF) to publish an updated NIRA, combined with the lack of comprehensive stakeholder consultation, has led to an outcome that can be seen as a continuation of the 2015 NIRA.

### Disruption of Terrorist Financing Measures: Striking a Balance between Security and Support for the Charitable Sector

Recent research on the CRA's treatment of Muslim charities have shed light on the heavy-handed approach employed by the CRA when auditing charities suspected of terrorism financing. This approach likely stems from the overall regime's objective of disruption in combating terrorism financing. However, this approach is not consistent with the educational and preventive measures that the CRA applies to other charities.

One significant concern is that the 2023 NIRA has not made any effort to differentiate between different types of charities within the sector. It fails to recognize the nuances between charities that may be vulnerable to terrorist financiers due to a lack of due diligence, those that may unknowingly have funded a terrorist activity, and those that are knowingly engaged in such activities. By not distinguishing between these categories, the regulatory framework undermines its ability to address the specific challenges faced by different charitable organizations and appropriate outcomes.

Instead of a heavy-handed approach, the CRA should adopt a supportive stance toward the charitable sector. This entails providing education, guidance, and resources to help charities thrive in their important work, whether it is humanitarian relief or advancing religious causes. The 2023 NIRA missed an opportunity to acknowledge and address the treatment of Muslim charities resulting from the 2015 NIRA. A more measured approach is necessary to strike a balance between effectively combating terrorism financing and safeguarding the sector's integrity and reputation.

Moreover, the 2023 NIRA should acknowledge the unique challenges faced by certain communities, such as Muslim charities, and recognize the importance of cultural sensitivity and understanding the religious

and socio-political contexts within which these charities operate. A more nuanced and informed approach would facilitate the development of targeted measures to address risks without stigmatizing or unduly burdening an entire community of charitable organizations.

Striking the right balance between disrupting terrorism financing and supporting the charitable sector requires an approach that is measured, fair, and acknowledges the diverse landscape of charitable organizations in Canada.

## **Chapter 5: Canada Financial Crimes Agency**

In Canada's national security regime, there is a lack of dedicated resources and expertise not only for identifying possible terrorism financing but also for investigating and holding threat actors accountable. To date this responsibility has been delegated in parts to different agencies such as the Canada Revenue Agency (CRA), responsible for overseeing the charitable sector – a key concern in Canada's national risk assessment. This approach has proven to be ineffective.

The CRA's approach of auditing charities has not been successful in identifying actual instances of terrorism financing, but rather, it has unfairly targeted and marginalized specific communities within the charitable sector, damaging their reputation.

The revocation of charities by the CRA has not resulted in any substantiated findings or proper follow-through of charges or trials against these organizations or individuals involved. This points to the failure of distributing the responsibility of monitoring and combating terrorism financing to agencies like the CRA. Furthermore, this approach has deteriorated the CRA's relationship with the charitable sector, as it has focused more on de-risking rather than supporting the growth and flourishing of legitimate charitable activities.

To address these issues effectively, the establishment of a new agency like the Canada Financial Crimes Agency is supported. This dedicated agency would be equipped with the necessary resources and expertise to oversee the monitoring and investigation of terrorism financing in the non-profit sector. This agency should have the right checks and balances, proper oversight and redress mechanisms.

As part of this reform, it is crucial to dismantle units within other agencies, such as the Review and Analysis Division within the CRA, and grant the authority to investigate charities and the non-profit sector to the Canada Financial Crimes Agency. By doing so, it will help remedy the findings of the FATF, which identified Canada's failure to combat terrorism financing adequately in the non-profit sector.

Moreover, the government of Canada should direct the CRA to rebuild trust with the charitable sector. The regulation and oversight of charities to ensure compliance with the Income Tax Act should be executed fairly, transparently, and consistently across all charities.

Taking this reform one step further, it is recommended to segregate the supervisory role of the charitable sector in Canada by establishing an independent commission outside of the CRA. This model

has been successfully implemented in countries like the United Kingdom through its Charity Commission<sup>11</sup> and in New Zealand through its Charities Services<sup>12</sup>, as well as in other countries.

By implementing these changes and creating a specialized agency along with an independent commission, Canada can significantly enhance its efforts in combating terrorism financing in the non-profit sector, foster better relationships with legitimate charities, and ensure a fair and transparent regulatory environment for all charitable organizations.

### **Balancing the Mandate with Human Rights**

Eliminating the existing systemic and cultural biases that have persisted in previous elements of the AML/ATF regime are critical to a robust and effective regime that doesn't hinder legitimate charitable activities, specifically by disproportionately targeting Muslim lead organizations.

Since 9/11, Muslims have been viewed through a lens of suspicion that the community has been unable to escape in the intervening decades. This lens of suspicion persists in the CRA's Anti-Terrorist frameworks, despite a dearth of clear convictions of wrongdoing resulting from CRA investigations of Muslim charities in over 20 years.

Rather than seen as innocent until proven guilty, the Muslim charities being targeted by RAD and the CRA are frequently hit with sanctions almost immediately. This framework stands in stark contrast to the education-first frameworks the CRA engages in the broader charitable sector. The understanding and support given to small, local organizations whose vision is to benefit the community ends when the charity is run by, funded by, or serves primarily Muslim audiences. This amounts to a culture of Islamophobia and significant harm for the organizations being unduly targeted, often without the resources to understand why and take corrective measures. Without acknowledging and addressing this disparity, nothing prevents a new Canadian Financial Crimes Agency from replicating it.

The government should take concrete steps to balance the rights of due process with any security concerns that are raised regarding Muslim charities. Unfortunately, this is often not the case, with preemptive action and sanctions taken as a first step, and burdensome processes imposed for charities to demonstrate their innocence, with harm befalling their operations and reputation in the meantime.

The way the CRA and RAD currently operate in implementing their mandate towards countering Anti-Money Laundering and Terrorist Financing activities is rooted in both structural Islamophobia in explicitly disproportionately targeting Muslim organizations, and cultural Islamophobia in the heavy handed approaches that RAD continues to employ in assuming guilt and interfering with legitimate activities.

The FATF's amendments to Recommendation 8 support this reaffirmation that non profit organizations deserve a right to a fair and transparent due process in the processing of concerns of possible terrorist financing and money laundering.

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<sup>11</sup> <https://www.gov.uk/government/organisations/charity-commission>

<sup>12</sup> <https://www.charities.govt.nz/>