

Fortius Foundation

c/o 203 - 815 Hornby Street, Vancouver, BC V6Z 2E6

Fax: 1 250 363.3000

ATTN: MARIA POPOVA

November 17, 2021

Canada Revenue Agency
Audit Division - Charities Directorate
Vancouver Island and North Tax Services Office
c/o 9755 King George Boulevard
Surrey BC V3T 5E1

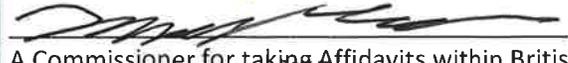
Attention: Ms. Popova:

Re: Fortius Foundation (the "Foundation") BN3578 0958 RR0001 File #3037178

As you know, on November 15 2021, I provided you with the Foundation's response to your letter dated September 7 2021 ("Sept 7 2021 letter") wherein the Foundation was invited to provide written representations to the compliance issues that were articulated in complex legal language based exclusively on CRA's perspective and findings outlined in your letter. I sent that letter in my capacity as a director of the Foundation on November 15 2021 to satisfy the time constraints imposed by CRA. That letter strictly followed the form and content of your Sept 7, 2021 letter. This letter is an addendum to the November 15 letter and is also sent in my capacity as a director but articulates a more personal response which is not constrained by the format of your letter. We ask that you ensure that this letter is included as a subsequent submission to our November 15 2021 response to your September 7 2021.

Today, I re-read your Sept 7 2021 letter and was offended by the tenor of CRA's analysis and the underlying suggestion that the Fortius endeavour was nothing more than a nefarious scheme to provide facilities rent-free to FADA. That is not only a false assumption but is insulting to me as an individual as well as a businessman. Years of preparation went into building a sophisticated business plan that would result in FADA making all of its lease payments and enable the Foundation to meet its disbursement quota from those payments. The lenders demanded and vetted such a business plan prior to putting up the millions of dollars required for construction.

Unfortunately, the collapse of the financial market in 2008 deprived the Foundation of the large capital donations from colleagues in my industry we anticipated in the planning stages. These would have significantly reduced the interest payments on debt. I hold on to the belief that if there had been no market crash at the outset of Fortius building this facility and the negative ripple effects through the economy, the facility would have opened with a manageable financial burden and been well positioned to succeed. Unfortunately, the financial collapse and lack of capital donors resulted in the facility opening without the Foundation being able to persuade a major bank to replace the construction financing with a mortgage at a much lower rate of interest.

This is Exhibit "C" referred to in the affidavit of Scott Cousens sworn (or affirmed) before me at Vancouver, British Columbia this 17 day of August, 2022

A Commissioner for taking Affidavits within British Columbia

In spite of these challenges and difficulties in the start up years, the Fortius program began to generate revenues equal to the facility's operating expenses and the Foundation thought it was going to succeed. Unfortunately, just as it was beginning to gain financial stability, the Covid 19 pandemic inflicted a devastating economic blow. The pandemic not only forced the facility to close completely for a period of time but, when it re-opened, the restrictions imposed on sports and other communities served by Fortius mandated by Dr. Bonnie Henry and the government to reduce the spread of Covid was the final nail in the Foundation's coffin. During the early months of the pandemic, not only were all forms of team sport banned but travel by athletes from outside Fortius' own health region was restricted or denied. The demand and need for sports medicine specialists, training and rehab programs was reduced to a fraction of pre-Covid numbers. It is immeasurably frustrating to have watched the facility and the Foundation suffer a second blow of such a magnitude that it was unable to prevail and carry on. I firmly believe that the facility would be flourishing today and would be contributing a unique and professional calibre program to enhance the performance athletes in Canada and on the world stage if not for the pandemic.

It is also interesting timing that I happen to be writing this letter the day after Canada's men's soccer team beat Mexico to go to the top of the table in the Concacaf Final Round of FIFA World Cup Qatar 2022. The team's coach, John Herdman, was an enthusiastic backer of Fortius' program from its inception and this team's amazing achievement can in part be credited to the programs at Fortius. In fact, John, in his previous job of coaching Canada's Women's soccer team, also centered the development of the entire Canadian Women's Soccer Program (U14 to the National team) out of Fortius. Many of the athletes on Canada's Women's Soccer Team who won the Gold Medal in the Tokyo Olympics frequently trained and did their medical rehab at Fortius.

In closing, it adds insult to injury for CRA to treat all the time, talent and money which went into this pioneering endeavour which during its short life proved the benefits of making such sophisticated medical and training equipment and facilities available to Canada's national athletes as little more than a scam. I feel it necessary to balance the initial unremittingly negative analysis of CRA with this subsequent response which highlights some of the aspirations and successes of Fortius.

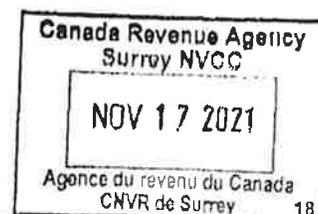
Yours sincerely,



Scott Cousens

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Re: Fortius Foundation (the "Foundation") BN3578 0958 RR0001 File #3037178

My response to your letter dated September 7, 2021 letter is much shorter than your 30 pages because I have tried to respond in layman's terms. Your letter focuses on complex explanations of the law which would provide a feast of legal fees if I turned it over to a lawyer. The Foundation is reluctant to spend the considerable amount in fees which it would take to respond to all the audit findings in detail and seek to refute all the technical legal arguments made. It is hoped that expense can be avoided by the Foundation receiving an education letter or signing a compliance agreement rather than having to engage lawyers to build responses which will form the basis for resolving our differences in a court battle.

General Legal Principles

You dedicate pages 3-5 almost exclusively to "General Legal Principles" and discuss charitable purposes in terms of a 19th century English case and spend a lot of time talking about "public benefit". You refer to the Foundation as the "Organization" and go on as if Fortius was a charitable organization rather than a charitable foundation. When the Foundation was registered, I was told that the *Income Tax Act* had a one-line definition of charitable purposes which restricted the Foundation's activities to investing and writing cheques to qualified donees. There was no discussion of public benefit; but I assumed that since CRA was the regulator which determined which donees qualified it was CRA's duty to have made certain that a recipient charity met whatever public benefit test the law requires.

I realize that it is possible that I have completely misinterpreted what you have written in this section. If so, please write me a follow-up letter so that I understand the legal principles correctly.

Collateral Charitable Purpose

Your letter acknowledges that the stated purposes are charitable. It also says that the monthly lease rate "appears to be FMV". You also state that "the Foundation reported total revenues of \$22,978,361" so there is no doubt that it not only intended to collect lease payments but actually did collect them. The facts set out in your letter contradict your determination that the Foundation operated for the unstated non-charitable purpose of enabling a non-qualified donee

to use charitable assets. The Foundation owned the building with the intention of earning income from property and had every intention of collecting lease payments set at FMV. It would not have gone to the trouble of creating a legally binding lease at FMV if the Foundation's purpose was merely to enable a non-qualified donee to use charitable assets.

Limitations Act of British Columbia

Your letter states that the audit period is October 1, 2014 through September 30, 2016. However, your criticisms with regard to the non-payments of Fortius Athlete Development Association ("FADA") apply to fiscal periods subsequent to the audit period. The two year limitation period for uncollected amounts had not expired during the audit period. Can you please advise what standards of fairness CRA applies when the majority of criticism is for issues outside the audit period.

Further, I had no idea that the Limitations Act applied to mean that the Foundation "cannot collect an amount owing under an agreement" as per your interpretation of the law. Your letter admits that FADA told the auditor that it intended to make up overdue payments. FADA never advised the Foundation that it was relying on the Limitations Act of British Columbia to deny its obligation. While I am unfamiliar with legal issues, I have enough experience with accountants in business to know that when they add a "note" to the audited financial statements, it reflects the caution of the auditors and not the wishes of the directors. When the Foundation receives your response, it reserves the right to seek legal advice on the interpretation of the Limitations Act to determine whether it applies to render a debt void if the debtor does not plead it.

Undue Benefit

Your letter states "typically, private benefits that are unacceptable under the common law will also be undue under subsection 188.1(5) of the Act". It seems strange that Parliament would take the trouble to put a comprehensive definition of "undue benefit" in the Act when CRA applies the common law meaning of "private benefit". However, I do not have the expertise or the legal budget to challenge CRA's interpretation of the law.

Loans to the Institute

The Foundation depended upon the Institute to generate revenue which would enable the lease payments to be made. Consequently, the Foundation made these loans with the intent of ultimately helping the Foundation by helping the Institute. Having said that, in hindsight the Foundation is able to see why CRA finds these loans unacceptable because while some were repaid, not all were. The Foundation is quite willing to enter into a compliance agreement to prevent it from carrying on such a practice in the future.

Undue Benefit Penalties

The Foundation does not agree with your determination that a penalty for undue benefits is applicable but would have to retain legal counsel to make the technical arguments. However, I am hoping to avoid that expense because, in any event, the Foundation does not have the funds required to pay the penalty should CRA apply the penalty. However, there are enough funds to fight this issue in the Tax Court of Canada should CRA proceed.

I also am doubtful that a failed commercial arrangement should be considered a "private benefit" for purposes of revocation. Many foundations lose millions of dollars in investing in the stock market or real estate and it is not considered a nefarious scheme to confer private benefit but simply as a failed commercial investment

Disbursement Quota

Given the magnitude of dollars involved, it seems extremely hostile for CRA to propose revocation over an alleged cumulative shortfall of \$39,998. If you are correct in taking the position that the unpaid debts are of no value, they should be deducted from the value of the Foundation's assets. The recalculation of the Foundation's disbursement quota should result in there being an excess rather than a shortfall.

Books and Records

Your letter does not set out any specifics as to mistakes in the books and records and even concedes that the audited financial statements have the correct figures. I have carefully read everything you have written about mistakes with regard to section 230 and can find no reference to mistakes in filing T3010s as being grounds for revocation. However, having been supplied with no specifics I have no idea of how to respond.

Donation Receipts

Thank you for providing specifics as to the problems with receipts. The Foundation accepts responsibility for the errors identified. However, it does not think that the appropriate response is revocation but is quite willing to accept an education letter or compliance agreement.

Information Return

The Foundation was extremely concerned that it comply with subsection 149.1(14) and file its T3010 within 6 months of its fiscal year end. Unfortunately, the audited financial statements had not been completed in time so it filed based upon its trial balances. This error occurred because of the Foundation's eagerness to comply with the statutory provision you cited and it did so. You have cited no authority for revoking because it failed to file a Form T1240. In any event, it seems very harsh to propose revocation for a mistake which occurred as a consequence of trying to comply with the provision cited.

Conclusion

As you are well aware, the Foundation has disposed of its primary investment to the City of Burnaby, a Qualified Donee. Without conceding the private benefits you allege, there can be no doubt that for decades to come the land acquired by the Foundation and the facilities it built will achieve a public benefit for the people of Burnaby which will pass any test which CRA may apply.

The Foundation has disposed of all of its real estate, chattels and equipment so is unlikely to repeat any of the mistakes alleged in your letter. It currently owns less than \$1 million and all of its assets are in cash and conservative publicly traded securities which generate enough income to meet its disbursement quota by making conventional gifts to other Qualified Donees. Unfortunately, it will be imprudent to make larger capital gifts until the conclusion of this audit as the Foundation may be required to use these funds to retain a law firm to make further complex

technical legal representations and to represent the Foundation in the Federal Court of Appeal and/or the Tax Court of Canada.

We have provided our response and the information herein for your consideration in determining the appropriate course of action. Given that the material change in asset composition makes it almost impossible to continue the non-compliance complained of in your letter, I respectfully request that you consider issuing an educational letter or compliance agreement and conclude this audit in a timely manner.

Yours sincerely,

FORTIUS FOUNDATION

Per:



Scott Cousens

Director