

Inside the tax agency's years-long fight with the charity behind a world-class athletic centre in Burnaby

Fortius Foundation, a once-prominent B.C. charity, loses court bid to stop the CRA from revoking charitable status while it contests allegations of “egregious” non-compliance

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In October 2020, Canada Revenue Agency staff discussed the findings of an audit that they had begun three years earlier at a prominent B.C. charity.

“We have concerns that there is currently no charitable activity and we struggle to see how that can change in the future,” one CRA auditor wrote in her contemporaneous notes after the call.

The auditor added that the case presented a “complex issue, especially given the high profile of this foundation in the community.”

The charity under scrutiny was the Fortius Foundation.

Fortius was launched with great fanfare in 2012, with headlines touting a record-breaking philanthropic donation. A world-class athletic facility bearing its name would go on to serve athletes ranging from local amateurs and youths to professionals and international champions.

But following an audit launched in 2017, the CRA alleged the Fortius had engaged in “egregious and continuous” non-compliance with Canadian tax law.

Last July, the federal tax regulator contacted Fortius’s director, B.C. mining magnate Scott Cousens, advising him of its intention to revoke the foundation’s charitable status.



**Fortius opens with state of the art facilities in Burnaby on May 15, 2013.
PHOTO BY WAYNE LEIDENFROST WAYNE LEIDENFR /PNG**

Fortius went to court to try to prevent the federal government from publicly revoking its charitable status before the charity could appeal the CRA's allegations.

That effort was first dismissed by a Federal Court of Appeal judge last October. Then, just last week, the Supreme Court of Canada refused to hear Fortius's appeal. As usual, it gave no reason for the dismissal.

Fortius was still listed as a federally registered charity as of Thursday, but last week's decision means its status could be revoked soon.

In Fortius's application for leave to appeal to the Supreme Court, the charity's lawyers wrote that "at present, the only thing preventing the minister from immediately completing the revocation" of Fortius's charitable status was an agreement between the foundation and the government that revocation would not take place while the application for leave to appeal to the Supreme Court was in play.

"If leave to appeal is denied, the minister will likely proceed to complete the revocation of the applicant's charitable registration," Fortius's lawyers wrote.

If Fortius's charitable status is revoked, it would follow 12 other charities connected with the Vancouver company Benefic Group to meet such a fate since July, as Postmedia reported earlier this year.

Link to Benefic Group

Fortius was originally set up by the now-shuttered Benefic Group.

As Postmedia has reported, some of the donors and directors tied to the other 12 recently revoked Benefic-related charities include prominent British Columbians, even if the charitable foundations themselves are not household names.

However, Fortius was a big name.

At the 2012 launch of the Fortius Foundation, and its namesake sports facility in Burnaby, it was announced that Cousens, a venture capitalist in B.C.'s mining industry, had donated \$23 million to build the state-of-the-art facility. Headlines heralded Cousens's gift as the largest donation in Canadian sports history.

The Fortius Sport & Health complex on Kensington Avenue was where NBA teams, including the 2019 championship-winning Toronto Raptors, Olympians like the 2020 gold medal-winning Canadian women's soccer team, and local amateur athletes came to train and recover from injuries.

But in late 2020, Fortius announced it was ceasing operations, citing financial challenges brought on by the COVID-19 pandemic. The City of Burnaby announced in December 2020 it was purchasing the 146,000 square-foot facility and its property from the Fortius Foundation for \$26.6 million, and today it serves the public as the Christine Sinclair Community Centre.

But the Fortius Foundation had come under scrutiny from CRA auditors years earlier.

Audit began in 2017

Documents filed in connection with the recent Supreme Court of Canada application show that the CRA began auditing Fortius in 2017, reviewing the charity's operations between 2014 and 2016.

The CRA's charities directorate advised Fortius in a September 2021 letter that the audit found "the organization was in serious non-compliance," and the agency was considering revoking its registration.

Among other things, the agency alleged Fortius was not constituted and operated exclusively for charitable purposes, had failed to devote sufficient resources to charitable activities carried on by Fortius itself, and failed to maintain adequate records.

CRA auditors raised concerns about the dealings among three Fortius-related entities, which were described in CRA documents as:

- Fortius Foundation, the charity that owned the land, buildings and capital assets.
- Fortius Athlete Development Association, a not-for-profit management entity that leased the facility from the Foundation, operated the centre, and provided community programming.
- Fortius Institute Inc., a for-profit Canadian private corporation, which subleased the centre from the non-profit Fortius Athlete Development Association, and provided sports medicine and performance practice services through a team of sport science and training personnel.



Scott Cousens speaks at the opening of the Fortius Sport and Health building in Burnaby on May 13, 2013. PHOTO BY WAYNE LEIDENFROST WAYNE LEIDENFR /PNG

All three entities were directed by Cousens, the CRA auditor's affidavit said, describing him as the Fortius Foundation's sole member and one of its directors, as well as a director of the non-profit Fortius Association and the for-profit Fortius Institute. Cousens owned 67 per cent of the share capital of the for-profit Institute, while the non-profit Fortius Association owned the rest, the auditor wrote.

CRA allegations

The CRA alleged the Fortius Foundation charity failed to collect rent and interest from the Fortius Association and had an "unwritten expense-sharing agreement" for several years with the for-profit Fortius Institute, an arrangement federal government lawyers described in court filings as "a loan to a related for-profit Canadian controlled private corporation with no repayment term."

The CRA alleged the Fortius Foundation charity conferred "undue benefits" totalling \$12.3 million to the non-profit Fortius Association and for-profit Fortius Institute — \$11.9 million worth of "free rent" to the association and \$479,189 to the for-profit corporation under the cost sharing agreement.

Cousens declined to be interviewed for this story. But he disputed the CRA's allegations in written correspondence filed as part of Fortius's Supreme Court of Canada application.

"There is no doubt," Cousens wrote in his November 2021 response to the CRA, that the Fortius Foundation "not only intended to collect lease payments, but actually did collect them."

Cousens wrote that the loans from the charity Fortius Foundation to the related for-profit Fortius Institute were made "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."

Cousens wrote that Fortius was willing to "enter into a compliance agreement to prevent it from carrying on such a practice in the future."

But the CRA responded in July 2022 that after considering Cousens's reply, it had "not alleviated our concerns."

While the charity did report the rent from the related association as a receivable, the agency wrote, the rent and associated interest had not actually been collected by the date of CRA's response.

"While we agree that the organization was constituted for a charitable purpose, it was not operated for a charitable purpose," the CRA wrote. "The intention to collect lease

payments is not enough when the activity did not in fact generate any appreciable public benefit.”

‘False’ and ‘insulting’

In other correspondence filed with the court, Cousens wrote he 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 (the Fortius Athlete Development Association). That is not only a false assumption but is insulting to me as an individual as well as a businessman.”



**The Toronto Raptors’ Jordan Hamilton #25 goes up for a shot during training camp session at Fortius Sport Health training centre in Burnaby, B.C. on Wednesday Oct. 1, 2014.
PHOTO BY CARMINE MARINELLI /Carmine Marinelli/QMI Agency**

Cousens highlighted some of the athletes who had trained at Fortius, including the Canadian men’s soccer team which had just defeated Mexico to take the top position in the CONCACAF table, saying the “team’s amazing achievement can in part be credited to the programs at Fortius.”

Many of the Canadian women’s national soccer team athletes who won gold medal in the 2020 Tokyo Olympics also frequently trained and did 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.”

Cousens declined to respond to Postmedia’s interview requests sent through several channels but did answer one question.

Asked if the CRA had ever overturned or disallowed any of Cousens’s charitable donations, Cousens replied, in an emailed statement: “I have never had a donation receipt overturned, disallowed, or questioned in any way.”

Fortius was originally registered, with Cousens as a founding director, under a different name in 2007 by Benefic Group, the now-shuttered firm that set up and worked with hundreds of other charities over several years.

Earlier this year, Benefic’s founder, retired charity lawyer Blake Bromley, told Postmedia News he objected to what he called the CRA’s “draconian approach” leading to increased revocations of charities. He told Postmedia that none of the 12 charities connected with Benefic that had their status recently revoked ever received a donation that was overturned by the CRA.



**Fortius’s state-of-the-art facilities in Burnaby included an underwater treadmill.
PHOTO BY WAYNE LEIDENFROST WAYNE LEIDENFR /PNG**

Ruling on one issue only

This latest court decision involving Fortius, like the Federal Court of Appeal decision before it, addressed only the question of whether CRA should be prevented from publicly revoking the foundation's charitable registration before it had appealed the CRA's allegations.

As previously reported, CRA allegations are not always upheld. A charity can ask CRA's appeals department and, ultimately, the courts to rule on the correctness of the agency's assertions.

The CRA said confidentiality provisions prevent it from "confirming or denying whether any taxpayer is the subject of any review."

The CRA says maintaining the integrity of charities is in the interest of all Canadian taxpayers.

In an affidavit sworn by a CRA auditor and filed in connection with Fortius's Supreme Court application, the auditor wrote that the tax credits associated with Canadian individuals' charitable donations "have a significant impact on federal revenues," estimated at more than \$3.4 billion for 2022. Ensuring registered charities continue to merit registration under the Income Tax Act, the auditor wrote, is "essential to maintaining the confidence of Canadians in the fairness and integrity of the registration system and of our tax system overall."

"Canadians rely on the CRA to regulate the charity sector," the auditor's affidavit says. "It is the position of the directorate that serious harm would be suffered by the Canadian public if Fortius's charitable status is not immediately revoked."

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