

FEDERAL COURT OF APPEAL	
COUR D'APPEL FÉDÉRALE	
FILED	18-AUG-2022
D	Elizabeth Silva
DEPOSE	3
OTTAWA, ON	

Court File No. A-167-22

FEDERAL COURT OF APPEAL

Between

FORTIUS FOUNDATION

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT Fortius Foundation will make a motion to the Federal Court of Appeal for an interim injunction to be decided on the basis of written representations, on an urgent basis and at a special hearing in Vancouver per rules 35, 369.2, 372 and 373 of the *Federal Courts Rules*, SOR/98-106 and section 44 of the *Federal Courts Act*, RSC 1985, c F-7.

THE MOTION IS FOR:

1. An interim order pursuant to Rule 373 of the *Federal Courts Rules*, SOR/98-106 and section 44 of the *Federal Courts Act*, RSC 1985, c F-7 that the Minister of National Revenue be enjoined from publishing in the Canada Gazette a copy of the notice proposing to revoke the applicant's charitable registration until such time as this Court has determined the applicant's application under section 168(2)(b) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the "Act");;
2. Costs of this application; and
3. Such further relief as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. By letter dated 21 July 2022, the Director General of the respondent's Charities Directorate (the "Director") advised the applicant of her intention to revoke the applicant's charitable registration by means of publication of a notice in the Canada Gazette pursuant to subsection 168(1) of the Act.

2. The Director intends to revoke the applicant's charitable registration immediately after the expiration of 30 days from 21 July 2022 by publishing the revocation in the Canada Gazette, despite the applicant having a statutory right to object to the revocation within 90 days of 21 July 2022, and having a further statutory right of appeal to this Court from the objection process. The applicant plans to file an objection, and if necessary, an appeal to this Court.
3. The Director has not identified any urgency to the planned revocation which would justify the completion of the revocation process prior to the applicant's exercise of its statutory rights of objection and appeal.
4. The applicant has shown there is a serious issue with respect to its application under section 168(2)(b) of the Act for an order extending the period of time that must expire before the Minister of National Revenue is permitted to publish in the Canada Gazette a copy of the notice proposing to revoke the applicant's charitable registration (the "Application").
5. If the Director is permitted to publish the revocation immediately after the expiry of 30 days from 21 July 2022, it would preclude the applicant from making the Application. Specifically, this outcome would render the Application moot, thereby practically stifling the applicant's ability to seek an extension permitted by 168(2)(b) of the Act, as well as from later pursuing its planned objection and appeal. As a result, the applicant will suffer irreparable harm.
6. The applicant is very concerned that it has been targeted by the respondent as a result of an aggressive letter-writing campaign by a self-styled citizen journalist, and that the accusations made by this citizen journalist have influenced the respondent in concluding that the applicant's charitable registration must be revoked.
7. The balance of convenience strongly favours the granting of the order sought by the applicant. This respondent maintains its ability to revoke the applicant's charitable registration through publication in the Canada Gazette, but is enjoined from doing so until the applicant has had an opportunity to pursue its statutory right to make the Application. This causes no prejudice to the respondent, but protects the applicant from the irreparable harm of revocation prior to this Court having determined its application under section 168(2)(b) of the Act.
8. The applicant relies on subparagraph 168(2)(b) of the Act, rules 373 and 400 of the *Federal Courts Rules*, SOR/98-106 and section 44 of the *Federal Courts Act*, RSC 1985, c F-7.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The applicant's written submissions;
2. Affidavit #1 of Scott Cousens, affirmed 17 August 2022; and
3. Such other evidence as this Court may allow.

18 August 2022



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