

Court File No. A-167-22

## FEDERAL COURT OF APPEAL

<b>FEDERAL COURT OF APPEAL</b>	
<b>COUR D'APPEL FÉDÉRALE</b>	
FILED	18-AUG-2022
	Elizabeth Silva
<b>OTTAWA, ON</b>	<b>4</b>

Between

FORTIUS FOUNDATION

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

**AFFIDAVIT OF SCOTT COUSENS**

I, Scott Cousens, businessperson, of 3194 West 27<sup>th</sup> Avenue, Vancouver, British Columbia, AFFIRM THAT:

1. I am a director of the applicant Fortius Foundation (“Fortius”), and therefore have personal knowledge of the facts set out in this affidavit, except where I have indicated that my knowledge of a fact is based on information and belief, and where so stated I verily believe that fact to be true.
2. I have been a director of Fortius since its founding in 2007. At the time of its founding, Fortius was known as Multisport Centre of Excellence Foundation, before changing its name to Fortius in 2012. Despite the name change in 2012, I will refer to the foundation as “Fortius” in this affidavit for ease of reference.
3. At all material times since 2007, Fortius has been registered as a public foundation with the Canada Revenue Agency.
4. In 2008, Fortius purchased land in Burnaby for the purpose of building a state-of-the-art integrated athletic development centre. Fortius provided funds for the construction of the centre, which opened in 2013. The centre was known as Fortius Sport & Health.
5. In December 2020, Fortius entered into an agreement with the City of Burnaby, a qualified donee, to transfer the centre to the City. The transfer took place in 2021. The centre is now known as the Christine Sinclair Community Centre, to honour the most decorated soccer player in Canadian history.
6. In the years 2010-2012, the Canada Revenue Agency (“CRA”) audited Fortius’ operations for the 2008 and 2009 fiscal years. The audit concluded in 2012 with a compliance

agreement through which Fortius agreed to correct the minor issues that had been identified by the CRA in its audit process. Fortius and the CRA worked collaboratively and productively in reaching the compliance agreement.

7. At the time of the compliance agreement, CRA advised that it would continue to monitor Fortius' compliance with the *Income Tax Act* and associated regulations, and suggested that it may elect to conduct a follow up audit in the coming years.

8. In 2017, as it had previously suggested it may do, CRA commenced a further audit of Fortius for the years 2014-2016. Fortius was not concerned by this audit, as I understood it had maintained full compliance with the *Income Tax Act* and associated regulations at all material times, and had engaged a reputable accounting firm (KPMG) to prepare audited financial statements for each year of the organization's operations.

9. In January 2020, a person named Vivian Krause began asking questions about the origin of Fortius' funding and the charitable purpose to which Fortius planned to put its funding. Fortius initially engaged with Ms Krause on a limited basis, but Ms Krause soon began levying unfounded allegations of impropriety against Fortius. When this took place, Fortius stopped engaging with Ms Krause.

10. In the years that followed, Ms Krause commenced a protracted letter writing campaign in which she made serious and unjustified allegations of fraud and impropriety against Fortius and various individuals involved with Fortius, including the allegation that Fortius is a "massive tax fraud scam" and I personally am the "front man of an elaborate scheme". In her letter writing campaign, Ms Krause routinely wrote to, or copied, the Director General of the CRA's Charities Directorate, the Minister for National Revenue, the House of Commons Standing Committee on Finance, and many others.

11. Attached to this affidavit and marked collectively as **Exhibit A** are true copies of selected correspondence from Ms Krause relating to Fortius in the years 2020, 2021 and 2022. I have not exhibited all of Ms Krause's correspondence relating to Fortius during this time period, as a full record of her correspondence would be too voluminous.

12. On September 7, 2021, approximately 18 months into Ms Krause's letter writing campaign, Fortius was advised that in the aforementioned audit of Fortius' operations from 2014-2016, the CRA had identified certain areas of alleged non-compliance by Fortius with the provisions of the *Income Tax Act* and associated regulations. The CRA outlined those alleged areas of non-compliance in a letter to Fortius. This letter was the CRA's first attempt to express to Fortius any areas of non-compliance, approximately four years after the audit process had been commenced.

13. Attached to this affidavit and marked as **Exhibit B** is a true copy of a letter from the CRA to Fortius dated September 7, 2021.

14. I am very concerned that the CRA's September 7, 2021 identification of alleged areas of non-compliance by Fortius with the *Income Tax Act* was motivated by Ms Krause's extensive

and accusatory correspondence described above.

15. I responded to the CRA's September 7, 2021 correspondence on behalf of Fortius by way of letters dated November 15, 2021 and November 17, 2021. In those letters I provided detailed explanations for the alleged areas of non-compliance, and highlighted Fortius' many important contributions to amateur athletics in Canada.

16. Attached to this affidavit and marked collectively as **Exhibit C** is a true copy of my letters to the CRA dated November 15, 2021 and November 17, 2021.

17. It is a source of great frustration to me, as a director of Fortius, that Fortius has expended significant resources with a reputable accounting firm to prepare audited financial statements for each year of its operations, only for the CRA to allege that it has failed to comply with the *Income Tax Act* because of, among other things, minor issues with its receipting practices.

18. It is similarly frustrating that the CRA has alleged non-compliance with the *Income Tax Act* because Fortius did not pursue rent from an entity that did not have the financial capacity to pay rent, and did not have any assets against which Fortius could execute on a potential judgment. Given FADA's inability to pay rent, Fortius was placed in the impossible position of either evicting its only tenant and shutting down the centre entirely, or failing to collect the rent it was owed. I believe Fortius made the right decision in keeping the centre open.

19. On July 21, 2022, the Director General of the CRA's Charities Directorate sent Fortius a letter indicating that the CRA intended to revoke Fortius' charitable status on the basis of "egregious and continuous" non-compliance with the *Income Tax Act* and associated regulations.

20. Attached to this affidavit and marked as **Exhibit D** is a true copy of a letter from the CRA to Fortius dated July 21, 2022.

21. Fortius strongly disputes the CRA's conclusion that it has engaged in "egregious and continuous" non-compliance with the *Income Tax Act* and associated regulations. Fortius plans to file an objection to the CRA's intention to revoke within 90 days of July 21, 2022 per s 168(2) of the *Income Tax Act*. If Fortius' objection is unsuccessful, Fortius plans to appeal the dismissal of its objection per s 172(3) of the *Income Tax Act*. Fortius will take all necessary steps to protect against the revocation of its charitable registration.

22. In the July 21, 2022 letter, the Director indicated that the CRA intended to publish the revocation of Fortius' charitable registration in the Canada Gazette immediately upon the expiry of 30 days from July 21, 2022, regardless of Fortius' statutory right to object to the decision within 90 days.

23. If Fortius' charitable registration is revoked on or shortly after August 22, 2022, I am concerned that Fortius will not be able to meaningfully exercise its statutory right to object, and if necessary, appeal the dismissal of its objection. The revocation of Fortius' charitable registration would prevent it from raising money from donors to fund its legal expenses, and subject it to a revocation tax which would fully deprive it of the financial resources it requires to

exercise its statutory rights of objection and appeal.

Affirmed before me at Vancouver, British Columbia on August 17, 2022.

  
Commissioner for Taking Affidavits

  
SCOTT COUSENS

**TANNER GERVIN**  
*Articled Student*  
**ALLEN & McMILLAN LLP**  
1625 - 1185 W. GEORGIA STREET  
VANCOUVER, B.C. V6E 4E6