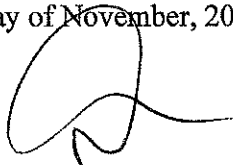


This is Exhibit "G" referred to in the affidavit of Vivian Krause sworn before me at Vancouver, B.C. this 16th day of November, 2023.



A Commissioner for taking Affidavits within British Columbia



Canada Revenue
Agency

Agence du revenu
du Canada

July 21, 2022

REGISTERED MAIL

Scott Cousens
Director
Fortius Foundation
[REDACTED]

BN: 835780958 RR0001
File number: 3037178
[REDACTED]

Dear Scott Cousens:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated September 7, 2021 (copy enclosed), in which Fortius Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2014 to September 30, 2016. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated November 15, 2021 and November 17, 2021. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. Although the Organization corrected its previous non-compliance, it committed multiple new serious breaches of the Act which demonstrates a continuous pattern of non-compliance. In particular, the current follow-up audit found that the Organization is not constituted and operated exclusively for charitable purposes, failed to devote resources to charitable activities carried on by the Organization itself, failed to maintain adequate books and records, failed to issue donation receipts in the accordance with the Act and/or its Regulations, and failed to file an information return as and when required by the Act and/or its Regulations. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated September 7, 2021, and pursuant to subsections 168(1) and 149.1(3) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of

the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), and paragraph 149.1(3)(b.1) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
835780958RR0001	Fortius Foundation Vancouver BC

In addition, due to the egregious and continuous nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

Should the Organization choose to object to this notice of intention to revoke its registration, in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within 90 days from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner
Appeals Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix B, attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and will no longer be permitted to issue official donation receipts. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act
- CRA letter dated September 7, 2021
- Organization's representations dated November 15, 2021 and November 17, 2021

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APPENDIX A

**Fortius Foundation
Comments on Representations**

In the administrative fairness letter (AFL) dated September 7, 2021, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2014 to September 30, 2016, identified that Fortius Foundation (the Organization) is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. It is not constituted and operated exclusively for charitable purposes
2. Failed to devote resources to charitable activities carried on by the Organization itself
3. Failed to meet disbursement quota
4. Failed to maintain adequate books and records
5. Failed to issue donation receipts in accordance with the Act and/or its Regulations
6. Failed to file an information return as and when required by the Act and/or its Regulations

We have reviewed and considered the representations of both November 15, 2021, and November 17, 2021, and we maintain our position that the non-compliance issues identified during our audit, with the exception of our position on the Organization's failure to meet the disbursement quota, represent a serious breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration as a charity should be revoked.

Although we maintain our position that each of the section 188.1 penalties we discussed in our previous letter are applicable and could be assessed from a technical perspective,¹ we will not be assessing any of the penalties as a result of the current audit given that we are now informing the Organization of our intention to revoke its status as a registered charity.

The basis for our position is further described in detail below, including:

- A summary of the issues raised in our AFL dated September 7, 2021;
- A summary of the representations provided by the Organization dated November 15, 2021, and November 17, 2021; and
- The CRA's response to the representations.

1. It is not constituted and operated exclusively for charitable purposes

As outlined in the AFL, the CRA is of the view that the Organization is not constituted and operated exclusively for charitable purposes, rather it is operating for an unstated, non-charitable purpose, namely enabling a non-qualified donee to use charitable assets. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

¹ Under subsection 189(7) of the Act, the Minister (that is, the CRA) may assess any applicable financial penalties against revoked charities and/or charities the Minister is in the process of revoking.

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The Organization's representations:

The Organization stated in its letter of November 15, 2021 (the Representations) that it did not have any unstated purposes. It did report revenues of \$22,978,361, and it owned the building with the intention of earning income from the property. It had every intention of collecting lease payments set at fair market value (FMV) rather than enabling a non-qualified donee to use charitable assets without providing consideration set at FMV in return.

CRA's findings:

While it is true that revenue was reported, as outlined in the AFL, the Organization did not in fact collect the lease payments. The revenue reported was accrued rent receivable that was never collected. While we agree that the Organization was constituted for a charitable purpose,² it was not operated for charitable purposes. The intention to collect lease payments is not enough when the activity did not in fact generate any appreciable public benefit.

As we stated in the AFL, the Organization's revenues (and ability to fund qualified donees in the future) is dependent upon the non-qualified donee Fortius Athlete Development Association (FADA) and the rent receivable. Absent another revenue source, or demonstration that the expenses have been reduced so much that they can be covered by revenues other than rent, we cannot conclude that the Organization is in a position to fund other qualified donees. We have not been provided with either another revenue source, or an analysis of expenses, and accordingly we maintain our position that the Organization operated to benefit FADA at the expense of the Organization's charitable mandate of gifting to qualified donees.

2. Failed to devote resources to charitable activities carried on by the Organization itself

As outlined in the AFL, the CRA is of the view that by gifting funds to non-qualified donees and loaning funds to a non-qualified donee at below fair-market terms, the Organization provided unacceptable private benefits. As a result, the Organization failed to meet the requirement of section 149.1 of the Act that it devote its resources to charitable activities carried on by the Organization itself. As such, there are grounds for the Minister to revoke the charitable status of the Organization in the manner as described under section 168 of the Act.

Additionally, it is the CRA's view that the above mentioned unacceptable private benefits are also considered to be undue benefits as described in subsection 188.1(5) of the Act. As such, there may also be grounds for the Minister to sanction the Organization under subsection 188.1(4) of the Act.

The Organization's representations:

The Organization stated in the Representations that it did not intend to make a gift to FADA. It was unaware that letting the limitation period expire would impair its ability to collect rent from

² "to solicit and receive gifts, bequests, trusts, funds and property, and beneficially; or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property, for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act."

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FADA, and that it is not in agreement with the CRA's interpretation of the Limitations Act that the expiry of the limitation period means that it cannot collect.

The Organization further stated that the limitation period had not expired during the audit period and therefore it would not be fair to raise issues of expiry of the limitation period when it happened outside the audit period.

Finally, the Organization stated that it does not agree that a failed commercial arrangement should be considered a private benefit for purposes of revocation; however, it did not provide the reasons for its position. The Organization only alleges that for decades to come the land acquired by the Organization and the facilities it built will achieve a public benefit for the people of Burnaby.

The Organization stated that it does not agree that a penalty for undue benefits is warranted, but did not provide any arguments in support of this position.

The Organization further stated that in hindsight it understands why the CRA found the loans to Fortius Institute (the Institute) unacceptable. It is willing to enter into a compliance agreement to cease such activities in the future.

CRA's findings:

We maintain our interpretation of the Limitations Act. Although there is nothing preventing FADA from repaying the Organization should it voluntarily decide to, the Organization has no legal recourse to insist on payment. In our view, the Organization willingly ceased to have legal control over its own financial resources in this regard.

Furthermore, as a result of this, we have concluded that the outstanding rental amounts were effectively given to FADA as a gift, since FADA can no longer be required to pay. This is independent of any intentions of the Organization, or FADA, and arises from the expiry of the limitation period. Given the large dollar values involved (\$11,900,003) this is a significant private benefit provided to FADA.

As explained in the AFL, at common law a private benefit means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. FADA is not a charitable beneficiary and hence, in our view, the benefit discussed above is a private benefit.

The separate concept of an undue benefit is defined under subsection 188.1(5) of the Act. An undue benefit means a benefit provided by a charity to a person who does not deal at arm's length with the charity. Hence, in addition to being a private benefit, the outstanding rental amounts are also an undue benefit given that the Organization and FADA are not at arm's length with one another.

While we have considered circumstances outside the audit period, this is circumstantial evidence of the Organization's intentions during the audit period. In our view, the Organization was not

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concerned with collecting its debt from FADA and did not take any steps, in the audit period or subsequently, to ensure that it would have an adequate source of income to gift to qualified donees. There was no audit evidence or documentation to demonstrate efforts were made to collect the outstanding amounts. This further supports the position that the Organization made a material gift to FADA. Although a gift to FADA may not have been intended, that was the effect of the Organization's actions.

We maintain our position in regards to the existence of unacceptable private benefits and that this is a reason for the Organization's status as a registered charity to be revoked. As stated in the AFL, we are particularly concerned that no collection action was taken by the Organization and no record exists of how the Organization came to the conclusion that no collection action was warranted or how the Organization made a logical and reasoned conclusion that FADA will pay the rent owed without the need for collection action. We still have not been provided with any explanations for why the Organization made these decisions.

Accordingly, we maintain our position that an inappropriate private benefit was provided to FADA when the Organization failed to collect any rent owed. This outstanding rent is also an undue benefit, but as mentioned previously, while we are moving forward with revocation, we are not pursuing the penalty for undue benefits.

While the land and facilities may generate a public benefit now, depending on how the City of Burnaby uses them, that is not the proper test for whether the Organization has charitable purposes. The public benefit must have been generated by the Organization itself, while the Organization owned the land and facilities, for it to qualify as a charitable purpose.

3. Failed to meet disbursement quota

As outlined in the AFL, the CRA is of the view that the Organization has not met its minimum disbursement requirements as contained in the definition of disbursement quota (DQ) in subsection 149.1(1) of the Act. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraphs 149.1(3)(b) and 168(1)(b) of the Act.

The Organization's representations:

The Organization stated that in its view it is not fair for the CRA to propose revocation for a cumulative shortfall that is relatively small at \$39,998. In addition, the Organization stated that if the unpaid debts from FADA and the Institute have no value, the Organization's assets for purposes of calculating the DQ should be adjusted.

CRA's findings:

Although the cumulative DQ short-fall in the audit period is relatively small it exists along with other areas of non-compliance identified in the Organization. Altogether, there is sufficient non-compliance to warrant revocation.

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4. Failed to maintain adequate books and records

As outlined in the AFL, there were inconsistencies between the Organization's books and records, including its audited financial statements, and the 2015 and 2016 T3010s, Registered Charity Information Returns, filed. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(e) of the Act. In addition, the Minister may suspend the Organization's authority to issue official donation receipts for one year for having inadequate books and records under subsection 188.2(2)(a) of the Act.

The Organization's representations:

The Organization stated that the AFL did not specify what deficiencies were in its books and records, and even concedes that its audited financial statements were correct. In addition, the Organization stated that there is no reference for mistakes in filing T3010s as being grounds for revocation.

CRA's findings:

While we acknowledge the Organization's intention with filing its T3010 based on the trial balances was to ensure that the information return was filed on time, there is a requirement, separate from the deadline for filing, that the information in the T3010 be supported by the books and records of the Organization. Far from supporting the T3010s filed, the Organization's books and records, in the form of the audited financial statements, support different figures.

The discrepancies between the Organization's trial balance and final audited financial statements were significant, affected numerous line items, and in our view cannot be reasonably viewed as minor. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.³

5. Failed to issue donation receipts in accordance with the Act and/or its Regulations

As outlined in the AFL, there were various errors and omissions noted in the Organization's official donation receipts (ODRs). For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(d) of the Act.

The Organization's representations:

The Organization accepted responsibility for the errors identified in its ODRs, but indicated that it does not think the appropriate response is revocation.

³ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.

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CRA's findings:

We understand that the ODR errors could be remedied as the Organization now acknowledges the errors made; however, they exist along with other areas of non-compliance identified in the Organization. Altogether, there is sufficient non-compliance to warrant revocation.

6. Failed to file an information return as and when required by the Act and/or its Regulations

As outlined in the AFL, the Organization's T3010s for its 2015 and 2016 fiscal year ends contained significant and material errors, and the Organization failed to file a Form T1240, Registered Charity Adjustment Request to account for the material differences. As such, the Organization was not compliant with its obligation to file an accurate information return as prescribed at subsection 149.1(14) of the Act. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's representations:

In the Organization's view, the discrepancies between its T3010 and its audited financial statements occurred because it was extremely concerned to file the T3010 within 6 months of its fiscal year end. As a result, the Organization argued that it should not be penalized. The Organization also argued that the AFL did not cite the authority for revocation for failure to file a Form T1240.

CRA's findings:

While we acknowledge that the Organization's intention with filing its T3010 based on the trial balances was to ensure that the information return was filed on time, there is a requirement, separate from the deadline for filing, that the information in the T3010 be accurate.

The discrepancies between the trial balance and the final audited financial statements were significant, affected numerous line items, and in our view cannot be reasonably viewed as minor. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.⁴

Conclusion

For the reasons explained above, and the reasons outlined in our letter of September 7, 2021, it is the CRA's position that the Organization has failed to meet the requirements for registration as a public foundation as outlined in subsections 149.1(1) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

⁴ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51