

June _____, 2023

Issued by:

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TO: **DEPARTMENT OF JUSTICE**
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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal, pursuant to paragraph 172(3)(a.1) of the *Income Tax Act* (Canada), RSC 1985, c 1 (5th Supp) (the “Act”) in respect of the Minister of National Revenue’s (the “Minister”) proposal to revoke the registration of the appellant as a charity under section 168 of the Act and pursuant to Rule 300(b) of the *Federal Courts Rules*, SOR/98-106.

THE APPELLANT SEEKS the following relief:

1. that the notice of intention to revoke the charitable registration of the appellant pursuant to subsection 168(1) of the Act dated March 9, 2020 be quashed;
2. that the notice of confirmation of the Minister’s notice of intention to revoke dated May 26, 2023 be quashed;
3. that the appellant be awarded its costs of this appeal; and,
4. such further and other relief as counsel may advise.

THE GROUNDS OF APPEAL are as follows:

5. The Minister erred in concluding that the appellant’s charitable registration should be revoked on the grounds that the appellant failed to demonstrate that it did not provide a private benefit to its members in respect of its in-house scholarships. In particular:
 - (a) the appellant’s in-house scholarships are available to a sufficient segment of the public and any restrictions on the beneficiaries of those scholarships are justifiable;
 - (b) the appellant maintained its in-house scholarship program based on a reasonable interpretation of a compliance agreement entered into by the appellant and the Canada Revenue Agency on March 4, 2011 (the “Compliance Agreement”). Accordingly, violations of the Compliance

Agreement (if any) that relate to the in-house scholarships are attributable to ambiguities in the drafting of the Compliance Agreement and not sustained non-compliance on the part of the appellant;

- (c) restrictions to the beneficiaries of the in-house scholarship programs are otherwise justifiable because they benefit members in need; and,
 - (d) restrictions to the beneficiaries of the in-house scholarship programs are otherwise justifiable because they benefit members of a religious community.
6. The Minister committed a palpable and overriding error in concluding that the appellant did not supply sufficient documentation to evidence that it maintained direction and control over disbursements made to certain non-qualified donees:
- (a) the appellant has provided the Minister with documentation which demonstrates that funds directed to non-qualified donees were loans and not gifts over which the appellant maintained direction and control;
 - (b) the Minister continues to improperly insist that an interest-bearing demand loan made to London Sigma Chi Properties (“LSCP”) in favour of the appellant represents a significant risk to the appellant despite being provided documentation which establishes that LSCP has: (i) expressly acknowledged the debt; (ii) made substantial payments toward the principal amount of the debt and any accrued interest; and (iii) the appellant has professed a willingness to seek recovery of its loan payable in full; and,
 - (c) any alleged lack of direction and control over the appellant’s funds ought to be considered in light of recent amendments to the Act, namely, the qualifying disbursement rules, which enable registered charities to make “qualifying disbursements” by way of gift or otherwise to certain non-qualified donees provided that several conditions are satisfied.

7. The Minister erred in concluding that the appellant's registration as a charity should be revoked on the grounds that the appellant failed to maintain and/or provide adequate books and records in accordance with subsection 230(2) of the Act to such an extent as to constitute sufficient grounds for revoking its registration.
8. The Minister breached her duty of procedural fairness and the principles of natural justice by failing to follow the Canada Revenue Agency's published policy regarding charity audits and the imposition of sanctions in issuing the notice of intention to revoke and the notice of confirmation.
9. The conduct of the Minister raises a reasonable apprehension of bias and infringes on the Applicant's rights under section 15 of the *Canadian Charter of Rights and Freedoms*. By concluding that the appellant's in-house scholarships confer a private benefit to its members, while implicitly permitting other registered charities (including other fraternities and sororities) to restrict the provision of their scholarships to narrower segments of the public, the Minister does not treat similarly situated charities in a similar manner.
10. The appellant relies on:
 - (a) the *Income Tax Act*, RSC 1985 c 1 (5th Supp) and amendments thereto;
 - (b) the *Federal Courts Act*, RSC 1985, c F-7, as amended;
 - (c) the *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11; and,
 - (d) certain pages on the website of the Canada Revenue Agency.

The appellant requests that the Minister send a certified copy of the following materials that are not in the possession of the appellant but are in the possession of the tribunal to the appellant and to the Registry:

11. any and all materials produced by, referenced, consulted or relied upon in any way by the Minister in respect of her decision to issue the notice of intention to revoke dated March 9, 2020 and the notice of confirmation dated May 25, 2023;

12. all documents and records of all meetings and discussions within the Canada Revenue Agency pertaining to the appellant's notice of objection and the appellant's supplementary submission to the notice of objection dated March 17, 2023; and,

13. If the Minister objects to the production of the above-noted materials pursuant to Rule 318(2), a list which includes a detailed description of each document that the Minister objects to producing, including materials which are not produced because the Minister believes that those materials are already in the possession of the appellant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of June, 2023



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