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FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
16 May 2023	
Frank Fedorak	
VAN	- 1 -

**FEDERAL COURT OF APPEAL**

BETWEEN:

PRIORITY FOUNDATION

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

**NOTICE OF APPEAL**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Vancouver, BC.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN  
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

16 May 2023

Address of local office:

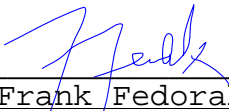
TO:

Attorney General of Canada  
c/o Department of Justice Canada  
Vancouver Regional Office  
900-840 Howe Street  
Vancouver, BC V6Z 2S9

Original signed by  
Frank Fedorak, Registry Officer  
Issued by:

Pacific Centre  
P.O. Box 10065  
701 West Georgia Street  
Vancouver, BC V7Y 1B6

I HEREBY CERTIFY that the above document is a  
true copy of the original issued out of/filed in the  
Court on the 16th day of May  
2023. Dated this 26th day of May 2023.



Frank Fedorak  
Registry Officer

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal pursuant to s. 172(3)(a.1) of the *Income Tax Act* (the “Act”) from the failure of the Minister to confirm or vacate the notice of intention to revoke, issued pursuant to s. 168(1) of the Act on 10 November 2022, within 90 days of the appellant having duly filed a notice of objection on 6 February 2023.

### THE APPELLANT ASKS:

1. that the Minister be ordered to vacate the notice of intention to revoke;
2. that the Minister be ordered to reinstate the appellant’s registration as a public foundation;
3. that the appellant be awarded its costs of this appeal; and
4. for such further and other relief as counsel may advise.

### THE GROUNDS OF APPEAL are as follows:

1. Priority Foundation (the “Foundation”) was registered as a public foundation effective 26 August 2008.
2. The Foundation’s central activity was making gifts to US-based entities exempt from taxation under s. 501(c)(3) of the US *Internal Revenue Code* (“US charities”). These gifts were made pursuant to paragraph 7 of Article XXI of the *Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital*, [1984] Can TS No 15 (the “Treaty”).
3. The Treaty has the force of law by s. 3(1) of the *Canada-United States Tax Convention Act, 1984*, SC 1984, c 20. In the event of an inconsistency between the provisions of that statute and the provisions of any other law, the statute and the Treaty prevail (s. 3(2)).
4. By letter dated 10 November 2022, the Minister’s delegate notified the Foundation that the Canada Revenue Agency had decided to issue a notice of intention to revoke the Foundation’s registration, and to publish a copy of the notice in the *Canada Gazette* immediately after the expiration of 30 days from the date of mailing of the notice, pursuant to paragraph 168(2)(b) of the Act (the “Revocation Decision”).

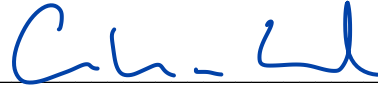
5. The Revocation Decision was unlawful. The Minister erred in law in failing to treat the Foundation's gifts to the US charities as gifts to registered charities for the purposes of Canadian taxation.
6. The Minister's legal error caused her to conclude that the Foundation had failed to comply with the Act by:
  - (a) failing to devote its resources to a charitable purpose;
  - (b) delivering non-incidental private benefits, being non-charitable gifts made to non-qualified donees;
  - (c) conferring an undue benefit on a person; and
  - (d) failing to file an information return as and when required by the Act and/or its Regulation.
7. Had the Minister properly interpreted paragraph 7 of Article XXI, she could not have reached these conclusions and revoked the Foundation's registration.
8. The Minister published a copy of the notice of intention to revoke registration in the *Canada Gazette*, pursuant to s. 168(2)(b) of the Act, prior to any objection or appeal and despite the Foundation's position that the issue was a long-outstanding legal question that has yet to be determined by this Court.

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

1. All materials produced by, referenced, consulted, or relied upon by the Minister in deciding to issue its notice of intention to revoke the appellant's registration;
2. All materials produced by, referenced, consulted, or relied upon by the Minister in deciding to publish a copy of the notice of intention to revoke in the *Canada Gazette*; and
3. If the Minister objects under Rule 318(2), a list describing each document that the Minister objects to producing, including materials not produced because the Minister believes the material is already in the possession of the appellant.

The appellant proposes that the appeal be heard in Vancouver.

16 May 2023



Gib van Ert



Dahlia Shuhaibar

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Solicitors for the appellant,  
Priority Foundation