

Court File No.

FEDERAL COURT

B E T W E E N:

(*Court Seal*)

REBEL NEWS NETWORK LTD., EZRA LEVANT, and SHEILA GUNN

Applicants

-and-

**CANADA (THE HONOURABLE STEVEN GUILBEAULT
and THE HONOURABLE CATHERINE MCKENNA) and
THE ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appear on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

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 APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date _____

Issued by _____
(Registry Officer)

Address of
local office: 180 Queen Street West
Suite 200
Toronto, Ontario M5V 3L6

TO: THE ADMINSTRATOR
Federal Court
180 Queen Street West
Suite 200
Toronto, Ontario M5V 3L6

**AND TO: CANADA (THE HONOURABLE STEVEN GUILBEAULT
and THE HONOURABLE CATHERINE MCKENNA)**
c/o Department of Justice Canada
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Respondent

AND TO: ATTORNEY GENERAL OF CANADA
Department of Justice Canada
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Respondent

APPLICATION

This is an Application for Orders declaring that the Respondents, the Honourable Steven Guilbeault (“**Minister Guilbeault**”) and the Honourable Catherine McKenna (“**Minister McKenna**”) violated the Applicants’ constitutional rights under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) in blocking access to official governmental Twitter accounts, and thereby limiting the Applicants’ ability to, *inter alia*, access and communicate important information, participate in public debate, and express views on matters of public concern.

THE APPLICANTS MAKE APPLICATION FOR:

- a) an Order declaring that Minister Guilbeault has violated the constitutional rights of the Applicants, Rebel News Network (“**Rebel News**”) and Ezra Levant (“**Mr. Levant**”) under section 2(b) of the *Charter* in blocking Mr. Levant’s access to his official Twitter account, “@s_guilbeault”, and thereby limiting Rebel News’ and Mr. Levant’s ability to, *inter alia*, access and communicate important information, participate in public debate, and express views on matters of public concern;
- b) an Order declaring that Minister McKenna has violated the constitutional rights of the Applicants, Rebel News and Sheila Gunn (“**Ms. Gunn**”) under section 2(b) of the *Charter* in blocking Ms. Gunn’s access to her official Twitter account, “@cathmckenna”, and thereby limiting Rebel News’ and Ms. Gunn’s ability to access and communicate important information, participate in public debate, and express views on matters of public concern;
- c) an Order directing the Respondents to unblock the respective Applicants from their official Twitter accounts and to refrain from further blocking for so long as they hold elected public office;
- d) costs of this Application, if opposed; and
- e) such other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS OF THE APPLICATION ARE:

The Parties

1. The Applicant, Rebel News Network Ltd. (“**Rebel News**”), is a federal company carrying on business as a popular, independent online news and media company operating across Canada and around the world.
2. Rebel News is a prominent, tireless advocate for press freedom in Canada. Rebel News’ journalists and commentators often take strong editorial positions on important public issues affecting Canadians, and convey those positions through different media, including on websites (<http://www.RebelNews.com>), podcasts, YouTube videos and ads, print media, paperback books, e-books, radio ads, and billboards.
3. Rebel News’ YouTube channel has nearly 1.5 million subscribers and averages 2 million weekly viewers, making it one of the most-watched Canadian news channels on YouTube. Its website receives over 8 million yearly visitors.
4. Rebel News has been granted media accreditation by governments in Canada and around the world, including the United States, the United Kingdom, the European Union, Sweden, the Netherlands, and India. Rebel News has also been granted accreditation in partly-free countries such as Iraq and Morocco. Rebel News is a member of the Independent Press Gallery of Canada.
5. Mr. Levant is the founder and principal of Rebel News. Mr. Levant is a broadcaster, media critic, bestselling and award-winning author, and journalist. Mr. Levant has nearly 250,000 Twitter followers and is a leading advocate for free expression and press freedom in Canada.
6. Mr. Levant’s bestselling 2009 book, *Shakedown: How Our Government is Undermining*

Democracy in the Name of Human Rights, was chosen as the Writer's Trust of Canada / Samara's - Best Canadian Political Book of the Last 25 Years and hailed by the National Post as the "most important public affairs book of [2009]." His bestselling 2011 book, *Ethical Oil: The Case for Canada's Oil Sands*, won the 25th National Business Book Award, one of Canada's most prestigious literary awards.

7. The Applicant, Ms. Gunn, is a broadcaster, bestselling author, journalist, and chief reporter at Rebel News. Ms. Gunn has over 70,000 followers on Twitter and is accredited with the Alberta Legislature. Ms. Gunn reports critically on public affairs across Canada and around the world, including field reporting from United Nations conferences and conflict zones such as Iraq.

8. Minister Guilbeault is the Member of Parliament for Laurier—Sainte-Marie, Quebec, and Canada's Minister of Canadian Heritage.

9. Minister Guilbeault oversees the Department of Canadian Heritage, an umbrella organization that has one of the largest portfolios in the Canadian federal government. In addition to the Department of Canadian Heritage, which is charged with the development of laws and policies, the Canadian Heritage portfolio comprises organizations active in the fields of arts, culture, heritage preservation and conservation, as well as human rights. The portfolio oversees media organizations and tribunals, including the Canadian Radio-television and Telecommunications Commission ("CRTC") and the Canadian Broadcasting Corporation ("CBC"), and is involved in distributing massive "bail-out" funds to media organizations.

10. The Prime Minister's December 12, 2019 mandate letter to Minister Guilbeault emphasizes the importance of Canada's media and Minister Guilbeault's engagement with same, as follows:

“Canada’s media and your engagement with them in a professional and timely manner are essential. The Parliamentary Press Gallery, indeed all journalists in Canada and abroad, ask necessary questions and contribute in an important way to the democratic process.”

11. The Prime Minister’s January 15, 2021 mandate letter to Minister Guilbeault reiterated the importance of journalists and his role, as follows:

“Now more than ever, Canadians are relying on journalists and journalism for accurate and timely news, especially in the face of a concerning spread of misinformation. I expect you to foster a professional and respectful relationship with journalists to ensure that Canadians have the information they need to keep themselves and their families safe.”

12. Minister Guilbeault has repeatedly emphasized his commitment to press freedom and the importance of media to Canada’s democratic stability.

13. Canadian media, including the Applicants, are under the auspices of Minister Guilbeault — the cabinet minister responsible for the laws, regulations, and policies in respect of Canadian arts, culture, and press.

14. Minister Guilbeault is on the precipice of announcing proposed sweeping legislation targeting “hate speech”, which will reportedly include:

- a) a statutory definition of “hate”;
- b) requiring online platforms to take down offending content within 24 hours; and
- c) the creation of a new regulator responsible for enforcing the new statutory definition, with the power to, *inter alia*, levy fines.

15. Minister Guilbeault has a long record of public animus towards the Applicants.

16. Minister McKenna is the Member of Parliament for Ottawa Centre, Ontario. Minister McKenna was appointed Minister of Environment and Climate Change in November 2015, and in

November 2019, was appointed as Minister of Infrastructure and Communities, which is responsible for national infrastructure, working directly with provincial, territorial, and municipal governments, as well as Indigenous communities.

17. The Prime Minister's January 15, 2021 mandate letter to Minister McKenna stated the importance of journalists and her role, as follows:

“Now more than ever, Canadians are relying on journalists and journalism for accurate and timely news, especially in the face of a concerning spread of misinformation. I expect you to foster a professional and respectful relationship with journalists to ensure that Canadians have the information they need to keep themselves and their families safe.”

The Federal Government's Stated Commitment to Transparency and Free Press

9. The federal government has highlighted its commitment to transparency and press freedom. The Prime Minister has stated that independent, fact-based reporting is vital, and that few professions have the power and responsibility to enrich conversations, open people to new ideas and perspectives, and widen the lens on the challenges facing society.

18. The Honourable Chrystia Freeland, then Minister of Foreign Affairs, stated the following at the inaugural Global Conference for Media Freedom in July 2019:

“We need to defend our independent press—even, and perhaps *especially*, when it criticizes us—as a central institution of democracy. We need to fight for the open society, against the closed one. We need to fight for the complexity of democratic truth, rather than the beguiling simplicity of authoritarian rhetoric. That is what we have done at this conference and what we have committed to doing, with our likeminded partners, in the days ahead.”

[Emphasis added]

19. The federal government has reiterated its stated commitment to press freedom in the throes

of the COVID-19 pandemic. In marking World Press Freedom Day on May 3, 2020, the Prime Minister stated in part, as follows:

“The theme of this year’s World Press Freedom Day is ‘Journalism without Fear or Favour’. It reinforces the fact that press freedom cannot be achieved unless journalists can work safely, free from censorship, intimidation, and violence. **When journalists and other media workers cannot investigate and report without interference, the public is deprived of reliable, accurate information and the foundation of our democracies starts to erode.**

Freedom of expression and access to information are vitally important, even more so during the ongoing COVID-19 pandemic. Journalists are working tirelessly on the front lines, at home, and abroad to report on a rapidly evolving global health crisis. But they are doing much more than that: **they are keeping us informed and helping us stay safe.**

A free-thinking, independent, and respected media is the cornerstone of any democracy. One cannot exist without the other. That is why Canada continues to defend press freedom and condemn all attempts to stifle the press.”

[Emphasis added]

Strong and Free: The Applicants’ Commitment to Free Expression and Press Freedom

20. The Applicants are leading advocates for free expression and press freedom in Canada.

21. Rebel News does not accept government money, unlike many of its competitors. It views this as the only way to retain its freedom of expression and strong editorial independence. For this reason, Rebel News is one of the few Canadian media outlets having the power, freedom, and will to challenge the views presented in Canada’s legacy media.

22. The Applicants have also risen to the challenges associated with seeking accountability and transparency from Canada’s federal government — a responsibility it views the legacy media as having failed or neglected.

23. Canada’s Globe and Mail newspaper recently published an opinion piece by Mr. Levant,

titled “*Press freedom applies to everyone — even The Rebel*”, wherein Mr. Levant detailed the federal government’s repeated refusals to accredit Rebel News reporters and other conservative media for press conferences and media availabilities.

24. On the eve of the 2019 official English Federal Leaders’ Debate, Rebel News obtained an emergency injunction from this Honourable Court ordering Canada’s Leaders’ Debates Commission to accredit Rebel News’ reporters, despite the Commission’s arbitrary, last-minute denial of accreditation.

Twitter — The Modern Public Square

25. Twitter is an online, interactive social media platform that allows its users to electronically send messages of limited length visible to anyone with internet access. After creating an account, a user can view other’s tweets and post their own messages on the platform (referred to as tweeting). Users may also respond to the messages of others (replying), republish the messages of others (retweeting), or convey approval or acknowledgment of another’s message by “liking” the message. All of a user’s tweets — their own and others’ — appear on a continuously-updated “timeline”, which is a convenient method of viewing and interacting with tweets.

26. Twitter currently has 192 million daily active users and is widely used by elected public officials and government agencies in Canada and around the world. It has become popular as an interactive space for elected government officials to publicize news and information, promote their views and agendas, and engage in discussion and debate with allies, political opponents and members of the electorate. On a daily basis, politicians, media personalities, social influencers, and the public turn to Twitter for real-time information and reactions to the day’s events.

27. By default, any member of the public with a Twitter account can follow or publicly interact with any Twitter user's account by quoting, replying to, or "retweeting" their tweets. However, Twitter offers two features for limiting interaction between users: "muting", which allows a user to remove another user's tweets from their timeline without unfollowing or blocking that account, and "blocking", which in addition to "muting", prevents a specific user (or users) from seeing, replying to, or otherwise interacting with a user's tweets.

28. Twitter designates and identifies those accounts that are of public interest and confirmed to be authentic using a "verified" badge.

The Twitter Accounts

29. Since April 2011, Minister Guilbeault has maintained a Twitter account using the profile name/handle, "@s_guilbeault".

30. Since May 2010, Minister McKenna has maintained a Twitter account using the profile name/handle, "@cathmckenna".

31. Unless their Twitter account has been blocked, anyone can follow the Respondents' Twitter accounts or participate in the interactive spaces associated by replying or retweeting the Respondents' tweets.

32. Ministers Guilbeault and McKenna directly or indirectly control the content of the tweets sent from these accounts and, through blocking, have the ability to prevent other Twitter users from accessing them and from participating in the interactive conversations that are associated with these accounts.

33. The Respondents' Twitter accounts are presented and operated as official government accounts and are used as official government communication channels for official purposes. The public presentation of the Respondents' Twitter accounts bear all the trappings of official, state-run accounts and the content is public in nature. Content and interactions are carefully considered, developed, prepared, reviewed, and approved by government staff in consultation with the Respondents.

34. Minister Guilbeault uses the "@s_guilbeault" account primarily in his capacity as Member of Parliament for Laurier—Sainte-Marie, Quebec, and Canada's Minister of Canadian Heritage, frequently communicating and commenting publicly on topics relating to his cabinet portfolio.

35. Minister McKenna uses the "@cathmckenna" primarily in her capacity as Member of Parliament for Ottawa Centre, Ontario, and Canada's Minister of Infrastructure and Communities, frequently communicating and commenting publicly on topics relating to her cabinet portfolio.

36. The Respondents also use their accounts to retweet tweets from federal officials, institutions, and services, and other elected officials.

37. The Respondents also use their accounts to retweet or respond to tweets from members of the public on issues of public concern or regarding the policies or political stances taken by themselves and other elected officials or candidates.

38. The Respondents' Twitter accounts are a public forum for the expression of views on public matters by the Respondents and others who wish to comment or express their opinions to others who read the Respondents' tweets on matters of public concern.

Violating the Applicants' Free Expression

39. Minister Guilbeault blocked Mr. Levant from viewing, interacting with, or responding to his tweets.

40. Minister McKenna blocked Ms. Gunn from viewing, interacting with, or responding to her tweets.

41. The Applicants' accounts remain blocked. The Applicants cannot view or respond to the Respondents' tweets and thus, their ability to engage in debate on matters of public concern has been limited.

42. These ministers chose not to utilize the less intrusive muting function, instead opting for the function that prevents Mr. Levant and Ms. Gunn from seeing, replying to, or otherwise interacting with the respective cabinet ministers' Twitter feeds.

43. Mr. Levant and Ms. Gunn are the principal and chief reporter, respectively, of Rebel News — one of Canada's most-watched news and opinion platforms. The Applicants are directly interested in, and affected by, Minister Guilbeault and Minister McKenna's public policies, activities, statements, and legislative/regulatory agenda.

44. The freedom of expression protected by section 2(b) of the *Charter* includes the derivative right to access government information where it is necessary for meaningful expression on the functioning of government and other matters of public concern.

45. The Respondents' Twitter accounts are a public digital space where individuals can express and disseminate their views on public matters, and the Respondents' actions to prohibit the

Applicants' access to their respective Twitter accounts infringes the Applicants' right to freedom of expression as protected by section 2(b).

46. The free expression of views in the public forum of the Respondents' Twitter accounts goes to the core values and purposes protected by section 2(b) of the *Charter*, namely to encourage active participation in debates on matters of public interest that have an impact on decision-making of social and political interest in a free and democratic society.

47. *Canadian Charter of Rights and Freedoms*, sections 1, 2(b) and 24(1), *inter alia*.

48. Such other grounds as counsel may advise and this Honourable Court deems just.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

49. The Affidavit of Ezra Levant, and the exhibits attached thereto, to be sworn;

50. The Affidavit of Sheila Gunn, and the exhibit attached thereto, to be sworn; and

51. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 15, 2021



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