

FEDERAL COURT

B E T W E E N:

REBEL NEWS NETWORK LTD.

Applicant

- and -

**CANADA (LEADERS' DEBATES COMMISSION/COMMISSION DES DEBATS DES CHEFS)
and THE ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF CONSTITUTIONAL QUESTION

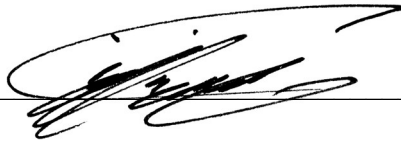
The Applicant, Rebel News Network Ltd. ("**Rebel News**"), intends to question the constitutional validity, applicability or effect of the Decision as defined in the Notice of Application filed in this action and attached hereto as **Schedule "A"**.

The question is to be argued on at a time to be determined by this Honourable Court. Rebel News requests that this action be heard on an urgent basis.

The following are the material facts giving rise to the constitutional question: (Set out concisely the material facts that relate to the constitutional question. Where appropriate, attach pleadings or reasons for decision.)

The legal basis for the constitutional question is particularized, described, and pled in the Notice of Application in the within action and attached hereto as **Schedule “A”**.

September 3, 2021





WILLIAMSON LAW

638 11 Avenue SW, Suite 200
Calgary, Alberta T2R 0E2
Phone & Fax: 587-355-3321

Chad Williamson LSA# 19668

Phone: 403-225-3567

Fax: 587-355-3321

chad@williamson.law

Counsel for the Applicant

SCHEDULE "A" TO THE NOTICE OF CONSTITUTIONAL CHALLENGE

FEDERAL COURT

T-1364-21



REBEL NEWS NETWORK LTD.

Applicant

- and -

**CANADA (LEADERS' DEBATES COMMISSION/COMMISSION DES DEBATS DES CHEFS)
and THE ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears 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 Calgary, Alberta, or as may be subsequently determined given the exigencies of the matter.

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.

Page 1 of 17

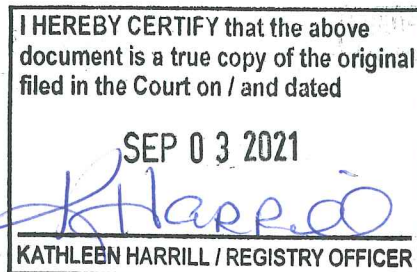
Date: September ³2, 2021

Issued by: **ORIGINAL SIGNED BY**
KATHLEEN HARRILL
A SIGNÉ L'ORIGINAL

(Registry Officer)

Address of local office:

Federal Court
Canadian Occidental Tower
635 8 Avenue SW, 3rd Floor
Calgary, Alberta T2P 3M3



TO: **THE ADMINISTRATOR**
Federal Court
Canadian Occidental Tower
635 8 Avenue SW, 3rd Floor
Calgary, Alberta T2P 3M3

AND TO: **CANADA (LEADERS' DEBATES COMMISSION/COMMISSION DES DEBATS
DES CHEFS)**
30 Victoria Street
Gatineau, Quebec K1A 0M6
info@debates-debats.ca

Respondent

AND TO: **ATTORNEY GENERAL OF CANADA**
Office of the Deputy Attorney General of Canada
Prairie Regional Office – Edmonton
Department of Justice Canada
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, Alberta

Respondent

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW of the decision of the Leaders' Debates Commission (the "**Commission**"), refusing the Applicant, Rebel News Network Ltd. ("**Rebel News**"), accreditation for its media representatives required to attend and cover ("**Accreditation**") the only official French Language General Election Federal Leaders' Debate taking place on Wednesday, September 8, 2021, and the only English Language General Election Federal Leaders' Debate taking place on Thursday, September 9, 2021 (collectively, the "**Debates**"). In response to the multiple applications of Rebel News for Accreditation of the following Rebel News journalists, Alexandra Lavoie, Abdusselam "Mocha" Bezirgan, Adam Soos, Andrew Chapados, David Menzies, Drea Humphrey, Katherine Krozonouski, Lincoln Jay, Sheila Gunn Reid, Sydney Fizzard, and Tamara Ugolini (hereinafter the "**Journalists**"), the Commission refused each application by stating, among other things or by other language having similar effect:

"I find that you do not meet the criteria in the Media Accreditation Process document and, as such, your application for media accreditation for the 2021 Leaders' Debates is denied."

(the "**Decision**").

THIS IS ALSO AN APPLICATION FOR MANDATORY INTERLOCUTORY INJUNCTIVE RELIEF and additional relief as requested herein, in conjunction with the Applicant's request for judicial review as aforesaid.

THE APPLICANT MAKES APPLICATION FOR:

1. An Order abridging the time for service of this Application and supporting materials;
2. Leave to hear this judicial review Application on an urgent basis pursuant to Rule 362(2)(b) of the *Federal Courts Rules*, SOR 98-106., and other rules as Counsel may advise and this Honourable Court permit;
3. A mandatory interlocutory injunction for an Order staying the Decision and requiring the Commission to grant the Rebel News Journalists the media Accreditation necessary and required to permit them to attend and cover the Debates;
4. An Order of *mandamus* requiring the Commission to grant the Rebel News Journalists the media Accreditation necessary and required to permit them to attend and cover the Debates;
5. In the alternative, an Order of *certiorari* quashing the Decision of the Commission and replacing it was an Order granting the Rebel News Journalists Accreditation to attend and cover the Debates;
6. In the alternative, an Order of *certiorari* quashing the Decision and remitting the matter back to the Commission with a direction that the Commission grant Rebel News Accreditation to attend and cover the Debates;
7. A Declaration that the Commission acted arbitrarily, capriciously, unfairly, unreasonably, and unlawfully in making the Decision by violating the principles of procedural fairness, breaching Rebel News' and the Journalists' right of freedom of expression, by demonstrating actual or apprehended bias, and by applying different criteria for Accreditation to Rebel News than applied to other media organization and/or intentionally failing and refusing to apply the same criteria to other media organizations or their representatives;
8. A Declaration that the Commission acted arbitrarily, capriciously, unfairly, unreasonably, and

unlawfully in refusing to grant Rebel News Accreditation for allegedly being involved in advocacy and/or for alleged conflict(s) of interest, while granting other media outlets and representatives Accreditation who are involved in advocacy and/or who have clear conflict(s) of interest;

9. A Declaration that the Commission breached Rebel News' legitimate expectations that the Commission would review and consider its application in a fair and transparent manner unencumbered by political bias and/or any other bias whatsoever;
10. A Declaration that the Commission breached the vested rights of Rebel News to have its application considered in a fair and transparent manner unencumbered by political bias and/or any other bias whatsoever;
11. A Declaration that the Commission did not follow its own processes, procedures, protocols, or the Order in Council (defined below) which created the Commission;
12. In the alternative, a Declaration that the Commission's processes, procedures, and protocols, created by the Commission, were specifically crafted, drafted, implemented, and applied in such a manner to predetermine the Decision in the sole respect of Rebel News and are therefore invalid;
13. In the alternative, a Declaration that the Commission's processes, procedures, and protocols, created by the Commission, are inconsistent and incompatible with the intent of the Order in Council;
14. A Declaration pursuant to section 24(1) of the *Charter of Rights and Freedoms* or Section 52(1) of the *Constitution Act, 1982*, or both, that the Decision is unreasonable because it disproportionately limits or violates the Applicant's constitutionally protected rights and freedoms with respect to freedom of expression and freedom of the press pursuant to section 2(b) of the *Charter of Rights and Freedoms*;

15. A Declaration pursuant to section 24(2) of the *Charter of Rights and Freedoms* or Section 52(1) of the *Constitution Act, 1982*, or both that the Applicant's section 2(b) rights were infringed and the infringements are not saved by section 1 of the *Charter of Rights and Freedoms*.
16. A Declaration that the Decision is unreasonable because it violates the rights afforded to the Applicant pursuant to sections 1(f) of the *Canadian Bill of Rights*.
17. An Order directing the Commission to provide a copy of the complete record of the decision-making process leading up to, and including, the Decision, and especially any records not yet provided to Rebel News, but which are material and relevant to this action, including but not limited to:
- a) The criteria used in making decisions upon on which media representatives should receive Accreditation;
 - b) Any and all materials relied upon in making the Decision;
 - c) Emails or other forms of correspondence between members of the Commission regarding the Decision, including but not limited to all correspondence, memorandum, internal communications, communications with third parties, recordings, meeting minutes, and records of any kind relating to Rebel News and the Debates;
 - d) A tally of the vote of the members of the Commission and records of pertaining to the actual Decision itself;
 - e) The nature of involvement, title, and role of any third parties who are not part of the Commission in the decision-making process and the impact and those individuals had in the decision-making process and the Decision;
 - f) Any other documents or records relied upon or referenced in the decision-making process or in arriving at the Decision itself whatsoever and non-exhaustively; and
 - g) The production of any further and other records materially relevant to this action.

18. An Order directing the Commission to advise when the Decision was made, given that it was conveyed four (4) business days before the Debates, thereby delaying, hindering, and obstructing any meaningful opportunity to appeal, or seek judicial review, of the Decision;
19. An Order directing the Commission — whose objectives are increased transparency — to release a list of those that received Accreditation, and confirm that none are involved in any type of advocacy, conflict of interest, or any other criteria or characteristics as applied to Rebel News in the reasoning for denial of Accreditation to Rebel News;
20. An Order allowing Rebel News to amend pleadings, due to the strict time constraints to which Rebel News finds itself subject;
21. A Declaration or an Order granting the Applicant Public Interest Standing;
22. Costs of this Application; and
23. Such other and further relief as Counsel may advise and this Honourable Court deems meet and just given the circumstances.

THE GROUNDS OF THE APPLICATION ARE:

The Parties

24. 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.
25. 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.

26. Rebel News has been granted media accreditation by governments around the world, including Alberta, the United Nations, the United States (both the White House and Congress), the United Kingdom, the European Union, Sweden, the Netherlands, Israel, Poland, and India. Rebel News has also been granted accreditation in partly-free countries such as Iraq and Morocco.
27. 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.
28. The Commission is a body created by an Order in Council [PC Number: 2018-1322] dated October 29, 2018 (the "**Order in Council**") and as amended by Order in Council [PC Number: 2020-11-05], which did not drastically alter the Commission's mandate nor modify the qualification criteria for media.
29. According to Paragraph 1 of the Order in Council, the Commission consists of the Debates Commissioner, the Advisory Board, and the Secretariat.
30. According to Paragraph 2 of the Order in Council, the mandate of the Commission is to:
 - a) Organize one leaders' debate in each official language during each general election period;
 - b) Ensure that the leader of each political party meet two enumerated criteria listed in Paragraph 2 to be invited to participate in the Debates;
 - c) Ensure that the Debates are broadcast and otherwise made available in an accessible way to persons with disabilities;
 - d) Ensure that the Debates reach as many Canadians as possible, including those living in remote areas and those living in official language minority communities through a variety of media and other fora;

- e) Ensure that the Debates are broadcast free of charge, whether or not the broadcast is live;
- f) Ensure that any reproduction of the Debates is subject to only the terms and conditions that are necessary to preserve the integrity of the debates;
- g) Ensure that high journalistic standards are maintained for the Debates;
- h) Undertake an awareness raising campaign and outreach activities to ensure that Canadians know when, where and how to access the Debates; and,
- i) Provide advice and support in respect of other political debates related to the general election, including candidates' debates, as the Debates Commissioner considers appropriate.

31. Significantly, the Order in Council provides at Paragraph 4 that in fulfilling its mandate, the Commission is to be guided by the “pursuit of the public interest” and by the principles of independence, impartiality, credibility, democratic citizenship, civic education, inclusion and cost-effectiveness.” Critically, the Order in Council makes no mention at all of “advocacy” or involvement therein by media organizations or representatives, and certainly does not reference “advocacy” as a bar to media participation. Likewise, the Order in Council makes no mention of crowdfunding, involvement in litigation, and other characteristics attributed to Rebel News by the Commission and used as reasoning and justification for the Decision.

The 2019 Leaders’ Debate Proceedings

32. During the Leaders’ Debate of 2019 (the “**2019 Debates**”), Rebel News was purposely and arbitrarily excluded.

33. The Commission provided Rebel News with notice of denial of Accreditation on the eve of the 2019 Debates so as to prevent Rebel News from effectively bringing legal proceedings to challenge the decision to exclude them from those debates infringing on the fundamental principles of procedural fairness and justice.

34. Rebel News filed a judicial review in this Honourable Court (Federal Court File Number T-1631-19) seeking, *inter alia*, mandatory injunctive relief for an order enjoining the Commission to grant Rebel News accreditation. Hereinafter, litigation arising from legal proceedings commenced by Rebel News against the Commission and the results and decision thereof shall be referred to as the “**2019 Legal Proceedings**”.
35. The Commission opposed the application in the 2019 Legal Proceedings.
36. This Honourable Court granted Rebel News an Order giving them accreditation at the 2019 Debates ruling that the Commission’s decision lacked discernible rationality and logic and were not justified or intelligible and that the record didn’t support the Commission’s rationale for excluding those involved in advocacy. This Honourable Court also noted the inconsistent methodology employed by the Commission — granting accreditation to other media organizations who appeared to also engage in advocacy and who endorsed specific candidates and parties in general elections. This Honourable Court also opined on the Commission’s lack of transparency in the decision-making process.

The Application Process

37. On or about August 16, 2021, the Commission published a press release inviting media representatives to apply for accreditation for the Debates. The press release also provided instructions to media representatives who wished to cover the debates, noting that they must apply for accreditation by sending an email to mediaaccreditation@debates-debats.ca. The period during which media representatives would be allowed to apply for Accreditation spanned ten (10) days, closing at 23:59 EDT on August 25, 2021 (the “**Application Process**”).
38. On the ‘Media Accreditation for the 44th General Election’ portion of the Commission’s website (the “**Accreditation Page**”), the Commission purports to have adopted the Canadian

Association of Journalists ("CAJ") guidelines on conflict of interest (the "**Standards**"). The Accreditation Page states that the Commission will rely on the Standards in evaluating accreditation applicants.

39. A mandate or power to evaluate media accreditation applications is *ultra vires* the Order in Council.

40. By imposing the Standards, the Commission is attempting to regulate the media industry and profession. It is not the mandate of the Commission to regulate the journalistic profession or establish minimum standards for the practice.

41. The Application Process for the Debates was new and was not the process used during the Leaders' Debates in 2019. Rebel News states, and the fact is, the Commission created the Application Process specifically to exclude Rebel News from the Debates. This amounts to the Commission taking a "mulligan" to unlawfully reverse the finding in the 2019 Legal Proceedings. The Application Process crafted by the Commission had three mechanisms by which an applicant could seek Accreditation (the "**Three Accreditation Classes**"):

- a) Option 1 - Any media representative that is a member of the Canadian Parliamentary Press Gallery would receive automatic accreditation;
- b) Option 2 - Any media representative that is a member of one of the following four (4) professional media organizations would receive automatic accreditation:
 - i. Canadian Association of Journalists (CAJ);
 - ii. National NewsMedia Council (NNC);
 - iii. Conseil de presse du Québec (CPQ); and
 - iv. Fédération professionnelle des journalistes du Québec (FPJQ); or
- c) Option 3 - Any media representative that is not a member of the aforementioned organizations could submit a letter of assignment, evidence of the applicant's journalistic

endeavours and work, identification, and links to information about the media organization to which the journalist belongs and the applicant would be considered for Accreditation by the Commission.

42. The Three Accreditation Classes are arbitrary and offended the rules of procedural fairness as they do not possess equal standards. The qualification standards required under Option 3 are unfairly restrictive, prohibitive, and antagonistic, and eclipse the standards of the organizations listed in Options 1 and 2. Moreover, the imposition of such standards is outside the mandate of the Commission. It is conceivable and plausible that any of the media organizations accredited under Option 1 or 2, could be denied Accreditation under Option 3. Moreover, as media organizations falling under Option 1 or Option 2, by virtue of receiving automatic Accreditation, were not scrutinized or given any further consideration by the Commission. Other media organizations were not subjected to the same standards as those under Option 3. This runs contrary to the Commission's stated aim of holding media organizations to the highest standards, especially if the standards of automatically accredited organizations were not even evaluated. Alternatively, if standards differed or were not equally and unilaterally applied to all media organizations in kind, it amounts to manifest unfairness and demonstrates the bias of the Commission which has not been adequately justified.

43. On or about August 24, 2021, for each Journalist, Rebel News submitted an application for accreditation in accordance and in compliance with the Application Process.

44. On or about August 31, 2021, by way of letters specific to each Journalist (the "**Rejection Letters**"), the Commission rejected every Journalist for which Rebel News had applied for Accreditation through the Application Process. The Commission conveyed the rejection of Rebel News' Accreditation only four (4) business days before the Debates, thereby delaying, hindering, and obstructing any meaningful opportunity to appeal, or seek judicial review, of the

Decision;

45. Reasons for the Decision given by the Commission in the Rejection Letters, included but were not limited to the following:

- a) The Commission relied on the CAJ guidelines and principles of responsible and ethical journalism and in respect of conflicts of interest and would apply those guidelines to its evaluation of applicants;
- b) The Commission declared that applicants falling under Option 1 and Option 2 were automatically eligible for accreditation, as membership in one of the listed organizations satisfied the principles of responsible and ethical journalism consistent with the standards of standards of professional journalism, including the absence of conflict of interest as defined by the CAJ and as adopted by the Commission;
- c) The Commission was required to review applicants falling under Option 3 to ensure their reporting was free of conflicts of interest defined by the CAJ and as adopted by the Commission;
- d) The Commission decided that because Rebel News engaged in crowdfunding, it had a conflict of interest;
- e) The Commission decided that because Rebel News engaged in legal activities and litigation, it had a conflict of interest;
- f) The Commission decided that because Rebel News engaged in organizing petitions, it had a conflict of interest; and
- g) The Commission decided that because Rebel News had filed formal complaints in respect of matters reported on, Rebel News had a conflict of interest;
- h) The Commission declared that it does not evaluate the opinions of journalists or a editorial policy, it is concerned with whether a journalist or media organization acts as an active

participant in stories they cover;

- i) The Commission declared that it will not accredit journalists and organizations who breach the CAJ's code of ethics with respect to conflicts of interest;
- j) The Commission acknowledged that the Decision impacted the freedom of expression of Rebel News; and
- k) The Commission declared that if it did not enforce its conflict of interest criterion it would bring the Commission and Debates into disrepute.

46. The Commission does not possess authority to decide on matters of law or fact, or mixed law and fact. The Commission "finding" that Rebel News has breached the CAJ guidelines and principles is *ultra vires* its statutory purpose and powers. The question of whether Rebel News has breached any guidelines or principles is not within its mandate provided for by the Order in Council.

47. The CAJ, upon whose guidelines the Commission relied in arriving at the Decision, has itself stated:

"The CAJ also supported Rebel News' access to the federal Leadership Debates in 2019 because the Leaders' Debate Commission was not transparent in its accreditation process and waited until the last business day to issue its decision, and had no appeal process. Further, we objected to a government body using the Canadian Association of Journalists' ethics guidelines to try to define who is a journalist."

48. The Commission breached the Applicant's procedural, natural, and substantive rights and acted in an capricious, unfair, unreasonable, unlawful, and arbitrary manner by:

- a) Arbitrarily and intentionally singling out Rebel News and its Journalists for purposeful exclusion from the Debates;
- b) Failing to provide adequate reasons, and/or in the alternative, providing contradictory, illogical, unreasonable, and capricious reasoning which was applied arbitrarily to Rebel

News;

- c) Failing to provide reasonable criteria for Accreditation;
- d) Breaching the duty of fairness owed to Rebel News;
- e) Failing to apply criteria equally to all media representatives during the Application Process;
- f) Intentionally adopting and/or crafting criteria geared specifically to exclude Rebel News and reject applications for the Journalists and Rebel News to attend the debates;
- g) Infringing on Rebel News' rights of freedom of expression and freedom of the press under the Charter of Rights and Freedoms and the Canadian Bill of Rights;
- h) Failing to properly assess the credentials of the Applicant;
- i) Conspiring, colluding, and/or otherwise preparing in advance for Rebel News to submit media representatives for Accreditation with the purpose and intent of denying Accreditation;
- j) Denying Rebel News and its Journalists Accreditation as punishment, retribution, and penalty for the 2019 Legal Proceedings;
- k) Allowing partisan politics to infiltrate and taint the Commission's review process;
- l) Granting other media representatives that are clearly "actively involved in advocacy" and/or other forms of "conflict of interest" as defined by the Commission in the Rejection Letters;
- m) Providing Rebel News with justifications that were illogical, irrational, contradictory, unfair, biased, paradoxical, circular or otherwise antithetical;
- n) Failing to provide any mechanism whatsoever for appeal or review of the Decision;
- o) If Rebel News has a conflict of interest, which is denied, the Commission intentionally and/or with improper purpose specifically provided *carte blanche* Accreditation to other media representatives from other organizations whose conduct is identical or similar to that of Rebel News; and

p) Such other and further capricious, unfair, unreasonable, unlawful, and arbitrary manners as will be proved at adjudication of this action.

49. Rebel News states, and the fact is, “journalistic independence” as described by the Order in Council is inconsistent with the imposition of the Commission’s, or anyone else’s, unfair standards upon media representatives. By imposing unfair, inconsistent, and ambulatory standards, the Commission has distorted the very notion of journalistic independence — especially given that the Commission is a government organization, has given *carte blanche*, automatic accreditation to media organizations who receive government funding, and have purposely excluded Rebel News, who is not subsidized by the government and often takes a critical view of the same.

50. The imposition of these standards amounts to an attempt to regulate the media industry and profession. It is not the mandate of the Commission to regulate the journalistic profession or establish minimum standards for the practice.

51. The Decision was conducted in bad faith for the sole purpose to deny Rebel News access to the Debates. It is *ultra vires* for a delegate to exercise its discretion for some unauthorized or ulterior purpose.

52. Rebel News pleads and relies on Section 18.1 of the Federal Courts Act RSC 1985, c F-7 and the following:

- a) *Canada Act 1982 (UK)*, 1982, c 11, including the Canadian Charter of Rights and Freedoms;
- b) *Canadian Bill of Rights*, S.C. 1960, c 44; and
- c) Such further and other acts and regulations, as amended, which Counsel may advise and this Honourable Court permit given the circumstances.

53. The Applicant pleads and relies on grounds as more specifically set out and particularized in the

Affidavit(s) filed in support of the within Application.

54. Such other grounds as Counsel may advise and this Honourable Court deems just.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

55. The Affidavit of Ezra Levant and the exhibits thereto;

56. Further Affidavits, exhibits thereto, and other materials as shall be filed by the Applicant in the within action prior to and throughout adjudication of this matter; and

57. Such further and other materials as Counsel may advise and this Honourable Courts allows given the circumstances of this matter.

September 2, 2021



WILLIAMSON LAW

638 11 Avenue SW, Suite 200
Calgary, Alberta T2R 0E2
Phone & Fax: 587-355-3321

Chad Williamson LSA# 19668
Phone: 403-225-3567
Fax: 587-355-3321
chad@williamson.law

Counsel for the Applicant