

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

**MEMORANDUM OF FACT AND LAW OF THE APPLICANT,
REBEL NEWS NETWORK LTD.**

September 5, 2021



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I. OVERVIEW AND FACTS

Overview

1. The Applicant and Moving Party, Rebel News Network Ltd. (“**Rebel News**”), brings this motion on an urgent basis to request, *inter alia*, an interlocutory injunction for an order requiring the Respondent, Canada (Leaders’ Debates Commission / Commission Des Debats Des Chefs) (the “**Commission**”) to grant Rebel News media representative accreditation (“**Accreditation**”) to cover 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**”).
2. The entirety of the denial of Accreditation was outlined in eleven nearly identical response letters to all applications, signed by David Johnston, Commissioner, Leaders’ Debate Commission, denying the accreditation for all eleven Rebel News journalists (the “**Decision**”).
3. The Decision was conveyed to Rebel News after business hours on Tuesday, August 31, 2021 — thereby prohibiting any meaningful opportunity to request reconsideration of the Decision, negotiate a resolution, bring a judicial review application in advance of the Debates, or bring this motion with more notice to the Respondents or to the Court.
4. Rebel News has been singled-out and subjected to arbitrary Accreditation guidelines (the “**Guidelines**”) newly forged by the Commission with the intent to exclude Rebel News from the Debates.¹

¹ Affidavit of Ezra Levant at paragraph 54, MR, Tab 2

5. There is a strong likelihood that Rebel News will ultimately be successful in establishing the allegations set out in its judicial review application. There is a serious issue to be tried and a strong *prima facie* case.
6. Rebel News will suffer irreparable harm if it is not granted Accreditation by way of an interlocutory injunction requiring the Commission to grant Rebel News Accreditation to attend the Debates, and the harm and prejudice cannot be compensated for by costs or damages, as granting media access to the Debates is an immeasurably important part of a fair and free election process. The balance of convenience also greatly favours granting the injunctive relief sought.
7. For the reasons set out below and elaborated upon in oral argument, the relief sought in this motion ought to be granted

Facts

Rebel News

8. Rebel News is a federally incorporated company, carrying on business as a popular online news and media company operating across Canada and around the world. 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.²
9. 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

² Affidavit of Ezra Levant at paragraphs 12 - 13, Motion Record of Rebel News ("MR"), Tab 2.

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.³

10. Rebel News strives for freedom of speech both for itself and for those with whom it disagrees.⁴ It believes any and every idea ought to be open to criticism and debate.⁵ Unlike many of its competitors, Rebel News does not take money from any government.⁶ It believes this is the only way to retain its unfettered freedom of expression and editorial independence. For this reason, Rebel News is one of the few Canadian media outlets having the power, freedom, and reach to challenge the views presented by Canada's legacy media.⁷

The Commission and its Mandate

11. The Commission was created by Order in Council PC 2018–1322 (the “**Order in Council**”), as an independent body whose first mandate is to “organize one leaders’ debate in each official language during the general election period.”⁸
12. Significantly, the Order In Council states 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.**”⁹

³ Affidavit of Ezra Levant at paragraph 22, MR, Tab 2.

⁴ Affidavit of Ezra Levant at paragraph 13, MR, Tab 2

⁵ Affidavit of Ezra Levant at paragraph 14, MR, Tab 2

⁶ Affidavit of Ezra Levant at paragraph 24, MR, Tab 2

⁷ Ibid.

⁸ Affidavit of Ezra Levant, Exhibit 28, section 2(a), MR, Tab 2.

⁹ Supra, section 4.

13. The mandate of the Commission was slightly amended by Order in Council 2020-0871 and added that the Commission “provide final approval of the format and production of the leaders’ debates, while respecting journalistic independence.”¹⁰
14. Neither the Order In Council nor the 2020 amendment make any reference to media accreditation or organizing and regulating media scrums after the debate. But the 2018 Order In Council does contain several statements concerning the broadcasting of debates, the aim of making them accessible to as many Canadians as possible, and ensuring that high journalistic standards are maintained for the leaders’ debates.

The 2019 Leaders’ Debate Court Proceedings

15. During the Leaders’ Debate of 2019 (the “**2019 Debates**”), Rebel News was purposely and arbitrarily excluded by the Commission in a high-handed manner.
16. 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 the 2019 Debates infringing on the fundamental principles of procedural fairness and justice.
17. 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**”.
18. The Commission opposed the application in the 2019 Legal Proceedings.

¹⁰ Affidavit of Ezra Levant, Exhibit 29, section (c), MR, Tab 2.

19. This Honourable Court granted Rebel News an Order giving them accreditation at the 2019 Debates and in its Reasons for Order¹¹ (the “**2019 Court Decision**”). The Court ruled that the Commission’s decision lacked discernible rationality and logic and was not justified or intelligible and that the record didn’t support the Commission’s rationale for excluding those involved in advocacy.¹² 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.¹³ This Honourable Court also opined on the Commission’s lack of transparency in the decision-making process.¹⁴

The Accreditation Application Process and the Denial

20. On or about August 16, 2021, the Commission published a press release (the “**Announcement**”) inviting media representatives to apply for the 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 prior to the prescribed deadline (the “**Accreditation Process**”). 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, 2021.¹⁵

21. Rebel News applied on behalf of its eleven journalists.¹⁶

¹¹ *Lawton v Canada (Leaders’ Debates Commission)*, 2019 FC 1424 [*Lawton*].

¹² *Lawton*, supra, at paragraphs 32 - 33.

¹³ *Lawton*, supra, at paragraphs 35 - 38.

¹⁴ *Lawton*, supra, at paragraph 38.

¹⁵ Affidavit of Ezra Levant, at paragraph 44.

¹⁶ Affidavit of Ezra Levant, at paragraph 4 - 5, 48 & Exhibits 2 - 12

22. After business hours on August 31, 2021, by way of the Rejection Letters specific to each Journalist, the Commission rendered the Decision and rejected every Journalist for which Rebel News had applied for Accreditation through the Application Process.¹⁷
23. Rebel News retained counsel immediately to bring the within judicial review application and urgent motion.¹⁸

II. STATEMENT OF ISSUES

24. The issue before this Honourable Court is whether the mandatory interlocutory injunction sought by Rebel News should be granted.
25. For the reasons below, Rebel News submits that a mandatory interlocutory injunction ought to be granted.

III. STATEMENT OF SUBMISSIONS

a. Should the Court Entertain these Motions?

26. Rebel News moves under Rule 362(2)(b) of the *Federal Courts Rules*, SOR/98-106, for Special Leave for Short Notice.
27. It is in the best interest of justice that the motion be heard on an urgent basis.
28. The Applicant was issued the Decision at the end of business day on August 31, 2021, a mere four (4) business days, including a long-weekend, before the first scheduled debate.¹⁹

¹⁷ Affidavit of Ezra Levant at paragraphs 7 and 49, Exhibits 13-23, MR, Tab 2

¹⁸ *Lawton*, supra, at paragraph 49.

¹⁹ Affidavit of Ezra Levant, at paragraph 9 & 49, MR, Tab 2.

29. The Applicant moved as fast as possible to bring this action forward by retaining Counsel.²⁰
30. Counsel for Rebel News filed and served the Notice of Application on September 4, 2021, and the Notice of Motion was served and filed on September 4, 2021.
31. The Respondents should not have been caught by surprise, they initiated the conduct that is the subject and gave rise to this action.
32. Just as in the 2019 Debates, Rebel News sought immediate Court relief following the rejection of Accreditation and the Respondents should have expected the same response by the Rebel News.
33. If the mandatory injunction is granted, the Respondents will not experience an adverse effect. In fact, Rebel News attended the 2019 Debates to much acclaim to their viewership, asking well-reasoned, timely, and important questions during the media scrum.²¹ If the Court grants Rebel News the relief sought, it will simply attend the Debates and participate in the media scrum as it did in 2019. Should the Court grant the relief requested, it should have little, if any, effect on the Respondent who is undoubtedly expecting hundreds of media representatives to attend the Debates.
34. Therefore, the Respondents are not prejudiced.
35. This Honourable Court has previously found that an urgency to hear a nearly identical motion existed, with extremely similar facts and identical parties.²²
36. Rebel News submits that this Honourable Court should exercise its discretion in hearing this motion.

²⁰ Affidavit of Ezra Levant, at paragraph 50, MR, Tab 2.

²¹ Affidavit of Ezra Levant, at paragraph 19, MR, Tab 2.

²² *Lawton*, supra, at paragraph 20.

b. Should the Court grant the relief sought?

37. The test for a mandatory interlocutory injunction was set out by the Supreme Court of Canada (the “SCC”) in *R v Canadian Broadcasting Corp*:

In sum, to obtain a mandatory interlocutory injunction, an applicant must meet a modified *RJR — MacDonald* test, which proceeds as follows:

(1) The applicant must demonstrate a strong *prima facie* case that it will succeed at trial. This entails showing a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice;

(2) The applicant must demonstrate that irreparable harm will result if the relief is not granted; and

(3) The applicant must show that the balance of convenience favours granting the injunction.²³ [emphasis in original]

38. Given that the relief sought is discretionary in nature, and provided that Rebel News meets the tri-partite test, the “fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case.”²⁴

c. Is there a strong *prima facie* case?

39. In *R v CBC* the SCC provided guidance as to what constitutes a strong *prima facie* case:

[There] is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a *strong likelihood* on the law and

²³ *R v Canadian Broadcasting Corp.*, 2018 SCC 5 [*R v CBC*], at para 18.

²⁴ *Google Inc v Equustek Solutions Inc*, 2017 SCC 34, at para 25

the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.²⁵ [emphasis in original]

The Procedural Fairness of the Process

40. The seminal case on the application and scope of procedural fairness in administrative decision-making is the SCC case of *Baker v Canada (Minister of Citizenship and Immigration)*.²⁶
41. The SCC in *Baker* noted that the “fact that a decision is administrative and affects “the rights, privileges or interests of an individual” is sufficient to trigger the application of the duty of fairness.”²⁷ The interests of Rebel News, whose eleven journalists were all denied Accreditation, is certainly affected by the Decision, and thus is sufficient to trigger the duty of fairness.
42. In considering the application of the duty of fairness, the SCC in *Baker* held that “the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected.”²⁸
43. The SCC then went on to identify five factors that a court ought to consider when determining the content of the duty of fairness in a particular case. This non-exhaustive list includes:
- a. The nature of the decision being made and the process followed in making it;
 - b. The nature of the statutory scheme and the terms of the statute pursuant to which the decision-maker operates;

²⁵ *R v CBC*, at paragraph 17.

²⁶ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [***Baker***].

²⁷ *Baker*, at paragraph 20.

²⁸ *Baker*, at paragraph 22.

- c. The importance of the decision to those affected;
 - d. The legitimate expectations of those challenging the decision regarding the procedures to be followed or the result to be reached; and
 - e. The choices made by the decision-maker regarding the procedure followed.²⁹
44. Ultimately, the SCC emphasized that “underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.”³⁰
45. It is important to note that while the CAJ stated that the conduct of Rebel News, in its opinion, “places Rebel News outside the definition the CAJ uses to distinguish our membership”.³¹ This definition is exclusive to CAJ’s membership definition and does not represent an agreed upon definition of journalists.
46. The Commission did not meet the standard for the duty of procedural fairness owed.

The Duty of Fairness in Making Accreditation Decisions

47. Taking lessons from its shortcomings in 2019, specifically those identified in the 2019 Court Decision, the Commission had adopted and published the Guidelines that it would use as criteria for evaluating applicants under Option 3. Additionally, the Commission issued eleven-page rejection letters to all of the Rebel News applicants³² to ensure an

²⁹ *Baker*, at paragraphs 23 - 27.

³⁰ *Baker*, at paragraph 22.

³¹ Affidavit of Ezra Levant, Exhibit 36, MR, Tab 2.

³² Affidavit of Ezra Levant, Exhibits 13 - 23

appearance of discernible rationality and logic, and that the rejection is both justified and intelligible.

48. There is a clear lack of uniformity within the Accreditation criteria. Membership in the Canadian Parliamentary Press Gallery, under Option 1, or the four associations prescribed in Option 2, meant automatic Accreditation and circumvention of the need to be evaluated against the Guidelines.³³

49. According to the the requirements, an applicant must provide under Option 3:

- a. A letter of assignment, identifying that the applicant is assigned to the leaders' debates, that is signed and dated by their assignment editor/authorized editor/publisher (PDF format). This letter should include information on reach and audience (print circulation, radio/television audience, digital audience/website traffic/social media/website subscribers); and
- b. Media organization website link, identifying that they contribute or belong to a media organization that either produces original news content related to coverage of Canadian/international political news or covers political, social and policy issues, and whose content is updated each week;
- c. Six recent news articles/reports within the last six months under their byline, identifying that journalism is their regular activity; and
- d. A passport size photo (JPEG format).³⁴

50. There is no mechanism in the application process to address any perceived conflicts of interest.

³³ Affidavit of Ezra Levant, at paragraph 47 & Exhibit 32, MR, Tab 2

³⁴ Affidavit of Ezra Levant, Exhibit 32, MR, Tab 2.

51. Nor is there an opportunity during the evaluation or upon receiving a rejection letter provided by the Commission to address any shortcomings.³⁵
52. Further, it is evident from the Decision that at the discretion of the Commission, any assessed conflict of interest is an automatic bar to Accreditation.³⁶ It is unclear if this discretion was applied uniformly in evaluating all the applicants under Option 3.
53. Finally, there is no appeal process embedded in the Accreditation process or the Decision.³⁷

The Commission Failed in Fulfilling its Mandate

54. The Commission's actions amount to an attempt to regulate or define who is a journalist.
55. The Canadian Association of Journalists (the “CAJ”) press release provided a warning to the Commission when it referenced the 2019 Debate and the related 2019 Court Decision, wherein the CAJ stated that “we objected to a government body using the Canadian Association of Journalists' ethics guidelines to try to define who is a journalist.”³⁸
56. 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.”³⁹
57. The Commission has, as in 2019, failed to fulfill its mandate by:⁴⁰
- a. Ignoring the public interest by excluding the millions of Canadians who rely on Rebel News to provide them with reporting, coverage, and commentary on political affairs and current events in Canada;

³⁵ Affidavit of Ezra Levant, Exhibits 13 - 23

³⁶ Affidavit of Ezra Levant, Exhibits 13 - 23 & 32, MR, Tab 2.

³⁷ Affidavit of Ezra Levant, at paragraph 55 & Exhibits 13 - 23 & 32, MR, Tab 2.

³⁸ Affidavit of Ezra Levant, Exhibit 36, MR, Tab 2.

³⁹ Affidavit of Ezra Levant, Exhibit 4, section 4, MR, Tab 2.

⁴⁰ Affidavit of Ezra Levant, paragraph 29, MR, Tab 2.

- b. Failing to exercise independence by relying on the CAJ Ethics Guidelines (the “**CAJ Ethics Guidelines**”), as described in the Affidavit of Ezra Levant;
 - c. Failing to exercise impartiality by creating two arbitrary, distinct classes of applicants for Accreditation;
 - d. Failing to adhere to the principle of inclusion by expressly excluding Rebel News, the Journalists, and millions of Canadians who rely on Rebel News to provide them with reporting, coverage, and commentary on political affairs and current events in Canada; and
 - e. Failing to adhere to any cost-effectiveness, but choosing to force Rebel News to seek costly and resource-demanding judicial review twice, as particularized herein, rather than simply allow Rebel News to attend, cover, and report on the Debates, which would have presented absolutely no harm to the Commission.
58. The Commission has stated that “making an informed decision is part of a thriving democracy”,⁴¹ but by excluding Rebel News, the Commission is effectively stripping millions of Canadians of their right, in a country which cherishes freedom of expression and freedom of the press, to obtain information from the media organization of their choosing. By preventing Rebel News from participating in the Debates and the media scrum, the Commission is effectively silencing a significant number of Canadians. Such behaviour offends the spirit of democracy.
59. Moreover, the Commission has failed in its mandate to respect journalistic independence by purposely excluding one of the most prominent independent media organizations in the country.⁴²

⁴¹ Affidavit of Ezra Levant, paragraph 30, MR, Tab 2.

⁴² Affidavit of Ezra Levant, paragraph 13-24, MR, Tab 2.

The Guidelines are Arbitrary and Capricious

60. The Guidelines were meant to target and prejudice Rebel News.⁴³
61. The Commission created two very distinct, disparate, and unequal classifications of media organization applicants: those who would receive *carte blanche*, automatic Accreditation to cover the Debates by simple virtue of being members of particular and arbitrary groups (the “**Grandfathered Legacy Media**”), and Rebel News, who was subjected to poorly applied, irrational Guidelines, whom the Grandfathered Legacy Media fail to meet, but for their automatic exclusion from evaluation by the Commission.⁴⁴
62. In fact, the Grandfathered Legacy Media has a marked track record of engaging in identical or similar activities to Rebel News, at best, and activities of a dubious and unethical nature, at worst.⁴⁵

The Reasonableness of the Decision

63. The SCC has stated that an unreasonable decision lacks justification, transparency, or intelligibility.⁴⁶ While the Commission continues to allege that the Rebel is engaged in advocacy, as they did in 2019,⁴⁷ the Commission has now peppered allegations of conflicts of interest into the Decision. Despite clear evidence on the record the Grandfathered Legacy Media’s abounding conflicts of interest,⁴⁸ it remains unclear why only Rebel News was targeted for exclusion by the Commission — or what editorialism,

⁴³ Affidavit of Ezra Levant, paragraph 51-52, MR, Tab 2.

⁴⁴ Affidavit of Ezra Levant, paragraph 41-60, MR, Tab 2.

⁴⁵ Affidavit of Ezra Levant, paragraph 61-63, MR, Tab 2.

⁴⁶ *Dunsmuir v New Brunswick*, 2008 SCC 9 at 47.

⁴⁷ *Lawton*, supra at 32 and 33.

⁴⁸ Affidavit of Ezra Levant, paragraph 61-63, MR, Tab 2.

crowdfunding, or the other allegations of the Commission have any relevance to a media organization attending and covering the Debates and participating in the media scrum.

64. Moreover, deciding who is and who is not a journalist is not within the mandate or function of the Commission. In fact, this Honourable Court stated the following in relation to the Commission's mandate to uphold high journalistic standards: "it is obvious that the high journalistic standards relates to the actual period of face-to-face debate and does not include the scrum which follows it".⁴⁹

65. While the Commission has attempted to craft new mechanisms to side-step this Court's ruling in 2019 on the reasonableness of the Decision, the Decision is patently unreasonable, especially in light of the circumstances of this case.

Bias

66. The conduct of the Commission raises an issue of reasonable apprehension of bias.

67. The SCC in *Baker* held that procedural fairness "also requires that decisions be made free from a reasonable apprehension of bias by an impartial decision-maker."⁵⁰

68. The test for reasonable apprehension of bias is:

. . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . [T]hat test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter

⁴⁹ *Lawton*, supra at 34.

⁵⁰ *Baker*, supra, at 45.

through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.⁵¹

69. The Commission has previously attempted to deny Rebel News Accreditation⁵² and it is actively attempting to once again refuse to grant the Accreditation.

70. In formulating the Guidelines and defining “conflict of interest”, the Commission referenced and quoted an opinion piece by the CAJ in which the CAJ stated:

In reviewing the evolution of the Rebel News, it is clear the organization sometimes becomes an actor in the stories it tells. To date, this has taken several different forms, but includes providing financial and legal assistance to some of its sources. Rebel News for example, crowdfunds to help some individuals in its stories hire lawyers. It also purchases political advertising, and launches petitions; including, most recently, fundraising to hire a plane to fly through the skies while carrying a #FireMorneau sign. It has also offered free legal services to “non-violent Canadians” who disassemble blockades. Earlier this summer, as well, the organization launched a petition demanding Ontario Premier Doug Ford keep summer camps open.

...

This places Rebel News outside the definition the CAJ uses to distinguish our membership.⁵³

71. The Commission’s definition of conflict of interest is:

According to the CAJ, there is a conflict of interest:

⁵¹ *Baker*, supra, at 46 quoting *Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at p. 394.

⁵² Affidavit of Ezra Levant, at paragraphs 32 - 39, MR, Tab 2.

⁵³ Affidavit of Ezra Levant, Exhibit 36, MR, Tab 2.

- when an organization:
 - becomes an actor in the stories it tells, including providing and applying financial and legal assistance to some of its sources to work toward a desired outcome or offering free legal services, crowdfunds to help some individuals in stories hire lawyers, purchases political advertising and launches petitions⁵⁴

The Commission then proceeded to reference the above noted CAJ opinion piece.

72. An informed person, viewing the matter realistically and practically, would think that it is more likely than not that the Commission in drafting the Standards, specifically the definition for conflict of interest, would, at best, not decide fairly, at worst, seek to punish Rebel News.

73. Therefore, Rebel News submits that there exists a reasonable apprehension of bias.

Charter Infringements and the Canadian Bill of Rights

74. The Commission infringed 2(d) *Charter*⁵⁵ rights, and the rights enshrined in the *Canadian Bill of Rights*,⁵⁶ of Rebel News and a significant number of Canadians, who rely on Rebel News to provide them with reporting, coverage, and commentary on political affairs and current events. The Commission admitted to restricting Rebel News' freedom of expression.⁵⁷

75. The meaning of "expression" within section 2(b) has been read broadly as including any

⁵⁴ Affidavit of Ezra Levant, Exhibit 32, MR, Tab 2.

⁵⁵ *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11

⁵⁶ *Canadian Bill of Rights*, SC 1960, c. 44.

⁵⁷ Affidavit of Ezra Levant, paragraph 57, MR, Tab 2.

activity that conveys, or attempts to convey, meaning. Commercial expression is recognized as an activity protected under section 2(b). This includes advertising and any other similar means of expression used to sell goods and services. A law will be found to violate the freedom of expression where the law either has the purpose or effect of violating the right.

76. The Supreme Court of Canada set out a three-part test to determine whether in a specific case, freedom of expression under section 2(b) of the Charter applies. Adapted to the present context, the test is as follows:

- a. Did the actions of Rebel News have expressive content, thereby bringing it within section 2(b) protection?
- b. If so, does the method or location of this expression remove that protection?
- c. If the expression is protected by section 2(b), does the Decision infringe that protection, either in purpose or effect?⁵⁸

77. Rebel News is press and is inherently expressive. Freedom of the press is entwined with freedom of expression.

78. The Debates are also, by nature, an expressive event. They are described as such by the Commission.

79. The Commission infringed that protection in both purpose and effect by excluding Rebel News and its viewership from the Debates and the media scrum.

80. Freedom of the press is sacrosanct and is a precept of a free and democratic society. Such an infringement cannot be saved by section 1 or be otherwise justified.

⁵⁸ *Montreal (City) v. 2952-1366 Quebec Inc.*, 2005 SCC 62 at para 56

D. Irreparable Harm

81. The second step of the tripartite test is the determination of whether the applicant would suffer irreparable harm if the application were refused.⁵⁹

82. The SCC in *RJR-MacDonald* defined irreparable harm as:

refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.⁶⁰

Loss of Opportunity to Ask Scrum Questions

83. In its 2019 Court Proceedings, this Honourable Court held that:

“There is nothing speculative about that loss of opportunity. It is certain. Moreover, it is a loss that cannot be ameliorated, addressed, or corrected in any way after the 2019 Debates have taken place.”⁶¹

84. This still holds true in the case at bar. If Rebel News is not granted the injunctive relief sought, its journalists will not be able to attend and cover the Debates.

85. Just as in 2019, the only benefit of Accreditation will be access to the media scrums after the Debates. In the 2019 Court Decision, this Honourable Court highlighted that “the Commission recognizes the importance to reporters and the media in being able to attend the scrums.”⁶² The importance of the media scrums still rings true today.

86. The loss of opportunity will not be “ameliorated, addressed, or corrected in any way after” the Debates. Simply put, Rebel News will suffer irreparable harm.

⁵⁹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*], at 334.

⁶⁰ *RJR-MacDonald*, supra, at 341.

⁶¹ *Lawton*, supra, at paragraph 62.

⁶² *Lawton*, supra, at paragraph 55.

87. With respect to constitutional claims, the SCC in *RJR-MacDonald* held that:

“...where the government is the unsuccessful party in a constitutional claim, a plaintiff will face a much more difficult task in establishing constitutional liability and obtaining monetary redress.”⁶³

The SCC went on to conclude that such hardship represents irreparable harm.

88. If this Honourable Court finds that Rebel News’ *Charter* right to freedom of expression has been breached by being denied media accreditation, no remedy will be available to correct the infringement. Thus, this constitutes irreparable harm.

89. Accordingly, the balance of probabilities favours that Rebel News will suffer irreparable harm if the requested order is not granted.

E. Balance of Convenience

90. In this final stage of the tripartite test, Rebel News must show that the balance of convenience favours granting the injunction.

91. This stage is a determination as to which of the two parties will suffer the greatest harm from the grant or refusal of an interlocutory injunction.⁶⁴

92. If the remedy is granted, there will be no harm experienced by the Respondents, especially by the Commission.

93. Any “flood-gates arguments” and arguments of interference with the accreditation process were previously found by this Honourable Court to be of no merit.⁶⁵ In actuality,

⁶³ *RJR-MacDonald*, supra, at 350.

⁶⁴ *RJR-MacDonald*, supra, at 342

⁶⁵ *Lawton*, supra, at paragraphs 65 - 66.

this Honourable Court challenged if the Commission's mandate even includes the accreditation process.⁶⁶

94. The urgency of granting the relief in light of the timing of the Debates rests squarely with Rebel News and the balance of convenience favours granting the relief sought by Rebel News.

IV. CONCLUSION

95. Based on the foregoing and the evidence tendered by Rebel News in this action, Rebel News respectfully requests the relief set out in its Notice of Motion granting mandatory injunctive relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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⁶⁶ Ibid, at paragraph 66.

List of Authorities

1. *Baker v Canada (Minister of Citizenship and Immigration)*, [\[1999\] 2 SCR 817](#)
2. *Dunsmuir v New Brunswick*, [2008 SCC 9](#)
3. *Google Inc v Equustek Solutions Inc*, [2017 SCC 34](#)
4. *Lawton v Canada (Leaders' Debates Commission)*, [2019 FC 1424](#)
5. *Montreal (City) v 2952-1366 Quebec Inc.*, [2005 SCC 62](#)
6. *R v Canadian Broadcasting Corp.*, [2018 SCC 5](#)
7. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [\[1994\] 1 SCR 311](#), [1994 CanLII 117 \(SCC\)](#)