

**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

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**RESPONDING MOTION RECORD OF THE RESPONDENT, CANADA (LEADERS'  
DEBATES COMMISSION/COMMISSION DES DEBATS DES CHEFS)  
(Volume Vof V)**

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September 6, 2021

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## PART I - OVERVIEW AND FACTS

### A. Overview

1. This motion arises from the decisions of the Leaders' Debate Commission / Commission des débats des chefs (the "**Commission**") to deny media accreditation sought for the federal leaders' debates on September 8 and 9, 2021. On August 31, 2021, the Commission determined that each of Rebel News' Ltd. ("**Rebel News**") 11 reporters were in a conflict of interest and thus did not meet the Commission's media accreditation criteria (the "**Decisions**").<sup>1</sup>

2. The motion for mandatory injunctive relief should be denied. Rebel News does not meet the test for mandatory injunctive relief. Rebel News does not have a strong *prima facie* case: the Commission's process was fair and transparent and its decision was reasonable and justifiable.

3. Under its statutory framework, the Commission is required to conduct and produce the debates with "high journalistic standards." These standards apply to all aspects of the nationally televised leaders' debates, including the accreditation of reporters who wish to participate in the televised press availability with the leaders immediately following the debates. The Commission published its media accreditation criteria which adopted the broadly accepted principle that reporters should not have a conflict of interest in stories that they are covering. In particular, when covering a story a reporter should not be active in the story by for example providing financial or legal assistance to some of those involved to achieve a desired outcome, soliciting petitions or purchasing political advertising.

4. Rebel News applied for accreditation pursuant to these criteria. It did not object to them. Rather, it submitted that it met these high journalistic standards.

5. The Commission denied the application. It set out several recent examples where Rebel News was in a conflict of interest and was actively involved in issues it

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<sup>1</sup> The Decisions are at Exhibit "3" to the Affidavit of Michel Cormier, sworn September 6, 2021 (the Cormier Affidavit"), Responding Motion Record of the Commission ("**MR**"), Tab A, 3, p. 96.

was covering – the “No Covid Jails” lawsuit, the Bring Back Harper Petition, the Open Saskatchewan Lawsuit, and the Audit Trudeau Letter to the Auditor General.<sup>2</sup> The Commission provided detailed and carefully drafted reasons on why these activities cross the line from acceptable journalist activities such as editorials or opinion pieces to active involvement in the issues being covered, thus raising a conflict of interest. In its factum, Rebel News does not dispute its involvement in any of the above.

6. In its legal submissions on this motion, Rebel News relies on this Court’s decision relating to the 2019 election. The circumstances of the present case are entirely different. The Commission has addressed the basis on which the Court in 2019 based its decision. The criteria on which the present accreditation is based were published publically ahead. Rebel News responded to those criteria in its applications. The Commission provided detailed reasons with its rationale and the logic of its Decisions to refuse accreditation.

7. The Commission’s decision-making process was fair and even handed. The Commissioner applied the criteria uniformly. A reasonable person reading the Commissioner’s Decisions would understand that the Decisions (or the accreditation process) were not based on pre-determination or bias but rather on Rebel News’ advocacy activities that gave rise to a conflict of interest.

8. The balance of convenience favours not granting the injunction in light of the Commission’s public interest mandate and its obligation to uphold high journalistic standards. Based on the foregoing, this Court should exercise its discretion to deny this motion for mandatory injunctive relief.

## **B. Factual Background**

### **1. The Parties**

9. Rebel News is a federally incorporated company, “carrying on business as a popular online news and media company operating across Canada.”<sup>3</sup>

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<sup>2</sup> Cormier Affidavit, para 67; Decisions at p. 96 of the MR, Tab A.

<sup>3</sup> *Rebel News Network Ltd v. Canada*, [2020 FC 1181](#) at para 6.

10. The Commission is an independent body that was created in 2018 by Order in Council P.C. 2018–1322 (“**Order in Council**”), and its mandate includes “organiz[ing] one leaders’ debate in each official language during the general election period.”<sup>4</sup> The Order in Council requires the Commission to ensure the debates are conducted and produced with “high journalistic standards,” but does not provide details on what this means.<sup>5</sup> In order for the Commission to fulfill its mandate, it must utilize its specialized knowledge to interpret the phrase “high journalistic standards.” The Order in Council, by necessary implication, empowers the Commission to do this.<sup>6</sup>

11. 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.”<sup>7</sup>

12. The Commission is responsible for organizing the debates. In addition to deciding which leaders should be invited to the debates, the Commission also undertakes the following: sets the date for the debates; chooses the consortium through a request for proposals (that includes defined criteria for broadcast distribution, promotion, security, cybersecurity, format, moderator selection, venue selection, translation, production (lighting, sound, visual identity) post-production deliverables and budget); ensures the proper public health protocols are in place in light of the COVID-19 pandemic; and accredits the media to the debates. The Commission must submit a report to Parliament after the conclusion of the debates.<sup>8</sup>

## **2. Rebel News litigated the Commission’s 2019 media accreditation decision**

13. The media accreditation process and the criteria used for these leaders’ debates are different from those in 2019 that were subject to a mandatory injunction. In September 2019, the Commission did not publish the criteria it would use to accredit media to the debates. The criteria, which were not made public ahead of the

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<sup>4</sup> Order in Council 2018, Exhibit “6” to Cormier Affidavit, Commission MR, Tab A, p. 288

<sup>5</sup> Cormier Affidavit, para. 4, Commission MR, Tab A, pp. 3-4.

<sup>6</sup> Cormier Affidavit, paras. 10-11, Commission MR, Tab A.

<sup>7</sup> Order in Council 2018, Exhibit “6” to Cormier Affidavit, Commission MR, Tab A, p. 288

<sup>8</sup> Cormier Affidavit, at para 16, MR, Tab A.

accreditation process, centered on whether media organization engage in advocacy or political activism.<sup>9</sup> In 2019, the decision denying accreditation was delivered by the Secretariat of the Canadian Parliamentary Press Gallery. The Commission did not provide detailed reasons for denying the applications.

14. Rebel News then filed an urgent application for judicial review and mandatory injunction, alleging that the Commission breached Rebel News' procedural and substantive rights and improperly delegated its decision-making authority to the Press Gallery. Justice Zinn of the Federal Court granted Rebel News accreditation and Rebel News reporters attended the 2019 debates.<sup>10</sup>

15. Interlocutory injunctions are fact specific and discretionary. As such, the findings of the Federal Court in 2019 are “not determinative of the issues” in this matter and “not binding upon...any other judge of this Court.”<sup>11</sup>

16. Following the Federal Court's decision in 2019, Rebel News elected to proceed with the application for judicial review, despite having obtained the ultimate relief sought: accreditation to attend the debates. In response, the Commission brought a motion to strike Rebel News' application for judicial review on the grounds of mootness. Justice Roussel of the Federal Court granted the motion to strike. Rebel News has since appealed Justice Roussel's decision and the appeal is pending to be heard by the Federal Court of Appeal.<sup>12</sup>

17. The Commission also denied accreditation to Andrew Lawton of True North Centre for Public Policy (“**True North**”) on the same grounds as Rebel News in 2019. Like Rebel News, Mr. Lawton filed for an injunction motion and an application for judicial review. Justice Zinn ordered the Commission to accredit Mr. Lawton. Justice Roussel struck True North's notice of application on the grounds of mootness.<sup>13</sup>

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<sup>9</sup> Commission's 2019 Guidelines for Media Accreditation, Exhibit 11 to Cormier Affidavit MR, Tab A, p. 358.

<sup>10</sup> *Lawton v. Canada (Leaders' Debates Commission)*, [2019 FC 1424](#).

<sup>11</sup> *Gordon v. Canada (Minister of National Defence)*, [2005 FC 335](#) at para 17.

<sup>12</sup> *Rebel News Network Ltd v. Canada*, [2020 FC 1181](#).

<sup>13</sup> *Rebel News Network Ltd v. Canada*, [2020 FC 1181](#).

### 3. The Commission issues a clear and transparent media accreditation process for the 2021 leaders' debates

18. For this election, having considered the criticism from the Federal Court about the process in 2019, the Commission structured the process for media accreditation differently. On August 16, 2021, the Commission published its media accreditation process for the federal election on September 20, 2021 (“**Media Accreditation Process**”). In it, the Commission explained its rationale behind the accreditation process writ large. For the Commission, the debates are more than media or campaign events; they are a public trust. Debates play an essential role in the health of Canada's democracy by informing the electorate about the leaders of political parties. A key component of the integrity and independence of the debates resides in the professionalism of the journalists involved. The importance of this component is evident in the Commission's mandate to “ensure that high journalistic standards are maintained for the leaders' debates.” Public confidence in the debates is further bolstered by the fact that journalists, not political parties nor the Commission, have full independence in deciding the themes for the debates and the questions to be asked to the leaders. This principle was affirmed by the Commission in its report to the Government on the 2019 leaders' debates, in which the Commission wrote “that the journalistic independence of the media participants be ensured” at the debates.<sup>14</sup>

19. In the Media Accreditation Process, the Commission explained that it has reviewed the Canadian Association of Journalists (“**CAJ**”) guidelines on conflict of interest and it has decided that these guidelines meet the high journalistic standards that the Commission is mandated to uphold:

...[T]he Commission has interpreted high journalistic standards to mean that journalists should not have a conflict of interest in the story that they are covering. As such, the absence of a conflict of interest is the principal criteria the Commission will use to evaluate applications for accreditation.

The Commission has reviewed the Canadian Association of Journalists (“CAJ”) guidelines on conflict of interest and it has decided that these guidelines meet the high journalistic standards that

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<sup>14</sup> Cormier Affidavit, at para. 29 (Exhibit “13”), MR, Tab A.

the Commission is mandated to uphold. The Commission will therefore rely upon these guidelines in evaluating applicants. The Commission has chosen to use the CAJ guidelines because the CAJ "is an independent, not-for-profit organization that provides advocacy and professional development for journalists across Canada." The CAJ exists to promote "excellence in journalism." The CAJ guidelines are widely accepted and adopted by journalists throughout Canada.

The Commission recognizes that media organizations, columnists or commentators may have an editorial point of view or endorse political candidates or political causes. However, a conflict of interest arises when the media organization or journalist becomes an active participant in the story that they are covering [emphasis added].<sup>15</sup>

20. The Commission adopted the CAJ's guidelines regarding conflicts of interest, which it outlines as follows in the Media Accreditation Process. The Commission determined that there is a conflict of interest:

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 petitions; or

when a reporter...writes opinion pieces about subjects they also cover as journalists, endorses political candidates or causes, takes part in demonstrations, signs petitions, does public relations work, fundraises and makes financial contributions [footnotes omitted].<sup>16</sup>

21. In the Media Accreditation Process, the Commission further explained that media representatives seeking to be accredited to attend the debates must apply under one of the three options:

Option 1: Any media representative who is a member of the Canadian Parliamentary Press Gallery will automatically be eligible for accreditation;

Option 2: Any media representative that is a member of one of the following four professional media organizations will automatically be eligible for accreditation: Canadian Association of Journalists (CAJ) (active (journalist) membership only); National NewsMedia

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<sup>15</sup> Cormier Affidavit, at para. 33 (Exhibit "13"), MR, Tab A.

<sup>16</sup> Cormier Affidavit, at para. 33 (Exhibit "13"), MR, Tab A.

Council (NNC); Conseil de presse du Québec (CPQ); and Fédération professionnelle des journalistes du Québec (FPJQ).

Option 3: Any media representative that is not a member of the Canadian Parliamentary Press Gallery or one of the four professional media organizations listed under Option 2, may apply for accreditation under Option 3.

This option is also available to foreign media representatives seeking accreditation at the debates. Consistent with the overarching objective behind this media accreditation process, the Commission will consider whether the applicant upholds the high journalistic standards set out above, including an absence of conflict of interest in their reporting.<sup>17</sup>

22. Canadian media representatives applying under Option 3 were required to provide all of the following supporting documentation:

- (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;
- (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.<sup>18</sup>

23. In addition to reviewing the supporting documentation for applicants under Option 3, the Media Accreditation Process stated that the Commission would review the regular activities of the applicant to ensure that the applicant's reporting is absent

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<sup>17</sup> Press Release dated August 16, 2021, Exhibit "13" to Cormier Affidavit, MR, p. 553.

<sup>18</sup> Press Release dated August 16, 2021, Exhibit "13" to Cormier Affidavit, MR, p. 553.



of conflict of interest. The Commission advised that it may also review and rely upon the reporting and content available in the public domain produced by the applicant to determine whether the applicant practices professional journalism that is free of conflict of interest.<sup>19</sup>

#### 4. Rebel News applies for media accreditation

24. On August 25, 2021—the last day before the accreditation process closed—Rebel News applied for media accreditation under Option 3 on behalf of the following 11 reporters: Abdusselam “Mocha” Bezirgan; Adam Soos; Alexandra Lavoie; Andrew Chapados; David Menzies; Drea Humphrey; Katherine Krozonouski; Lincoln Jay; Sheila Gunn Reid; Sydney Fizzard; and Tamara Ugolini.<sup>20</sup>

25. Ezra Levant, founder and principal at Rebel News, applied for media accreditation on behalf of each reporter under Option 3 by way of letter (“**Letter of Assignment**”). In the Letter of Assignment, Mr. Levant included a link to Rebel News’ website, five to six Rebel News articles published by the individual reporter, and his or her passport size photo. The Letters of Assignment (all signed by Mr. Levant) were identical for each of the 11 representatives of Rebel News, except for the list of articles that the respective reporter authored.<sup>21</sup>

26. In the Letter of Assignment, Mr. Levant did not challenge or dispute the criteria that the Commission set out for media accreditation. On the contrary, Rebel News and Mr. Levant provided submissions to the Commission on how they satisfied the accreditation criteria. Mr. Levant explained that Rebel News is a “popular online news and media company operating across Canada that regularly produces, publishes, and broadcasts original news content related to Canadian and international political news including Canadian Parliament and Government affairs.”<sup>22</sup> He noted that Rebel News has been granted media accreditation in other countries. With respect to the principles, and practices of independent, ethical journalism, Mr. Levant made the

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<sup>19</sup> Cormier Affidavit, at para. 48 (Exhibit “13”), MR, Tab A.

<sup>20</sup> Letters of Assignment, Exhibit “2” to Cormier Affidavit, MR, Tab A, p. 52.

<sup>21</sup> Letters of Assignment, Exhibit “2” to Cormier Affidavit, MR, Tab A, p. 52.

<sup>22</sup> Letter of Assignment, Exhibit “2” to the Cormier Affidavit, MR, Tab A, p. 52.

following submissions:

- (a) Rebel News “abides by the highest journalistic principles, and practices, as demonstrated by its commitment to independence, accuracy, fairness, transparency, and accountability”;
- (b) Rebel News “is a member of the Independent Press Gallery of Canada”;
- (c) Rebel News “does not accept government funding” and “retain[s] its freedom of expression and strong editorial independence”; and,
- (d) “Rebel News does not represent interests of political parties, governments, non-parliamentary organizations, or any entity other than Rebel News, and are committed to following the rules of the LDC.”<sup>23</sup>

27. While the Letter of Assignment indicated the individual reporter’s title and provided some of their bylines, the Letter only discussed Rebel News, its operations, and its goal of upholding high journalistic standards. There was no reference to the individual reporter’s conduct or approach to journalism, or how s/he met the media accreditation standards enumerated by the Commission.<sup>24</sup>

### **5. The Commission denied media accreditation to Rebel News**

28. On August 31, 2021, the Commission released 11 Decisions, denying the Rebel News reporters media accreditation. The reasons for the Commission’s Decisions are summarized below:

- (a) The Commission’s mandate requires it to uphold “high journalistic standards,” which it has interpreted to mean that applicants must not be in a conflict of interest, as defined in the CAJ guidelines;

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<sup>23</sup> Letter of Assignment, Exhibit “2” to the Cormier Affidavit, MR, Tab A, p. 52

<sup>24</sup> Letter of Assignment, Exhibit “2” to the Cormier Affidavit, MR, Tab A, p. 52

- (b) The Commission found that both Rebel News (as an organization), as well as the 11 reporters, were in a conflict of interest;
- (c) The Commission found that Rebel News was in a conflict of interest because it becomes an active participant in stories it covers by launching petitions, fundraising and engaging in litigation on issues that it reports on regularly. Rebel News also embeds links to its petitions and fundraising campaigns within its articles and videos.
- (d) The Commission provided several examples of where Rebel News was in a conflict of interest in its reporting:
  - (i) The “No COVID Jails” Lawsuit: Rebel News is “suing the Trudeau government over the unconstitutional COVID jails.” In one video, a Rebel News journalist who is reporting on quarantine hotels solicits donations to support its legal defence fund and includes a link to NoCovidJails.com on the screen.<sup>25</sup>
  - (ii) The “Bring Back Harper” Petition: Rebel News invites readers to sign its petition if they agree that “we should bring back Stephen Harper to unite the Conservative Party and put Canada first.” Rebel News also states that “when O’Toole gets crushed this spring, we’ll deliver the petition to Harper to let him know we need him now more than ever.” Rebel News regularly reports on matters related federal politics generally, and O’Toole in particular. It has embedded a link to [www.BringBackHarper.com](http://www.BringBackHarper.com) in its stories on O’Toole and Harper.<sup>26</sup>
  - (iii) The “Open Saskatchewan” Lawsuit: Rebel News “filed a constitutional challenge to Saskatchewan’s lockdown law[s].” Rebel News solicits donations to help “crowdfund [their] legal eagles.” At the same time Rebel regularly reports on Saskatchewan’s lockdown laws, and has embedded a link to

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<sup>25</sup> The Decisions, Exhibit “3” (“[No COVID Jails Lawsuit](#)” and “NO COVID JAILS: Woman held against her will at Calgary quarantine hotel”); hyperlinked in the Decisions; available online [here](#) and [here](#)), MR, Tab A, p. 96

<sup>26</sup> The Decisions, Exhibit “3” to Cormier Affidavit (“PETITION: Bring Back Harper” and “If O’Toole loses, is it time to bring back Stephen Harper?”); hyperlinked in the Decisions, available [here](#) and [here](#)), MR, Tab A, p. 96

the “Open Saskatchewan” fundraising page within its articles on the subject.<sup>27</sup>

- (iv) The Audit Trudeau Letter: Rebel News filed “a formal legal complaint to the Auditor General asking for a forensic and thorough examination of Justin Trudeau's February 2018 trip to India.” Rebel News also launched a petition in support of this initiative. In one article, a Rebel News reporter covered a story on Justin Trudeau’s spending on coal in India, and embeds a link to [www.AuditTrudeau.com](http://www.AuditTrudeau.com) within the body of the text. This website prompts the reader to “sign the petition” and “donate to offset the legal costs” of the campaign.<sup>28</sup>
- (e) The Commission also found that each of the 11 reporters were in a conflict of interest because they participated in advertising petitions and/or fundraising campaigns on issues on which they report. Each journalist embedded links to Rebel News’ petitions and/or fundraising campaigns. **Appendix “A”** to the Commission’s Memorandum contains a table summarizing the Commission’s findings with respect to each individual applicant;<sup>29</sup> and,
- (f) By publishing content that created a conflict of interest, both Rebel News and the 11 reporters failed to meet the “high journalistic standards” required for accreditation.<sup>30</sup>

29. On September 3, 2021, Rebel News filed the within motion for injunctive relief.

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<sup>27</sup> The Decisions, Exhibit “3” to Cormier Affidavit (“Open Saskatchewan” and “Can lockdowns be defeated legally? We're going to find out in Saskatchewan”); hyperlinked in Decisions: available online [here](#) and [here](#)) and, MR, Tab A, p. 96

<sup>28</sup> The Decisions, Exhibit “3” to Cormier Affidavit (“Audit Trudeau” and “EXCLUSIVE: Justin Trudeau bought \$850 worth of coal to power one of his fancy parties in India”); hyperlinked in the Decisions; available [here](#) and [here](#)), MR, Tab A, p. 96.

<sup>29</sup> Cormier Affidavit, at para. 68, MR, Tab A.

<sup>30</sup> Cormier Affidavit, at para. 68, MR, Tab A.

## PART II - ISSUES

30. The issue on this motion is whether Rebel News meets the three-part test for a mandatory injunction.

## PART III - SUBMISSIONS

### A. Law on mandatory injunctions

31. Rebel News does not meet the high threshold for an interlocutory mandatory injunction. An interlocutory injunction is an extraordinary equitable remedy and “the decision to grant or refuse such a remedy is a discretionary one”.<sup>31</sup> As the Federal Court of Appeal has explained, injunctive relief “is an unusual relief that requires satisfaction of a demanding test” and the test “is aimed at recognizing that the suspension of a legally binding and effective matter – be it a court judgment, legislation, or a subordinate body’s statutory right to exercise its jurisdiction – is a most significant thing.”<sup>32</sup> The burden imposed on the moving party is therefore onerous: compelling circumstances are required to justify the Court’s intervention and decision to exercise its discretion to grant injunctive relief.<sup>33</sup>

32. The Commission agrees with Rebel News that as the motion is for a mandatory injunction that would grant Rebel news the ultimate relief on its application, the more onerous three-part test for mandatory injunctions in *CBC* applies:

- (a) The applicant must demonstrate a strong *prima facie* case that it will succeed at trial;
- (b) The applicant must demonstrate that irreparable harm will result if the relief is not granted; and
- (c) The applicant must show that the balance of convenience favours granting the injunction.<sup>34</sup>

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<sup>31</sup> *Campeau v. Muskowekwan First Nation*, [2021 FC 643](#) at para 9.

<sup>32</sup> *Catalyst Pharmaceuticals Inc v. Canada (Attorney General)*, [2020 FC 938](#) at para 18.

<sup>33</sup> *Catalyst Pharmaceuticals Inc v. Canada (Attorney General)*, [2020 FC 938](#) at para 19.

<sup>34</sup> *Campeau v. Muskowekwan First Nation*, [2021 FC 643](#) at para 10.

**B. Rebel News does not have a strong *prima facie* case**

33. Under the “strong *prima facie*” case standard, the burden is on the applicant to show that “there is 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.”<sup>35</sup> The applicant “must satisfy the court that he or she is clearly right and is almost certain to be successful at trial.”<sup>36</sup> As such, the strong *prima facie* case standard involves an “intensive examination of the merits” of the applicant’s case.<sup>37</sup>

34. There is no “strong likelihood” or near certainty that Rebel News will be successful on its judicial review. The Commission’s decisions are likely to be upheld on the merits of the application for judicial review. The Commission provided Rebel News with procedural fairness by informing Rebel News of the criteria (what the application required) and the standard (conflict of interest) that would be applied. The Decisions are transparent, intelligible and justified.

**1. The Commission has the authority and wide discretion to set media accreditation criteria**

35. The Commission has wide discretion conferred on it by the Order in Council to administer the debates and set criteria for media accreditation. The Order in Council provides that the Commission shall make decisions in the public interest and has a duty to maintain “high journalistic standards” with respect to the debates. The Order in Council does not specify what “high journalistic standards” means, nor does it provide guidance to restrict how the Commission interprets this term. The Executive has chosen to grant the Commission the discretion to define and interpret this term, and to use its specialized knowledge to develop “rules” and procedures that best enable it to meet its statutory duty of upholding high journalistic standards. Following the 2019 litigation and the publication of the Commission’s Report,<sup>38</sup> the Executive had the opportunity to impose additional requirements or to change the media accreditation process but it

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<sup>35</sup> *R. v. Canadian Broadcasting Corp.*, [2018 SCC 5](#) at para 17.

<sup>36</sup> *Rezaee v. Zar et al.*, [2020 ONSC 3014](#) at para 36 [emphasis added].

<sup>37</sup> *Rezaee v. Zar et al.*, [2020 ONSC 3014](#) at para 36.

<sup>38</sup> “Democracy Matters”, Exhibit “12” to Cormier Affidavit, MR, p. 361.

decided not to do so. The Executive changed the process for the participation criteria (leaving it with the Commission), but did not remove or modify the discretion of the Commission to administer the media accreditation process.<sup>39</sup> This further shows that the intent of the Executive was to maintain the Commission’s discretion and not limit it further.

36. In granting the Commission the mandate to maintain high journalistic standards, the Order in Council enables the Commission to establish media accreditation criteria to meet this mandate. For the 2021 debates, the Commission determined that “high journalistic standards” meant that journalists must be free from conflict of interest. In contextualizing what conflict of interest entails, the Commission relied on the industry-wide definition that the Canadian Association of Journalists developed on conflicts of interest (“**CAJ Guidelines**”). In adopting such standards, the Commission was not adopting something uncommon or controversial; rather, the Commission reaffirmed one of the core principles of journalism as articulated by the nation’s leading journalism association.<sup>40</sup>

37. Administrative bodies interpreting the ambit of their authority and setting criteria through guidelines—on both procedural and substantive issues<sup>41</sup>—is a laudable feature of their operations.<sup>42</sup> As the Federal Court of Appeal explained, “an administrative agency does not require an express grant of statutory authority in order to issue guidelines and policies to structure the exercise of its discretion or the interpretation of its enabling legislation.”<sup>43</sup>

38. Contrary to Rebel News’ submission, the Commission through its delegated authority is not regulating the journalism industry. The Commission is committed to the narrow task of determining which media entities may be accredited to cover the debates, which is typical of other national and international events.<sup>44</sup> For the 2021

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<sup>39</sup> Cormier Affidavit, at para. 14 (Exhibit “9”), MR, Tab A.

<sup>40</sup> Cormier Affidavit, at paras. 33-34 (Exhibit “13”), MR, Tab A.

<sup>41</sup> *Thamotharem v. Canada*, [2007 FCA 198](#) at para 60.

<sup>42</sup> *Thamotharem v. Canada*, [2007 FCA 198](#) at para 55-56

<sup>43</sup> *Thamotharem v. Canada*, [2007 FCA 198](#) at para 56 [emphasis added].

<sup>44</sup> Cormier affidavit, paras. 34 and 41.

debates, the Commission focused on conflict of interest to discharge its statutory duty of ensuring that high journalistic standards are maintained at the debates.

## **2. The Commission’s choice of media accreditation criteria merits deference**

39. In accordance with the jurisprudence, the Commission’s wide statutory discretion, and its exercise of this broad discretion to establish the media accreditation criteria, merit deference.

40. First, deference should be given to administrative decision-makers on questions of interpretation of their “home statute.”<sup>45</sup> As this Court recognized, *Vavilov* did not change this long-held proposition.<sup>46</sup> In *Delta Air Lines Inc v Lukács*, the Supreme Court clarified that “[w]here an administrative body interprets its own statute and is required to exercise discretion under it, it is presumptively entitled to deference [emphasis added].”<sup>47</sup> In this case, the Commission is interpreting its enabling instrument, the Order in Council, and determining how best to interpret a term – “high journalistic standard” – that it is authorized to uphold. That interpretation is owed deference (subject to reasonableness review, as further discussed in the next section).

41. Second, multifaceted policy (or “polycentric”) decisions that the government has delegated to an administrative body warrant deference.<sup>48</sup> The Supreme Court stated that “[a]s a general principle, increased deference is called for where legislation is intended to resolve and balance competing policy objectives or the interests of various constituencies.”<sup>49</sup> In its view, “[a] statutory purpose that requires a tribunal to select from a range of remedial options or administrative responses, is concerned with the protection of the public, engages policy issues, or involves the

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<sup>45</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at para 25 [“*Vavilov*”].

<sup>46</sup> *Canada RNA Biochemical Inc. v. Canada (Health)*, [2020 FC 668](#) at para 69.

<sup>47</sup> *Delta Air Lines Inc v Lukács*, [2018 SCC 2](#) at para. 8.

<sup>48</sup> *Gitxaala Nation v. Canada*, 2016 FCA 187 at paras. 148-149.

<sup>49</sup> *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003 SCC 19](#) at para 30.



balancing of multiple sets of interests or considerations will demand greater deference from a reviewing court.”<sup>50</sup>

42. By granting the Commission the discretion to define “high journalistic standards,” which it was required to do in order to fulfill its mandate, the Commission had to engage with policy issues in order to balance competing interests, such as upholding the public interest by avoiding “distortion of the information at the press conferences following the debates with questions from journalists who are actively involved with the subject of the questions.”<sup>51</sup> In so doing, the Commission has the discretion to set policy on how it will fulfill this public interest. It exercised its discretion according to its expertise and knowledge of the industry. All of these considerations favour deferring to – and not second guessing – the Commission’s choice in understanding “high journalistic standards.”

43. Third, an administrative body is the master of its own procedure.<sup>52</sup> Absent issues of natural justice, deference is owed to the procedural choices that an administrative body makes if its “[enabling] statute leaves to the decision-maker the ability to choose its own procedures.”<sup>53</sup> This Court has held that judges should not intervene with respect to an administrative body’s interpretation of its own mandate or procedures “unless the interpretation adopted by the [administrative body] is not one that it can reasonably bear.”<sup>54</sup> In this case, the Commission’s enabling Order in Council grants broad authority to develop and apply a test to uphold the mandated “high journalistic standard.” Unless the “test” breaches other legal considerations – which it does not – the Court owes deference to the Commission’s accreditation criteria.

44. The Federal Court of Appeal in *Re: Sound v Canadian Association of Broadcasters* outlined the ways in which the above three lines of cases intersect to

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<sup>50</sup> *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003 SCC 19](#) at para 31.

<sup>51</sup> Decision, Exhibit “3” to Cormier Affidavit, para. 41, MR, p. 96.

<sup>52</sup> *Canada (Attorney General) v. Sketchley*, [2005 FCA 404](#) at para 119.

<sup>53</sup> *Douglas v Canada (Attorney General)*, [2014 FC 299](#) at para 70.

<sup>54</sup> *Douglas v Canada (Attorney General)*, [2014 FC 299](#) at para 70.

make a case for deference (on a reasonableness review). The general principles are as follows:

A decision-maker that has been given a broad policy mandate has a broad range of options it can legitimately choose from. Where the decision is suffused with subjective judgment calls, policy considerations and regulatory experience or is a matter uniquely within the ken of the executive, the margin of appreciation will be broader. Courts are "poorly positioned" to opine on policy issues with "public interest components" and "economic aspects" and so "by legislative design the selection of a policy choice from among a range of options lies with the [administrative decision-maker] empowered and mandated to make that selection."

A decision about the quantum of "equitable remuneration," such as the one in this case, is not a simple one, arrived at by processing information objectively and logically against fixed, legal criteria. Rather, it is a complex, multifaceted decision involving sensitive weighings of information, impressions and indications using criteria that may shift and be weighed differently from time to time depending upon changing and evolving circumstances. Accordingly, the Board's decision on such an issue is entitled to considerable leeway.<sup>55</sup>

45. The Commission's exercise of its discretion and adopting of the media accreditation criteria are owed deference.

### **3. The Commission's process was fair**

46. The Commission provided Rebel News with a fair process. The concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case.<sup>56</sup> In this case, three indicia establish that the Commission's process was fair.

#### **(1) The Commission met its duty of fairness**

47. ***Advance Notice was Provided.*** In the Media Accreditation Process, the Commission provided a detailed explanation of the criteria that would apply. The

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<sup>55</sup> *Re: Sound v. Canadian Association of Broadcasters*, [2017 FCA 138](#) at paras 49-50 [emphasis added; citations omitted].

<sup>56</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#) para 21.

Media Accreditation Process was public. In it, the Commission set out the test it was applying, the justification for it, and the supporting documentation an applicant needed to provide to meet the test. As discussed further below, Rebel News did not challenge the accreditation criteria.

48. ***Rebel News Had an Opportunity to be Heard.*** The Commission invited applicants to seek media accreditation, including domestic and foreign media, those belonging to traditional media outlets and those identifying as independent media organizations. The Commission invited them to provide supporting documentation to meet one of the three Options to accreditation. With respect to Option 3, applicants were asked to submit Letters of Assignment, which allowed applicants to make submissions on why they should be accredited. Rebel News made submissions on how it met the criteria set out by the Commission.<sup>57</sup>

49. ***All Applicants were Fairly Treated.*** All applications were subjected to the same process, comprising of review, research, and consideration. The applicants were aware that the Commission would consider publicly available content to determine whether applicants met the criteria of absence of conflict of interest. The Commission considered all applications in a fair and even handed manner. It then provided reasons for its determinations.

**(2) *Rebel News' allegations of an unfair process are without merit***

50. Rebel News' argument that the Commission somehow acted unfairly with respect to the accreditation process is without merit. Rebel News waived its right to raise procedural fairness issues on this urgent injunction motion given that it did not raise these purported breaches of procedural fairness before the Commission. This Court has held that issues of procedural fairness must be raised at the earliest opportunity and a failure to do so amounts to an implied waiver of any perceived breach of procedural fairness.<sup>58</sup> In its Letter of Assignment, Rebel News did not indicate that

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<sup>57</sup> Cormier Affidavit, at para. 65 (Exhibit "2"), MR, Tab A.

<sup>58</sup> *Sayed v. Canada (Citizenship and Immigration)*, [2008 FC 567](#) at para 23.

the process and/or the rules of accreditation were unfair. On the contrary, Rebel News' Letter of Assignment stated that Rebel News was "committed to following the rules of the LDC [the Commission]" and made submissions on high journalistic standards and conflicts of interest.<sup>59</sup> The issues that Rebel News raises now would have been known to it when it applied for accreditation but it chose not to raise such issues before the Commission.

51. Even if the Court considers Rebel News' procedural fairness arguments, they should be rejected. Rebel News appears to argue that applicants under Options 1 and 2 are given "*carte blanche*" automatic accreditation whereas applicants under Option 3 are not, thus resulting in alleged unfairness.

52. The Commission disagrees. All of the options have the same objective: to identify and accredit journalists who meet the principles of responsible and ethical journalism, and the "high journalistic standards" set out in the Commission's mandate, and whose reporting is absent of conflict of interest. The organizations under Options 1 and 2 (listed above) have formal rules or have adopted guidelines on conflict of interest.<sup>60</sup> As such, by virtue of an applicant's continued membership in such organization, the Commission reasonably concluded that an applicant and/or the association is abiding by their obligation to avoid conflict of interest. Because applicants under Option 3 do not belong to some such organizations, it is incumbent on the Commission to review if such applicants are adhere to the same standards.

53. In an effort to accredit as many journalists and media accreditation as possible, the Commission chose to have an Option 3 where even though organizations may not belong to professional organizations, they could still apply for accreditation.

54. At paragraph 62 of Mr. Levant's affidavit, he lists a number of examples where in his view "legacy media" have conflicts of interest. Mr. Cormier provides a comprehensive response to these allegations in his affidavit,<sup>61</sup> but in summary the

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<sup>59</sup> Cormier Affidavit, at para. 65 (Exhibit "2"), MR, Tab A.

<sup>60</sup> Cormier Affidavit, at para. 39 (Exhibits "16-19"), MR, Tab A.

<sup>61</sup> Cormier affidavit, at para. 81 (see Table thereto), MR, Tab A.

Commission generally submits that the allegations by Mr. Levant either do not address conflict of interest, or do not address conflict of interest as it is applied in the Media Accreditation Process.

55. ***Opinion Pieces.*** The Commission acknowledged in the Media Accreditation Process that “media organizations, columnists or commentators may have an editorial point of view or endorse political candidates or political causes. However, a conflict of interest arises when the media organization or journalist becomes an active participant in the story that they are covering.” As such, the Commission does not take issue with opinion pieces;

56. ***Funding.*** Many of the examples listed by Mr. Levant involve media organizations raising funds for their operations, either through advertising, or direct funding. This does not constitute a conflict of interest. Media organizations can fundraise and solicit donations from their readership if those funds are targeted towards their continued operation. Advertising provided during broadcasts, on websites, or on other media organization platforms is separate from the news content that those same media organizations publish and distribute; and,

57. ***Retired Journalists.*** Rebel News takes issue with the activities of some journalists who are members of the Press Gallery. Many of those identified are no longer practicing journalism or they have not applied to be accredited to the debates. A private citizen, who is also a journalist, may donate to a political party.<sup>62</sup>

58. Rebel News’ other arguments on procedural fairness (outlined at paragraphs 50-53 of its Memorandum) must also be rejected:

- (a) In the Media Accreditation Process, the Commission noted that the applicable criteria was conflict of interest. The “mechanism” to address any conflicts of interest was the applicant’s Letter of Assignment. Rebel News expressly discussed conflict of interest in its Letter;

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<sup>62</sup> Cormier affidavit, at para. 81 (see Table thereto), MR, Tab A.

- (b) As a creature of an Order in Council, the Commission does not have the authority to provide an appeal process unless authorized by its enabling statutory framework. The Order in Council does not expressly provide such authority. The mere fact that there is no right of appeal does not make the process unfair.<sup>63</sup> In the alternative, even if the Commission was allowed to have an appeal process, as a master of its process and given wide discretion to determine its accreditation process, it was within the Commission's authority to determine whether there ought to be an appeal mechanism;
- (c) Rebel News had the opportunity to be heard during the process. The Commission made its accreditation criteria public before Rebel News applied. If it had any issues with the criteria it could have addressed them in its submissions. Given the compressed timeline of a "snap" election, there is no duty on the Commission to participate in an extensive consultation process with Rebel News while assessing their applications. Rebel News knew that the Commission would conduct its own research. The materials that the Commission found and evaluated were all from Rebel News' website, so the content was familiar to both Rebel News and the respective reporters (as it was their publication[s]); and,
- (d) All applications under Option 3 were thoroughly and fairly assessed. Other applicants (outside of Rebel News) who applied under Option 3 were also denied accreditation.

#### **4. The Commission's Decisions are reasonable**

59. The Commission's 11 Decisions are reviewable on the reasonableness standard. The majority in *Vavilov* held that "a presumption of reasonableness review is

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<sup>63</sup> *Peavine Metis Settlement v. Whitehead*, [2015 ABCA 366](#) at para 39 (see also fn 31 of the decision).

already a well-established feature of the standard of review analysis in cases in which administrative decision makers interpret their home statutes.”<sup>64</sup>

60. On reasonableness review, a court’s role is to *review* the decision before it, not to decide the matter anew.<sup>65</sup> The court will look to ensure that the decision is internally coherent, with a rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker.<sup>66</sup> This includes being attentive to the specialized knowledge or expertise possessed by the decision-maker that may illuminate underlying practical realities of the administrative scheme.<sup>67</sup>

61. A court applying the reasonableness standard “does not ask what decision it would have made in place of that of the administrative decision, attempt to ascertain the 'range' of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the 'correct' solution to the problem.”<sup>68</sup>

62. ***The Decisions are Internally Coherent.*** The Commission’s Decisions are internally coherent, with a rational chain of analysis that is justified in relation to the facts and law that constrain it.

63. The Decisions first detailed in depth the Commission’s statutory framework and its mandate to uphold high journalistic standards. The Commission then quoted verbatim from its public Media Accreditation Process with respect to what it defined “high journalistic standards” to mean – and in particular, what a conflict of interest entailed. The Commission summarized each application noting, among other things, Rebel News’ submissions on journalistic standards, refusal to accept government funding, and its commitment to following the rules of the Commission. The Commission made all applicants aware that it may undertake additional research to ensure that they met its accreditation criteria of an absence of a conflict of interest. It then reviewed Rebel News’ and the journalists’ published content that was generally

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<sup>64</sup> [Vavilov](#), at para. 25.

<sup>65</sup> [Vavilov](#), at para. 83.

<sup>66</sup> [Vavilov](#), at paras. 84, 85, and 93.

<sup>67</sup> [Vavilov](#), at paras. 31, 84, 85, 93, and 97.

<sup>68</sup> [Vavilov](#), at para. 85.

available on the internet to the public and came to reasonable conclusions about them, including that by seeking “crowdfunding” on an issue and also reporting on it, Rebel News was in a conflict of interest. The Commission listed six such ongoing activities on the part of Rebel News.<sup>69</sup>

64. The Commission turned to the individual reporters on whose behalf Rebel News had applied. The Commission considered each reporter’s publications and concluded that there was evidence of conflicts of interest where they reported on a matter and sought crowdfunding or signatures for petitions on the same issue. Based on this evidence, the Commission found that content published by each reporter was not free from a conflict of interest.

65. These findings were open to the Commission on the face of the Letters of Assignment filed by Rebel News and from its own research, which Rebel News was aware it would undertake. There is no gap in the Commission’s reasoning. Nor did the Commission make any finding that was not open to it in view of the facts or the law.

66. ***The Decisions are Detailed.*** The Commission provided detailed reasons addressing each individual reporter’s application submitted by Rebel News. The reasons presented the Commission’s mandate, responded to Rebel News’ submissions, and included a detailed assessment of each application. The reasons surpass the minimum standard for adequate reasons outlined in *Vavilov*.

67. ***The Commission was Responsive to the Evidence.*** The Commission was alert to Rebel News’ submissions and expressly quoted from the applications. It engaged with Rebel News’ submission that not receiving funds from the government disposes of the conflict of interest allegation. The Commission’s review of Rebel News’ publication was accurate and quoted directly from Rebel News’ impugned news stories.<sup>70</sup>

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<sup>69</sup> Cormier Affidavit, paras. 61-69 (Exhibit “3”), MR, Tab A.

<sup>70</sup> The Decision, Exhibit “ 3” to Cormier Affidavit MR, Tab A.



68. ***The Commission Reasonably Applied the Law.*** The Commission detailed its applicable conflict of interest criteria and from where it had adopted such standard. The conflict of interest criteria expressly referenced “financial and legal assistance” and petitioning. In applying the standard, the Commission focused on crowdfunding and petitioning by both Rebel News and the individual reporters. As such, its application of the conflicts of interest criteria was reasonable.<sup>71</sup>

69. Although Rebel News did not expressly make submissions on freedom of expression, recognizing its obligation, the Commission engaged with this issue. The Commission conducted a *Doré* analysis as part of exercising its administrative discretion, finding that the deleterious effects of accrediting Rebel News outweigh the salutary effect of not impinging on Rebel News’ expressive rights. Such finding was appropriate on the facts (for reasons discussed in detail below).

70. Taken together, the Decisions clearly demonstrate that the Commission’s rigorous reasoning supported its findings. The reasons are intelligible, transparent and justified and the findings fall within a spectrum of reasonable outcomes.

## **5. No violation of *Charter* values**

71. The Commission’s *Charter* values analysis merits deference. The Commission conducted a *Doré* analysis and found that any engagement of the *Charter* value of expressive freedom did not outweigh the salutary benefits of denying media accreditation to Rebel News reporters.

72. The Commission’s *Doré* analysis is reviewed on a reasonableness standard. *Doré* recognizes that the decision-maker is generally in the best position to weigh the *Charter* protections with his or her statutory mandate in light of the specific facts of the case. Deference is warranted when a reviewing court is determining whether the decision reflects a proportionate balance, and that there may be more than one outcome that strikes a proportionate balance between *Charter* protections and statutory objectives. If the decision falls within a range of possible, acceptable outcomes, it will

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<sup>71</sup> Cormier Affidavit, para. 33 (Exhibit “13”), MR, Tab A.

be reasonable. The features of the reasonableness standard of justification, transparency, and intelligibility are still applicable.<sup>72</sup>

73. The Commission recognized that the *Charter* value of freedom of expression was implicated and then engaged in a balancing analysis. The Commission noted that the decision has “an impact on the freedom of expression of the applicant” journalist. However, the Commission found “the impacts on the applicant’s freedom of expression are outweighed by the salutary effects of the Commission carrying out its mandate” of upholding high journalistic standards.<sup>73</sup> The Commission explained as follows:

The Commission’s mandate requires it to uphold high journalistic standards that may in some instances lead to a decision to deny accreditation to some applicants. The Commission set out those standards in the Media Accreditation Process. This document explains that the press conferences are more than media or campaign events. They are part of the leaders’ debates process and thus involve a public trust. Debates play an essential role in the health of Canada’s democracy by informing the electorate about the leaders of political parties who have the greatest likelihood of becoming Prime Minister...if the Commission did not enforce the conflict of interest criterion it set out in its Media Accreditation Process, it would bring the Commission and the debates’ Process into disrepute. While there may only be a few questions being asked by the applicant, allowing him to proceed would undermine the Process and there would be justification for others to ignore it...I consider that it would undermine the public trust and the high journalistic standards the Commission must uphold if the Commission accredited journalists and their media organizations who did not abide by high journalistic standards and were in a conflict of interest by being actively involved in the stories they are covering and influencing the outcome of those stories.<sup>74</sup>

74. The foregoing passages demonstrate that the Commission was alert to balancing its statutory mandate with the impacts on the *Charter* value of freedom of

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<sup>72</sup> *Aryeh-Bain v. Canada (Attorney General)*, [2019 FC 964](#) at para 36. See also *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32](#), at paras 58 and 59.

<sup>73</sup> Cormier Affidavit, paras. 67 and 69 (Exhibit “3”), MR, Tab A.

<sup>74</sup> Cormier Affidavit, paras. 67 and 69 (Exhibit “3”), MR, Tab A.

expression. That balancing is a reasonable outcome on the spectrum of possible outcomes and therefore merits deference from this Court.

75. It is also open to this Court to consider that freedom of expression guaranteed by section 2(b) of the *Charter* does not guarantee any particular means of expression.<sup>75</sup> In *Haig*, the Supreme Court stated that freedom of expression “prohibits gags, but does not compel the distribution of megaphones.”<sup>76</sup> In this case, the Commission’s decision is a reasonable limit on an access to a particular platform – attending the debates and participating in the media scrum. It does not eliminate Rebel News’ ability to report on the debates and the election writ large.

## 6. No actual or reasonable apprehension of bias

76. Rebel News’ bias allegation should be rejected. The threshold for an allegation of bias is a high one. As a preliminary matter, administrative adjudicators benefit “from a presumption that they are impartial.”<sup>77</sup> The question is whether “an informed person, viewing the matter realistically and practically — and having thought the matter through” would think that it is more likely than not that the decision-maker would decide fairly. A mere suspicion of bias, or a mere concern about bias, is not enough to satisfy the test. There must be “a real likelihood or probability of bias.”<sup>78</sup>

77. Rebel News’ bias argument centres on the idea that the Commission deliberately sought to exclude Rebel News from the accreditation process. Rebel News points to the fact that in explaining its accreditation criteria in the Media Accreditation Process, the Commission footnoted a blog post from August 2020 by the CAJ, where the CAJ noted some conduct by Rebel News that made it “inconsistent with [the CAJ’s] suggested code of ethics” (the “**Blog Post**”).<sup>79</sup>

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<sup>75</sup> *Baier v. Alberta*, [2007 SCC 31](#) at para 23. These principles would also be applicable to Rebel News’ allegation that the *Bill of Rights* was breached.

<sup>76</sup> *Haig v Canada*, [1993 CanLII 58 \(SCC\)](#) at p. 1035.

<sup>77</sup> *Francis v. Canada (Citizenship and Immigration)*, [2012 FC 1141](#) at para 33.

<sup>78</sup> *Agrium Vanscoy Potash Operations v United Steel Workers Local 7552*, [2014 SKCA 79](#) at para 42.

<sup>79</sup> Cormier Affidavit, para. 33, Footnote “1” (CAJ, “CAJ: Alberta Press Gallery has a Duty and a Right to Determine Access” available [online](#)), MR, Tab A.

78. The Blog Post does not demonstrate bias or “predetermination” on the part of the Commission for four reasons.

79. First, the Blog Post is an attempt by the CAJ to illustrate a breach of its code of conduct. That breach happens to be about Rebel News. In footnoting to the Blog Post, the Commission was extracting the principles that led to the breach. There is no indication in the Media Accreditation Process or the Decisions that the Commission deferred to the Blog Post or “copied” the CAJ’s reasoning illustrated in the Blog Post. The Blog Post showed an instance of the CAJ’s code of ethics being violated. Understood in its context, a reasonable observer would not view a mere footnote to be the “silver bullet” in demonstrating bias on the part of the Commission, especially in view of the Commission’s detailed Media Accreditation Process and Decisions.

80. Second, outside of the footnote to the Blog Post, Rebel News does not point to any other concrete evidence of alleged bias. There is no evidence that the Commission acted in a bad faith manner to deny Rebel News accreditation. The Commission implemented Option 3 (under which Rebel News applied) in order to be more inclusive. The Commission recognized the need to design an accreditation process that did not limit its accreditation only to members of existing professional bodies. The accreditation process was designed to allow for as wide an application process as possible, and as narrow an interpretation as possible of what constitutes unacceptable behaviour that might compromise their mandate to uphold high journalistic standards.<sup>80</sup> Option 3 allowed any form of media outlet to seek accreditation, and not just established media entities. In so doing, the Commission accredited 19 media outlets/journalists under Option 3—including True North, which had been denied accreditation during the 2019 election cycle.

81. Third, the Blog Post was published in August 2020 and set out Rebel News’ conduct at that time. When Rebel News applied for accreditation in August 2021, the Commission independently considered Rebel News’ *current conduct*. The mere fact that Rebel News, a year ago, may have breached the CAJ’s code of ethics was not a

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<sup>80</sup> Cormier Affidavit, paras. 67 and 69 (Exhibit “3”), MR, Tab A.

factor in the Commission's assessment of how Rebel News was conducting itself at present. The Commission has accredited independent media outlets, such as True North, during this accreditation cycle even though it denied them accreditation in the past. The Commission's criteria focuses on the present and not the past. Accordingly, the Blog Post is of limited assistance to the Commission.

82. Fourth, similar to issues of procedural fairness generally, this Court has held that “[a]n allegation of bias must be raised at the earliest possible opportunity; otherwise, the party waives the right to later raise bias as a ground for judicial review.”<sup>81</sup> In its Letter of Assignment, Rebel News did not allege that the criteria were biased or that the impugned footnote demonstrated that Rebel News was being “singled out.” On the contrary, Rebel News made a case for why it met the Commission's accreditation criteria and said it was “committed to following the rules of the LDC.” Rebel News had concerns even before applying concerning bias but chose not to raise them before the Commission. On August 18, 2021 (i.e., two days after the Media Accreditation Process was published), Rebel New published an article entitled “Debates Commission crafts rules to keep Rebel News out.”<sup>82</sup> Allegations of bias against public authorities must be raised at first instance as they are serious and the public body must be provided with an opportunity to respond.<sup>83</sup>

### **C. Rebel News will not suffer irreparable harm**

83. With respect to the “irreparable harm” branch of the test, an applicant must establish that a refusal to grant relief could so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits did not accord with the result of the application.<sup>84</sup> Rebel News has the onerous burden of establishing irreparable harms. Rebel News' evidence must be more than a series of possibilities, speculations, hypotheticals or assertions. There needs to be “evidence at a convincing level of particularity that demonstrates a real probability that unavoidable

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<sup>81</sup> *Dunkova v. Canada (Citizenship and Immigration)*, [2010 FC 1322](#) at para 34.

<sup>82</sup> Cormier Affidavit, Exhibit “23”, MR Tab A.

<sup>83</sup> *Benitez v. Canada (Minister of Citizenship and Immigration)*, [2006 FC 461](#) at para 219.

<sup>84</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#) at para. 63.

irreparable harm will result unless a stay is granted.”<sup>85</sup> Rebel News must “demonstrate in a detailed and concrete way that it will suffer real, definite, unavoidable harm – not hypothetical and speculative harm – that cannot be repaired later.”<sup>86</sup>

84. If the Court is persuaded that Rebel News meets this threshold, the Court must contextualize the harm alleged by Rebel News. The loss of opportunity to ask leaders a question must be understood in view of the entire election process. The loss of accreditation does not prohibit Rebel News in any way from reporting on the debates and covering the elections. The Commission has taken upon itself to ensure that the debates are widely accessible – in multiple formats and languages.

**D. The balance of convenience favours denying the mandatory injunction**

85. The third branch of the injunction test—balance of convenience—only becomes relevant if the applicant establishes that there is a strong *prima facie* case and that it will suffer irreparable harm if the injunction is not granted. The Court must determine which of the parties will suffer the greatest harm from the granting or denial of the injunction pending the adjudication of the application.<sup>87</sup> This Court has recognized that the role of public authorities in protecting the public interest is an important factor in assessing the balance of convenience:<sup>88</sup>

...in the case of a public authority, the SCC teaches us that the onus of demonstrating irreparable harm to the public is less than that of a private applicant and states: “[The test will] nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action [emphasis added; citations omitted].”<sup>89</sup>

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<sup>85</sup> *Catalyst Pharmaceuticals Inc v. Canada (Attorney General)*, [2020 FC 938](#) at para 42.

<sup>86</sup> *Catalyst Pharmaceuticals Inc v. Canada (Attorney General)*, [2020 FC 938](#) at para 42.

<sup>87</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#) at para. 63.

<sup>88</sup> *Catalyst Pharmaceuticals Inc v. Canada (Attorney General)*, [2020 FC 938](#) at para 52.

<sup>89</sup> *Catalyst Pharmaceuticals Inc v. Canada (Attorney General)*, [2020 FC 938](#) at para 53.

86. There is a presumption that the decision or the law at issue will produce a public good.<sup>90</sup> Rebel News therefore has the onus of demonstrating that the balance of convenience favours it.

87. The balance of convenience weighs in favour of deferring to the Commission's decision. To reverse the decision of the Commission would interfere with the accreditation process set out in the Commission's mandate. For this Court to grant Rebel News accreditation would mean that the Court would substitute its decision for that of the Commission and override the Commission's Decisions to deny accreditation to media organizations mired in conflicts of interest. The Legislature and the Government determined that an independent Commission should be the one to make decisions about how debates are conducted in order to improve public confidence in the leaders' debates and increase access to democratic institutions. Absent an unreasonable decision, the Commission's decision must be given deference.

#### **PART IV - ORDER SOUGHT**

88. The Commission respectfully requests that the motion for injunctive relief be dismissed with costs awarded to the Commission.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6th day of September, 2021.




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**BORDEN LADNER GERVAIS LLP**  
 Nadia Effendi / Ewa Krajewska / Julia  
 Webster / Mannu Chowdhury  
 Lawyers for the Respondent, Canada  
 (Leaders' Debates Commission /  
 Commission des débats des chefs)

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<sup>90</sup> *Harper v Canada (Attorney General)*, [2 SCR 764](#) at para. 9.

## PART V - LIST OF AUTHORITIES

<b>Jurisprudence</b>	
1.	<i>Rebel News Network Ltd v. Canada (Leaders' Debates Commission)</i> , <a href="#">2020 FC 1181</a> .
2.	<i>Lawton v. Canada (Leaders' Debates Commission)</i> , <a href="#">2019 FC 1424</a> .
3.	<i>Gordon v. Canada (Minister of National Defence)</i> , <a href="#">2005 FC 335</a> .
4.	<i>Campeau v. Muskowekwan First Nation</i> , <a href="#">2021 FC 643</a> .
5.	<i>Catalyst Pharmaceuticals Inc v. Canada (Attorney General)</i> , <a href="#">2020 FC 938</a> .
6.	<i>R v. Canadian Broadcasting Corp.</i> , <a href="#">2018 SCC 5</a> .
7.	<i>Rezaee v. Zar et al.</i> , <a href="#">2020 ONSC 3014</a> .
8.	<i>Thamotharem v. Canada</i> , <a href="#">2007 FCA 198</a> .mc
9.	<i>Dr. Q. v. College of Physicians and Surgeons of British Columbia</i> , <a href="#">2003 SCC 19</a> .
10.	<i>Gitxaala Nation v. Canada</i> , 2016 FCA 187.
11.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , <a href="#">2019 SCC 65</a> .
12.	<i>Canada RNA Biochemical Inc. v. Canada (Health)</i> , <a href="#">2020 FC 668</a> .
13.	<i>Delta Air Lines Inc v Lukács</i> , <a href="#">2018 SCC 2</a> .
14.	<i>Canada (Attorney General) v. Sketchley</i> , <a href="#">2005 FCA 404</a> .
15.	<i>Douglas v Canada (Attorney General)</i> , <a href="#">2014 FC 299</a> .
16.	<i>Re: Sound v. Canadian Association of Broadcasters</i> , <a href="#">2017 FCA 138</a> .
17.	<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , <a href="#">1999 CanLII 699 (SCC)</a> .
18.	<i>Sayeed v. Canada (Citizenship and Immigration)</i> , <a href="#">2008 FC 567</a> .
19.	<i>Doré v. Barreau du Québec</i> , <a href="#">2012 SCC 12</a> .
20.	<i>Aryeh-Bain v. Canada (Attorney General)</i> , <a href="#">2019 FC 964</a> .
21.	<i>Law Society of British Columbia v Trinity Western University</i> , <a href="#">2018 SCC 32</a> .



22.	<i>Baier v. Alberta</i> , <a href="#">2007 SCC 31</a> .
23.	<i>Haig v Canada</i> , <a href="#">1993 CanLII 58 (SCC)</a> .
24.	<i>Agrium Vanscoy Potash Operations v United Steel Workers Local 7552</i> , <a href="#">2014 SKCA 79</a> .
25.	<i>Francis v. Canada (Citizenship and Immigration)</i> , <a href="#">2012 FC 1141</a> .
26.	<i>Dunkova v. Canada (Citizenship and Immigration)</i> , <a href="#">2010 FC 1322</a> .
27.	<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , <a href="#">1994 CanLII 117 (SCC)</a> .
28.	<i>Peavine Metis Settlement v. Whitehead</i> , <a href="#">2015 ABCA 366</a> .
29.	<i>Benitez v. Canada (Minister of Citizenship and Immigration)</i> , <a href="#">2006 FC 461</a> .
30.	<i>Harper v Canada (Attorney General)</i> , <a href="#">2 SCR 764</a> .

**Appendix “A”: Excerpts from the Decisions re: Individual Applicants**

Applicant	Decision
Andrew Chapados	<p>I now consider the content published by the individual applicant, Andrew Chapados, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising on numerous occasions, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following articles, which do not contain an exhaustive review of your publications, are illustrative of such conflict of interest:</p> <ol style="list-style-type: none"> <li>1. <a href="#">“Quarantine rule change nets university basketball player \$3,755 fine”</a> (July 2, 2021): In this article, you report on Roy Anku, who, “was fined a whopping \$3,755 under the Quarantine Act for ‘Failure to comply with an order prohibiting or subjecting to any condition the entry to into [sic] Canada.’” You note that “as a 21-year-old student, Roy couldn’t produce a line of credit out of thin air.” You then solicit donations for Mr. Anku, and write the following: “Please consider donating to help Canadians who have received unjust lockdown fines by going to <a href="http://www.FightTheFines.com">www.FightTheFines.com</a>, where you can receive a charitable tax receipt for your contribution.”</li> <li>2. <a href="#">“Entrepreneur starts fund to help struggling Canadian small businesses”</a> (January 21, 2021): In this article, you report on “entrepreneur Travis Kanellos and his business partner, professional Lacrosse player Dan Lomas,” who “have started Fund the Grind, aimed at supporting establishments.” Within the article, you solicit donations by writing the following: “While Rebel News tackles COVID fines across the world through our FightTheFines.com civil rights campaign, other entrepreneurs have taken it upon themselves to help small businesses in their own way.”</li> <li>3. <a href="#">“No, “store policy” can’t include ‘No Mask Exemptions’”</a> (March 24, 2021): In this article, you state that “the Rebel News inbox has been flooded with instances of stores and restaurants not abiding by mask laws, specifically with regards to exemptions.” Within the article, you “encourage our readers to go to <a href="http://www.UnMask.ca">www.UnMask.ca</a> for information on properly filing a human rights complaint if they have been discriminated against illegally.” You also solicit donations by writing the following: “due to the mass of viewer requests regarding stores claiming trespass, or suggesting that customers use ‘curb-side pickup’ as opposed to providing them equal treatment under the law,</li> </ol>

	<p>citizens may need to contact local bylaw authorities or go to our portal at <a href="http://www.FightTheFines.com">www.FightTheFines.com</a> if they are fined.”</p>
Adam Soos	<p>I now consider the content published by the individual applicant, Adam Soos, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content that gives rise to conflict of interest, your articles published at Rebel News also result in a conflict of interest. On multiple occasions, you have prompted and/or requested your readers to visit Rebel News’ fundraising and petitioning on various issues, thus creating a conflict of interest and breaching CAJ’s Guidelines. Some examples of such articles are as follows:</p> <ol style="list-style-type: none"> <li data-bbox="516 600 1448 1142">1. <a href="#">"It's bulls***": Calgarians react to mandatory vaccination requirement for sporting events</a> (August 28, 2021): in this article, you note the Calgary Sports and Entertainment Corporation has decided that “they will be requiring full vaccination for anyone wishing to attend an event at their venues...” You write that “Rebel News took on thousands of cases with our <a href="http://FightTheFines.com">FightTheFines.com</a> initiative, and we provided top-notch legal teams for people who received ridiculous COVID tickets and fines. We are now taking the fight to the corporations and government agencies who are coercing people into being vaccinated, but we need your help to hire the very best lawyers if we hope to win. This is a David and Goliath battle for the soul of the country and for the fundamental rights of Canadians. Go to <a href="http://FightVaccinePassports.com">FightVaccinePassports.com</a> today and help us take a stand against medical tyranny.” Rebel News’ <a href="http://FightVaccinePassports.com">FightVaccinePassports.com</a> page prompts readers to sign petitions and “help fund our lawsuits”.</li> <li data-bbox="516 1213 1448 1541">2. <a href="#">“Charges DROPPED against Pastor Artur Pawlowski's “right-hand man”</a> (August 19, 2021): In this article, you report on criminal charges being dropped against Pastor Peter Reicher while the criminal proceeding continues against Pastor Artur Pawlowski. You write that Pastor Pawlowski was “criminally charged” for violating provincial COVID restrictions. You also write that “[p]lease go to <a href="http://FightTheFines.com">FightTheFines.com</a> or <a href="http://SaveArtur.com">SaveArtur.com</a> to help the fight for freedom today.” Both pages prompt readers to donate funds with respect to fines issues in view of violating COVID restrictions.</li> <li data-bbox="516 1612 1448 1860">3. <a href="#">“Antifa ATTACKS Pastor Artur Pawlowski's prayer rally in Portland”</a> (August 09, 2021): in this article, you report on an incident with respect to Pastor Artur Pawlowski. You write “Pastor Artur is facing the legal battle of his life — he could be sent to prison for 21 days for daring to gather for worship. If you think that is unacceptable, go to <a href="http://SaveArtur.com">SaveArtur.com</a> and make a contribution to his legal battle today.” <a href="http://SaveArtur.com">SaveArtur.com</a> appears to be run by Rebel News</li> </ol>

	and prompts readers to donate to “[h]elp pay the legal fees of Pastor Artur”.
Alexandra Lavoie	<p>I now consider the content published by the individual applicant, Alexandra Lavoie, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content that gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. On multiple occasions, you have prompted and/or requested your readers to visit Rebel News’ fundraising and petitioning campaigning on various issues, thus a creating conflict of interest and breaching CAJ’s Guidelines. Some examples of such articles are as follows:</p> <ol style="list-style-type: none"> <li>1. <a href="#">“Following Health Canada guidelines on mixing vaccines could get Canadians kicked off cruises”</a> (August 3, 2021): In your reporting about vaccinations and cruises, you write “[s]o we have a government that strongly recommended the mixing of vaccines to the population, and now those people are seeing their promised freedoms suppressed simply due to having listened to their government. How long will people tolerate what is happening? Is this what could happen on airlines, too? How far will people’s tolerance go? If like me, you find things are going too far, please go to NoVaxPassport.com to support us and to sign our petition against these extreme measures.”</li> <li>2. <a href="#">“We’re suing the Montreal police for assaulting another Rebel News reporter”</a> (June 9, 2021): in this article, you report on an incident involving the police with respect to a rally against COVID restrictions. You write “[w]hen my Toronto colleagues came to report on the massive anti-lockdown protests, showcasing what the mainstream media here in Quebec refuse to, they were deliberately targeted by police, and have faced many instances of police misconduct for just doing their jobs as journalists. That’s why we plan to sue the Montreal police to hold them accountable. Head over to DefendJournalists.com, if you’d like to help chip in towards our lawsuit to help shine a light on the darkness of Montreal’s heavy-handed policing. In the upcoming weeks, you will see our full legal filing there with the details of each incident.” DefendJournalists.com—which is operated by Rebel News—prompts donations from the reader and says “help us sue the Montreal Police.”</li> </ol>
Sheila Gunn Reid	I now consider the content published by the individual applicant, Sheila Gunn Reid, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content that gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. On multiple occasions, you have prompted and/or requested your readers to visit Rebel News’ fundraising and petitioning campaigning on

various issues, thus creating a conflict of interest and breaching CAJ's Guidelines. Some examples of such articles are as follows:

1. "[EXCLUSIVE: Trudeau underlings pressured India hotel to help cheat expense limit](#)" (July 8, 2021): In this article, you write that Rebel News is filing a "formal legal complaint to the Auditor General asking for a forensic and thorough examination of Justin Trudeau's February 2018 trip to India." You go onto write "How many other times have Canadian taxpayers paid for things that no one had any intention of using, so that bureaucrats could abuse their expense accounts for nicer accommodations? Is this standard operating practice in the federal government? This requires an audit. At [AuditTrudeau.com](#), you can sign our petition demanding that the Auditor General examine these expense claims. Rebel News is also hiring a lawyer who will draft a formal complaint asking for an audit. To offset our legal costs to draft that letter demanding accountability from the government for their sketchy expense claims, please donate today at [www.AuditTrudeau.com](#)."
2. "[EXCLUSIVE: Justin Trudeau bought \\$850 worth of coal to power one of his fancy parties in India](#)" (July 9, 2021): In this article, you appear to continue you reporting on Prime Minister Trudeau's February 2018 visit to India. You write "Rebel News is hiring a law firm to draft a letter calling on the Auditor General to forensically audit the 2018 India trip. To sign the petition and donate to offset the legal costs to hold Trudeau's people accountable, please visit [www.AuditTrudeau.com](#)."
3. "[Formal complaint submitted to Auditor General over Trudeau India trip](#)" (July 13, 2021): In this article, you write "[I]lawyers for Rebel News have sent an official legal letter to the Auditor General asking for a full audit of Justin Trudeau's February 2018 state visit to India". You also state that readers "can still donate and sign our petition to the AG at [www.AuditTrudeau.com](#)."
4. "[Can lockdowns be defeated legally? We're going to find out in Saskatchewan](#)" (March 10, 2021): In this article, you report that Rebel News is commencing a constitutional challenge to the Saskatchewan's COVID measures. You write "We are trying to raise \$150,000 to fight for the civil liberties of Saskatchewan residents. We are already helping so many people fight their lockdown tickets in Saskatchewan through [FightTheFines.com](#), but we want the lockdown responsible for punishing people with these fines thrown out all together... What she's [your lawyer] doing in Saskatchewan can be a template for other provinces if she's successful. But this is very expensive, as any Charter

	<p>challenge is. It is time consuming and it demands a lot of research and resources. So we can't do it without your help... Civil liberties organizations are not doing this work, and so it falls to us here at Rebel News. We need your help...If you want to help us end the lockdown in Saskatchewan and start the cascade that will end the lockdowns across the country, please donate today at <a href="http://OpenSaskatchewan.com">OpenSaskatchewan.com</a>.”</p> <p>5. <a href="#">“Cops PRESSURED by health authority to ticket Full Gospel Outreach Church in Saskatchewan”</a> (March 18, 2021): In this article, you write Full Gospel Outreach Centre church in Prince Albert, Saskatchewan that has been fined for failing to enforcing provincial COVID measures. You write “If you would like to help Full Gospel Outreach and Pastor Vern Temple with their legal fees, so they can continue to use their limited resources to help the most vulnerable in Prince Albert, please donate today at <a href="http://www.FightTheFines.com">www.FightTheFines.com</a>”.</p> <p>6. <a href="#">“BREAKING: Rebel News is appealing Federal Court decision to keep Justin Trudeau's COVID jail system in place”</a> (July 12, 2021): In this article, you report on the Federal Court’s decision to reject Rebel News’ (among others) challenge to the Federal government’s policy of quarantine hotels. You write “Rebel News has already spent nearly \$200,000 fighting the COVID jail system, for the Charter rights of innocent, healthy Canadians to come home or leave without being taken into dangerous facilities against their wishes and being charged ridiculous fees for it. The challenge of this wrongheaded and dangerous decision has already had chilling ramifications for the freedoms of Canadians and those trying to fight for them. The appeal could cost as much as \$70,000, but we think fighting for the rights of 34 million Canadians to travel as they wish without being sent to jail for three days is worth it. Can you help us? Please donate today at <a href="http://www.NoCOVIDJails.com">www.NoCOVIDJails.com</a>.”</p>
Tamara Ugolini	<p>I now consider the content published by the individual applicant, Tamara Ugolini, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising on numerous occasions, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following articles, which do not contain an exhaustive review of your publications, are illustrative of such conflict of interest:</p> <p>1. <a href="#">“\$800k in COVID tickets loom over Niagara area anti-lockdown leader,”</a> (August 25, 2021): In this article, you report on Rob Primo, who “is facing eight different summonses,” and “[i]f found guilty, each summons holds a maximum penalty of \$100,000 and up to one year in prison.” You state that “[h]ere at Rebel News, we have</p>

	<p>undertaken the largest civil liberties initiative in Canada to date, to push back against overreaching health mandates in the name of hygiene hysteria.” You solicit donations by writing that “[t]hrough our Fight the Fines campaign, we crowdfund legal defence for individuals who have been fined for exercising fundamental rights like freedom of assembly and freedom of expression.”</p> <p>2. <a href="#">“Spa hit with DOZENS of COVID fines, summonses forced to start over after online hate”</a> (August 18, 2021): In this article, you “get an update” from one of Rebel’s “Fight The Fine cases, Jess Downey from BoHo Beauty Microblading and Spa.” You provide two links to the Fight The Fines fundraising page within this article.</p> <p>3. <a href="#">“Vaccine segregation at the airport and \$25,000 fine upon return to Canada,”</a> (August 9, 2021): In this article, which you identify as a “Fight The Fines segment,” you report on how “married couple William O’Kane and Kim Green explain how they were ticketed upon arrival into Canada after they refused to take a follow-up COVID-19 test and be sent to a government-run quarantine hotel.” You solicit donations by writing: “If you’d like to contribute to William and Kim’s legal fight, as well as those of over 2,000 Canadians who have received COVID-related fines and even criminal charges, please donate at FightTheFines.com.”</p>
Drea Humphrey	<p>I now consider the content published by the individual applicant, Drea Humphrey, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising on numerous occasions, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following articles, among a larger number of your related publications, are illustrative of such conflict of interest:</p> <p>1. <a href="#">“Investigating a COVID hotel in British Columbia”</a> (February 19, 2021): In this article, you report that “[h]ealthy, law-abiding Canadians are officially being detained against their will and forced to pay for their “stay” inside hotels, better known as “COVID jails,” as part of the federal government’s plans for certain Canadians trying to return home from international travel.” Within the article, you solicit donations on this issue, by writing: “If you’d like to help us continue to provide legal counsel for the Canadians who are reaching out to us before and during their detainment at these hotels, please donate what you can at NoCOVIDJails.com.”</p> <p>2. <a href="#">www.StopMedicalSilencing.com</a> (June 1, 2021): In the description of this petition, you state that “[s]ince the COVID-19 pandemic was</p>

	<p>declared, many frontline doctors and nurses have been shamed, silenced, and even punished, for sharing medical opinions that differ from those of our unelected public health officials.” You state that readers should sign the petition, by writing: “[s]tand with me by signing and sharing this petition to help remove the political muzzle from our medical professionals’ brilliant minds.”</p> <p>3. <a href="#">“Free churches and free press with Drea Humphrey”</a> (June 2, 2021): In the description of this article, which can be accessed only by subscription, it states that “Drea has recently launched a brand new campaign to advocate for the free thought, free expression and independence of healthcare professionals who are facing increased censorship and consequences for deviating from the accepted COVID-19 narratives. You can see her campaign and sign the petition at <a href="http://www.StopMedicalSilencing.com">www.StopMedicalSilencing.com</a>.”</p>
Sydney Fizzard	<p>I now consider the content published by the individual applicant, Sydney Fizzard, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising on numerous occasions, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following articles, which do not contain an exhaustive review of your publications, are illustrative of such conflict of interest:</p> <p>1. <a href="#">“Manitoba COVID dissent crackdown takes aim at independent media,”</a> (July 19, 2021): In this article, you report on Todd McDougall, who “was arrested under a warrant issued by a Manitoba justice for what appears to be a non-arrestable offence.” You explain that: “Fortunately, we are able to help Todd with his legal fight. On the case is a top-tier Canadian lawyer, Leighton Grey. These tickets and arrests will be challenged, and may well open a door for all Manitobans to bask in their constitutionally-granted freedoms soon once again.” You solicit donations by writing: “If you wish to help Todd McDougall, go to <a href="http://FightTheFines.com">FightTheFines.com</a> where you can donate today.” You also extend the offer of possible financial support for legal defence to your readers by stating: “Or if you need legal aid yourself and wish to share your story, go to <a href="http://FightTheFines.com">FightTheFines.com</a>.”</p> <p>2. <a href="#">“Manitoba lockdown protester arrested again for Facebook post,”</a> (July 29, 2021): In this article, you reported on the arrest of Patrick Allard. You state: “We are helping Patrick fight multiple tickets issued against him previously for breaching the Public Health Act, and we’re doing that through our portal at <a href="http://FightTheFines.com">FightTheFines.com</a>.” You also extend</p>



	<p>the offer of possible financial support for legal defence to your readers by stating: “Don’t forget, if you yourself need help fighting against lockdown tickets and want to share your story, go to FightTheFines.com, and if we think we can help, we will provide top-notch legal assistance to stand by your side.”</p> <p>3. <a href="#">“Stop organizing protests? ‘They'd have to kill me’ says Manitoba man,”</a> (June 24, 2021): In this article, you report on Patrick Allard, who “was previously a FightTheFines.com client.” You solicit donations by writing that: “We are helping Patrick with his legal fees and if you wish to support him or others in his position, please go to FightTheFines.com and donate. All donations now qualify for a charitable tax receipt. Think of it this way: would you rather pay taxes to Justin Trudeau, or direct some of that money instead to help fight for freedom?”</p>
Lincoln Jay	<p>I now consider the content published by the individual applicant, Lincoln Jay, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising in the past, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following article, only one of a number of your related publications, is illustrative of such conflict of interest:</p> <p>1. <a href="#">“Father &amp; son denied home quarantine, sent to hotel after returning from surgery overseas”</a> (May 21, 2021): In this article, you report on Matt Catteroll. You state that “[u]pon returning to Manchester from Abu Dhabi, Matt and his son were forced into a quarantine hotel, where they were both left without necessary medication — even though they had been told before they left for the trip that they could self-isolate at home upon return.” In this article, you solicit donations by writing the following: “We don’t think this is just in any manner, and that’s why we are providing Matt with a legal team at no cost to him, with the help of your support of our campaign at FightTheFines.co.uk. If you want to help fight back against these unjust measures, please donate via that same website at FightTheFines.co.uk so we can back Matt 100 per cent.”</p>
Katherine Krozonouski	<p>I now consider the content published by the individual applicant, Katherine Krozonouski, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising on numerous occasions, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following articles, which do not</p>

	<p>contain an exhaustive review of your publications, are illustrative of such conflict of interest:</p> <ol style="list-style-type: none"> <li>1. <a href="#">“Attending drive-in church service results in summons to court for COVID infraction”</a> (April 26, 2021): In this article, you state: “Katherine Krozonouski here for Rebel News, with another Fight The Fines case that will make your blood boil.” Furthermore, you explain that “[a]ll the lawyers we use as part of our Fight The Fines program are provided at no cost to the people we are helping.” Within the article, you solicit donations by writing: “Please make sure to visit FightTheFines.com to make a donation, and keep helping us fight tyranny.”</li> <li>2. <a href="#">“Six OPP cruisers sent to ticket lone teen protester a waste of police resources”</a> (June 29, 2021): In this article, you reported on Christina McMichael and her daughter Meghan receiving tickets “after Meghan walked in front of her school with signs in a solo protest,” and again “the next day, while at a peaceful protest.” You also write the following: “don’t worry, because we are helping them fight these tickets in court at no cost to them through out Fight The Fines campaign. This is Rebel News’ largest civil liberties project ever, where we help Canadians fight their lockdown tickets by hooking them up with top notch criminal defence lawyers.” You also solicit donations by stating: “If you want to help us fight these tyrannical lockdown tickets, please visit FightTheFines.com today, and make a donation.”</li> <li>3. <a href="#">“Sorry, testing's closed: Student returning to Canada fined for refusing quarantine hotel,”</a> (August 9, 2021): In this article, you report on Gregory Vovtchenko, who “is a student who was recently travelling home from Mexico to Canada,” and “wanted to avoid the dreaded COVID hotels.” You state that “[a]ll was well until he encountered border agents and nurses at the Canadian border who told him that his negative PCR test from Mexico wasn’t valid.” You explain that “[l]ike so many of our Fight The Fines victims, Gregory comes off as a tolerant and patient individual, one who isn’t used to being in trouble with the law.” You solicit donations from readers, by writing the following: “Jenna [the Fight The Fines paralegal] and her team are eager to challenge this fine in court, and you can help by donating to FightTheFines.com.”</li> </ol>
Abdusselam “Mocha” Bezirgan	I now consider the content published by the individual applicant, Abdusselam “Mocha” Bezirgan, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content that gives rise to a conflict of interest, one of your articles published at Rebel News also result in a conflict of interest. You have requested your readers to visit Rebel News’ fundraising campaign in the past, thus creating a conflict of interest

	<p>and breaching CAJ’s Guidelines. The following article, which is not an exhaustive review of your publications, is illustrative of such conflict of interest:</p> <ol style="list-style-type: none"> <li>1. <a href="#">“Montreal police CHOKE protester during violent arrest”</a> (July 12, 2021): In this article, you report on the “Montreal police [being] caught on camera choking a protester for allegedly not wearing a mask during a demonstration.” You then identify an individual (Alex Bowles) who has been fined at this protest by the authorities. You then solicit donations for Mr. Bowles and write the following: “Rebel News has retained a lawyer to fight Alex’s obstruction charge and his \$1,550 fine through our largest civil liberties campaign ever, FightTheFines.com. Make sure to donate there to help Alex and nearly 2,000 other Canadians fight their lockdown fines and charges. And for more reporting on lockdowns across Canada, visit LockdownReports.com.”</li> </ol>
David Menzies	<p>I now consider the content published by the individual applicant, David Menzies, as distinct from the general content published by Rebel News discussed above. In addition to Rebel News’ general content, which gives rise to a conflict of interest, your articles published at Rebel News also result in a conflict of interest. You have requested that your readers consider donating to Rebel News’ fundraising on numerous occasions, thus creating a conflict of interest and breaching CAJ’s Guidelines. The following articles, which do not contain an exhaustive review of your publications, are illustrative of such conflict of interest:</p> <ol style="list-style-type: none"> <li>1. <a href="#">“Tamara on the beach: Why we hired a lawyer to fight an \$880 ticket”</a> (July 26, 2020): In this article, you report on Rebel’s “most recent Fight The Fines case of Tamara Ugolini.” You explain that: “We are fighting back against these silly Wuhan virus fines—primarily because no other institution is. But folks, we need your help.” You state that Rebel has retained “top legal talent” that “charge about \$4,000 per case.” Within the article, you solicit donations by writing that “if we all chip-in a donation – be it \$5 or \$50 or \$500 – we can pay our lawyers’ bills and continue to fight for justice. Please visit <a href="http://www.FightTheFines.com">www.FightTheFines.com</a>. And if you’re able to, kindly make a donation.”</li> <li>2. <a href="#">“Take Toronto Back Petition”</a> (undated): In this petition, you claim that “Enough is enough. Toronto Mayor John Tory must enforce the laws, clean up Toronto parks, and take them back from filthy illegal occupiers.” You invite readers to “sign our petition if you agree.”</li> <li>3. <a href="#">““Computer glitch’ preventing Quarantine Act tickets from being prosecuted in Ontario”</a> (April 12, 2021): In this article, you report on the “government inefficiency and ineptitude” connected with an</li> </ol>

	<p>“Ontario court computer system’s inability to process tickets of more than \$1,000.” Within the article, you link to the Fight The Fines webpage.</p> <p>4. “<a href="#">Police issue summons to journalist after quarantine hotel investigation</a>” (February 11, 2021): In this article, you report on police charging you and your cameraman, Mocha, while you were “practicing journalism.” You state that “[t]here is no fine on the ticket, but that’s irrelevant, because we will, of course, fight this outrageous ticket in court all the way.” You invite donations by writing the following: “And if you would like to help contribute to our legal fees, please visit <a href="http://www.FightTheFines.com">www.FightTheFines.com</a> and kindly make a donation.”</p>
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