

**FEDERAL COURT**

B E T W E E N:

ANDREW JAMES LAWTON and TRUE NORTH CENTRE FOR PUBLIC  
POLICY

Applicants

-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 APPLICANTS**

**[MOTION TO STRIKE NOTICE OF APPLICATION]**

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February 3, 2020

**JUSTICE CENTRE FOR CONSTITUTIONAL  
FREEDOMS**

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Court File No. T-1633-19

**FEDERAL COURT**

B E T W E E N:

ANDREW JAMES LAWTON and TRUE NORTH CENTRE FOR PUBLIC  
POLICY

Applicants

-and-

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

Respondents

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**AFFIDAVIT OF ANDREW JAMES LAWTON**

**(Sworn February 2, 2020)**

---

I, ANDREW JAMES LAWTON, of the City of London in the Province of Ontario, MAKE OATH AND SAY:

1. I am one of the Applicants herein, and as such have knowledge of the matters hereinafter deposed to.
2. I am a journalist and fellow at True North Centre for Public Policy ("**True North**"). On October 4, 2019, our then counsel filed a Notice of Application for judicial review with this Court (the "**Application**"). It was followed shortly thereafter by a Motion for a mandatory injunction (the "**Injunction Motion**") challenging the decision of the

Respondent, the Leaders' Debates Commission (the "**Commission**"), which refused to grant me the necessary media accreditation to cover the Federal Leaders' Debate taking place on Monday, October 7, 2019 (the "**Decision**"). Attached hereto and marked as **Exhibit "A"** is a copy of the Notice of Application filed in the within proceedings.

### **The Parties**

3. True North is an independent, non-partisan and not-for-profit organization that advances Western democratic values consistent with the *Canadian Charter of Rights and Freedoms* (the "**Charter**"). True North employs staff journalists and advocates for freedom of the press. Attached hereto and marked as **Exhibit "B"** is a copy of the Detail Page for True North Centre for Public Policy, as found on the Government of Canada's website on October 5, 2019.

4. Since its inception, True North and its journalists have been granted media accreditation to cover political events by the Government of Canada, the Government of the United Kingdom and by various political parties including the New Democratic Party, the Conservative Party of Canada and the People's Party of Canada.

5. I have worked as a journalist since 2013. In addition to my journalism with True North, I write a weekly column for Loonie Politics and contribute monthly to The Interim. Recently, I hosted the Andrew Lawton Show on 980 CFPL in London and wrote a national column for Global News analyzing politics and culture, often with a focus on freedom of speech, limiting government and combatting radicalism. My work has been published across the world, including in the Washington Post, the National Post, the Toronto Sun

and the Edmonton Sun. I have appeared as a commentator on CBC, CTV, TVO, CTS, and BBC World.

6. During the course of the 2019 federal election campaign, the only political party to decline my requests for media accreditation was the Liberal Party of Canada. This escalated to the point where the Liberal Party of Canada apologized to True North and me for kicking me out of one of its rallies in Thunder Bay, Ontario, and gave rise to a National Post article dated September 23, 2019, entitled "*You've got to go': Liberals apologize to conservative broadcaster banned from public rally.*" Attached hereto and marked as **Exhibit "C"** is a copy of said article.

7. The Commission was created by an Order in Council, dated October 29, 2018, ostensibly to make the debates a more predictable, reliable and stable element of federal election campaigns. The only aspect of its mandate that touched on journalism was to "ensure that high journalistic standards are maintained for the Debates." This appeared to relate particularly to the media involved in moderating the actual debates. Also of note is this passage on the Commission's website: "*In fulfilling its mandate, the Leaders' Debates Commission is to be guided by the pursuit of public interest.*" Attached hereto and marked as **Exhibit "D"** is a printout from the "Transparency" section of the Commission's website.

### **Application for Accreditation**

8. At 9:05 a.m. on Monday, September 23, 2019, the Commission published a press release advising of the dates of the debates. It additionally stated: "*Media representatives who wish to cover the debates must apply for accreditation using the*



*Government of Canada Accreditation portal....*” There was no information provided to indicate the criteria that would be applied in granting this accreditation. Attached hereto and marked as **Exhibit “E”** is a copy of the Press Release dated September 23, 2019.

9. As instructed, I applied for media accreditation as a staff journalist of True North on September 24, 2019, through the Government of Canada Accreditation portal. My application was acknowledged.

10. At 9:10 a.m. on Friday, October 4, 2019, on the last business day before the day of the first debate, I received an email from Mr. Collin Lafrance, the Chief of the Parliamentary Press Gallery, advising that my request for accreditation was denied. Mr. Lafrance’s email reads as follows: *“Hello, your request for media accreditation for the 2019 Federal Leaders’ Debate has been denied. The about section of tnc.news clearly states that True North is involved in advocacy.”* Attached and marked as **Exhibit “F”** is a copy of the said email.

### **The Involvement of the Parliamentary Press Gallery**

11. My reaction upon review of the email correspondence from Mr. Lafrance on October 4, 2019, was one of surprise. As the Chief of the Parliamentary Press Gallery, I was unaware he had any official relationship with the Commission. Attached hereto and marked as **Exhibit “G”** is a printout from the Parliamentary Press Gallery’s website noting the contact information and employment position of Mr. Collin Lafrance.

12. I was additionally surprised by the reasoning provided by Mr. Lafrance on behalf of the Commission in the Decision, since some news media outlets that were

granted accreditation do engage in advocacy, including the Toronto Star, which explicitly states on its website that participating in “advocacy” is a fundamental part of its mandate. Attached hereto and marked as **Exhibit “H”** is a printout from “About the Star” as published on its website.

### **The Injunction Motion and Aftermath**

13. Our Injunction Motion was heard by Justice Zinn of the Federal Court on October 7, 2019. Following submissions from counsel, Justice Zinn ordered that I be accredited as a media representative for the debates and the follow-up media scrum with party leaders. Two journalists from Rebel Media, whose applications for accreditation were also rejected and whose injunction motion was heard alongside ours, were granted a mandatory order requiring their accreditation by the Debates Commission as well.

14. It was only after receiving materials from the Commission for the Injunction Motion that I saw what purported to be a guideline for accreditation. It was dated October 3, the day before the Decision, and appeared to be hastily drafted. It refers to the fact that it had received about 200 accreditation requests for the English debate, and stated that, in consultation with the Secretariat of the Parliamentary Press Gallery, it had established a principle about journalistic independence, and that this principle precluded media organizations that engage in advocacy and political activism. It went on to say that, “[I]n communicating its decision to journalists or media organizations that will not be admitted to debates, the Commission, in keeping with its mandate of transparency, will explain its reasoning clearly.” A copy of the statement is attached hereto, marked as **Exhibit “I”**.

15. Following our successful Injunction Motion, a news story from Blacklock's Reporter was published, which directly challenged the sworn evidence given in the Injunction Motion by the Commission's Executive Director, Michel Cormier, in his affidavit affirmed on October 6, 2019. At paragraph 17, Mr. Cormier had stated:

The Commission used the services of the Press Gallery Secretariat to assist with the process of obtaining applications for accreditation from potential media representatives. **Despite engaging the Press Gallery Secretariat and Summit Management Office of Global Affairs Canada to develop the media accreditation practice and procedure**, the Commission retained the ultimate decision-making authority for media accreditation. However, given the Press Gallery Secretariat's logistical role in administering the accreditation portal, Collin Lafrance was responsible for communicating the final decision to the applicants.

16. However, the report by Blacklock's Reporter stated:

[A] House of Commons staffer contradicted the Debates Commission's sworn affidavit claiming the Parliamentary Press Gallery set criteria that banned two media outlets from attending national TV election debates. Records indicate Gallery directors were never consulted and had not even met for months before the ban was imposed by a handful of federal employees.

Attached hereto and marked as **Exhibit "J"** is a copy of the Blacklock's Reporter article, dated November 15, 2019.

### **True North's Motion for Leave to Amend**

17. In the rush to get the Application for judicial review filed the very day we received the denial from the Commission, in order to be able to bring our Injunction Motion



in time for the debate, we did not include a claim for a remedy for the Commission's breach of our guarantee of freedom of the press under the *Canadian Charter of Rights and Freedoms*.

18. As a journalist who continues to report on the activities of Parliament, and who expects to participate in future election debates, it is entirely likely that this situation could be repeated, and I am concerned that, while one particular event has been allowed to proceed, there has been no opportunity to address the breach of my freedom as a member of the press, and how this can be avoided in the future.

19. In order to seek this relief, in addition to our claim for judicial review of the Commission's Decision, our new lawyers, the Justice Centre for Constitutional Freedoms, drafted an amended Notice of Application. Attached hereto and marked as **Exhibit "K"** is a copy of the draft amended pleading.

20. I am advised by my lawyers, and verily believe, that the draft Amended Notice of Application, along with a draft Order for Leave to Amend and consent, were forwarded to counsel for the Debates' Commission and the Attorney General of Canada, on January 10, 2020. Attached hereto and marked as **Exhibit "L"** to this my Affidavit is a true copy of the correspondence sent by Lisa Bildy of the Justice Centre to counsel for the other parties.

21. I am further advised by my lawyers, and verily believe, that the Commission's counsel responded on January 22, 2020, advising that it would not consent to the motion for leave to amend. Attached hereto and marked as **Exhibit "M"** to this my Affidavit is a true copy of the email from Ewa Krajewska.

22. I am further advised by my lawyers, and verily believe, that Ms. Krajewska immediately thereafter served a Motion to Strike our Notice of Application, seeking an order that it be granted without leave to amend.

23. I am advised by Candice Malcolm, Executive Director of True North, that the Costs award of \$6500 agreed to in October by the parties has not been paid by the Commission.

24. I swear this affidavit in response to the Commission's motion to strike our Application, and in support of our motion for leave to amend said Application.

**SWORN BEFORE ME** at the City of London, in the Province of Ontario this 2<sup>nd</sup> day of February, 2020.



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A Commissioner, etc.

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**ANDREW JAMES LAWTON**

**LISA D.S. BLDY**  
**BARRISTER & SOLICITOR**



This is Exhibit "A" referred to  
in the Affidavit of  
Andrew Lawton  
Sworn before me this 2<sup>nd</sup> day  
of February A.D., 2020  
L. Bildy  
A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**



Court File No. T-1633-19

**FEDERAL COURT**

**ANDREW JAMES LAWTON and TRUE NORTH CENTRE FOR  
PUBLIC POLICY**

Applicants

-and-

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

Respondents

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

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

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

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

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

-2-

Date OCT 07 2019Issued by \_\_\_\_\_  
(Registry Officer)Address of  
local office: 180 Queen Street West  
Suite 200  
Toronto, Ontario  
M5V 3L6

**TO: BORDEN LADNER GERVAIS LLP**  
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Lawyers for the Respondent, the Leaders'  
Debates Commission

**AND TO:** The Attorney General of Canada  
Department of Justice Canada  
120 Adelaide Street West  
Suite 400  
Toronto, Ontario  
M5H 1T1

Respondent

## APPLICATION

This is an Application for judicial review in respect of the decision of the Leaders' Debates Commission (the "**Commission**"), refusing the Applicants, Andrew James Lawton ("**Andrew**") and True North Centre for Public Policy ("**True North**") [collectively, the "**Applicants**"] the media representative accreditation ("**Accreditation**") required to cover the Federal Leaders' Debates taking place on Monday, October 7, 2019 in the English Language and Thursday, October 10, 2019 in the French Language (the "**Debates**"). The two (2) sentence denial of Accreditation was outlined in email correspondence sent from Mr. Collin Lafrance, the Chief of the Canadian Press Gallery to Andrew at 9:10am on Friday, October 4, 2019 (the "**Decision**").

### **The Applicants make Application for:**

1. An Order quashing the Decision of the Commission;
2. An Order directing the Commission to provide reasonable and meaningful feedback to the Applicants regarding the Decision including details of the decision-making procedure the Commission employs in reviewing applications for Accreditation, the reason(s) why the Commission made the Decision, including how the Decision is consistent with its mandate and particulars of who was involved in making the Decision;
3. An Order directing the Commission to provide detailed information regarding the relationship between Mr. Collin Lafrance, the Chief of the Canadian Press Gallery and the Commission, including a description of what



capacity and under what authority Mr. Lafrance was working when he reviewed and denied the Applicants' request for Accreditation.

4. Costs of this Application; and,

5. Such other relief as counsel may advise and this Court deems just.

**The grounds for the Application are:**

**The Parties**

6. True North is a registered charity with the Government of Canada. Its head office is situated in Richmond, British Columbia. True North is an independent, non-partisan and not-for-profit organization that advances Western democratic values consistent with the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c 11. True North employs staff journalists and advocates for freedom of press.

7. Andrew is an individual residing in London, Ontario. He is a fellow and staff journalist of True North, freelance journalist, broadcaster, columnist and commentator.

8. The Commission is a body created pursuant to an Order in Council dated October 29, 2018 (the "**Order**"). The Commission, which is situated in Ottawa, Ontario, was created to make the Debates a more predictable, reliable, and stable element of federal election campaigns. The Commission consists of

the Debates Commissioner, the Advisory Board and the Secretariat. Per the Order, The Commission's mandates are to:

- (a) Organize the Debates in each official language during each general election period;
- (b) Ensure that the leader of each political party that meets minimum criteria to be invited to participate in the Debates;
- (c) Ensure that the Debates are broadcast and otherwise made available in an accessible way to persons with disabilities;
- (d) Ensure that the Debates reach as many Canadians as possible, including those living in remote areas and those living in official language minority communities through a variety of media and other fora;
- (e) Ensure that the Debates are broadcast free of charge, whether or not the broadcast is live;
- (f) Ensure that any reproduction of the Debates is subject to only the terms and conditions that are necessary to preserve the integrity of the debates;
- (g) Ensure that high journalistic standards are maintained for the Debates;

- (h) Undertake an awareness raising campaign and outreach activities to ensure that Canadians know when, where and how to access the Debates; and,
- (i) Provide advice and support in respect of other political debates related to the general election, including candidates' debates, as the Debates Commissioner considers appropriate.

The Commission's website states that "*In fulfilling its mandate, the Leaders' Debates Commission is to be guided by the pursuit of public interest.*"

9. Per the Order, the Commission is to:

- (a) Conduct any necessary research or rely on any applicable research to ensure that the Debates are of high quality;
- (b) Develop and manage constructive relationships with key opinion leaders and stakeholders;
- (c) Conduct its activities in a manner that does not preclude other organizations from producing or organizing leaders' debates or other political debates;
- (d) Ensure that the decisions regarding the organization of the Debates, including those respecting participation criteria, are made publicly available in a timely manner;

- (e) Ensure that the leaders' responses to the invitations to participate in the Debates are made publicly available before and during the Debates; and,
- (f) Conduct an evidence-based assessment of the Debates that it has organized, including with respect to the number of persons to whom the Debates were accessible, the number of persons who actually accessed them and the knowledge of Canadians of political parties, their leaders and their positions.

### **The Applicants' Application for Accreditation**

10. At 9:05am on Monday, September 23, 2019, the Commission published a press release advising of the dates of the Debates. It additionally stated: "*Media representatives who wish to cover the debates **must apply for accreditation** using the Government of Canada Accreditation portal...*":

11. Andrew applied through the Government of Canada Accreditation portal for Accreditation as a staff journalist of True North on Tuesday, September 24, 2019. At 10:54am on the same date, Andrew received email correspondence from [accreditation@international.gc.ca](mailto:accreditation@international.gc.ca) confirming receipt of the Applicants' application for Accreditation.

12. At 9:10am on Friday, October 4, 2019, Andrew received email correspondence from Mr. Collin Lafrance, the Chief of the Canadian Press Gallery advising that the Applicants' request for Accreditation was denied. Mr.



Lafrance's two (2) sentence email reads as follows: "*Hello, your request for media accreditation for the 2019 Federal Leaders' Debate has been denied. The about section of tnc.news clearly states that True North is involved in advocacy.*"

13. Procedural fairness demanded that the Applicants understood the criteria being applied to be granted Accreditation and had the reasonable expectation that they would receive meaningful feedback from the Commission regarding why Accreditation was denied.

14. Procedural fairness also demanded that the application assessment for the Accreditation process be sufficiently transparent to allow the Applicants to know what was required and/or expected of them to be successful in being granted Accreditation.

15. Given the lack of meaningful feedback and complete lack of transparency in the Accreditation process, the Commission's decision to deny the Applicants' Accreditation without detailed reasons or appeal options was unfair, arbitrary, unreasonable and frankly an attempt by the current Government to censor and silence media outlets that have provided a platform for Canadians with views inconsistent with its mandate.

16. Section 18.1 of the *Federal Courts Act* RSC 1985, c F-7.

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

**This Application will be supported by the following material:**

18. A supporting Affidavit and the exhibits thereto; and,
19. Such other materials that counsel may advise and this Court deems just.

The Applicants request that the Respondents send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Commission to the Applicants and to the Registry:

- (a) A detailed list of the selection criteria used by the Commission in determining the granting of Accreditation;
- (b) A list of the decision-makers involved in the decision-making process and the process of communicating the Decision to the Applicants, including a description of their position in or relationship to to the Commission;
- (c) The complete file and all notes pertaining to the application for Accreditation made by the Applicants; and,
- (d) A complete list of the parties granted Accreditation.

October 4, 2019



---

**CASSELS BROCK & BLACKWELL LLP**

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**Jessica L. Kuredjian**

**LSO #: 68794N**

Tel: 416.815.4251

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[jkuredjian@casselsbrock.com](mailto:jkuredjian@casselsbrock.com)

Counsel for the Applicants

20  
ANDREW JAMES LAWTON and TRUE NORTH CENTRE  
FOR PUBLIC POLICY  
Applicants

and CANADA (LEADERS: DEBATES COMMISSION/COMMISSION  
DES DEBATS DES CHEFS) et. al  
Respondents

Court File No.

FEDERAL COURT

NOTICE OF APPLICATION

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Toronto, ON M5H 3C2

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**LSO #: 68794N**  
Tel: 416.815.4251  
Fax: 416.640.3020  
jkuredjian@casselsbrock.com

Counsel for the Applicants

This is Exhibit "B" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2<sup>nd</sup> day

of February A.D., 2020

L. Bildy

A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**

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→ [T3010 Registered Charity Information Return](#)

## Detail page

---

**i** Use this page to confirm a charity's status and Business/Registration number. The Charities Directorate has not necessarily verified the other information provided by the charity.

### True North Centre for Public Policy

Business/Registration number:

**132703448 RR 0001**

Charity status:

**Registered**

Effective date of status:

**1994-06-18**

Sanction:

**N/A**

Language of correspondence:

**ENGLISH**

Designation:

**Charitable organization**

Charity type:

**Relief of Poverty**

Category:

**Organizations Relieving Poverty**

Address:

**2030 - 10013 RIVER DR**

City:

**RICHMOND**

Province, territory, outside of Canada:

**BC**

Country:

**CA**

Postal code/Zip code:

**V6X0N2**

Charity Email address:

**STGEORGE@TELUS.NET**

Charity website address:



View this charity's quick view information

**Quick view**

Links to Websites not under the control of the Government of Canada (GoC) are provided solely for the convenience of users. The GoC is not responsible for the accuracy, currency or the reliability of the content. The GoC does not offer any guarantee in that regard and is not responsible for the information found through these links, nor does it endorse the sites and their content. Users should be aware that information offered by non-GoC sites that are not subject to the Official Languages Act and to which the CRA links, may be available only in the languages used by the sites in question.

[Back to search results](#)

[New search](#)

Screen ID: CRA-HACC-DP

**Date modified:**

2018-10-24

This is Exhibit "C" referred to  
in the Affidavit of  
Andrew Lawton

Sworn before me this 2<sup>nd</sup> day  
of February A.D., 2020

L. Bilty  
A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**

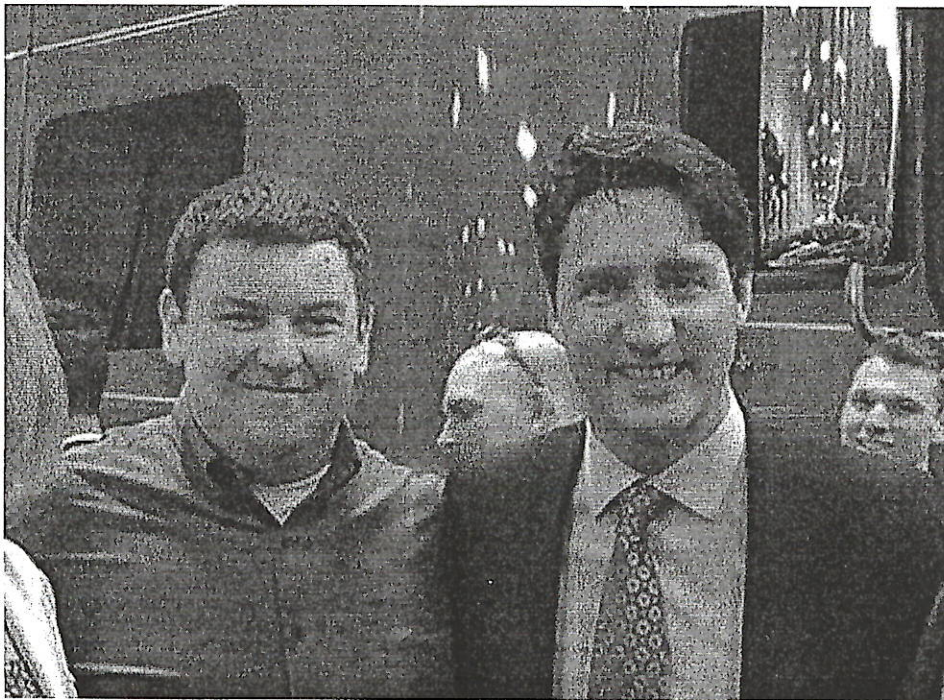


# NATIONAL POST

NEWS • ELECTION 2019 • FULL COMMENT • SPORTS • CULTURE • LIFE • MORE • JOBS • CLASSIFIEDS • DRIVING • SUBSCRIBE • FINANCIAL POST • VIDEO

## 'You've got to go': Liberals apologize to conservative broadcaster banned from public rally

*'They wouldn't even recognize me as a Canadian citizen wanting to hear a prime minister speak at an event,' Andrew Lawton said*



Conservative broadcaster Andrew Lawton and Justin Trudeau. *Supplied*

### FEATURED ARTICLES

Jagmeet Singh: Resisting Islamophobia



STUART THOMSON

September 26, 2019  
8:23 PM EDT

Filed under  
Canadian Politics

The Liberal Party has apologized to a journalist who was booted from one of Justin Trudeau's public rallies in Thunder Bay, Ont., on Wednesday.

Andrew Lawton, a conservative broadcaster who has worked in journalism since 2013, says despite the apology he's still fighting to get access to the kind of media events the party has barred him from this week, and he's at a loss to explain why he's been targeted.



# NATIONAL POST

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## RECOMMENDED FOR YOU

Green Party used Photoshop to add reusable cup and metal straw to photo of Elizabeth May

Christie Blatchford on Trudeau's blackface scandal: 'He's going to get away with it, mark my words'

Surrey RCMP pulled over party bus with 40 drunk, underage teens

She quit her job. He got night goggles. They searched 57 days for their dog

ending in 2018 and was a columnist for Global News.

**Andrew Lawton** @AndrewLawton · Sep 26, 2019  
Replying to @AndrewLawton  
It shouldn't have happened. Full stop. The Liberal Party seems to realize this now. I don't know the cause of the misunderstanding -- I'll leave that to the party to explain. But I've been vindicated and will carry on covering this campaign.

**Andrew Lawton** @AndrewLawton

To summarize: I'm still fighting for access to press conferences and media events. The difference now is that I'm not at risk of being arrested for attending public rallies.

489 2:07 PM - Sep 26, 2019

164 people are talking about this

Lawton says the True North Centre, a right-leaning think tank and journalism outlet where he is a fellow, even raised thousands of dollars for him to join the Liberal campaign on the media bus, but the party turned him away on Sunday when he tried to join the tour.

On Monday, he was unable to get details of a Trudeau press event in Niagara Falls, so he tried to follow the bus to the venue. He was soon pulled over by a police officer who questioned him for about 15 minutes and who said he didn't think Lawton was doing anything illegal, Lawton said.

On Tuesday, he was barred from a Trudeau policy announcement in Burnaby, B.C. and told that he was not an "accredited" journalist. After being turned away from Trudeau's event, Lawton said the New Democratic Party happily admitted him to their party's event nearby, where he was able to quiz leader Jagmeet Singh.

Lawton then hopped on a plane to Thunder Bay where he planned to cover Trudeau's public rally on Wednesday night. He filled in an RSVP form and stood in line for about an hour before a campaign worker approached him, took his photograph and then showed it to the police officers in attendance. The officers promptly asked him to leave the venue. Lawton asked the officers why he was being removed and they said they didn't know. The Liberals also gave him no answers.

"They wouldn't even recognize me as a Canadian citizen wanting to hear a prime minister speak at an event," said Lawton. "They didn't say, 'We're worried you're going to disrupt it.' They didn't say there's a security concern. They just said, 'You've got to go'."



his team are in office, but not in power



The battle for B.C.'s Lower Mainland: Liberals hope to make inroads while NDP fights for its foothold



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This has nothing to do with media credentials or accreditation. This was an ejection from a public rally. Not even a townhall where there was a risk I could \*gasp\* ask a question. What do the Liberals find so scary about me?

848 7:52 PM - Sep 25, 2019 · Thunder Bay, Ontario

301 people are talking about this

Lawton said he wasn't sure whether he was personally being targeted or if the Liberal Party had a problem with the True North Centre.

The think tank and news outlet, which is a registered charity, has been described by founder Candice Malcolm as "a cross between the Canadian Taxpayers Federation and the Fraser Institute but for national security and immigration." It's designed to bring a right wing perspective to those issues and Lawton identifies himself as a conservative. He emphasizes that he's "small c conservative," not a partisan, although he did run for the Ontario Progressive Conservatives in the 2018 election. During that race, Lawton had to apologize for offensive comments he had made in the past.

Lawton has been barred from three Liberal news conferences, in Burnaby, Brampton and Hamilton, with little explanation other than he wasn't "accredited." Lawton says he watched two people approach a campaign worker and get admitted on the spot in Burnaby and he's struggled to get an explanation of what "accredited" means, when there's no formal process for Canadian journalists.

Many journalists who cover the government in Ottawa are part of the parliamentary press gallery, but that's not required for election campaign events and local media and foreign media have covered events featuring all the major parties.

From his discussions with Liberal campaign staff, Lawton said he think "they don't really have a working definition" for media accreditation.

"So my position is that they're making it up on the spot," he said.

### SEE ALSO

Chris Selley: The Liberal campaign trail is a place for absurdities, but not much else

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10/3 podcast: Why climate change goals are almost never reached in Canada



10/3 podcast: A police sergeant violently assaulted a woman in custody - here's how the full story was uncovered

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priding itself on being the party that would be open to the press, and would allow all reporters to come and ask the tough questions," said Lawton.

"And it's also the party that was thumping its chest years ago, and saying that it doesn't kick people out of rallies for not being supporters. And, you know, there's a hypocrisy in what they've done," he said.

Perhaps the most baffling thing to Lawton is that he's asked Trudeau questions at a press conference before. On Wednesday, he posted a two-year-old photo of himself and Trudeau posing for a photo together after a media event.

• *Email:* [sxthomson@postmedia.com](mailto:sxthomson@postmedia.com) | *Twitter:*

Follow @stuartxthomson 2,053 followers

193 Comments  
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N.C. man sues wife's lover for 'alienation of affection', wins \$750,000 in damages  
Kevin Howard says the lawsuit against his wife's lover — a family friend — is about respecting the sanctity of a marriage

This is Exhibit " D " referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2<sup>nd</sup> day

of February A.D., 2020

L.S. Bilty

A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**



[Home](#)

## Transparency

In fulfilling its mandate, the Leaders' Debates Commission is to be guided by the pursuit of the public interest. All documentation regarding our mandate, outreach partnerships and official reports are posted here.

Do you have questions or concerns about the Commission and its mandate? Send us an e-mail at [info@debates-debats.ca](mailto:info@debates-debats.ca).

To learn more about our mandate and guiding policies, read the [Order in Council](#).

### Departmental plans

- [Departmental Plan 2019-2020](#)

### Financial reports

- [Quarterly Financial Report: For the quarter ended June 30, 2019](#)

### Public Opinion Research

- [Public Opinion Research to provide evidence for the interpretation of the participation criteria for the leaders' debates](#)

### Supplementary reading

- [Report by the Institute of Research on Public Policy \(PDF\)](#)  
This report by the Institute of Research on Public Policy summarizes recommendations made by experts and stakeholders on how best to proceed with the commission.
- [Report by the Standing Committee of Procedural and House Affairs \(PDF\)](#)  
The Standing Committee of Procedural and House Affairs report on the creation of an independent Commissioner for Leaders' Debates
- [Democratic institutions – Leaders' Debates](#)  
Information regarding the future of leaders' debates in federal elections.

Date modified: September 18, 2019

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[Participation Criteria](#) ▾

[Transparency](#)

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## Stay connected

This is Exhibit "E" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2nd day

of February A.D., 2020

L. Bedy  
A Commissioner for Oaths In and for Ontario

**LISA D.S. BILDY**  
BARRISTER & SOLICITOR

# Media advisory: Media registration opens for the Federal Leaders' Debates 2019

Français

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NEWS PROVIDED BY

**Leaders' Debates Commission** →

Sep 23, 2019, 09:05 ET

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OTTAWA, Sept. 23, 2019 /CNW/ - The Canadian Debates Production Partnership's federal leaders' debates will take place on Monday October 7 (English debate) and Thursday October 10 (French debate), both at the Canadian Museum of History in Gatineau, Québec.

Leaders of the following parties have been invited to participate in the debates:

- Bloc Québécois
- Conservative Party of Canada
- Green Party of Canada
- Liberal Party of Canada
- New Democratic Party
- People's Party of Canada

Media representatives who wish to cover the debates **must apply for accreditation** using the Government of Canada accreditation portal: <https://accreditationcanada.gc.ca/lcdc-cdc/>. The online portal is now open and will close on October 4, 2019, at 11:59 p.m. EDT.

## **Pick-up of media accreditation badges**

Media representatives who have been approved for accreditation will be provided instructions through email on when and where to pick up their badges.

Note that accreditation badges must be worn by media at all times during the event. If your badge is lost or stolen, you must immediately inform the Accreditation Office.



**Media centre services**

Accredited media representatives will have access to a filing room equipped with power and Internet access. No printing services will be available for media.

Further information for the media will be made available soon.

SOURCE Leaders' Debates Commission

For further information: Leaders' Debates Commission, Jill Clark, Senior Communications Advisor, (613) 943-5766, [jill.clark@debates-debats.ca](mailto:jill.clark@debates-debats.ca); For questions on the accreditation process only: Canadian Parliamentary Press Gallery Secretariat, Collin Lafrance, [Collin.lafrance@parl.gc.ca](mailto:Collin.lafrance@parl.gc.ca), 613 290 8891

This is Exhibit " F " referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2<sup>nd</sup> day

of February A.D., 2020

Bildy

A Commissioner for Oaths In and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**

**From:** collin.lafrance@parl.gc.ca   
**Subject:** Accreditation for the 2019 Federal Leaders' Debates  
**Date:** October 4, 2019 at 09:10  
**To:** andrewjameslawton@gmail.com



---

Hello,

Your request for media accreditation for the 2019 Federal Leaders' Debates has been denied. The about section of tnc.news clearly states that True North is actively involved in advocacy.

Regards.

***Collin Lafrance***

Chief | Chef

Press Gallery Secretariat

Secrétariat de la Tribune de la presse

T. 613-992-4511

M. 613-290-8891

[collin.lafrance@parl.gc.ca](mailto:collin.lafrance@parl.gc.ca)

[www.press-presse.ca](http://www.press-presse.ca)

This is Exhibit "G" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2nd day

of February A.D., 2020

L. Bildy

A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**

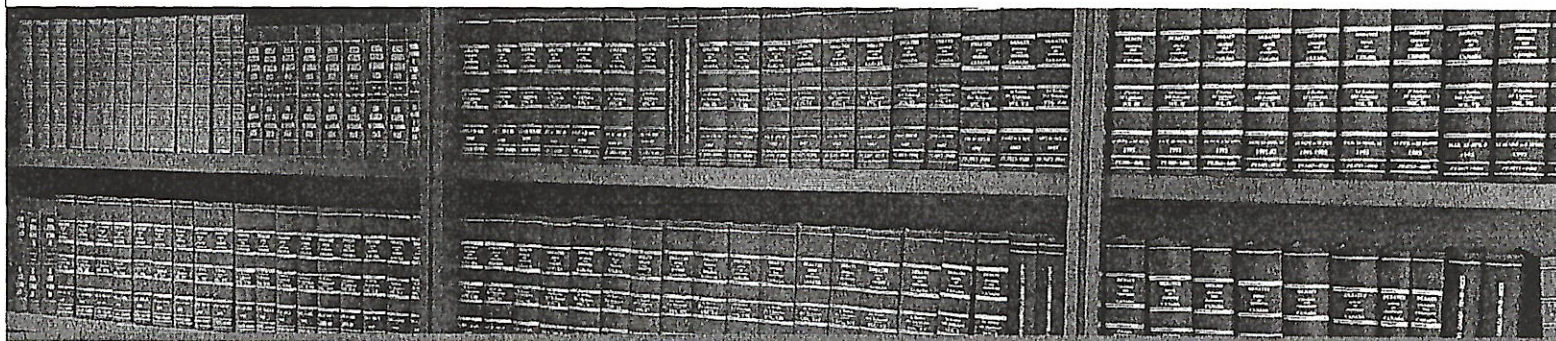


**[LIST OF MEMBERS \(HTTPS://WWW.PRESS-PRESSE.CA/EN/PRESS-GALLERY-MEMBERS\)](https://www.press-presse.ca/en/press-gallery-members)**

**[SENDING PRESS RELEASES \(HTTPS://WWW.PRESS-PRESSE.CA/EN/INFORMATION/SENDING-PRESS-RELEASES\)](https://www.press-presse.ca/en/information/sending-press-releases)**

**[HOLDING A CONFERENCE \(HTTPS://WWW.PRESS-PRESSE.CA/EN/INFORMATION/HOLDING-A-NEWS-CONFERENCE\)](https://www.press-presse.ca/en/information/holding-a-news-conference)**

**[CONTACT US \(HTTPS://WWW.PRESS-PRESSE.CA/EN/INFORMATION/CONTACT-US\)](https://www.press-presse.ca/en/information/contact-us)**



## **Contact us**

The Press Gallery Secretariat has two offices. Our head office is in the Centre Block of the Parliament and our other office is in the National Press Building.

### **Head Office:**

Canadian Parliamentary Press Gallery  
Room 143-A, West Block  
Ottawa, Ontario, K1A 0A6

**Phone number:** 613-992-4511

**Fax number:** 613-995-5795

**E-mail:** [pressres2@parl.gc.ca](mailto:pressres2@parl.gc.ca)  
(<mailto:pressres2@parl.gc.ca>)

### **Contacts:**

Collin Lafrance, Chief of the Press Gallery, 613-992-4511  
Christine Thibeault, Coordinator, Press Event Support, 613-992-4511

### **National Press Building Office:**

Press Gallery Secretariat  
501-150 Wellington Street  
Ottawa, Ontario, K1P 5A4

**Phone number:** 613-992-6517

**E-mail:** [pressres2@parl.gc.ca](mailto:pressres2@parl.gc.ca)  
(<mailto:pressres2@parl.gc.ca>)

### **Contact:**

Pierre Cuguen, Manager, Press Events, 613-992-6517  
Philippe Perrier, Coordinator, Press Event Support, 613-992-6517

**Hours of operation:**

Both offices are open from 8:00 a.m. to 7:00 p.m., Monday to Friday.

© 2019 - Canadian Parliamentary Press Gallery

This is Exhibit "H" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2nd day

of February A.D., 2020

L.S. Bilty

A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**

**Anna Marie Menezes**

VP Customer Revenue

**Lynne Munro**

VP Promotions and Partnerships

**John A. Honderich**

Chair, Torstar Corp.

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## The Star Mission and Atkinson Principles

The Toronto Star is a multi-platform news organization that makes things happen. We inform, connect, investigate, report and effect change.

The purpose of the Toronto Star is to keep our customers informed about what matters most to them, to help make their life, community, country and world better. Our mission is to deliver trusted news, information and content on all platforms.

We focus public attention on injustices of all kinds and on reforms designed to correct them. We are the news organization people turn to when they need help; when they want to see the scales balanced, wrongs righted; when they want powerful people held to account.

The Star has long been guided by the values of Joseph E. Atkinson, publisher from 1899 to 1948. Throughout his leadership Atkinson developed strong views on both the role of a large city newspaper and the editorial principles it should espouse. These values and beliefs now form what are called the Atkinson Principles, the foundation of the Star's ongoing commitment to investigating and advocating for social and economic justice.

The principles Atkinson espoused were founded on his belief that a progressive news organization should contribute to the advancement of society through pursuit of social, economic and political reforms. He was particularly concerned about injustice, be it social, economic, political, legal or racial.

Fundamental to Atkinson's philosophy was the belief that the state has the right, and duty, to act when private initiative fails. The central Principles can be summarized as follows:

- [A strong, united and independent Canada](#)
- [Social justice](#)
- [Individual and civil liberties](#)
- [Community and civic engagement](#)
- [The rights of working people](#)
- [The necessary role of government](#)

**Learn more** about the [history of the Toronto Star](#) and Joseph E. Atkinson, Publisher, 1899-1948.



This is Exhibit "I" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 21<sup>st</sup> day

of February A.D., 2020

L.S. Bildy  
A Commissioner for Oaths in and for Ontario

LISA D.S. BILDY  
BARRISTER & SOLICITOR

## **Guiding principle for accreditation of media organizations and journalists at the leaders' debates**

### **Leaders' Debates Commission**

**October 3 2019**

#### **The Commission's role**

The Leaders' Commission has agreed, after discussion with the CDPP, the media group that produces the debates, to be responsible for the accreditation of journalists and media organizations that will cover the debates.

In doing so, the Commission has turned to two institutions with experience in this type of event: the Summit Management Office of Global Affairs, which is tasked with managing the accreditation process and the Parliamentary Press Gallery, which provide logistical advice on participation guidelines and logistical issues.

Ultimate decision-making in the accreditation rests with the Commission.

#### **Principles and guidelines**

The Commission has received a considerable number of accreditation requests, around 200 for the English debate and 150 for the French debate. These represents a various types of media.

In its consideration of these accreditation requests, the Commission has produced the following statement of principle, in consultation with the Secretariat of the Parliamentary Press Gallery:

*Journalistic independence is fundamental to the Commission. In order to protect this independence, the Commission has asked the Parliamentary Press Gallery Secretariat to be involved in media accreditation and to provide support and guiding principles. The Commission respects and maintains that accreditation will be granted to recognized professional media organizations.*

This statement establishes clearly that the Commission will accredit journalists and media organizations that respect the recognized norms of independent journalism. It precludes media organizations that engage in advocacy and political activism.

### **Communication decisions**

In communicating its decision to journalists or media organizations that will not be admitted to the debates, the Commission, in keeping with its mandate of transparency, will explain its reasoning clearly.

This is Exhibit "J" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2nd day

of February A.D., 2020

L. S. Bilty

Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY  
BARRISTER & SOLICITOR**



# BLACKLOCK'S Reporter

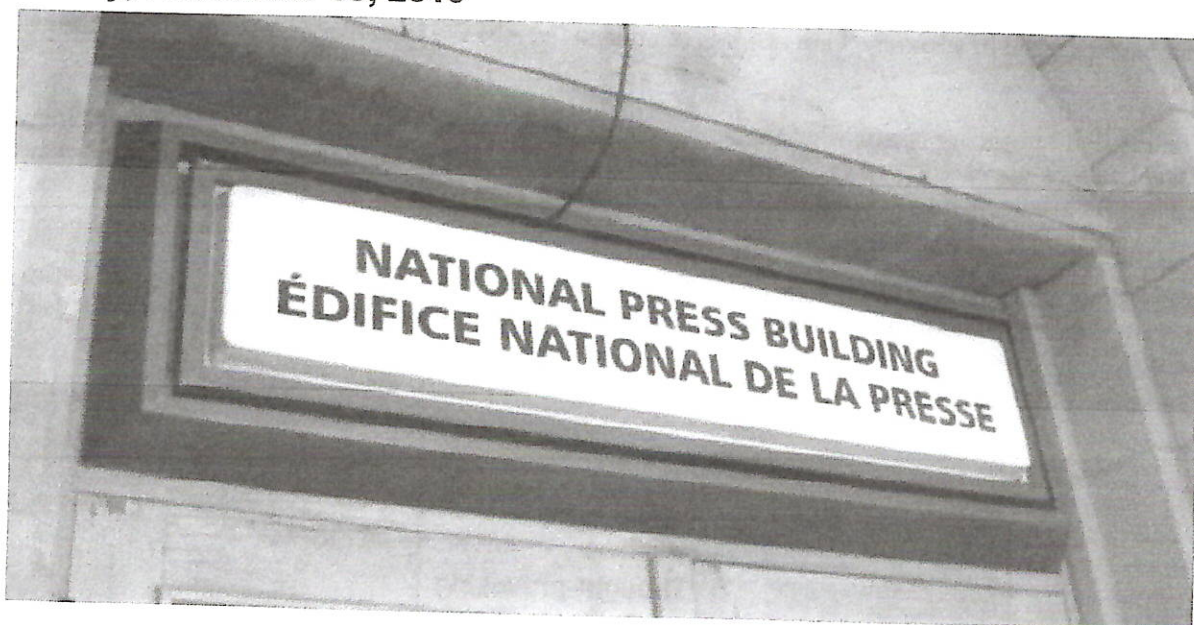
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Friday, November 15, 2019

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## Press Kept In Dark On Ban

A House of Commons staffer yesterday contradicted a Federal Court affidavit claiming the Parliamentary Press Gallery set criteria that banned two media outlets from attending national TV election debates. Records indicate Gallery directors were never consulted and had not even met for months before the ban was imposed by a handful of federal employees.

"The Canadian Parliamentary Press Gallery was not involved, no," said Gallery chief clerk Collin Lafrance, a House of Commons employee. "I was just helping out on behalf of the Press Gallery."

A federal judge on October 7 quashed the Gallery's refusal to accredit reporters with Rebel News Network Ltd. and the True North Centre for Public Policy. Justice Russel Zinn in a newly-released written judgment called the ban "troubling", "unreasonable", "procedurally unfair" and lacking in "discernible rationality and logic".

The cabinet-appointed Leaders' Debate Commission organized two national telecasts on October 7 and 10. Studio access was limited to media who applied for passes. Of some 200 applications only five were rejected.

The Commission in an affidavit claimed the Press Gallery helped "develop internal media accreditation guidelines" and "conducted an initial review of the applications". However records indicate Press Gallery directors – all journalists – hadn't met since June 13, four months before the debate, and were not consulted.

Clerk Lafrance yesterday acknowledged he never spoke to any Gallery members. Asked if he consulted the Prime Minister's Office, Lafrance replied: "No." Lafrance's predecessor, Terry Guillon, is now a media manager for Prime Minister Trudeau.



Lafrance refused accreditation for Rebel News Network and the True North Centre on behalf of the Press Gallery. Lafrance yesterday said he was told to do so by the Debate Commission. Asked who at the Commission gave the order, Lafrance replied: "Talk to the Commission."

The Commission did not reply to multiple interview requests. The president of the Press Gallery, Radio-Canada reporter Philippe-Vincent Foisy, did not comment.

**"Lack Of Transparency"**

The Rebel and True North were banned for being "actively involved in advocacy". Lawyers for the media organizations successfully argued the decision was arbitrary, noting accredited media like the *Toronto Star* published mission statements "advocating for social and economic justice".

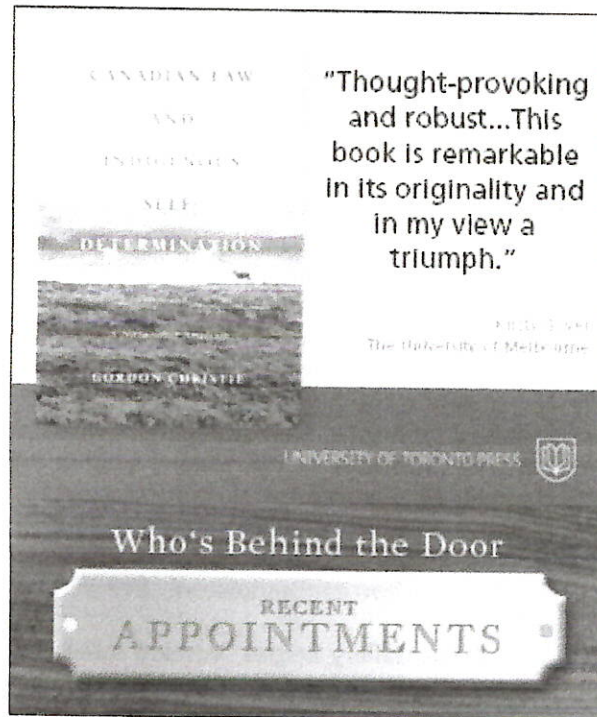
"This begs the question as to where one draws the line as to what is and is not advocacy that disqualifies an applicant from accreditation," wrote Justice Zinn. "This also goes to the lack of transparency."

"Absent any explanation as to the meaning to be given to the term 'advocacy', and given that the Commission accredited some organizations that have engaged in advocacy, I am at a loss to understand why the Commission reached the decisions it did," wrote the Court.

"At no time did the Commission inform applicants what the requirements were to obtain accreditation," said Justice Zinn, adding the review of applications appeared cursory. The Commission completed its accreditation guidelines October 3 without any input by press, TV, radio or internet publishers. Rebel News and True North were banned the following day, October 4.

"The wording of these decisions indicates they were made by the Press Gallery," wrote Justice Zinn: "At no time prior to the decision being made were these applicants told of the case against them as an advocacy group and afforded a fair opportunity of answering it."

By Staff



Like Susan M. Delacourt and 964 others like this.

This is Exhibit "K" referred to  
in the Affidavit of  
Andrew Lawton

Sworn before me this 2nd day  
of February A.D., 2020

L. Beldy  
A Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**

Court File No. T-1633-19

*(Court Seal)***FEDERAL COURT**

B E T W E E N:

ANDREW JAMES LAWTON and TRUE NORTH CENTRE FOR  
PUBLIC POLICY

Applicants

-and-

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

Respondents

**AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENT(S)

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

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

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

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

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

[2]

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
(Registry Officer)

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

**TO: BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Suite 3400  
Toronto, ON M5H 4E3

**Nadia Effendi**  
Tel: 416.367.6728  
Fax: 416.367.6749  
NEffendi@blg.com

**Ewa Krajewska**  
Tel: 416.367.6244  
Fax: 416.367.6749  
EKrajewska@blg.com

Lawyers for the Respondent, the Leaders'  
Debates Commission

**AND TO:** The Attorney General of Canada  
Department of Justice Canada  
120 Adelaide Street West  
Suite 400  
Toronto, Ontario  
M5H 1T1

**John Provart**  
Tel : 647-256-0842  
Fax: 416-954-8982  
John.Provart@justice.gc.ca

Lawyers for the Respondent, the Attorney General of Canada



[3]

## APPLICATION

This is an Application for judicial review in respect of the decision of the Leaders' Debates Commission (the "**Commission**"), refusing the Applicants, Andrew James Lawton ("**Andrew**") and True North Centre for Public Policy ("**True North**") [collectively, the "**Applicants**"] the media representative accreditation ("**Accreditation**") required to cover the Federal Leaders' Debates taking place on Monday, October 7, 2019 in the English Language and Thursday, October 10, 2019 in the French Language (the "**Debates**"). The two (2) sentence denial of Accreditation was outlined in email correspondence sent from Mr. Collin Lafrance, the Chief of the Canadian Press Gallery to Andrew at 9:10am on Friday, October 4, 2019 (the "**Decision**").

### **The Applicants make Application for:**

1. An Order quashing the Decision of the Commission;
2. An Order directing the Commission to provide reasonable and meaningful feedback to the Applicants regarding the Decision including details of the decision-making procedure the Commission employs in reviewing applications for Accreditation, the reason(s) why the Commission made the Decision, including how the Decision is consistent with its mandate and particulars of who was involved in making the Decision;
3. An Order directing the Commission to provide detailed information regarding the relationship between Mr. Collin Lafrance, the Chief of the Canadian Press Gallery and the Commission, including a description of what



[4]

capacity and under what authority Mr. Lafrance was working when he reviewed and denied the Applicants' request for Accreditation, and full details of the consultation(s) that the Commission alleges occurred between it and the Press Gallery Secretariat, or any members thereof, including but not limited to emails, particulars of meetings, and any other communications;

4. A Declaration that the Decision breached the Applicants' freedom of the press and freedom of expression, as guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*.
5. Costs of this Application; and,
6. Such other relief as counsel may advise and this Court deems just.

**The grounds for the Application are:**

**The Parties**

7. True North is a registered charity with the Government of Canada. Its head office is situated in Richmond, British Columbia. True North is an independent, non-partisan and not-for-profit organization that advances Western democratic values consistent with the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c 11. True North employs staff journalists and advocates for freedom of the press. True North also engaged in research and education on various issues of public policy, including immigration and national security.

[5]

8. Andrew is an individual residing in London, Ontario. He is a fellow and staff journalist of True North, freelance journalist, broadcaster, columnist and commentator.

9. The Commission is a body created pursuant to an Order in Council dated October 29, 2018 (the "**Order**"). The Commission, which is situated in Ottawa, Ontario, was created to make the Debates a more predictable, reliable, and stable element of federal election campaigns. The Commission consists of the Debates Commissioner, the Advisory Board and the Secretariat. Per the Order, The Commission's mandates are to:

- (a) Organize the Debates in each official language during each general election period;
- (b) Ensure that the leader of each political party that meets minimum criteria to be invited to participate in the Debates;
- (c) Ensure that the Debates are broadcast and otherwise made available in an accessible way to persons with disabilities;
- (d) Ensure that the Debates reach as many Canadians as possible, including those living in remote areas and those living in official language minority communities through a variety of media and other fora;
- (e) Ensure that the Debates are broadcast free of charge, whether or not the broadcast is live;

[6]

- (f) Ensure that any reproduction of the Debates is subject to only the terms and conditions that are necessary to preserve the integrity of the debates;
- (g) Ensure that high journalistic standards are maintained for the Debates;
- (h) Undertake an awareness raising campaign and outreach activities to ensure that Canadians know when, where and how to access the Debates; and,
- (i) Provide advice and support in respect of other political debates related to the general election, including candidates' debates, as the Debates Commissioner considers appropriate.

The Commission's website states that "*In fulfilling its mandate, the Leaders' Debates Commission is to be guided by the pursuit of public interest.*"

10. Per the Order, the Commission is to:

- (a) Conduct any necessary research or rely on any applicable research to ensure that the Debates are of high quality;
- (b) Develop and manage constructive relationships with key opinion leaders and stakeholders;

[7]

- (c) Conduct its activities in a manner that does not preclude other organizations from producing or organizing leaders' debates or other political debates;
- (d) Ensure that the decisions regarding the organization of the Debates, including those respecting participation criteria, are made publicly available in a timely manner;
- (e) Ensure that the leaders' responses to the invitations to participate in the Debates are made publicly available before and during the Debates; and,
- (f) Conduct an evidence-based assessment of the Debates that it has organized, including with respect to the number of persons to whom the Debates were accessible, the number of persons who actually accessed them and the knowledge of Canadians of political parties, their leaders and their positions.

### **The Applicants' Application for Accreditation**

11. At 9:05am on Monday, September 23, 2019, the Commission published a press release advising of the dates of the Debates. It additionally stated: *"Media representatives who wish to cover the debates **must apply for accreditation** using the Government of Canada Accreditation portal...":*
12. Andrew applied through the Government of Canada Accreditation portal for Accreditation as a staff journalist of True North on Tuesday, September 24,



[8]

2019. At 10:54am on the same date, Andrew received email correspondence from accreditation@international.gc.ca confirming receipt of the Applicants' application for Accreditation.

13. At 9:10am on Friday, October 4, 2019, Andrew received email correspondence from Mr. Collin Lafrance, the Chief of the Canadian Press Gallery advising that the Applicants' request for Accreditation was denied. Mr. Lafrance's two (2) sentence email reads as follows: "*Hello, your request for media accreditation for the 2019 Federal Leaders' Debate has been denied. The about section of tnc.news clearly states that True North is involved in advocacy.*"

14. Procedural fairness demanded that the Applicants understood the criteria being applied to be granted Accreditation and had the reasonable expectation that they would receive meaningful feedback from the Commission regarding why Accreditation was denied.

15. Procedural fairness also demanded that the application assessment for the Accreditation process be sufficiently transparent to allow the Applicants to know what was required and/or expected of them to be successful in being granted Accreditation.

16. Given the lack of meaningful feedback and complete lack of transparency in the Accreditation process, the Commission's decision to deny the Applicants' Accreditation without detailed reasons or appeal options was unfair, arbitrary, unreasonable and frankly an attempt by the current



[9]

Government to censor and silence media outlets that have provided a platform for Canadians with views inconsistent with its mandate.

17. The Commission produced a document entitled “Guiding principle for accreditation of media organizations and journalists at the leaders’ debates” dated October 3, 2019, the day before the Decision was communicated to Andrew. The document states that the Commission consulted with the Secretariat of the Parliamentary Press Gallery (“PPG”) to develop the statement of principle. There is a serious question as to the whether the Commission arbitrarily and misleadingly created this document, without any input from the PPG Secretariat, for the sole purpose of presenting a documentary foundation for its decisions to ban two media outlets on purely partisan grounds.

18. There is no evidence that the PPG met or consulted on the establishment of guidelines at any point in the four months preceding the debates, nor that Mr. Lafrance consulted with any other members of the PPG, despite sworn evidence from the Commission’s Executive Director that the internal media accreditation guidelines were developed in consultation with the PPG Secretariat.

19. The Decision was based on an erroneous finding of fact that was made in a perverse, arbitrary or capricious manner. The Commission failed to be transparent about its criteria for accreditation and failed to even develop criteria

[10]

until it was faced with accreditation applications from media outlets it did not wish to include.

20. This behaviour, along with the Decision itself, demonstrates a flagrant breach of the fundamental freedom of the press, as protected under section 2(b) of the *Canadian Charter of Rights and Freedoms* (“**Charter**”). The activities protected by section 2(b) include the gathering and dissemination of information without undue governmental interference. The Debates Commission, as a creation of the Government of Canada carrying out a government mandate, has a duty not to unreasonably interfere with legitimate press functions, regardless of who is undertaking them or for what purpose. To do otherwise is to allow the state to violate a core tenet of Canada’s liberal democracy by injecting arbitrary or partisan considerations into the accreditation process, as was the case here.

21. Whether a journalist or media outlet engages in “advocacy” is not an appropriate test for whether they are guaranteed freedom of the press under the *Charter*. Most news outlets, including the “legacy” outlets, have their own political biases in the stories they choose to report, the experts they choose to interview, the opinions that grace their pages, and the politicians they choose to endorse.

22. Any government can be tempted to limit media coverage unsympathetic to its agenda. In a liberal democracy, this temptation is constrained through constitutional protections for the press. Subjectively and arbitrarily declaring

[11]

certain media to be engaged in “advocacy”, and thus not granted media access, is a means of ensuring that only journalists and outlets which may be more inclined to report favourably on the government’s activities are present. This leaves state actors in the powerful position of controlling who has access to information and, more specifically, who may be permitted to ask questions of the government during media scrums. Weeding out journalists based on their perceived political bent ensures that no uncomfortable questions may be asked.

23. Section 2(b) of the *Charter* guarantees “fundamental” freedoms. These freedoms exist precisely to prevent government appointees from arbitrarily excluding media outlets that the government does not like from covering events open to other journalists and media organizations.

24. The right of the public to receive information is also protected by the constitutional guarantee of freedom of expression under section 2(b). Citizens in a properly functioning democracy must have access to a wide range of perspectives. It is primarily through the press that most individuals can learn what is transpiring in their community. By protecting the freedom of the press, section 2(b) thereby guarantees the further freedom of members of the public to develop and advance informed opinions about matters of public interest. In this case, the matter at issue was that of the federal election, an informed opinion of which is integral to meaningfully exercising one’s democratic right protected under section 3 of the *Charter*.



[12]

25. Regardless of the fact that this particular debate has passed, there remains a dispute which will affect the rights of the parties going forward. This situation may be repeated in an identical manner by the Debates Commission or the entity which replaces it, or in a substantially similar manner by the Government of Canada in any number of decisions it makes relating to accepting or accrediting media outlets. Whether the Debates Commission's Decision violated the *Charter* freedoms of the Applicants, including freedom of the press and freedom of expression, has not yet been addressed.

26. Further, it is in the public interest and the interest of justice to have a full hearing into the decisions of a government-appointed body to exclude certain media outlets on partisan grounds from participation in government-sanctioned events.

27. In an era when technology has dynamically reshaped the media landscape and the manner in which Canadians receive information, there is also a pressing public interest for the courts to clarify and confirm that the constitutional guarantee of freedom of the press must protect the *function* of the press, which includes any news-gathering activity with the intent to publish or otherwise disseminate that information to the public. Permitting government to restrict members of the media based on their perceived *motive* for gathering and disseminating information, as was done in this case, is too subjective and arbitrary. Where space limits the number of journalists who can be accredited, the use of an objective measure is the only way to restrict government's

[13]

temptation to unreasonably curtail unfavourable news coverage and curate a press gallery of sycophants, as is the case in more totalitarian regimes.

28. Canadians need to be assured that those undertaking the function of the press – and thereby serving the public's need to be informed and right to hear a variety of perspectives – are protected under the *Charter* and that state interference in this activity is prohibited unless compelling justification in a free and democratic society can be clearly established.

29. Section 18.1 of the *Federal Courts Act* RSC 1985, c F-7.

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

**This Application will be supported by the following material:**

31. A supporting Affidavit and the exhibits thereto; and,

32. Such other materials that counsel may advise and this Court deems just.

The Applicants request that the Respondents send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Commission to the Applicants and to the Registry:

- (a) A detailed list of the selection criteria used by the Commission in determining the granting of Accreditation;



[14]

- (b) A list of the decision-makers involved in the decision-making process and the process of communicating the Decision to the Applicants, including a description of their position in or relationship to the Commission;
- (c) The complete file and all notes pertaining to the application for Accreditation made by the Applicants; and,
- (d) A complete list of the parties granted Accreditation.

January , 2020

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**JUSTICE CENTRE FOR CONSTITUTIONAL  
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Counsel for the Applicants

This is Exhibit "L" referred to  
in the Affidavit of

Andrew Lawton

Sworn before me this 2nd day

of February A.D., 2020

Lisa D.S. Bilty  
A Commissioner for Oaths in and for Ontario

LISA D.S. BILDY  
BARRISTER & SOLICITOR

## True North and Lawton v. Debates Commission

Lisa Bilyd <LBilyd@jccf.ca>

Fri 2020-01-10 2:45 PM

To: 'arosenberg@relawllp.ca' <arosenberg@relawllp.ca>; Krajewska, Ewa <EKrajewska@blg.com>; Provart, John <John.Provart@justice.gc.ca>

Cc: Marty Moore <MMoore@jccf.ca>

 2 attachments (762 KB)

2020-01-10 Federal Court Letter re Order.pdf; Jan 10, 2020 - Draft Order & Consent.pdf;

Dear Counsel,

Further to our conference call on December 20, I have now prepared an Amended Notice of Application on behalf of True North, and need to obtain leave of the court to file same. As we discussed in the call, it makes sense to have the amended pleadings sorted out first, followed by Ewa's anticipated motion to quash. After that is disposed of, we can finalize the timeline for the remaining steps in the proceedings, if still applicable.

As discussed, Rebel Media's application will follow a similar timeline. I don't know whether Aaron plans to amend Rebel's Application as well, but if so, perhaps that can be done quickly and a similar consent order can be obtained to keep the files aligned.

I have taken the liberty of preparing a draft request for an informal order on consent. Kindly review and let me know your thoughts on the suggested timeline and other terms.

Best regards,

Lisa

**Lisa D.S. Bilyd**, JD, BA

**Justice Centre for Constitutional Freedoms**

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*"Defending the constitutional freedoms of Canadians"*

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This is Exhibit "M" referred to  
in the Affidavit of  
Andrew Lawton  
Sworn before me this 2nd day  
of February A.D., 2020  
L. Bildy  
Commissioner for Oaths in and for Ontario

**LISA D.S. BILDY**  
**BARRISTER & SOLICITOR**



## LDC ats. True North and Rebel Media

Krajewska, Ewa <EKrajewska@blg.com>

Wed 2020-01-22 9:45 AM

To: Lisa Bilty <LBilty@jccf.ca>; David Elmaleh <delmaleh@relawllp.ca>; Aaron Rosenberg <arosenberg@relawllp.ca>  
Cc: Provart, John <John.Provart@justice.gc.ca>; Venney, Marilyn <Marilyn.Venney@justice.gc.ca>; Wong, Benjamin <Benjamin.Wong2@justice.gc.ca>; Chowdhury, Mannu <MChowdhury@blg.com>; Muir, Christine <CMuir@blg.com>

Counsel,

We have considered True North's proposed amendments to their statement of claim and we are not prepared to consent to the amendments.

We propose to have the motion to strike on the basis of mootness proceed first. You will receive our motion materials on that shortly. If True North decides to proceed with amending their application, they can bring that motion at the same time or raise it in response to our motion to strike.

With respect to Rebel Media's proposed motion to move for a better court record, in our view that motion is best properly scheduled only after the motion to strike is disposed of. If the court orders that the matter is not moot and should proceed, we can schedule the hearing of that motion.

Lisa, we do not have a consent to electronic service from your firm. My associate Mannu will send you a form to sign for us to file with the federal court to consent to electronic service. We would appreciate your cooperation in this regard as it simply facilitates service of materials. We would of course extend you the same courtesy.

Regards,

Ewa

### Ewa Krajewska

Lawyer

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Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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**FEDERAL COURT**

B E T W E E N:

ANDREW JAMES LAWTON and TRUE NORTH CENTRE FOR PUBLIC  
POLICY

Applicants

-and-

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

Respondents

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**WRITTEN REPRESENTATIONS OF THE APPLICANTS****[Motion to Strike Notice of Application]**

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February 3, 2020

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Lawyers for the Respondent, the Attorney General of Canada

## PART I – STATEMENT OF FACTS

### A. OVERVIEW AND PRELIMINARY CONSIDERATIONS

1. On October 4, 2019, the Applicants, Andrew James Lawton (“**Andrew**”) and True North Centre for Public Policy (“**True North**”) filed an application for judicial review of a decision by Canada (Leaders’ Debates Commission) (“the **Commission**”) to deny Andrew’s application for media accreditation. This was followed on October 7, 2019 by an urgent motion for a mandatory injunction to permit Andrew to attend as a media representative at the Federal Leaders’ Debate later that evening. The motion was heard that afternoon, and Justice Zinn of this Honourable Court granted the interim relief sought by the Applicants: Andrew attended the debate just hours later, followed by the media scrum with the party leaders.

2. Justice Zinn’s written Reasons<sup>1</sup> were released on November 13, 2019, and described the Commission’s decision not to accredit Andrew (the “**Decision**”) as “lacking in discernible rationality and logic” and “neither justified nor intelligible.”

3. The within motion by the Commission is to strike the originating application for judicial review of the Applicants, on the basis that it is now moot. The Applicants disagree.

4. The Applicants also move for an Order granting leave to amend the Notice of Application to include a claim for, *inter alia*, a declaration that the Commission violated

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<sup>1</sup> *True North Centre for Public Policy v. Canada (Leaders’ Debates Commission)*, 2019 FC 1424 [the “**Reasons**”], Motion Record of the Leaders’ Debates Commission (“**Commission’s MR**”), Tab 4.



the Applicants' freedom of the press, as guaranteed under s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

5. The Commission posits that its motion to strike is a threshold one that should be determined before consideration of the Applicants' motion. The Applicants say that any consideration of the mootness of the judicial review application must, in fairness, be determined *after* a ruling on the motion for leave, or at least contemporaneously, so that the Court is in a position to consider the full scope of the issues which remain in contention between the parties.

6. On consent of the parties, a request for a case management judge to assist in determining this preliminary issue has been made by counsel for the Commission.

7. Should this Honourable Court determine that the Commission's motion to strike should be disposed of first, as a standalone matter, then the Applicants oppose the motion being heard in writing alone and request an oral hearing.

8. Given that the motion to strike may be heard separately, and given that there is additional relief being sought which is not evident on the face of the Notice of Application as it is presently constituted, the Applicants respectfully submit the Affidavit of Andrew Lawton, sworn February 2, 2020, to provide the necessary context.

9. For the reasons set out below, the relief sought in the Commission's motion to strike ought to be denied.

## B. THE PARTIES

10. True North is an independent, non-partisan and not-for-profit organization that advances Western democratic values consistent with the *Canadian Charter of Rights and Freedoms* (the “**Charter**”). True North employs staff journalists and advocates for freedom of the press.<sup>2</sup>

11. Since its inception, True North and its journalists have been granted media accreditation to cover political events by the Government of Canada, the Government of the United Kingdom and by various political parties including the New Democratic Party, the Conservative Party of Canada and People’s Party of Canada.<sup>3</sup>

12. Andrew is a Canadian broadcaster and columnist, and serves as a journalism fellow at True North. He has worked as a journalist since 2013. In addition to his journalism with True North, he writes a weekly column for Loonie Politics and contributes monthly submissions to The Interim. Most recently, he hosted the Andrew Lawton Show on 980 CPFL in London and wrote a national column for Global News analyzing politics and culture, often with a focus on freedom of speech, limiting government and combatting radicalism.<sup>4</sup>

13. During the course of the 2019 federal election campaign, the only political party to decline the Applicants’ requests for media accreditation was the Liberal Party of Canada. This escalated to the point where the Liberal Party of Canada apologized to the

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<sup>2</sup>Affidavit of Andrew Lawton, sworn February 2, 2020 (“**Lawton Affidavit**”), para. 3, Responding Motion Record of the Applicants (“**Applicants’ MR**”), Tab 1, page 2.

<sup>3</sup> Lawton Affidavit, para. 4, Applicants’ MR, Tab 1, page 2.

<sup>4</sup> Lawton Affidavit, para. 5, Applicants’ MR, Tab 1, page 2-3.

Applicants after removing Andrew from one of its rallies in Thunder Bay, Ontario. This event gave rise to a National Post article dated September 23, 2019 entitled “*You’ve got to go’: Liberals apologize to conservative broadcaster banned from public rally*”.<sup>5</sup>

14. The Commission is a body created pursuant to an Order in Council dated October 29, 2018, ostensibly to make the debates a more predictable, reliable, and stable element of federal election campaigns. The only aspect of its mandate that touched on journalism was to “Ensure that high journalistic standards are maintained for the Debates.” This appeared to relate to the media personalities involved in moderating the actual debates.<sup>6</sup>

15. According to the Commission’s website: “In fulfilling its mandate, the Leaders’ Debates Commission is to be guided by the pursuit of public interest.”<sup>7</sup>

### **C. THE ACCREDITATION DECISION**

16. At 9:05 a.m. on Monday, September 23, 2019, the Commission published a press release advising of the dates of the debates. It additionally stated: “*Media representatives who wish to cover the debates must apply for accreditation using the Government of Canada Accreditation portal....*” There was no information provided to indicate the criteria that would be applied in granting this accreditation.<sup>8</sup>

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<sup>5</sup> Lawton Affidavit, para. 6, Applicants’ MR, Tab 1, page 3.

<sup>6</sup> Lawton Affidavit, para. 7, Applicants’ MR, Tab 1, page 3. This was also noted by Justice Zinn in Reasons, para. 34, Commission’s MR, Tab 4, page 24.

<sup>7</sup> Lawton Affidavit, para. 7, Applicants’ MR, Tab 1, pages 3 and Exhibit “D” thereto, Tab 5.

<sup>8</sup> Lawton Affidavit, para. 8, Applicants’ MR, Tab 1, page 3-4.

17. Andrew applied for media accreditation as a staff journalist of True North on September 24, 2019, through the Government of Canada Accreditation portal. His application was acknowledged.<sup>9</sup>

18. At 9:10 a.m. on Friday, October 4, 2019, on the last business day before the day of the first debate, Andrew received an email from Mr. Collin Lafrance, the Chief of the Parliamentary Press Gallery (the “PPG”) which read as follows: *“Hello, your request for media accreditation for the 2019 Federal Leaders’ Debate has been denied. The about section of tnc.news clearly states that True North is involved in advocacy.”*<sup>10</sup>

19. As noted by Justice Zinn, the Commission’s evidence on the Injunction Motion was that there were more than 200 journalists accredited to attend the post-debate media scrum. Only five journalists were denied, at least three of whom were from what might be considered conservative-leaning outlets.<sup>11</sup>

20. The exclusion of these media outlets from the debate was allegedly because they engage in “advocacy”, but the term was not defined, and the Commission approved other media outlets that consider themselves advocates. In fact, on the Toronto Star’s own website, it states that the Star has “an ongoing commitment to investigating and *advocating for social and economic justice.*”<sup>12</sup>

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<sup>9</sup> Lawton Affidavit, para. 9, Applicants’ MR, Tab 1, page 4.

<sup>10</sup> Lawton Affidavit, para. 10, Applicants’ MR, Tab 1, page 4.

<sup>11</sup> Reasons, para. 14, Commission’s MR, Tab 4, page 18.

<sup>12</sup> Lawton Affidavit, para. 12, Applicants’ MR, Tab 1, page 4-5.



#### **D. THE INVOLVEMENT OF THE PARLIAMENTARY PRESS GALLERY**

21. The involvement of the PPG in the accreditation decision was a surprise to the Applicants, given the lack of any apparent connection with the Commission.<sup>13</sup>

22. Included as an Exhibit to the Affidavit of the Commission's Executive Director in the Injunction Motion, and later in the Certified Tribunal Record, the Commission provided a document entitled, "Guiding principle for accreditation of media organizations and journalists at the leaders' debates". It was dated October 3, 2019 – **one** day before the Applicants were denied accreditation.<sup>14</sup> This document had not previously been made available to the Applicants.

23. It stated that, in consultation with the Secretariat of the Parliamentary Press Gallery, it had established a principle about journalistic independence, and that this principle precluded media organizations that engage in advocacy and political activism. It went on to say that, "[I]n communicating its decision to journalists or media organizations that will not be admitted to debates, the Commission, in keeping with its mandate of transparency, will explain its reasoning clearly."

24. There is some controversy over how the policy, drafted up at the last minute and apparently used to exclude only a small number of journalists, most of whom happened to be conservative, came to be created. Following the successful Injunction Motion, a news story from Blacklock's Reporter was published, which directly challenged the sworn evidence given by the Commission's Executive Director, Michel Cormier, in his

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<sup>13</sup> Lawton Affidavit, para. 11, Applicants' MR, Tab 1, page 4.

<sup>14</sup> Certified Tribunal Record, pages 15-16.

affidavit affirmed on October 6, 2019, in the Injunction Motion. At paragraph 17, Mr. Cormier had stated:

The Commission used the services of the Press Gallery Secretariat to assist with the process of obtaining applications for accreditation from potential media representatives. **Despite engaging the Press Gallery Secretariat and Summit Management Office of Global Affairs Canada to develop the media accreditation practice and procedure**, the Commission retained the ultimate decision-making authority for media accreditation. However, given the Press Gallery Secretariat's logistical role in administering the accreditation portal, Collin Lafrance was responsible for communicating the final decision to the applicants [emphasis added].<sup>15</sup>

25. However, the report by Blacklock's Reporter stated:

[A] House of Commons staffer contradicted the Debates Commission's sworn affidavit claiming the Parliamentary Press Gallery set criteria that banned two media outlets from attending national TV election debates. Records indicate Gallery directors were never consulted and had not even met for months before the ban was imposed by a handful of federal employees.<sup>16</sup>

26. The foregoing concerns are relevant to an assessment of the reasonableness and procedural fairness of the Decision, as well as the motivation of the Commission.

## **E. REMAINING RELIEF IN APPLICATION**

27. In the Applicants' original Notice of Application, included at Tab 2 of the Responding Motion Record of the Applicants, the following relief was requested:

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<sup>15</sup> Lawton Affidavit, para. 15, Applicants' MR, Tab 1, page 6.

<sup>16</sup> Lawton Affidavit, para. 16, Applicants' MR, Tab 1, page 6, and Exhibit "K" thereto, Tab 11.

- a) an Order quashing the Decision of the Commission;
- b) an Order directing the Commission to provide reasonable and meaningful feedback to the Applicants regarding the Decision including details of the decision-making procedure the Commission employs in reviewing applications for Accreditation, the reason(s) why the Commission made the Decision, including how the Decision is consistent with its mandate and particulars of who was involved in making the Decision;
- c) An Order directing the Commission to provide detailed information regarding the relationship between Mr. Collin Lafrance, the Chief of the Canadian Press Gallery and the Commission, including a description of what capacity and under what authority Mr. Lafrance was working when he reviewed and denied the Applicants' request for Accreditation.

28. In his Reasons, Justice Zinn noted at paragraph 28 that “the ultimate hearing [this Application] will determine whether the decisions under review should be set aside. Accordingly, the question to be answered on the first prong of the tripartite test is whether, on a preliminary review, there is a *strong likelihood* that the Applicants will be successful in the underlying review applications. At the hearing on the merits, these Applicants need not prove that the decisions are wrong; rather, they must convince the Court that the decisions are unreasonable or were reached in a manner that is procedurally unfair.”<sup>17</sup>

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<sup>17</sup> Reasons, para. 28, Commission’s MR, Tab 4, pages 22-23.

29. He then went on to consider the likelihood of success for the applicants on reviewing the reasonableness of the Commission's decisions, and found "that the decisions are lacking in discernible rationality and logic, and thus are neither justified nor intelligible." He also stated at paragraphs 38-39 that he was "at a loss to understand why the Commission reached the decisions it did with respect to the Applicants. Accordingly, I find that the Applicants are likely to succeed on the merits in setting aside the decisions as unreasonable."<sup>18</sup>

30. Although True North was permitted to attend the Debate, the remaining relief was not disposed of and important questions about the propriety of the Commission's actions have not been addressed.

#### **F. MOTION FOR LEAVE TO AMEND**

31. There is additional relief sought which is fundamental to these parties and in the interests of the public to have resolved. By way of a separate Motion for Leave to Amend, the Applicants seek:

- a) An Order directing the Commission to provide detailed information regarding the relationship between Mr. Collin Lafrance, the Chief of the Canadian Press Gallery and the Commission, including a description of what capacity and under what authority Mr. Lafrance was working when he reviewed and denied the Applicants' request for Accreditation, *and full details of the consultation(s) that the Commission alleges occurred between it and the Press Gallery Secretariat, or any members*

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<sup>18</sup> Reasons, para 38-39, Commission's MR, Tab 4, page 26.

*thereof, including but not limited to emails, particulars of meetings, and any other communications* [emphasis showing proposed amendment]; and

- b) A Declaration that the Decision breached the Applicants' freedom of the press and freedom of expression, as guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

## **PART II - ISSUES**

32. The issue before this Honourable Court is whether, a) looking at the Notice of Application holistically, including the relief sought in the proposed Amended Notice of Application, the matter is moot; and, if so, b) whether there remains a live controversy that warrants this Court exercising its discretion to hear the matter.

## **PART III – ARGUMENT**

### **A. STRIKING THE NOTICE OF APPLICATION**

33. The threshold for whether a notice of application for judicial review should be struck is the same as that of an action, as Justice Stratas has confirmed<sup>19</sup>:

[33] ... In motions to strike applications for judicial review, this Court uses... the "plain and obvious" threshold commonly used in motions to strike actions, sometimes also called the "doomed to fail" standard. Taking the facts pleaded as true, the Court examines whether the application: ...is "so clearly improper as to be bereft of any possibility of success": ... There must be a "show stopper" or a "knockout punch" – an obvious, fatal flaw striking at the root of this Court's power to entertain the application.

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<sup>19</sup> *Wenham v Canada*, 2018 FCA 199 at para 33, Applicants' MR, Tab A.



34. This is a high threshold. The Federal Court, in considering a similar motion recently, held: “[T]his Court will hear the motion to strike and apply the standard of “so clearly improper as to be bereft of any possibility of success”. This is a very strict standard that only can only allow a successful remedy in very exceptional cases.”<sup>20</sup>

35. In that case, the Court was extremely reluctant to strike the judicial review application, even in the face of mootness arguments. As the Court held, in declining the motion to strike:

17 What is more, in *Borowski*, the Court declared that even if the case became moot, it may nevertheless be subject to a decision due to the exercise of a restricted discretion. However, the courts insist that the dispute is still part of an adversarial system....**The Court recognized that ancillary consequences from the solution of the original dispute, which is no longer, may provide the necessary adversarial context. There may be ancillary considerations that justify the hearing of a case, even though the “live controversy” has disappeared** [emphasis added].

36. Similarly, in the case at bar there remain ancillary considerations, including a review of the Decision and the circumstances leading up to the development of the policy on which it was allegedly based, which could provide necessary guidance to the executive branch on future media accreditation decisions.

37. Motions to strike an application for judicial review should be resorted to only in the most exceptional circumstances, i.e. when the application is bereft of any possibility of success. Since judicial review proceedings are designed to proceed expeditiously,

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<sup>20</sup> *McKenzie c. Conseil de la nation Innu Matimekush Lac-John*, 2017 FC 298 at para. 9, Applicants’ MR, Tab B.

justice is better served by allowing the application judge to deal with all of the issues raised on the judicial review application.<sup>21</sup>

## **B. LEAVE TO AMEND**

38. The Commission seeks an order that the Application be struck without leave to amend.

39. The Applicants have filed a separate motion for leave to amend their Notice of Application, to which the Respondents would not consent. The general rule is that for amendments to pleadings, “an amendment should be allowed at any stage of an action for the purpose of determining the real question in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and it would serve the interests of justice.”<sup>22</sup>

40. Further, as set out in *Varco Canada Ltd.*<sup>23</sup>, the test to *amend* a pleading must be applied consistently with the test to *strike* a pleading:

Amendments will be denied, and pleadings will be struck only when it is plain and obvious that the claim discloses no reasonable cause of action. In *Enoch Band of Stony Plain Indians v. Canada* [1993] F.C.J. No. 1254, the Federal Court of Appeal made in very clear that the Court should only “deny amendments in plain and obvious cases” where the matter is “beyond doubt”.

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<sup>21</sup> *League for Human Rights of B'Nai Brith Canada v. R.*, 2009 CAF 82, 2009 FCA 82, para. 6, Applicants' MR, Tab C

<sup>22</sup> *Canderel Ltd. v. Canada*, 1993 CanLII 2990 (FCA), [1993] F.C.J. No. 777, (FCA), Applicants' MR, Tab D

<sup>23</sup> *Varco Canada Limited v. Pason Systems Corp.*, 2009 FC 555 (CanLII), para. 26, Applicants' MR, Tab E

41. Consideration of the question of whether to strike the Application should be done holistically which, it is respectfully submitted, includes consideration of the proposed amendments.

### **C. MOOTNESS**

42. The test for mootness has been set out in *Borowski*<sup>24</sup>, and involves a consideration of whether:

- a) there is a tangible concrete dispute; and
- b) if there is no live controversy between the parties, whether the court should exercise its discretion to hear the case notwithstanding. Factors to consider for the exercise of that discretion include:
  - i) the presence of an adversarial relationship between the parties;
  - ii) concern for judicial economy, and;
  - iii) the need for the Court to respect Parliament's sphere of authority.

#### ***A Tangible Concrete Dispute – Judicial Review***

43. Mandamus may be ordered in addition to declaratory or other relief, in accordance with s. 44 of the *Federal Court Rules*. That the former was ordered does not preclude the latter, which may stand alone.

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<sup>24</sup> *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, Commission's MR, Tab I.

44. The Commission takes the view that the only tangible dispute between these parties was whether Andrew would be permitted to attend the leaders' debates as a member of the media. Having been ordered by Justice Zinn to accredit True North and Andrew, the Commission wishes to be done with this matter. The dispute is broader than a single event. The dispute is about the executive branch making a decision that was arbitrary, unreasonable, partisan, biased, lacking in procedural fairness and unconstitutional.

45. The purpose of judicial review is to ensure the legality of state decision making,<sup>25</sup> which includes upholding the rule of law and democracy. This necessitates a full hearing on the circumstances of the Decision, including a review of the Certified Tribunal Record which was not available to the motions judge.

46. The balance of the judicial review application has not been adjudicated, including the Applicants' challenge of the reasonableness and procedural fairness of the Commissions' decision. The relief sought by the Applicants in their Notice of Application for reasonable and meaningful feedback and full details of the decision-making procedure remains a live issue between the parties. This is particularly so, given the circumstances of the denial of accreditation where two conservative-leaning outlets were singled out.

47. The Applicants are seeking full details of the consultation that the Commission alleges occurred between it and Mr. Lafrance and the PPG, or any of its members, to understand how the Commission created its policy to exclude journalists engaged in

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<sup>25</sup> *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, para. 13, Commission's MR, Tab N

“advocacy”. The judicial review application would, if allowed to continue in the normal course, permit a thorough examination of these concerns. It is in the public interest that these facts be reviewed by a neutral decision maker.

48. Further, it is in the public interest and the interest of justice to have a full hearing into the decisions of a government-appointed body to exclude certain media outlets on what appear to be partisan grounds from participation in government-sanctioned events.

49. Since the Applicants continue to report on the activities of Parliament, and expect to participate in and report on future election debates, it is probable that this situation will be repeated by the Debates Commission or the entity which replaces it, or in a substantially similar manner by the Government of Canada in any number of decisions it makes relating to accepting or accrediting media outlets and journalists. While one particular event has been allowed to proceed, there has been no opportunity to review the administrator’s Decision, address the breach of the Applicants’ rights as members of the press, and provide guidance as to how this can be avoided in the future.<sup>26</sup>

### ***A Tangible Concrete Dispute – Charter Breach***

50. Section 24(1) of the *Charter* provides:

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

51. The breach of the Applicants’ *Charter* rights, particularly their right to freedom of expression including freedom of the press, remains to be addressed – not only to

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<sup>26</sup> Lawton Affidavit, Applicants’ MR, para 18, Tab 1, page 7.



remedy the violation of the fundamental freedoms of these Applicants, but also to clarify a matter of public interest concerning freedom of the press, to ensure this situation is not repeated.

52. That breach of the Applicants' rights happened whether it was initially pleaded or not. The Decision engaged the *Charter* by limiting its protections.

53. In *Loyola*<sup>27</sup>, Madam Justice Abella of the Supreme Court of Canada wrote for the majority:

[39] The preliminary issue is whether the decision engages the *Charter* by limiting its protections. If such a limitation has occurred, then "the question becomes whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play": *Doré*, at para. 57.

54. The Commission restricted the Applicants' freedom of expression, including freedom of the press, for no transparent, intelligible or reviewable reason. The restriction is for that reason alone unreasonable, and the Applicants have sufficient grounds to support the relief they now seek: a declaration pursuant to section 24(1) of the *Charter* that their constitutionally guaranteed freedom was unreasonably infringed.

55. The submissions of the Commission show that it is unwilling to take responsibility for its violation of the constitutional rights of the Applicants, and is asking the Court to do the same.

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<sup>27</sup> *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, para. 39, Applicants' MR, Tab F

56. The declaratory relief sought by the Applicants is an appropriate and just response to the Commission's unreasonable restriction of their freedom of expression in these circumstances. It is now the only way for the Court to authoritatively communicate to the Commission and the government more generally that it failed in its constitutional obligations and that it must attend to the *Charter* rights and freedoms of the press. Accordingly, there exists a sufficient "live controversy and concrete dispute" for the Court to now decide the case and make the order the Applicants seek.

57. The matter of *Trang v. Alberta (Edmonton Remand Centre)*<sup>28</sup> originated as an application for habeas corpus and declaratory relief under the *Charter* relating to conditions in the Edmonton Remand Centre. As charges were stayed over time and applicants were released, it became a stand-alone application for a declaration of a *Charter* breach. The Alberta Court of Appeal held:

[5] In our view, the proceedings are not moot. There is clearly a live controversy between the parties as to whether or not the respondents' *Charter* rights were breached while they were incarcerated. An action for a declaration may proceed in the absence of a claim for any other remedy. Given our findings on that issue it is unnecessary for us to consider the second stage of the *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 (S.C.C.) analysis, that is whether the chambers judge properly exercised his discretion in allowing the proceedings to continue.

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<sup>28</sup> *Trang v. Alberta (Edmonton Remand Centre)*, 2005 ABCA 66 (Alta. C.A.), para. 5, Applicants' MR, Tab G

58. This case is therefore not moot. The Applicants' request for declaratory relief pursuant to Section 24(1) of the *Charter* remains a live and concrete controversy between the parties. The Applicants need not rely on a court's discretion to hear this case.

### ***The Exercise of Discretion***

59. Even if the parties no longer have a live controversy, which is not conceded but denied, the Court has discretion to determine the matter anyway. In *Doucet-Boudreau*,<sup>29</sup> the Supreme Court of Canada considered doctrine of mootness in a situation where the subject matter of the dispute (the building of schools) had resolved. There remained a question of a breach of the *Charter*, however, and the court, applying the 3-prong *Borowski* test for the exercise of discretion, concluded that it was in the interest of justice for the matter to be heard:

19 In this case, the appropriate adversarial context persists. The litigants have continued to argue their respective sides vigorously.

20 As to the concern for conserving scarce judicial resources, this Court has many times noted that such an expenditure is warranted in cases that raise important issues but are evasive of review (*Borowski*, supra, at p. 360; ...

21 Moreover, in deciding whether to hear a moot case, courts must weigh the expenditure of scarce judicial resources against "the social cost of continued uncertainty in the law" (*Borowski*, supra, at p. 361). The social cost of uncertainty as to the available Charter remedies is high. ...

22 Finally, the Court is neither departing from its traditional role as an adjudicator nor intruding upon the legislative or executive sphere by deciding to hear this case (*Borowski*, supra, at p. 362). The question of what remedies

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<sup>29</sup> *Doucet-Boudreau v. Nova Scotia (Department of Education)*, 2003 SCC 62, paras. 19-22, 24-25, Applicants' MR, Tab H

are available under the *Charter* falls squarely within the expertise of the Court and is not susceptible to legislative or executive pronouncement.

60. It is respectfully submitted that the analysis in *Doucet-Boudreau* applies to the case at bar. The parties continue to have an adversarial context with respect to the *Charter* breach and the dispute over the Decision itself. The value of addressing important questions about how to determine who is entitled to constitutional protection as a member of the press, which is fundamental to democracy, outweighs any concerns over judicial economy. And a *Charter* analysis which would clarify and delimit how the executive branch determines that question is squarely within the purview of the Courts – and is indeed necessary for protecting public confidence in both the press and the government.

61. As the Court held in *Doucet-Boudreau*:

24 The requirement of a generous and expansive interpretive approach holds equally true for *Charter* remedies as for *Charter* rights....

25 Purposive interpretation means that remedies provisions must be interpreted in a way that provides "a full, effective and meaningful remedy for *Charter* violations" since "a right, no matter how expansive in theory, is only as meaningful as the remedy provided for its breach" (*Dunedin, supra*, at paras. 19-20). A purposive approach to remedies in a *Charter* context gives modern vitality to the ancient maxim *ubi jus, ibi remedium*: where there is a right, there must be a remedy. More specifically, a purposive approach to remedies requires at least two things. First, the purpose of the right being protected must be promoted: courts must craft *responsive* remedies. Second, the purpose of the remedies provision must be promoted: courts must craft *effective* remedies.

62. A judicial review application is the precise forum for obtaining such relief. In *Ernst*,<sup>30</sup> the SCC held that judicial review is available to vindicate *Charter* rights and to clarify the law to prevent similar future breaches:

37 Thus, judicial review of the Board's decisions and directives has the potential to provide prompt vindication of *Charter* rights, to provide effective relief in relation to the Board's conduct in the future, to reduce the extent of any damage flowing from the breach, and to provide legal clarity to help prevent any future breach of a similar nature.

### **The Public Interest**

63. A declaration that the state has violated the fundamental freedoms of a Canadian is not merely a remedy for the aggrieved Canadian – it is in the public interest as well. As a check on the executive branch of government, it is the role of the judiciary to ensure that such violations are not given a free pass in favour of judicial economy.

64. The implication of the *Charter* in this case highlights the fact that there is a significant public law interest that remains a live issue. Judicial review is concerned with protecting the public law values of democracy, rule of law and good administration.

65. The Debates Commission, as a creation of the Government of Canada carrying out a government mandate, has a constitutional duty not to unreasonably interfere with legitimate press functions, regardless of who is undertaking them or for what purpose. It must proportionately balance the impact of its decision on protected rights and freedoms, here, freedom of expression and freedom of the press, against competing public

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<sup>30</sup> *Ernst v. Alberta Energy Regulator*, 2017 SCC 1, para. 30, Applicants' MR, Tab I



purposes. To do otherwise is to allow the state to violate a core tenet of Canada's liberal democracy by injecting arbitrary or partisan considerations into the accreditation process, as the Applicants say was the case here.

66. The right of the public to receive information is also protected by the constitutional guarantee of freedom of expression under section 2(b). Citizens in a properly functioning democracy must have access to a wide range of perspectives. It is primarily through the press that most individuals can learn what is transpiring in their community. By protecting the freedom of the press, section 2(b) thereby guarantees the further freedom of members of the public to develop and advance informed opinions about matters of public interest. In this case, the matter at issue was that of the federal election, an informed opinion of which is integral to meaningfully exercising one's democratic right protected under section 3 of the *Charter*.

67. Canadians need to be assured that those undertaking the function of the press – and thereby serving the public's need to be informed and right to hear a variety of perspectives – are protected under the *Charter* and that state interference in this activity is prohibited unless compelling justification in a free and democratic society can be clearly established.

#### **PART IV – ORDER SOUGHT**

68. The Applicants seek a dismissal of the Commission's motion to strike, with costs of this motion awarded to the Applicants.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at London, Ontario this 3rd day of February, 2020



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LISA BILDY and MARTY MOORE  
Justice Centre for Constitutional Freedoms  
Counsel for the Applicants

**PART V – LIST OF AUTHORITIES**

***Jurisprudence***

1. *Wenham v Canada*, 2018 FCA 199
2. *McKenzie c. Conseil de la nation Innu Matimekush Lac-John*, 2017 FC 298
3. *League for Human Rights of B'Nai Brith Canada v. R.*, 2009 CAF 82, 2009 FCA 82  
para. 6 *Candere Ltd. V. Canada*, 1993 CanLII 2990 (FCA)
4. *Varco Canada Limited v. Pason Systems Corp.*, 2009 FC 555
5. *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342
6. *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018  
SCC 26
7. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12
8. *Trang v. Alberta (Edmonton Remand Centre)*, 2005 ABCA 66 (Alta. C.A.)
9. *Doucet-Boudreau v. Nova Scotia (Department of Education)*, 2003 SCC 62
10. *Ernst v. Alberta Energy Regulator*, 2017 SCC 1

## **Statutes**

### 10. Canadian Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

### 11. Federal Courts Act (R.S.C., 1985, c. F-7)

44. In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a *mandamus*, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms or conditions that the court considers just.