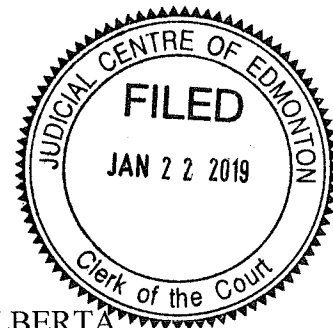


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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANT

REBEL NEWS NETWORK LTD.

RESPONDENT

THE ELECTION COMMISSIONER OF ALBERTA

DOCUMENT

**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Attention: Michael E. Swanberg  
Reynolds Mirth Richards & Farmer LLP  
3200 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3W8  
Telephone: (780) 425-9510  
Fax: (780) 429-3044  
File No: 114261-003-MES

**NOTICE TO RESPONDENT**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

<b>Date</b>	<b>March 15, 2019</b>
<b>Time</b>	<b>10:00 A.M.</b>
<b>Where</b>	<b>Law Courts Building, Edmonton, Alberta</b>
<b>Before</b>	<b>Presiding Justice of the Court of Queen's Bench of Alberta</b>

**Basis for this claim:**

1. This is an appeal and application for judicial review of a decision issued by the Election Commissioner against Rebel News Network Ltd. ("Rebel Media") on January 14, 2019 (under sections 51.03 and 54 of the *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2 (the "EFCDA")).

2. Rebel Media is an online news and media company operating in Alberta and across Canada. Rebel Media's editorialists and commentators often take strong editorial positions on important public issues, and convey those positions through different media, including on websites, podcasts, YouTube videos and ads, print media, paperback books, e-books, radio ads, and billboards.
3. On December 17, 2018, the Election Commissioner's office sent a letter to Rebel Media indicating it "has commenced an investigation into Rebel Media's actions with respect to an alleged violation on November 23-30, 2018 [of the EFCDA]" related to "a billboard on Alberta Highway 2 near Innisfail." The billboard included pictures of the Minister of Education, David Eggen, and Premier Rachel Notley, along with the following text:

40% of Grade 9 Students Failed Provincial Exams – Alberta can  
do Better than David Eggen [www.FireEggen.ca](http://www.FireEggen.ca)

4. Rebel Media requested further particulars and information about the allegation, including a copy of the complaint filed by Elections Alberta.
5. Before providing Rebel Media with a copy of the complaint, or a reasonable opportunity to present its case, the Election Commissioner issued a Decision finding Rebel Media guilty of breaching section 9.1(1) of the EFCDA (attached as **Appendix "A"**).
6. The Election Commissioner found that the billboard "appears to constitute political advertising because it opposes a member of the Legislative Assembly and was in place prior to December 2018 (November 23, 2018 to November 30, 2018)" and that Rebel Media had incurred expenses in excess of \$1,000 to display the billboard. On that basis, the Election Commissioner concluded that the Applicant "is required to be registered as a third party advertiser with Elections Alberta."
7. Rebel Media had not registered as a third party with Elections Alberta prior to displaying the billboard, so the Election Commissioner decided that an administrative penalty should be imposed in the amount of \$5,500.
8. Rebel Media is appealing and seeking a judicial review of the Decision for the following reasons:
  - a. The Commissioner failed to provide the Applicant with a copy of the complaint filed by Elections Alberta concerning the billboard prior to issuing the Decision, in breach of section 44.97(1.1) of the EFCDA, and the principles of natural justice;
  - b. The Commissioner failed to disclose the basis of the complaint, and the information he obtained through his investigation, in breach of section 44.97(1.1) of the EFCDA, and in breach of the principles of natural justice;
  - c. The Commissioner failed to give Rebel Media a reasonable opportunity to respond to the complaint prior to finding Rebel Media guilty of an offence, in contravention of section 44.97(3) of the EFCDA and in breach of the principles of natural justice;

- d. The Commissioner failed to provide adequate reasons to support his Decision, in breach of the principles of natural justice;
  - e. The Commissioner incorrectly and unreasonably found that the billboard constitutes “political advertising” based on his opinion that it “appears to oppose a member of the Legislative Assembly.” The billboard did not oppose a member of the Legislative Assembly. The billboard clearly takes a position on whether a particular Minister of the Crown (in this case, David Eggen) should be removed by the Premier from his position as a Cabinet Minister. This falls outside of the statutory definition of “political advertising”.
  - f. Rebel Media produces news and journalism. The billboard directs interested individuals to its website, which hosts commentary concerning the poor state of Alberta’s public schools, amongst other issues important to Albertans. The billboard therefore falls under the exception set out in the EFCDA for news media (section 44.1(1)(g)(i)), and cannot be considered “political advertising.”
9. It is clear the Commissioner incorrectly and unreasonably found that Rebel Media was required to register as a third party with Elections Alberta, and the Decision should be quashed pursuant to section 51.03(5) of the EFCDA.
10. Further, or in the alternative, sections 9.1, 44.1(1)(g), and 49.1 of the EFCDA are unconstitutional, and breach Rebel Media’s and all Albertans’ fundamental right to freedom of expression, as protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*. The EFCDA’s definition of “political advertising” is so broad that it conceivably encompasses any public communication, using any medium, critical of particular members of the government, or that take positions with respect to important political issues. The Act requires any person, organization, corporation or group that is considering engaging in its broad definition of “political advertising” to register with Elections Alberta, and then comply with onerous financial and reporting requirements. If an organization, corporation or group unknowingly or inadvertently engages in “political advertising”, it can be subject to a fine of up to \$100,000. This creates a chilling effect on speech, and imposes unreasonable and unjustifiable limitations on what can and cannot be said about members of the Legislative Assembly, thereby breaching section 2(b) of the *Charter*.
11. Specifically, Rebel Media is challenging the constitutional validity of sections 9.1, 44.1(1)(g) and 49.1 of the EFCDA for the following reasons:
- a. The definition of “political advertising” under section 44.1(1)(g) applies to any “transmission to the public by any means ... an advertising message that promotes or opposes ... a member of the Legislative Assembly”. This definition is overbroad, and conceivably applies to any form of communication that promotes or opposes elected members of the Legislative Assembly. This definition could conceivably apply to any communication that promotes or opposes members of the government or cabinet ministers. This curtails freedom of speech and expression to a degree that is unjustifiable in a free and democratic society.

- b. The definition of “political advertising” under section 44(1)(g) is vague, and therefore void. It is impossible for a person to reasonably understand if a billboard, advertisement or any other communication meets the statutory definition, thereby requiring that person to register as a third party with Elections Alberta. In particular, the inclusion of any communications that “oppose a member of the Legislative Assembly” or that “take a position on an issue with which a ... member of the Legislative Assembly ... is associated” could apply to any communication that is critical, or otherwise, of policies advanced by members of the government. The definition fails to reasonably specify what type of communications lead to a requirement to register as a third party.
  - c. The requirement under section 9.1 of the EFCDA to proactively register as a third party in anticipation of incurring expenses in excess of \$1000 for political advertising is an unreasonable limit on freedom of speech. The EFCDA imposes onerous reporting and auditing requirements that have the effect of unjustifiably circumscribing freedom of expression. It is impossible for any individual or organization to understand if they are engaged in “political advertising” as defined, which by extension makes it impossible for a person or organization to determine if they are in breach of the Act.
  - d. The penalties imposed under section 49.1 of the EFCDA are unreasonable, disproportionate and have the effect of unjustifiably curtailing freedom of speech. As noted above, the overbroad and vague definition of “political advertising” and requirement to proactively register as a third party make it possible that anyone who communicates a message by any means about members of the Legislative Assembly will face significant fines of up to \$100,000 for their failure to register as third parties. This broad exposure to potential penalties creates a chilling effect on free speech, and is not justifiable.
  - e. The maximum penalties imposed on third parties for violations under the EFCDA, including for failure to register as a third party with Elections Alberta, are higher than the maximum penalties imposed for other offences under the EFCDA (see, for example, sections 48, 48.1(2), 48.1(3), 48.2, 49, 50 and 50.1), and there is no justifiable reason why third parties should be subject to harsh penalties of up to \$100,000 for a failure to register with Elections Alberta. As noted above, the penalties create a chilling effect on speech critical of the government, and as such unjustifiably curtail freedom of expression.
12. In the alternative, if the Court finds Rebel Media did breach the EFCDA, and finds that Rebel Media’s *Charter* rights have not been infringed, Rebel Media is appealing the administrative penalty imposed on the following basis:
- a. The Commissioner followed an unfair process in deciding to levy an administrative penalty of \$5,500 against Rebel Media. The Commissioner invited Rebel Media to make additional submissions on the proposed \$5,500 penalty after stating “I have considered all the information obtained during the investigation and am of the opinion that an administrative penalty would be appropriate in the circumstances.” The Commissioner failed to disclose the information he based

this decision on to Rebel Media, and he decided that an administrative penalty was appropriate as opposed to a reprimand without receiving any input from Rebel Media. The Commissioner failed to provide Rebel Media with a reasonable opportunity to present its case prior to deciding that an administrative penalty was appropriate and proposing the amount of the penalty. In doing so, the Commissioner contravened section 44.97(3) of the EFCDA and breached of the principles of procedural fairness and natural justice;

- b. The Commissioner created a reasonable apprehension of bias by suggesting the appropriate quantum of the penalty before inviting Rebel Media to provide its perspective on an appropriate penalty;
- c. The Commissioner failed to provide adequate reasons to support his Decision to impose the administrative penalty, and to set the proposed amount of that penalty;
- d. The Commissioner failed to take into consideration the mandatory factors itemized at section 51.01(4) of the EFCDA when he assessed the penalty;
- e. In the alternative, if the Commissioner did take into consideration the mandatory factors itemized at section 51.01(4) of the EFCDA, the Commissioner failed to provide adequate reasons explaining these factors, in contravention of section 51.01(3)(b) of the EFCDA;
- f. The penalty is unreasonable, excessive, and disproportionate in the circumstances.
- g. If this Honourable Court dismisses the appeal and *Charter* challenges set out above, the Respondent submits this Honourable Court should rescind the administrative penalty imposed, and instead direct the Commissioner to issue a letter of reprimand.

**Remedy Sought:**

13. An Order scheduling this matter for a one day Special Chambers application before a Justice of the Court of Queen's Bench;
14. An Order rescinding the Decision;
15. A declaration that sections 9.1, 44.1(g) and 49.1 are of no force or effect pursuant to violations of section 2(b) of the *Canadian Charter of Rights and Freedoms*;
16. In the alternative, an Order rescinding the Decision and directing the Commissioner to issue a letter of reprimand;
17. Costs; and
18. Such further and other relief as this Honourable Court may deem just.

**Affidavit or other evidence to be used in support of this application:**

19. The Affidavit of Ezra Levant, to be filed in advance of the hearing of this Application in accordance with the *Alberta Rules of Court*;
20. The Decision, attached as **Appendix A**;
21. Such further and other evidence as the parties may advise and this Honourable Court may allow.

**Applicable Acts and Regulations:**

22. The *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2;
23. The *Alberta Rules of Court*, Alta Reg 124/2010, Part 3, Division 2.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.



January 14, 2019

**SENT VIA EMAIL:** legal@therebel.media

**File No. 2018-11-014**

The Rebel News Network Ltd.  
PO Box 61056, Eglinton/Dufferin RO  
Toronto, ON M6E 5B2

Attention: Mr. Ezra Levant and Mr. Keenan Beexte

**RE: Notice of Adverse Finding and Proposed Penalty**

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Dear Sirs:

I write in relation to an investigation undertaken by my Office regarding a complaint from Elections Alberta that The Rebel News Network Ltd. ("Rebel Media") engaged in political advertising while not registered as a third-party advertiser, in violation of section 9.1(1) of the *Election Finances and Contributions Disclosure Act* ("EFCDA"). Specifically, Rebel Media posted a political advertisement in the form of a billboard on Highway 2 near Innisfail, Alberta with the message "40% OF GRADE 9 STUDENTS FAILED PROVINCIAL EXAMS – ALBERTA CAN DO BETTER THAN DAVID EGGEN www.FireEggen.ca".

**Relevant Statutory Provisions:**

Section 9.1(1) of the EFCDA specifies when a third party is required to be registered with Elections Alberta:

**Registration of third parties**

**9.1(1)** A third party shall apply for registration under this section

- (a) when it has incurred expenses of \$1000 or plans to incur advertising expenses of at least \$1000 for election advertising or political advertising, or
- (b) when it has accepted advertising contributions of \$1000 or plans to accept advertising contributions of at least \$1000.

Section 44.1(1) of the EFCDA defines political advertising as follows:

**44.1(1)(g)** “political advertising” means, subject to subsection (1.1), the transmission to the public by any means, at any time other than during an election advertising period, of an advertising message that promotes or opposes a registered party, the leader of a registered party, a member of the Legislative Assembly, a registered nomination contestant, a registered leadership contestant or the election of a registered candidate, including an advertising message that takes a position on an issue with which a registered party, the leader of a registered party, a member of the Legislative Assembly, a registered nomination contestant, a registered leadership contestant or a registered candidate is associated,

### **Findings of the Investigation**

1. In November 2018, Rebel Media sponsored an advertisement in the form of a billboard near Innisfail, Alberta.
2. The message posted on the billboard appears to constitute political advertising because it opposes a member of the Legislative Assembly and was in place prior to December 2018 (November 23, 2018 to November 30, 2018).
3. Third party advertising that occurs in the period commencing December 1 in the year immediately preceding the year in which a general election is held and ending at the end of the polling day is election advertising. Advertising by third parties that occurs outside of the election advertising period is political advertising.
4. In sponsoring this political advertisement, Rebel Media incurred expenses exceeding \$1,000. Our investigation confirmed that the expenses incurred were approximately \$2,730.
5. Rebel Media identifies itself as a “fearless source of news, opinion and activism that you won’t find anywhere else!” The website hosts a “Fire David Eggen Campaign”. Rebel Media is an online news organization. In addition, as part of its mandate as a source of “activism”, Rebel Media has purchased advertising space on a billboard.
6. According to the legislation, Rebel Media is required to be registered as a third party advertiser with Elections Alberta.

### **Notice of Proposed Penalty**

Section 51.01(2) of the EFCDA states as follows:



**51.01(2) If the Election Commissioner is of the opinion that**

(a) a person has made one or more contributions in excess of a limit prescribed by section 17(1) or 18(1),

(b) a prohibited person or entity has made a contribution in contravention of section 16,

(b.1) a person, a political party, a constituency association or a third party fails to comply with a direction of the Election Commissioner,

(c) a prohibited corporation, a person ordinarily resident outside Alberta or a trade union or employee organization that is not an Alberta trade union or Alberta employee organization has made an election advertising contribution in contravention of section 44.2(3), or

**(d) a person, a prohibited person or entity, a political party, a constituency association or a third party has contravened a provision of this Act, otherwise than as referred to in clause (a), (b) or (c),**

**the Election Commissioner may serve on the person or entity either a notice of administrative penalty requiring the person or entity to pay to the Crown the amount set out in the notice, or a letter of reprimand.**

In assessing the appropriate penalty, I have considered all the information obtained during the investigation and am of the opinion that an administrative penalty would be appropriate in the circumstances. I believe that Rebel Media intended to convey a message that opposes a member of the Alberta Legislative Assembly.

Section 49.1 of the EFCDA establishes the penalties to be assessed:

**49.1** A third party that contravenes a provision of this Act is guilty of an offence and liable to a fine not exceeding

(a) \$10 000 if the third party is a person;

(b) \$100 000 if the third party is a trade union, employee organization, corporation or other organization.

In my initial assessment of this matter, I am considering an administrative penalty of \$5,500.

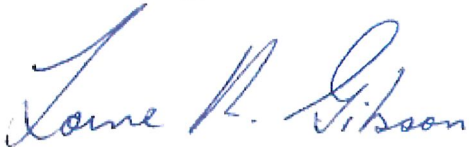
In circumstances where the Election Commissioner imposes an administrative penalty, publication of the findings, decisions, and any additional information that the Election Commissioner considers to be appropriate is required under Section 5.2(3)(a) of the EFCDA. This means the outcome of this investigation will be published on our website.

You are invited to respond to this notice and include any information you consider to be relevant prior to my final assessment and issuance of an appropriate penalty.

Please provide your written response on or before (30 days).

If you require any clarification or assistance, please contact Steve Kaye, Manager, Investigations by email at: [steve.kaye@albertaelectioncommissioner.ca](mailto:steve.kaye@albertaelectioncommissioner.ca) or by phone at 780-983-8357.

Yours sincerely,

A handwritten signature in blue ink that reads "Lorne R. Gibson". The signature is fluid and cursive, with the first name "Lorne" being the most prominent.

Lorne R. Gibson  
Election Commissioner of Alberta  
/ss

c: Reynolds Mirth Richards & Farmer LLP  
3200, 10180 101 Street NW  
Edmonton, AB T5J 3W8  
**Attention: Mr. Fred Kozak, Q.C. (via email [fkozak@rmrf.com](mailto:fkozak@rmrf.com))**  
**Your File 114261-002-FSK**