

**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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**MOTION RECORD OF THE APPLICANTS**

**[MOTION FOR LEAVE TO AMEND NOTICE OF APPLICATION]**

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February 10, 2020

**JUSTICE CENTRE FOR CONSTITUTIONAL  
FREEDOMS**

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**NOTICE OF MOTION**

**(Rule 75 Motion for Leave to Amend)**

**TAKE NOTICE THAT** the Applicants, True North Centre for Public Policy and Andrew Lawton, will make a motion to the Court in writing under Rule 369 of the Federal Courts Rules.

**THE MOTION IS FOR:**

- (a) An Order granting the Applicants leave to amend their Notice of Application, dated October 4, 2019;
- (b) An Order fixing costs of the motion heard October 7, 2019, in the amount of \$6,500, as agreed by the parties, to be payable forthwith by the

Respondent, Canada (Leaders' Debates Commission/Commission des Debats des Chefs) to the Applicant, True North Centre for Public Policy;

- (c) An Order granting the Applicants their costs of this motion;
- (d) Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. True North Centre for Public Policy ("**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. Its head office is situated in Richmond, British Columbia.

2. Andrew Lawton ("**Andrew**") is a Canadian broadcaster and columnist, and serves as a journalism fellow at True North. He resides in London, Ontario, and has worked as a journalist since 2013. He previously 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.

3. The Leaders' Debates Commission (the "**Commission**") is a body created pursuant to an Order in Council dated October 29, 2018, ostensibly to make the leaders' election debates a more predictable, reliable, and stable element of federal election campaigns.

4. The Commission organized the first leaders' debate, in the English language, to take place on October 7, 2019.

5. 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.

6. 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. The key benefit of being a member of the media was the ability to attend a subsequent media scrum where each leader was available to respond to questions for a 10-minute period.

7. 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."*

8. Of more than 200 journalists who applied for and received accreditation, only five (5) were denied. At least three (3) of these, including Andrew, were from conservative-leaning media outlets. 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. On the Toronto Star's

website, for example, it states that the Star has “an ongoing commitment to investigating and *advocating for social and economic justice.*”

9. On October 3, the day before it rendered its decision to deny accreditation, the Commission apparently developed and adopted an accreditation guideline which stated that it would not accredit media entities that engaged in advocacy. That policy was not disclosed to the applicants for accreditation.

10. On October 4, the day on which the denial of accreditation was received, the Applicants commenced an application for judicial review. In the Applicants’ original Notice of Application, included at Tab 3 of the Motion Record of the Applicants, the following relief was requested:

(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.

11. On October 7, 2019, the day of the first debate, the Applicants also filed a motion seeking an interlocutory injunction mandating that the Commission accredit Andrew to cover the debates. A similar motion was brought by Rebel Media with respect to its journalists who had been similarly declined. The motions were heard together on the afternoon of October 7.

12. Justice Zinn ordered the Commission to accredit True North and Rebel News. On November 13, he provided written reasons for his Orders.

13. 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."

14. 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 [emphasis added].”

15. Although Andrew was permitted to attend the Debate on behalf of True North, the remaining relief was not disposed of and important questions about the propriety of the Commission’s actions have not been addressed.

16. There is additional relief sought which is fundamental to these parties and in the interests of the public to have resolved. In their draft Amended Notice of Application, attached hereto at Tab 13, 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 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*.

17. The relief sought in the Amended Notice of Application arises out of essentially the same facts as the relief claimed in the original Notice of Application.

18. There is no prejudice to the Respondents in granting leave to amend, nor will the proceedings be delayed or impacted negatively. Affidavits have not yet been served or cross-examined upon in the judicial review application.

19. Allowing the amendments will serve the interests of justice as they permit a full determination of the questions at the heart of the matter before the Court.

20. The Commission has brought a motion to strike the Applicants' application for judicial review, without leave to amend, on the ground of mootness. It seeks to have its motion heard first, before any consideration of whether the Applicants might be granted leave to amend. The Applicants oppose this and seek to have the within motion heard first, or alternatively heard contemporaneously with the Commission's motion to strike.

21. As indicated in the Reasons of Justice Zinn, the parties informed the Court following the injunction motion that they had settled the matter of costs. To date, three months following the settlement, the Debates Commission has failed to pay the Applicants as agreed. It is respectfully requested that an Order be granted fixing the Applicants' costs of the Injunction Motion, as agreed, at \$6500, and that this disregard for its obligations be taken into account in any costs award in the within proceedings which might otherwise favour the Commission.

22. The Applicants plead and rely upon Rules 75 and 400 of the *Federal Court Rules*, SOR/98-106.

23. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of  
the motion:

- (a) Affidavit of Andrew James Lawton, sworn February 2, 2020;
- (b) Exhibits attached thereto, including the Notice of Application of True North and Andrew, issued October 7, 2019;
- (c) Justice Zinn's Reasons for Orders, dated November 13, 2019;
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 10, 2020



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