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Court File No.

FEDERAL COURT

B E T W E E N:

(Court Seal)

REBEL NEWS NETWORK LTD.

Applicant

and

CANADA REVENUE AGENCY

Respondent

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 and Rules 300(a) and 317 of the *Federal Courts Rules*, SOR/98-106.

NOTICE OF APPLICATION

TO THE RESPONDENT

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.

Date _____ Issued by _____
(Registry Officer)

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

TO: CANADA REVENUE AGENCY
Attention: Legislative Policy and Regulatory Affairs Branch
Journalism Division
Place de Ville, Tower A
320 Queen Street, 6th Floor
Ottawa, ON K1A 0L5

APPLICATION

This is an Application for judicial review in respect of a decision (the “**QCJO Refusal**”) made by the Respondent, Canada Revenue Agency (“**CRA**”) dated February 14, 2022 and received March 8, 2022, where the CRA rejected the application submitted by the Applicant, Rebel News Network Ltd. (“**Rebel News**”) for designation as a qualified Canadian journalism organization (“**QCJO**”) under section 248(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) (the “**ITA**”).

The Applicant, Rebel News, makes the Application for:

1. Pursuant to section 18.1(3) of the *Federal Courts Act*, RSC 1985, c F-7 (“**Federal Courts Act**”), Rebel News seeks a declaration that the QCJO Refusal is unreasonable and unlawful, and an order quashing the QCJO Refusal. Rebel News also seeks an order directing the CRA to reverse the QCJO Refusal and to designate Rebel News as a “qualified Canadian journalism organization” pursuant to the *ITA*.
2. All remedies are sought with respect to a final order, as well as any interim order pursuant to section 18.2 of the *Federal Courts Act*.

The grounds for the Application are:

The Parties

3. The Applicant, Rebel News, is an independent news media outlet, with its head office located in Toronto, Ontario. Rebel News has been granted media accreditation by governments in Canada, the United States (both White House and Congress), United Kingdom, European Union, Sweden, Netherlands, Israel, Poland, and India. Rebel

News has also been granted accreditation in partly-free countries such as Iraq and Morocco. Rebel News is also approved media at the United Kingdom Court of Appeal and the Old Bailey Central Criminal Court, amongst others.

4. The Respondent, CRA, is an agent of Her Majesty in right of Canada and established and continued pursuant to the *Canada Revenue Agency Act*, SC 1999, c 17.

Qualified Canadian Journalism Organization

5. QCJO is defined in section 248 of the *ITA*. Section 248 sets out certain qualifying features of a QCJO and contemplates that a “body” may make recommendations with respect to whether an organization qualifies for a QCJO designation.

6. The recommendation “body” referenced in section 248 of the *ITA* is the Independent Advisory Board on Eligibility for Journalism Tax Measures (the “**Advisory Board**”), which was established pursuant to Order in Council PC2020-0177 (the “**Order in Council**”). The Advisory Board provides advice to the Minister of Revenue and the CRA as to whether a journalism organization can be granted QCJO status by the government.

7. A QCJO attracts different tax benefits for itself and for its subscribers. Namely, a QCJO may qualify for the Canadian journalism labour tax credit; and a subscriber to a QCJO may be eligible for the digital news subscription tax credit.

8. Among other things, a QCJO must be engaged in the production of “original news content.”

9. “Original news content” is not defined in the *ITA*. The subparagraphs in the definition of a QCJO direct that a QCJO “must be primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes” and “must not be primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment.”

10. The Government of Canada and the CRA published guidelines to inform and explain the QCJO application process (the “**Guidelines**”). Sections 2.23 to 2.38 of the Guidelines explain that “original news content” generally refers to reports, features, investigations, profiles, interviews, analyses, or commentaries, that are:

- (a) News;
- (b) Written, researched, edited and formatted by and for the organization;
- (c) Based on facts, and multiple perspectives are pursued, researched, analyzed and explained by a journalist for the organization; and
- (d) Produced in accordance with journalistic processes and principles.

11. The Guidelines go on to say that “original news content” requires that:

- (a) Content must be of a general interest, aimed at a general audience, as opposed to specialists;
- (b) Content should be diverse and include local news, national news, international news, social issues, business, economy, sports, culture, science, technology and the environment;

- (c) Content should address democratic institutions and processes, including election issues, legal issues, operation of justice system, government budget issues, and government decisions related to public assets; and
- (d) Research, writing, editing and formatting should be conducted by and for the organization.

12. Rebel News creates content that meets all the criteria set out in the Guidelines for “original news content.”

QCJO Application

13. On May 26, 2021, Rebel News submitted a form T625, Application for Qualified Canadian Journalism Organization Designation (“**QCJO Application**”) to the Journalism Section of the Legislative Policy and Regulatory Affairs Branch of the CRA.

14. On June 25, 2021 CRA followed up for access to Rebel News content that is behind a paywall. Access was granted promptly.

15. Rebel News then followed up with CRA on its QCJO Application numerous times between August 8, 2021 and November 10, 2021. On November 10, 2021, Rebel News was advised that its QCJO Application had been reassigned to other CRA staff. Rebel News made multiple offers during this period to discuss its application with CRA staff. Upon further follow up by Rebel News, CRA advised on January 26, 2022 and February 22, 2022 that the QCJO Application was still being reviewed and discussed internally.

16. As set out in the QCJO Application, Rebel News meets the definition of a QCJO in the *ITA*; specifically, because Rebel News:

- (a) Is incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44;
- (b) Has a citizen of Canada as its chairperson and as its director;
- (c) Is resident in Canada, operates in Canada, and its content is edited, designed and published in Canada;
- (d) Is engaged in the production of original news content, including matters of general interest and reports of current events (including coverage of democratic institutions and processes);
- (e) Regularly employs more than 10 journalists who deal at arm's length with it in the production of its content;
- (f) Does not significantly engage in the production of content for a government, Crown corporation or government agency;
- (g) Does not significantly engage in the production of content to promote the interests, or report on the activities, of an organization, an association, or its members; and
- (h) Is not a Crown corporation, municipal corporation, or government agency.

17. More specifically, Rebel News hires journalists to research, write, edit, and format its content. Its journalists gather facts, conduct interviews, and report on matters of general interest for a general audience in an independent manner. Many of the matters that are reported on by Rebel News' journalists include electoral issues and criminal justice issues.

18. Rebel News journalists follow the strictures of responsible and ethical journalism, including researching and verifying information before publication, providing, and inviting opportunities for rebuttal, honestly representing their sources, and correcting any errors that arise. Rebel News is committed to and exemplifies the values of accuracy, fairness, privacy, independence, transparency, diversity, and accountability.

19. Rebel News is generally critical of government action or inaction and has a mission statement to "tell the other side of the story." Rebel News is akin to an official opposition to legacy media and government narratives, as a counterweight to the dominant point of view. Rebel News is one of the few Canadian media outlets having the power, freedom, and will to meaningfully challenge government figures and policies and the political views presented in Canada's legacy media.

20. Rebel News seeks to provide accessible and independent media to Canadians. Rebel News' YouTube channel has over 1.5 million subscribers, 11.5 million yearly users, 27 million yearly sessions, and 45 million yearly page views, making it one of the most watched Canadian news channels on YouTube and widely accessible to Canadians.

21. Rebel News seeks to set aside assumptions and prejudices and to find facts that are overlooked or ignored by mainstream media. Rebel News is a frequent critic of Canada's Federal and Provincial Governments, and in particular, of the governments of Alberta, Ontario, and the Government of Canada, including their respective Premiers and Prime Minister.

22. Rebel News is a member of the Independent Press Gallery of Canada. Rebel News has become a well-known media organization which is accessible to Canadians and uses its platform to not only share news stories, but to report on entities that offend civil liberties and hold those entities accountable. Rebel News takes independence of the press seriously.

23. Rebel News reports on matters of local, national, and international importance. For example,

- (a) Rebel News journalists regularly attend and report extensively on the Federal Leaders' Debates, despite having to seek and obtain Court Orders to do so, during the 2019 and 2021 elections;
- (b) Rebel News journalists regularly attend and report extensively on Federal and Provincial Budget announcements;
- (c) Rebel News journalists have reported extensively on the COVID-19 crisis and the resulting lockdowns and other restrictions;
- (d) Rebel News creates original content, and has a full-time researcher who specializes in Access to Information documents to find original, native

content from government through access to information and freedom of information requests;

- (e) Rebel News creates original news content, discovered by its journalists, and sometimes later covered by other legacy media, including stories on Canadian military involvement in China and government assets used during emergencies such as the Fort McMurray fires.

24. These are just some of the examples of Rebel News reporting on matters of local, national, and international importance.

QCJO Refusal

25. Although it is quite apparent that Rebel News publishes “original news content”, its QCJO Application was denied. The QCJO Refusal was dated February 14, 2022, despite, as set out above, CRA advising Rebel News on February 22, 2022 that the CRA was still considering the QCJO Application internally. The QCJO Refusal was received by Rebel News by regular mail on March 8, 2022.

26. The QCJO Refusal appended a recommendation report from the Advisory Board, which recommended against granting Rebel News QCJO designation (the “**Advisory Report**”). The recommendation in the Advisory Report was adopted by the CRA in making the QCJO Refusal.

27. The Advisory Report found that Rebel News produces content of general interest, democratic institutions and processes, and does not focus on a particular topic, but ultimately recommended that the QCJO Application be refused because, according

to the Advisory Report, Rebel News does not produce “original news content.” The Advisory Report came to this conclusion by finding that Rebel News promotes “one particular perspective” and that less than 1 per cent of its content was “original news content”, as it contained opinion or content that originated from other sources.

28. Rebel News does not promote a particular perspective any more than many other outlets that have previously received the QCJO designation. It seeks to tell another side of a story, regardless of the “perspective” that side may have. Sometimes that results in a conservative “law and order” oriented story, while other times the story is about overreach or selective enforcement by authorities, both being the other side of stories not being pursued by mainstream media. To do this, Rebel News seeks multiple perspectives and grants opportunities for rebuttal or to simply comment on the story, both of which allow Rebel News to present alternative perspectives, as set out in the Guidelines.

29. Of note, while the *ITA* and the Guidelines do not contemplate whether an organization is a QCJO based on providing or promoting a “particular perspective”, many CRA-approved QCJOs do promote their own “particular perspective.” Specifically, while the CRA decisions are not transparent and do not advise publicly as to which entities are approved for QCJO and which entities are not approved, some organizations have self-disclosed that they have been approved for QCJO status, including the Western Standard, the Catholic Register, the Narwhal, the National Observer, and the Logic.

30. The decision as to whether an entity is a QCJO or not is a discretionary and non-transparent decision, which is informed and significantly influenced by the background, preconceptions, and partiality of the Advisory Board chosen by the executive branch of the government of the day.

31. The QCJO designation is important. If an organization is designated a QCJO, it can then qualify for other definitions, descriptions, and tax benefits under the *ITA*. For example, QCJO may also ask the CRA to be a qualifying digital news subscription. Qualifying digital news subscriptions include The Catholic Register. The QCJO designation may provide basis for additional entitlements in the future.

32. Bestowing QCJO designations on numerous organizations, which appear to run afoul of the Advisory Board's stated "particular perspective" concern, gives rise to the natural inference that the QCJO Refusal was both political and unreasonable, and failed to follow the Guidelines. The government should not make QCJO decisions to legitimize or delegitimize perspectives and criticisms.

33. The QCJO Refusal has the effect of censoring a large and active Canadian journalism organization which is engaged in the production of original political, justice, cultural and health-oriented news content. It bears noting that the QCJO Refusal is just the latest effort to restrict the ability of Rebel News to report the news and follows two earlier attempts by the Leaders' Debate Commission to refuse to issue Rebel News' journalists media accreditation to attend and cover the Federal Leaders Debate during the 2019 election and 2021 election. In both cases, this Honourable Court heard

emergency injunction applications and ordered media accreditation to be issued to Rebel News, who attended and reported extensively on the Debates.

34. As noted above, Rebel News has also been granted media accreditation by governments around the world.

35. Further, to find that “less than 1 per cent” of Rebel News stories were original news content strongly suggests that an unstated or certainly unpublished political overlay has informed, if not determined, the QCJO Refusal decision.

36. Rebel News qualifies for QCJO status under the *ITA*. The QCJO Refusal was incorrect and unreasonable and follows earlier attempts by the Federal Government to censor Rebel News for having a “particular perspective”.

This Application will be supported by the following material:

35. This application will be supported by the following material:
- (a) Affidavit of the Corporate Representative of Rebel News, Ezra Levant, served and filed;
 - (b) Other affidavit evidence, including affidavits from expert(s) and fact witness, as served and filed;
 - (c) All records before the CRA and the Advisory Board at the time of making the QCJO Refusal, as may be produced pursuant to the Rule 317 request below;

- (d) Such further and other materials as counsel may advise and this Honourable Court may accept.

36. Pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106, Rebel News requests that the CRA send a certified copy of the following material that is not in the possession of Rebel News but is in the possession of the CRA to the Registry of all records before the CRA and the Advisory Board at the time of making the QCJO Refusal, including but in no way limited to:

- (a) Records, such as research, briefing reports, studies, correspondence, proposals, respecting the Guidelines, the Order in Council, the Advisory Board's mandate, and the intent or use of the QCJO designations, the QCJO application and consideration process, the QCJO Application or QCJO Refusal;
- (b) Research, analysis, briefing reports, studies, or related records regarding the QCJO application and consideration process, the QCJO Application or QCJO Refusal;
- (c) Rebel News content and any content reviewed and considered in comparison regarding the QCJO application and consideration process, the QCJO Application or QCJO Refusal;
- (d) Any content created by other media sources, including QCJO approved or rejected media, reviewed and considered in the QCJO application and consideration process, QCJO Application or QCJO Refusal;

- (e) Correspondence between Ministerial or other political exempt staff, the CRA, the Minister of Revenue, CRA staff, the Advisory Board and any other government entity, staff or other third party regarding the QCJO application and consideration process, the QCJO application and consideration process, the QCJO Application or QCJO Refusal;
- (f) Proposals, presentations, reports, memos, opinions, advice, letters, emails, and any other communications that were prepared, commissioned, considered, or received by the CRA or Advisory Board regarding the QCJO application and consideration process, the QCJO Application or QCJO Refusal; and
- (g) All records produced by or contributed to by members the Advisory Board, whether published or unpublished, before or during the term of their appointment, that touch upon the QCJO criteria elements, and in particular those that might inform the Court as to the perspective or bias the Advisory Board Members may have brought to the task of determining if Rebel News produces original news content, as such records record at least in part the information before the Advisory Board in completing its work.

Dated: April 7, 2022 at Calgary, Alberta



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