

e-document	T-1249-21-ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE  August 11, 2021 11 août 2021
	D É P O S É
Imrana Ahmed	
TOR	1

Court File No.

**FEDERAL COURT**

B E T W E E N:

(Court Seal)

**REBEL NEWS NETWORK LTD.**

Applicant

-and-

**CANADA (COMMISSIONER OF CANADA ELECTIONS) and  
THE ATTORNEY GENERAL OF CANADA**

Respondents

APPLICATION under section 18.1 of the *Federal Courts Act*, sections 1 and 2(b) of the *Charter of Rights and Freedoms*, and section 52(1) of the *Constitution Act, 1982*

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appear 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: THE ADMINSTRATOR**  
Federal Court  
180 Queen Street West  
Suite 200  
Toronto, Ontario M5V 3L6

**AND TO: CANADA (COMMISSIONER OF CANADA ELECTIONS)**  
30 Victoria Street  
Gatineau, Quebec K1A 0M6

Respondent

**AND TO: 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 of the decision (the “**Decision**”) by the Commissioner of Canada Elections (the “**Commissioner**”), dated July 12, 2021, which confirmed the decision of the Deputy Commissioner of Canada Elections (the “**Deputy Commissioner**”) dated January 25, 2021, finding that the Applicant, Rebel News Network Ltd. (“**Rebel News**”), contravened ss. 352 and 353(1) of the *Canada Elections Act*, S.C. 2000, c. 9 (the “**Act**”), issuing two Notices of Violations (NOV #A-190752-1 and NOV #A-190752-2, respectively) (the “**Notices**”), and imposing corresponding administrative monetary penalties.

### THE APPLICANT MAKES APPLICATION FOR:

- a) An Order abridging the time for service of this Application and allowing the Application to proceed on an expedited basis;
- b) An Order setting aside the Decision, the Notices, and the corresponding penalties;
- c) A Declaration, pursuant to s. 52(1) of the *Constitution Act, 1982*, that ss. (b) of the *Act*’s definition of “election advertising” at ss. 2(1) (the “**Book Exemption**”) is inconsistent with ss. 1 and 2(b) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) and severing the following condition (the “**Condition**”) as being of no force or effect:

*election advertising* means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including by taking a position on an issue with which a registered party or candidate is associated. For greater certainty, it does not include

[...]

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;

[emphasis added]

- d) costs of this Application; and

e) such other relief as counsel may advise and this Honourable Court deems just.

**THE GROUNDS OF THE APPLICATION ARE:**

**The Parties**

1. The Applicant, Rebel News Network Ltd. (“**Rebel News**”), is a federal company carrying on business as a popular, independent online news and media company operating across Canada and around the world.

2. Rebel News is a prominent, tireless advocate for press freedom in Canada. Rebel News’ journalists and commentators often take strong editorial positions on important public issues affecting Canadians, and convey those positions through different media, including on websites (<http://www.RebelNews.com>), podcasts, YouTube videos and ads, print media, paperback books, e-books, radio ads, and billboards.

3. Ezra Levant (“**Mr. Levant**”) is the founder and principal of Rebel News. Mr. Levant is a broadcaster, media critic, bestselling and award-winning author, and journalist. Mr. Levant is a leading advocate for free expression and press freedom in Canada.

4. Mr. Levant’s bestselling 2009 book, *Shakedown: How Our Government is Undermining Democracy in the Name of Human Rights*, was chosen as the Writer's Trust of Canada / Samara's - Best Canadian Political Book of the Last 25 Years and hailed by the National Post as the "most important public affairs book of [2009]." His bestselling 2011 book, *Ethical Oil: The Case for Canada's Oil Sands*, won the 25<sup>th</sup> National Business Book Award, one of Canada's most prestigious literary awards.

5. Rebel News and Mr. Levant are leading critics of the Prime Minister of Canada, the Right

Honourable Justin Trudeau (the “**Prime Minister**”), his associates, and the Liberal Party of Canada (the “**LPC**”), and have released other bestselling books critical of these parties.

6. The Commissioner is an independent officer appointed under section 509 of the *Act* by the Chief Electoral Officer. The Commissioner’s position is within the Office of the Chief Electoral Officer. The Commissioner’s duty is to ensure that the *Act* is complied with and enforced by taking any measure that is provided for in the *Act*, including by (a) conducting investigations; (b) instituting prosecutions for offences under the *Act*; (c) entering into compliance agreements; (d) issuing notices of violation that set out an administrative monetary penalty; or (e) accepting undertakings. The Commissioner may conduct an investigation on its own initiative or in response to a complaint.

7. The Commissioner delegated to the Deputy Commissioner certain of its powers, duties, and functions relating to the issuance of the Notices pursuant to section 509.23 of the *Act*.

### **The 2019 Federal Election**

8. Canada’s 43<sup>rd</sup> federal general election was a fixed-date election, called on September 11, 2019 and held on October 21, 2019. During the election, the incumbent Prime Minister campaigned across the country as leader of the LPC.

### **The Book and the Promotion Thereof**

9. On September 4, 2019, Rebel News, as publisher, released its newest book by Mr. Levant — *The Libranos: What the media won’t tell you about Justin Trudeau’s corruption* (the “**Book**”). The Book’s cover features an artistic rendering of the Prime Minister and his prominent ministers and staff in a manner evocative of the hit 2000s television drama, the Sopranos. The original

concept for the Book and its cover art, was derived from a 2005 cover of the Western Standard magazine of which, Mr. Levant was the publisher at the time.

10. As part of the promotion of the sale of the Book, Rebel News developed and implemented a guerrilla marketing campaign. One element of this campaign was the creation and distribution of lawn signs promoting the Book and encouraging passers-by to “Buy the Book”, as follows (the “**Lawn Signs**”):



### **The Investigation**

11. The Commissioner received seven (7) complaints between September 25, 2019 and October 18, 2019 regarding the Lawn Signs. These complaints originated in three provinces: Ontario (4), British Columbia (2), and Alberta (1).

12. Lead investigators for the Commissioner, Louis Panneton and Avril Ford Aubry, submitted a Recommendation to Initiate an Investigation against “Rebel Media” dated December 5, 2019, as follows (the “**2019 Recommendation**”):

<b>File Name/Caption:</b>	<b>Rebel Media</b>
<b>Lead Investigator:</b>	Louise Panneton and Avril Ford Aubry
<b>Counsel:</b>	Philippe Madgin

<b>Purpose of memo:</b>	The following is a recommendation to initiate an administrative investigation.
<b>Nature of Complaint/Referral:</b>	<p>During the election period, Rebel News Network Ltd. engaged in election advertising under section 2(1) of the <i>Canada Elections Act</i> (the Act) in its production and distribution of "Libranos" lawn signs. Documents show that these lawn signs do not contain the proper tagline in accordance with the requirements under section 352 of the Act.</p> <p>As well, the evidence gathered to date indicates that the election advertising expenses incurred in regard to these lawn signs and their election advertising messages are at least, if not over, the \$500.00 threshold that triggers the obligation under section 353 of the Act for a third party to register as such with Elections Canada.</p> <p>A preliminary review of the documents and information gathered through open source and public documents give the investigators reasonable grounds to suspect that offences under the Act have been committed.</p>
<b>Potential Offences:</b>	<p>S. 352 — Tag Line requirement — Election Advertising</p> <p>S. 353 (1) (b) — Registration requirement for Third Parties</p>
<b>Suspects:</b>	Rebel News Network Ltd.
<b>Counsel's comments:</b>	Counsel has reviewed the documents and supports the recommendation.

13. The 2019 Recommendation indicates that it was signed that same day — December 5, 2019 — by:

- a) Ms. Panneton, Investigator;
- b) Ms. Aubry, Investigator;
- c) Mr. Madgin, Senior Legal Counsel;
- d) Ms. Mylene Gigou, Director of Investigations; and

e) Mr. Yves Cote, the Commissioner.

14. By letter of Director of Investigations, Mylene Gigou to Mr. Levant dated December 9, 2019, Ms. Gigou gave notice that the Commissioner had initiated an administrative investigation pursuant to s. 510(2) of the *Act* into allegations that Rebel News had contravened ss. 352 and 353 of the *Act* by:

- a) failing to include the required information on third party election advertising (s. 352 – third party information requirements); and
- b) incurring over \$500.00 on election advertising expenses without registering as a third party in the 2019 federal election (s. 353 - third party registration requirements).

15. The Commissioner identified the Book Exemption in this letter, indicating its potential applicability in the circumstances. The Commissioner also noted that Rebel News was under no obligation to “cooperate with investigators” during the investigation, while signalling that a failure to cooperate could impact the determination of the amount of an eventual administrative monetary penalty. The Commissioner invited Rebel News representatives to schedule an “interview” with investigators from the Commissioner’s office, or alternatively, to submit all relevant facts and information and any written representations. This letter identified Louise Panneton as the lead investigator.

16. On January 23, 2020, Mr. Levant, as a representative of Rebel News, submitted to an hour-long interview with two Commissioner investigators (Paul Couture and Tim Mackin — both senior RCMP veterans) at the Commissioner’s office in Gatineau, Quebec, wherein the investigators interrogated Mr. Levant on Rebel News’ marketing and publishing practices. At all material times, Mr. Levant stated that he was cooperating in the Commissioner’s investigation under protest, given his view that this exercise was contrary to the *Act* and the *Charter*.



17. Ms. Panneton submitted a Compliance or Enforcement Recommendation Report dated March 30, 2020 (the “**March 2020 Report**”) to Ms. Gigou and the Commissioner recommending that the file be transferred to the Compliance Unit for analysis and for a recommendation to be made to the Commissioner on the appropriate compliance and enforcement measure. The March 2020 Report details the CCE’s investigation of the Book and the promotion thereof (focusing on the Lawn Signs).

18. The CCE’s Compliance Unit submitted a Compliance Unit Recommendation Report on Compliance and Enforcement Measure dated January 11, 2021 to Marc Chénier, Deputy Commissioner and Chief Legal Counsel, for consideration and approval (the “**January 2021 Report**”).

19. The January 2021 Report determined that the Book did not itself constitute election advertising, “as a book sold and bought does not meet the requirement that advertising is generally unsolicited by the view, but rather, interferes with their regular activities.”

20. In finding that there were “reasonable grounds to believe that Rebel News transmitted election advertising during the general election period, and failed to meet obligations imposed by” the *Act* under ss. 352-353, the CCE’s Compliance Unit ruled out the Book Exemption, as follows:

“The illustration of communications that are not election advertising at ss. 2(1) that deals with the promotion and distribution of a book (“the book promotion exclusion”) does not apply in this case. For that exclusion to apply, the book must have been “planned to be made available to the public regardless of whether there was to be an election”. Here, **it seems clear that the entire project was planned and executed in order to coincide with the 43rd general election**, as indicated by Mr. Levant during his interview.

In addition to Mr. Levant’s admission, the following factors are relevant in determining that the book was planned to be made available at that time because there was to be a general election:

- Federal general elections following a majority Parliament usually have a fixed

date, and voting day for the 43rd federal elections was October 21, 2019.

- Rebel News was distributing lawn signs at the same time the book was launched. This book appears to have been initially launched on or around September 9, 2019, and book launch events continued during the election period.
- There is little doubt that the lawn signs were intended to – and did – oppose a registered party. That they may also have been intended to promote the referenced book during the election period does not change that fact. The Act considers an advertising message to be election advertising if it can be seen to have the effect of promoting or opposing a registered party or a candidate during an election period.
- Moreover, the investigator’s report details Tweets sent by Rebel News promoting distribution of the signs using the hashtag #elxn43.
- Also, the signs constituted one of the elements of Rebel News’ 2019 federal election plan, in a video it posted on YouTube. For the reasons outlined above, the book promotion exclusion is not applicable here.
- Although certainly not determinative, it is also noteworthy that Rebel News has used lawn sign advertising in the past to promote a book attacking a provincial premier and her registered party, and in that case also, the book launch was made to coincide with the beginning of a general election in that province.
- Finally, lawn signs are not a usual method of promoting a book. They are, however, a staple of election campaigns. The Rebel News signs, which appeared during or near the election campaign only, resembled the type of election signs that have long been used by various campaigns to advertise their election messages.

[Emphasis added]

21. The January 2021 Report went on to recommend the imposition of an administrative monetary penalty for violations of ss. 352-353 of the *Act*, being \$1,500.00 for a violation of s. 352 and \$1,500.00 for a violation of s. 353, totalling \$3,000.00.

22. By letter dated January 12, 2021, Sylvie El Hamarneh, Manager of the Compliance Unit, served Rebel News with two Notices of Violation issued by the Deputy Commissioner: (1) NOV #A-190752-1 – Violation of s. 352 of the *Act*; (2) NOV #A-190752-2 - Violation of s. 352 of the

*Act*. The Notices provided the same Key Facts of the Violation(s), as follows:

During the 43rd federal general election period, Rebel News distributed lawn signs promoting Ezra Levant's book *Librano\$: What the media won't tell you about Justin Trudeau's corruption*, that contained an advertising message opposing a registered party and its leader. The advertising message contained the book title's reference to "Librano\$", which was clearly designed to create an association between the name of a registered party and *The Sopranos*, a mafia-themed television show, and to link the party to corruption. The advertising message also contained an edited version of a graphic used to promote the show; drawings of the show's characters were replaced with drawings of the leader and other public figures of the party. In a Rebel Media video entitled "The Rebel's 2019 Federal Election Plan" [emphasis added], Rebel News' Director stated that the signs "are perfect for anyone who wants to show their opinions about the first prime minister in Canadian history to be convicted of breaking the law, not once, but on five counts." In Tweets by @RebelNewsOnline during the election period, the signs' distribution was promoted by using the hashtag #elxn43. A Tweet sent on October 3, 2019, asked: "Why not get your TheLibranos.com lawn sign, just in time for #elxn43 ?" During an interview with investigators, Rebel News' Director admitted that the book's launch had been timed to coincide with the general election. Finally, of note, Rebel News had previously distributed lawn signs promoting a book opposing a premier on the eve of a general election in that premier's province.

Consequently, the book's launch two days before the beginning of a general election held at a fixed-date, the decision to promote the book using lawn signs (a staple of election campaigns, but not of book launches), statements by Rebel News and its Director linking the signs to the election, and the advertising message's content that clearly opposed a registered party and its leader give reasonable grounds to believe that Rebel News carried out "election advertising", as defined at subsections 2(1) and (7) of the *Canada Elections Act* (Act).

23. The Notice in respect of s. 352 of the *Act* went on to state as follows:

In accordance with s. 352 of the Act, a third party must include in any election advertising message placed by it, in a manner that is clearly visible or otherwise accessible, its name, its telephone number, either its civic or its Internet address, and an indication in or on the message that it authorized its transmission (commonly referred to as a "tagline"). As evidenced during the investigation, the election advertising message contained on the lawn signs distributed by Rebel News did not contain the required tagline as they did not provide the third party's telephone number,

its civic or Internet address, and an indication on the message that the third party authorized its transmission.

There are therefore reasonable grounds to believe that Rebel News contravened s. 352 of the Act.

24. The Notice in respect of ss. 353(1) of the *Act* went on to state as follows:

Further, there are reasonable grounds to believe that Rebel News incurred costs of \$500 or more for the signs' production and distribution. In the course of the investigation, it was found that thousands of signs were distributed, each having a manufacturing cost of \$2.50. In solicitations for donations, Rebel News stated that they wanted to raise \$15,000 to cover the signs' production and that additional costs of \$25,000 would need to be paid for the salary and travel expenses of two individuals hired to drive across the country to distribute them.

In accordance with subsection 353(1) of the Act, a third party must register immediately after having incurred \$500 in regulated election period expenses. The application for registration must be sent to the Chief Electoral Officer. Elections Canada has confirmed that no application for registration as a third party has been received from Rebel News for the purposes of the 43rd federal general election. There are therefore reasonable grounds to believe that Rebel News contravened subsection 353(1) of the Act.

There are therefore reasonable grounds to believe that Rebel News contravened s. 352 of the Act.

25. By letter dated February 4, 2021, Rebel News requested review by the Commissioner in respect of the Notices pursuant to s. 521.14 of the *Act*.

26. By letter dated April 1, 2021, Rebel News submitted its written submissions and evidence in respect of the requested review by the Commissioner, stating *inter alia*, that the Book and the promotion thereof (including the Lawn Signs) fell squarely within the Book Exemption and aligned with its clear intention — to remove from scrutiny a critical sphere of democratic discourse, public debate/literature during an election period — as follows:

To reiterate, the *Act* sets out the Book/Promotion Exemption, as follows:

“For greater certainty, it does not include

[...]

the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, **if the book was planned to be made available to the public regardless of whether there was to be an election;**”

[emphasis added]

That last portion — if the book was planned to be made available to the public regardless of whether there was to be an election” — is the heart of the Book/Promotion Exemption. The question appears to be, as follows: was there an intention to release the subject book whether there would be an election or not? If so, the Book/Promotion Exemption applies. This necessarily requires an examination of the original development of the subject book and the promotion/sales strategy, and not merely the publisher/author’s intention/strategy at the time of release. However, as detailed above, the question that the CCE appears to have put to itself was narrower: was Rebel News’ intention at the time of the release of the Book to release it during the 2019 election period? This question answers itself.

27. Rebel News went on to identify publicly-available information demonstrating that the Book was planned well before a fixed election date and would be released whether there would be election or not, including:

- a) The original Book concept was derived from a Western Standard cover published in 2005, based on a television show from the 2000s;
- b) Rebel News registered the URL (thelibranos.com) in February 2016 — over three (3) years before the fixed 2019 election date; and
- c) Rebel News/Mr. Levant are leading critics of the Prime Minister, his associates, and the LPC, and have released other bestselling books critical of same during non-election periods.

28. Accordingly, Rebel News requested that the Notices be reviewed and withdrawn.

29. By letter dated July 12, 2021, the Commissioner affirmed the alleged contraventions of the *Act* and maintained the Notices. In upholding the contraventions and Notices, the Commissioner, *inter alia*, determined that:

- a) the Book Exemption did not apply to the circumstances because “Rebel News had planned the launch of the book to coincide with the election”; and
- b) the informational and registration requirements at ss. 352-352 minimally impair Rebel News’ freedom of expression in light of their compelling and substantial objectives and thus, “do not result in a breach of the *Charter*.”

### **The Decision Should Be Set Aside**

30. There are sufficiently serious shortcomings in the Decision central to the merits of the Decision rendering it unreasonable. The Decision fails to meaningfully account for the central issues and concerns raised and misapplies the law to the facts of the case. It does not exhibit the requisite degree of justification, intelligibility, and transparency, nor is it justified in relation to the relevant factual and legal constraints that bear on it.

31. The Decision was made without consideration for relevant legal and contextual factors, and failed to comport with the fundamental values of Canadian society.

32. The Commissioner failed to reasonably apply and interpret the Book Exemption to the circumstances. The Commissioner misapplied the Book Exemption, directing itself to the following question: Did Rebel News plan the “launch of the book to coincide with the election”? However, the Book Exemption asks a different question: Whether the book was “planned to be made available to the public regardless of whether there was to be an election.”

33. The Commissioner also failed to grapple with all the relevant evidence before it by, *inter alia*, failing to consider and address Rebel News’ submissions.

34. Further, the Commissioner engaged in a *Charter* analysis of the *Act*’s informational and registration requirements (which Rebel News does not oppose), but did not consider, or engage in the necessary “balancing” assessment of the rights, objectives, proportionality, and reasonable

limits surrounding the application of the Book Exemption. The intention of the Book Exemption is to remove from scrutiny a critical sphere of democratic discourse, public debate/literature during an election period. As decision-maker, it was incumbent on the Commissioner in exercising its discretionary power to sanction conduct under ss. 352-353 of the *Act* to balance the legislative objectives and *Charter* values of the Book Exemption and whether its process, findings, and sanctions disproportionately and unreasonably limited *Charter*-protected freedom of expression.

35. Administrative discretion must be exercised in accordance with the fundamental values of Canadian society, including the rights and freedoms guaranteed by the *Charter*. The Commissioner is empowered, and indeed required, to consider *Charter* values while exercising its discretionary decision making.

36. The Commissioner failed to appropriately balance the relevant *Charter* values engaged with the statutory objectives. Had the Commissioner assessed these considerations, it would have concluded that the Book Exemption applied and that the Book and the Lawn Signs did not violate the *Act*.

### ***The Book Exemption Unjustifiably Limits Charter Freedoms***

37. The free exchange of political ideas is essential to a properly functioning democracy. Free expression is valued above all as being instrumental to democratic governance. Political speech is the most valuable and protected type of expression.

38. Section 2(b) of the *Charter* guarantees the “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.” Among other things, this protection promotes participation in social and political decision making and denies

the state the power to suppress opinion and commentary.

39. Books are, and have historically been, critical instruments to express opinions on matters of public interest and concern, especially during elections — the pinnacle moment of a democracy. Books, circulars, pamphlets, newsletters — all of these mediums have found a significant place in the history of democratic elections. In some instances, such instruments have motivated the birth of nations, and the very notions of democracy and principles of self-government.

40. The Book Exemption, as currently read with the Condition, undermines and limits the freedoms of belief, opinion, and expression guaranteed in s. 2(b) of the *Charter*.

41. The fundamental importance of the freedoms guaranteed in s. 2(b) of the *Charter* requires that any attempt to restrict them must be subject to the most exacting scrutiny. Limits of political speech — particularly in the election context — must always be difficult to justify.

42. The ability to freely publish and market election-timed, politically-expressive books goes to the core values and purposes protected by section 2(b) of the *Charter*, namely to encourage active participation in debates on matters of public interest that have an impact on decision-making of social and political interest in a free and democratic society.

43. The Book Exemption, as currently read, does not promote the integrity of Canada's federal elections. Rather it serves to comprise the robust debate on which our democracy depends by chilling political expression. It empowers the state to punish individuals for exercising their freedom to express and share information, opinions, and beliefs during federal elections campaigns. In doing so, it offends the *Constitution* and a fundamental value of the Canadian way of life: freedom of expression, a freedom which long existed before it was enshrined in our



*Charter.*

44. The Book Exemption is vague, ambiguous, and overbroad. Whether a book “was planned to be made to the public regardless of whether there was to be an election” is not inherently self-evident. Before a book is released for public consumption, it is written, designed, typeset, and edited. Timing a book for an election-cycle release is a standard marketing strategy in the publishing industry. However, the question of whether an election-times, politically-expressive book would have been released regardless of an election is in practice, unknowable — it is a speculative exercise, especially within the context of Canada’s electoral model.

45. The Condition within the meaning of the Book Exemption is impermissibly vague such that it is not a limit prescribed by law for the purposes of the justification analysis.

46. The vagueness of the Condition render it difficult to know whether a particular book or promotion would contravene the prohibition against third party election advertising. It is insufficiently clear and begets arbitrariness.

47. It does not provide fair notice to authors and publishers of what is prohibited. Further, it does not provide clear standards for those entrusted with enforcement, which may lead to arbitrary enforcement.

48. The Book Exemption, as currently read, is exceptionally broad — it captures all politically-expressive books released during an election cycle. Releasing and promoting a book during an election ought not to be prohibited, and subjecting authors and publishers to registration requirements is not demonstrably justified in a free and democratic society.

49. The vagueness and ambiguity of the Book Exemption leaves individuals and organizations

uncertain about what the provision exempts. Consequently, they may decide not to publish a book during an election cycle and thereby limit their expression (or the impact of their expression) for fear of contravening the law. This can only come at the expense of the free and uninhibited exchange of information, beliefs and opinions. Such an exchange is essential to a functioning democracy and an open and effective democratic process.

50. The law endows the Commissioner with vast investigatory powers to determine whether the Book Exemption applies. This necessarily requires a troubling examination of an author/publisher's writing, marketing plans, etc, and in some cases, as in this case, lead to government bodies scrutinizing and investigating dissident writers.

51. The chilling effect of the process, including the investigation process, is exacerbated by the overbreadth and vagueness of the Book Exemption, as detailed above. The more broad and vague the provision, the greater the risk that writers/publishers will stay silent to avoid the risk of punishment. By suppressing and chilling legitimate expression, the Book Exemption undermines the democratic election process in the name of protecting it.

52. The detrimental effect of the Book Exemption's Condition on the freedoms guaranteed in s. 2(b) of the *Charter* outweighs its benefits. Censoring political debate by intruding into a protected sphere of expression in the name of electoral integrity undermines the freedoms of belief, opinion, and expression without practical benefit.

53. The Book Exemption, as currently read, limits the freedoms in s. 2(b) of the *Charter* in a manner not reasonably or demonstrably justified.

54. Section 18.1 of the *Federal Courts Act*.

55. *Canadian Charter of Rights and Freedoms*, sections 1 and 2(b).
56. Section 52(1) of the *Constitution Act, 1982*.
57. Such other grounds as counsel may advise and this Honourable Court deems just.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

58. The Affidavit of Ezra Levant, and the exhibits attached thereto, to be sworn;
59. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

**REQUEST FOR MATERIAL**

60. The Applicant requests that the Respondents send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Commissioner to the Applicant and to the Registry:

- a) The complete record of all materials (including all documentation and communication) considered, created, and/or before the Commissioner, the Deputy Commissioner, Director of Investigations, Mylene Gigou, Lead Investigator, Louise Pannenton, and any person or entity acting on behalf of, or delegated by, the Commissioner, concerning:
  - (i) The complaints, investigation, and findings regarding Rebel News' alleged contravention of the *Act* during the 2019 federal election;
  - (ii) The determination that Rebel News violated the *Act*; and
  - (iii) The decision to impose an administrative monetary penalty against Rebel News.

August 10, 2021



---

**RE-LAW LLP**

Barristers and Solicitors  
1118 Centre St., Suite 207  
Vaughan, ON L4J 7R9

**David Elmaleh** LSO# 62171I

Tel: 416-398-9839

delmaleh@relawllp.ca

**Aaron Rosenberg** LSO# 71043B

Tel: 416-789-4984 / Fax: 416-429-2016

arosenberg@relawllp.ca

Lawyers for the Applicant