Federal Court of Appeal | Cour d'appel fédérale

Date: 20261007

Docket: A-342-24

Citation: 2026 FCA 170

2026 FCA 170 (CanLII)

CORAM: **WEBB J.A.**
HECKMAN J.A.
BIRINGER J.A.

BETWEEN:

REBEL NEWS NETWORK LTD

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 24, 2025.

Judgment delivered at Ottawa, Ontario, on October 7, 2026.

REASONS FOR JUDGMENT BY: HECKMAN J.A.

CONCURRED IN BY: WEBB J.A.
BIRINGER J.A.

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REASONS FOR JUDGMENT

HECKMAN J.A.

I. OVERVIEW

[1] Rebel News Network Ltd. appeals from the judgment of the Federal Court in *Rebel News Network Ltd. v. Canada (Attorney General)*, 2024 FC 1468 (the Federal Court Decision), upholding as reasonable the decision of the Minister of National Revenue (the Minister) that

Rebel News is not a “qualified Canadian journalism organization” (QCJO) within the meaning of subsection 248(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the Act) because it is not engaged in the production of original news content.

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[2] Rebel News claims that the Minister’s decision is unreasonable. It submits that the Minister failed to consider some of the material Rebel News submitted for review, focusing instead on the content Rebel News produced in a three-week period selected by Rebel News. It argues that, in denying Rebel News’ application for a QCJO designation, the Minister relied on an unreasonable interpretation of the relevant statutory provisions, unreasonably applied these to the evidence and failed to address Rebel News’ submission that the Minister’s denial amounted to censorship and was contrary to the fundamental right to freedom of the press. It submits that the Federal Court erred in dismissing its application for judicial review and in refusing to consider some of the affidavit evidence it filed in support of the application.

[3] For the reasons that follow, I find that, contrary to Rebel News’ submissions, the Minister followed a fair and reasonable process to decide whether Rebel News is engaged in the production of original news content and qualifies for QCJO designation, reasonably interpreted and applied the applicable statutory provisions, and sufficiently addressed Rebel News’ submission that denying it QCJO designation limited the right to freedom of the press. Moreover, I find that the Federal Court committed no reviewable error in refusing to consider some of the affidavit evidence filed by Rebel News in support of its judicial review application. Accordingly, I would dismiss the appeal.

II. BACKGROUND

A. *The regulatory framework*

[4] Before turning to the specific events that led to this appeal, it is helpful to first set out the underlying statutory framework and the process through which the Minister designates an organization as a QCJO.

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[5] In its 2019 budget, the Government of Canada introduced a range of tax benefits to support Canadian journalism organizations producing original news. Parliament amended the Act accordingly: *Budget Implementation Act, 2019, No. 1*, S.C. 2019, c. 29. The amendments created a digital news subscription tax credit and a Canadian journalism labour tax credit and allowed journalism organizations meeting certain conditions to register as qualified donees: ss. 118.02, 125.6 and 149.1 of the Act. To apply for the tax benefits, a journalistic organization must first be designated as a QCJO.

[6] Central to this appeal is the QCJO definition in subsection 248(1) of the Act (the QCJO definition), which defines a QCJO as follows:

248 (1) In this Act,	**248 (1)** Les définitions qui suivent s’appliquent à la présente loi.
…	[…]
qualified Canadian journalism organization,	***organisation journalistique canadienne qualifiée***
at any time, means a corporation,	Société, société de personnes ou

partnership or trust that

(a) meets the following conditions:

(i) in the case of a corporation,

(A) it is incorporated under the laws of Canada or a province,

(B) the chairperson or other presiding officer, and at least 3/4 of the directors or other similar officers, are citizens of Canada, and

(C) it is resident in Canada,

…

(iv) it operates in Canada, including that its content is edited, designed and, except in the case of digital content, published in Canada,

(v) it is engaged in the production of original news content, which

(A) must be primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes, and

(B) must not be primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment,

(vi) it regularly employs two or

fiducie qui, à la fois :

a) satisfait aux conditions suivantes :

(i) dans le cas d'une société :

(A) elle est constituée sous le régime des lois du Canada ou d'une province,

(B) son président ou une autre personne agissant comme tel et au moins les 3/4 des administrateurs ou autres cadres semblables sont des citoyens canadiens,

(C) elle réside au Canada,

[…]

(iv) elle exerce ses activités au Canada, le contenu qu'elle produit devant notamment être révisé, conçu et, sauf dans le cas de contenu numérique, publié au Canada,

(v) elle produit du contenu de nouvelles originales qui, à la fois :

(A) doit être axé principalement sur des questions d'intérêt général et rendre compte de l'actualité, y compris la couverture des institutions et processus démocratiques,

(B) ne doit pas être axé principalement sur un sujet donné, comme des nouvelles propres à un secteur particulier, les sports, les loisirs, les arts, les modes de vie ou le divertissement,

(vi) elle emploie régulièrement au

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more journalists who deal at arm's length with the organization in the production of its content,	moins deux journalistes qui n'ont aucun lien de dépendance avec l'organisation pour la production de son contenu,
(vii) it is not significantly engaged in the production of content	**(vii)** elle ne se consacre pas de façon importante à la production de contenu:
(A) to promote the interests, or report on the activities, of an organization, an association or its members, or	**(A)** ayant pour but de promouvoir les intérêts d'une organisation, d'une association ou de ses membres, ou de rendre compte de leurs activités,
(B) for a government, Crown corporation or government agency, and	**(B)** pour le compte d'un gouvernement, d'une société d'État ou d'un organisme gouvernemental,
(viii) it is not a Crown corporation, municipal corporation or government agency, and	**(viii)** elle n'est ni une société d'État, ni une société municipale, ni un organisme gouvernemental;
(*b*) is designated at that time by the Minister and, for this purpose, the Minister shall take into account any recommendations of a body established for the purpose of this definition;	***b*)** est désignée, au moment considéré, par le ministre, celui-ci tenant compte aux fins de la désignation des recommandations, le cas échéant, d'une entité établie pour l'application de la présente définition.

[7] Before the requirement was eliminated through the *Budget Implementation Act, 2021, No. 1*, S.C. 2021, c. 23, subparagraph (*a*)(v) of the QCJO definition specified that an organization needed to be "primarily" engaged in the production of original news content.

[8] The CRA published administrative guidelines to structure the assessment of applications for QCJO designation. The Guidance on the Income Tax Measures to Support Journalism (the

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Guidance) fleshes out the requirements for QCJO designation, and in particular the expression "is engaged in the production of original news content" found at subparagraph (*a*)(v) of the QCJO definition, which is otherwise undefined in the Act. Its relevant excerpts read as follows:

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> 2.25 For the purposes of the definition of QCJO, an organization is considered to be engaged in the production of original news content where it demonstrates a commitment to producing original news content on an ongoing basis.
>
> 2.26 Neither the legislation, nor the CRA, have set an amount of original news content that must be produced by an organization in order to be considered engaged in the production of original news content.
>
> 2.27 The original news content of an organization 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 actively pursued, researched, analyzed, and explained by a journalist for the organization; and
>
> d. produced in accordance with journalistic processes and principles.
>
> …
>
> 2.34 The rewriting, translation, reproduction or aggregation of news from external sources (including articles from news agencies, a current or previous issue of the same publication or any other publication) would not be considered original. Content produced in such a manner, by or for an organization, will factor into the determination of whether the organization is engaged in the production of original news content.
>
> 2.35 In addition, lightly edited reproductions of news content would not be considered original news content. For example, an article that repeats material from a news release with no evidence of further independent research and no additional facts, third party perspectives, or context, would not be considered original news content.
>
> 2.36 Original news content should be based on journalistic processes and principles, which include:
>
> a. a commitment to researching and verifying information before publication;

> b. a consistent practice of providing rebuttal opportunity for those being criticized and presenting alternate perspectives, interpretations and analyses;
>
> c. an honest representation of sources; and
>
> d. a practice of correcting errors,
>
> but do not include:
>
> e. solicitation, design or production of advertising;
>
> f. advertorials, sponsored content, branded content (any content where a third party, advertising client or business partner, participates in the development of the concept or directs or gives final approval to a large portion of the content);
>
> g. stories produced primarily for industrial, corporate or institutional purposes; or
>
> h. editing content that is entirely or principally accumulated or produced by algorithms or by aggregation software.
>
> 2.37 Content that is acquired, created, used, or presented in a way that contradicts journalistic processes and principles (for example, content that is plagiarized) would not be considered original news content.

[9] When an organization applies for QCJO designation, the CRA generally reviews a minimum of three weeks of published content to assess whether the organization is engaged in the production of original news content. After analyzing this sample in light of the Act and the Guidance, the CRA issues a recommendation on the organization's eligibility for QCJO designation.

[10] When the CRA has questions about whether an application meets the journalistic criteria, including whether an organization is engaged in the production of original news content, it submits its recommendation to the Independent Advisory Board on Eligibility for Journalism Tax Measures (the Independent Advisory Board) to obtain an independent assessment and non-

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binding recommendation as to whether an organization applying for QCJO designation satisfies the conditions set out in subparagraphs (*a*)(v), (vi) and (vii) of the QCJO definition. Established in March 2020 by Order in Council PC 2020-0177, pursuant to paragraph (*b*) to the QCJO definition, the Independent Advisory Board comprises individuals with expertise in journalism. After reviewing the Independent Advisory Board's analysis, the CRA issues its final recommendation.

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[11] Ultimately, the decision lies with either the Director General of the Legislative Policy Directorate (the Director General) or the Assistant Commissioner for the Legislative Policy and Regulatory Affairs Branch (the Assistant Commissioner), acting on behalf of the Minister.

[12] I now turn to the specific facts underlying this appeal.

B. *Rebel News' application for QCJO designation*

[13] In 2021, Rebel News filed an application with the CRA for QCJO designation. In a preliminary determination, a CRA determination officer (the First Officer) determined that Rebel News was not engaged in the production of original news content and did not meet the conditions specified under subparagraph (*a*)(v) of the QCJO definition. The First Officer found that all but two of the 276 articles reviewed were aggregated from news from external sources and/or were not consistent with paragraphs 2.27(c) and (d) of the Guidance, because they were not based on multiple perspectives actively pursued, researched and analyzed and explained by a journalist and/or did not provide a rebuttal opportunity for those being criticized. The First

Officer also found that the video content reviewed consisted largely of opinion or commentary pieces not based on multiple perspectives.

[14] The First Officer submitted the application to the Independent Advisory Board, which came to the same conclusion. According to the Board's assessment, almost all of Rebel News' content had "an activist point of view," focusing on and promoting one perspective, or was curated from other sources. After considering the Independent Advisory Board's findings, the First Officer determined that Rebel News did not satisfy subparagraph (*a*)(v) of the QCJO definition because its content was "largely opinion based and focused on the promotion of a particular perspective, or lightly edited reproductions of content produced by third party organization [sic] (i.e. curated content)." On February 12, 2022, the Director General informed Rebel News that its application had been denied for these reasons (the First Decision).

[15] Rebel News requested a reconsideration of the denial and appended to its request a list of 144 exclusive news reports authored between 2015 and 2022 and other examples of content it considered to be original news content (the Additional Content). At the CRA's request, Rebel News selected a three-week period of digital content to be reviewed for the assessment, though it submitted that this window was "arbitrary" and "unnecessarily disregard[ed]" its ongoing commitment to producing original news content. The period it chose ran from January 30 until February 19, 2022 (the Three-week Period), during which Rebel News' content focused on the "Freedom Convoy" movement and its various protests.

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[16] On November 1, 2022, a different CRA determination officer (the Second Officer) conducted a decision review. As it was agreed that the other eligibility criteria for QCJO designation were met, the review focused on the issue of whether Rebel News is engaged in the production of original news content. In a preliminary determination, the Second Officer found that Rebel News could qualify as a QCJO. The Second Officer reviewed 423 news reports and determined that: two thirds of these were not based on facts or multiple perspectives analyzed and explained by a journalist; close to a third of the items were curated content, rewritten from other sources; several items were not news and solely opinions, promotional pieces or speculation without basis in fact; and, contrary to journalistic processes and principles, Rebel News crowdfunded on the subject matter it covered in 58 of the items and frequently failed to identify the author of an item. The Second Officer concluded that 10 of the 423 news reports (2%) were original news content. Noting that the plain meaning of "engaged" did not include a quantitative threshold, the Second Officer found that this was a "borderline case."

[17] The Second Officer also requested a recommendation from the Independent Advisory Board in respect of the decision review regarding whether Rebel News met the criterion in subparagraph (*a*)(v) of the QCJO definition, including whether it followed journalistic principles and processes. The Board's recommendation, based on its review of the news reports running from January 30 until February 19, 2022, was that Rebel News did not satisfy subparagraph (*a*)(v) because it was not engaged in the production of original news content and did not follow journalistic processes and principles. It found that Rebel News had espoused the cause of the "Freedom Convoy" protesters and taken on an activist role as the events unfolded, contrary to subparagraph (*a*)(v) of the QCJO definition and several sections of the Guidance,

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including that original news content generally refers to content based on facts and multiple perspectives actively pursued, researched, analyzed, and explained by a journalist for the organization. Moreover, it found that Rebel News had published unverified claims, and curated news from other organizations or videos from citizens.

[18] On March 28, 2023, the Second Officer conducting the decision review reconsidered their preliminary analysis of Rebel News' content in light of the Independent Advisory Board's recommendation. The Second Officer found that Rebel News did not qualify as a QCJO as it could not be considered to be engaged in the production of original news content.

[19] On May 18, 2023, the Assistant Commissioner, acting on behalf of the Minister, maintained the First Decision denying Rebel News' application for QCJO designation (the Second Decision). The Assistant Commissioner accepted that an organization can pursue activities, including the publication of opinion and opinion-based content, concurrent with their engagement in the production of original news content but must still be engaged in the production of original news content. Second, the Assistant Commissioner decided that, while a perspective that may "be broadly discernible" within an organization's news content is irrelevant to whether it is eligible for a QCJO designation, that content must be "based on input from a range of people, with a range of perspectives on issues or events" (underlining in the original) and, together with facts, these perspectives should be analyzed and explained by a journalist. Third, the Assistant Commissioner accepted that the Act did not set a threshold for original news content production, but found that, based on the plain meaning of "engaged", the statutory requirement that an organization be "engaged in the production of original news content"

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required the "consistent, intentional creation of original news content on more than an infrequent basis." Fourth, the Assistant Commissioner noted that Rebel News often reproduced content from other sources, which could not qualify as original news content. Finally, the Assistant Commissioner rejected Rebel News' submission that selecting a three-week period was arbitrary. They observed that, on a decision review, the CRA generally requested that organizations select a three-week period to be reviewed, and found that such a period was generally representative of an organization's activities and allowed it to make its case.

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III. THE FEDERAL COURT'S DECISION

[20] Rebel News unsuccessfully challenged the Second Decision through an application for judicial review before the Federal Court. The Federal Court ruled that the CRA had justified its decision that Rebel News was not engaged in the production of original news content by analyzing news content spanning a three-week period selected by Rebel News itself in light of its interpretation of subparagraph (*a*)(v) of the QCJO definition as informed by the Guidance (Federal Court Decision at paras. 34-35). Accordingly, its conclusion that Rebel News had not demonstrated consistent, intentional production of content that could be considered original news content was reasonable, because it was justified, transparent and intelligible in relation to the relevant factual and legal constraints that bore on the decision.

[21] As a preliminary matter, the Federal Court struck various paragraphs from the affidavits of Mr. Ezra Levant, Rebel News' founder, president and chairperson, and Ms. Sheila Gunn, Rebel News' editor-in-chief (the impugned paragraphs). It ruled that they contained submissions

and evidence not put before the CRA despite Rebel News having multiple opportunities to do so, and ventured beyond permissible background information and into argumentation.

[22] Turning to the reasonableness of the Second Decision, the Federal Court rejected Rebel News' two main arguments to the effect that 1) the Minister unduly narrowed its interpretative approach by reading a criterion into subparagraph (*a*)(v) of the QCJO definition that would disqualify organizations for taking an "activist stance"; and 2) the Minister arbitrarily focused on the content produced by Rebel News during the Three-week Period and failed to consider its reconsideration request, including the Additional Content. First, the Federal Court found that the Minister had agreed with Rebel News that an organization's standpoint was generally irrelevant for QCJO designation and had not rejected Rebel News' application on the sole ground that it embraced an activist stance. Second, the Federal Court determined that Rebel News had failed to demonstrate that a three-week period for review was unreasonably narrow and that "for an organization that is actively engaged in the dissemination of news, three weeks should be a sufficient time frame within which to demonstrate news generating activities" (Federal Court Decision at para. 44). The Federal Court reiterated that the Three-week Period included 423 news reports, of which 283 were found not to be based on facts or multiple perspectives researched, analyzed, or explained by a journalist; another 135 were curated or lightly rewritten from other sources; and only 10 were considered original news content. The Federal Court noted that Rebel News had failed to identify any news reports that were overlooked in the review.

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[23] Finally, the Federal Court rejected Rebel News' argument that by creating a government system of media accreditation, media censorship, and media control, the QCJO mechanism impermissibly violates the right to freedom of the press guaranteed by paragraph 2(*b*) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the Charter). The Federal Court found that the Charter argument lacked foundation because it had not been raised with the CRA directly, and because Rebel News did not provide evidence to demonstrate how the Second Decision impeded freedom of the press nor did it explain how the inability to receive tax credits generally hindered its ability to work or impede freedom of the press.

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IV. ARGUMENTS

A. *The Appellant*

[24] As a preliminary matter, Rebel News submits that Mr. Levant and Ms. Gunn's affidavits were admissible in their entirety under each of the three exceptions carved out in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 F.T.R. 297 [*Access Copyright*]. First, it argues that the struck excerpts provide background information by organizing information that was already in the record. Second, it claims that the excerpts highlight the "complete absence of evidence" before the CRA and the procedural defects of the reconsideration process, by demonstrating that the reconsideration process lacked transparency and impartiality and that the CRA declined to speak with individuals affiliated with Rebel News or to analyze the entirety of the evidence submitted

by Rebel News, including the Additional Content. Third, it submitted that the affidavits explain that various internal CRA documents were not provided through the mandatory disclosure under Rule 317 of the *Federal Courts Rules*, SOR/98-106 (the Rules), but through an access to information request. This, in Rebel News' view, demonstrates that the CRA failed to apply its own guidance to Rebel News' application for QCJO designation.

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[25] Rebel News reiterates that the purpose of the 2019 amendments was to support independent Canadian journalism, and that the Second Decision imposes a quantitative requirement for original news content production even though such a requirement was repealed in 2021. It adds that the word "engaged" does not preclude an organization from pursuing various ventures or genres of reporting, including curating stories, provided it engages in some level of original news content production. The threshold is low, as reflected by the simplicity of the application form for QCJO designation.

[26] More specifically, Rebel News alleges several errors in the Federal Court's finding that it is not engaged in the production of original news content. It argues that: the Additional Content reflected an engagement with original news content; its content is indeed based on facts and multiple perspectives analyzed by Rebel News journalists; while its content is consistent with "journalistic processes and principles," this requirement is foreign to the Act; and internal CRA documents acknowledge that on-location reporting, which constituted the majority of its news reports for the three-week period, is less fitting to journalistic processes and principles because it is more difficult in that context to provide opportunities for rebuttal and to verify claims. Rebel News insists that by seeking out the "contrarian perspective," it provides a rebuttal of the

"mainstream" perspective and effectively integrates multiple perspectives into its stories. It adds that an otherwise proper story does not cease to be original news content if it includes crowdfunding or another type of solicitation.

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[27] Rebel News also contends that the CRA erred when it criticized Rebel News' "activist stance", because activism is neither prohibited by the Act, the Guidance nor CRA's internal documents, and the CRA's position is inconsistent with that expressed by the Federal Court in *Lawton v. Canada (Leaders' Debates Commission)*, 2019 FC 1424 [*Lawton*]. In Rebel News' opinion, disqualifying an organization for its perceived perspective constitutes censorship and is inconsistent with Parliament's broad, liberal intent underlying the QCJO regime.

[28] Rebel News states that it raised a Charter issue in its reconsideration request by invoking the "free and independent press", the "expression of opposing points of view", "anti-journalism efforts, driven largely by governments" and the use of QCJO designation "to suppress diversity of opinion in journalism". It submits that the CRA was required, and failed to, conduct an analysis under the framework set out in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395 [*Doré*]. Rebel News adds that the Charter requires a liberal and generous interpretation of the statutory requirements for QCJO designation, which supports its eligibility.

[29] Rebel News asks that this Court quash the Second Decision and direct the Minister to designate it as a QCJO as of the date of its initial application, in 2021.

B. *The Attorney General*

[30] The Attorney General replies that the Minister rendered an intelligible decision, anchored in facts and responsive to Rebel News' arguments. In its view, Rebel News is asking the Court to review its application for QCJO status *de novo*, which is impermissible on this appeal.

[31] The Attorney General argues that the impugned paragraphs were properly struck, as they fit none of the *Access Copyright* exceptions, and were also prohibited by Rule 81 as they are not restricted to facts and more properly characterized as speculation and opinion.

[32] Further, the Attorney General takes the position that Rebel News' concern with a threshold for original news content production was properly addressed by the Minister's reasonable interpretation of the word "engaged" as requiring a demonstrated "consistent, intentional production of content that could be considered original news content." Likewise, the Federal Court properly found that Rebel News had failed to point to any material which would have been overlooked, or to demonstrate that a three-week period of its own choosing was unreasonably narrow.

[33] The Attorney General states that, as acknowledged by the Assistant Commissioner in the Second Decision, the perspective expressed in the content of an organization applying for QCJO designation is irrelevant and was not the basis of the Second Decision. It adds that neither the record nor Rebel News' submissions demonstrate that Charter rights were infringed, and that the Minister was not required to conduct a *Doré* analysis. It invokes the Supreme Court of Canada's

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finding, in *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 [*CSFTNO*] at paragraph 66, that a decision cannot be unreasonable because of a decision-maker's failure to consider a Charter value that was irrelevant. In the Attorney General's opinion, this is such a case: no limits were imposed on expression, as QCJO is solely a designation under the Act for tax purposes, not a regulation of the journalism profession.

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[34] The Attorney General submits that Rebel News' request that this Court direct the Minister to grant Rebel News a QCJO designation is essentially a request for *mandamus*. That remedy is unavailable, it contends, because a QCJO designation requires the weighing of multiple factors, and the evidence in the record does not inevitably lead only to the conferral of a QCJO designation.

V. ISSUES AND STANDARD OF REVIEW

[35] Rebel News essentially raises three issues on this appeal. First, it submits the Federal Court erred in upholding as reasonable the Second Decision. Second, and related to the first issue, Rebel News argues the Federal Court erred in holding that Rebel News had alleged that the QCJO provisions of the Act violated paragraph 2(*b*) of the Charter. Rather, it had claimed that the Minister failed to interpret these provisions in conformity with the freedom of the press and failed to consider that freedom when it denied Rebel News a QCJO designation, contrary to the approach laid out in *Doré*. Third, Rebel News claims that the Federal Court erred when it decided not to consider the impugned paragraphs of the Levant and Gunn affidavits

because they did not fall within a recognized exception to the rule that only evidence that was before the decision maker can be considered on an application for judicial review.

[36] On the first and second issues, the role of this Court in an appeal of the Federal Court's decision on the merits of Rebel News' application for judicial review of the Second Decision is to determine whether the Federal Court identified the correct standard of review and applied it properly (*Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 47). This appeal is thus essentially a "do-over", though the appellant faces a tactical burden to identify some error in the Federal Court's reasoning if its reasons are compelling and complete (*Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4).

[37] In my view, the Federal Court correctly identified reasonableness as the applicable standard of review for the first issue, which involves the Minister's interpretation and application of the Act. The presumption of reasonableness review is not displaced (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*] at para. 32).

[38] In undertaking reasonableness review, a reviewing court must take a "reasons first" approach that evaluates the administrative decision maker's justification for its decision. The decision will be reasonable if it is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at paras. 84–85; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, 485 D.L.R. (4th) 583 at para. 8).

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[39] As detailed in these reasons, Rebel News urges an interpretation of the statutory requirement that, to be recognized as a QCJO, it be "engaged in the production of original news content" that differs from that adopted by the Assistant Commissioner and the Independent Advisory Board and argues that, under that interpretation, the Assistant Commissioner would have recognized that Rebel News met this requirement based on the content it produced.

[40] Parliament chose to delegate to the Minister the authority to administer the statutory scheme governing the designation of an organization as a QCJO. The Minister fulfills this mandate by interpreting the applicable legislative provisions and applying them to the facts. As directed by Parliament, in its determinations regarding the meaning and application of the QCJO definition, the Minister takes into account the non-binding recommendations of the Independent Advisory Board, whose members are experienced in journalism practice or education.

[41] In conducting reasonableness review of the Minister's decision, the Court's role is not to ask what decision it would have made in the Minister's place or to determine the "correct" outcome to the questions that were before the Minister (*Vavilov* at para. 83). This approach respects the principle of legislative supremacy and Parliament's choice to delegate decision-making to the Minister (*Vavilov* at para. 30).

[42] The burden is on the party challenging the decision—in this case, Rebel News—to show that it is unreasonable by satisfying the reviewing court that there are shortcomings or flaws in the decision such that it cannot be said to exhibit the requisite degree of justification,

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intelligibility and transparency. Such shortcomings or flaws cannot be merely superficial or peripheral to the merits of the decision; they must be sufficiently central or significant to render the decision unreasonable (*Vavilov* at para. 100).

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[43] In evaluating an administrative decision maker's justification for its decision, a reviewing court examines the decision maker's written reasons with respectful attention and seeks to understand the reasoning process followed by the decision maker to arrive at its own conclusion (*Vavilov* at para. 84). A reviewing court should read the reasons "holistically and contextually" to understand the basis on which the decision was made (*Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 S.C.R. 900 at para. 31). Reasons must also be read with due sensitivity to the administrative setting in which they were given and in light of the record before the decision maker (*Vavilov* at para. 96). In making the Second Decision, the Assistant Commissioner had before him several documents. These included Rebel News' original application for QCJO designation, the First Officer's report, the First Decision, Rebel News' decision review request (which itself included, among other documents, the Independent Advisory Board's first assessment of Rebel News' eligibility for QCJO designation and the Additional Content), the Second Officer's report and the Board's second assessment.

[44] With regards to the second issue, Rebel News claims that, in determining whether it was entitled to a QCJO designation, the Minister was required by *Doré* to consider the Charter right to freedom of the press. The *Doré* approach provides that an administrative decision that infringes a Charter right or limits a value underlying the right is subject to reasonableness review (*CSFTNO* at para. 67). A reviewing court must first determine whether the decision limits

Charter protections—both rights and values—and, if that is the case, examine the decision maker's reasoning process to assess whether, given the relevant factual and legal constraints, the decision reflects a proportionate balancing of the Charter protections with the underlying statutory objectives (*CSFTNO* at para. 73). The preliminary question of whether a Charter right is engaged is reviewed on a correctness standard (*Toth v. Canada (Mental Health and Addictions)*, 2025 FCA 119, 505 D.L.R. (4th) 356 at para. 17 [*Toth*]; *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22, 492 D.L.R. (4th) 613 at para. 63 [*York Region*]).

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[45] Finally, the Federal Court's decision that the impugned paragraphs in Rebel News' affidavits were not permissible on the application for judicial review is reviewable on the ordinary appellate standard: absent an error on a question of law or extricable legal principle, it is reviewed on the deferential standard of palpable or overriding error (*Yeager v. Canada (Attorney General)*, 2020 FCA 176 at para. 24). "Palpable" means an error that is obvious, and "overriding" means an error that goes to the very core of the outcome of the case (*Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46).

VI. ANALYSIS

[46] Having set out the standard of review that applies to each of the issues raised by Rebel News, I consider each issue in turn to decide whether they warrant this Court's intervention.

A. *Rebel News has not demonstrated that the Second Decision is unreasonable*

[47] To apply a reasons-first approach to the reasonableness review of the Second Decision, I return briefly to the reasons offered by the Assistant Commissioner.

(1) The Assistant Commissioner's reasons for the Second Decision

[48] The Assistant Commissioner began by noting that subparagraph (*a*)(v) of the QCJO definition requires that an organization be engaged in the production of original news content. In assessing whether this requirement was met, the Assistant Commissioner considered the Guidance, and found that, contrary to paragraph 2.27(c), the majority of Rebel News' content from the Three-month Period was not based on facts and multiple perspectives that are analyzed and explained by a journalist for Rebel News. In the Assistant Commissioner's opinion, "multiple perspectives" did not mean "asking multiple people with essentially the same or similar views to comment on an issue or event" nor did it necessarily mean "asking multiple people who hold opposing views to comment." Rather, the Assistant Commissioner held an organization's content should be based on input "from a range of people, with a range of perspectives on issues or events" (emphasis in the original); these perspectives "should be analyzed and explained by a journalist for the organization." The Assistant Commissioner found that "in most instances" the content reviewed in the Three-week Period did not meet this requirement.

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[49] The Assistant Commissioner also took into account content that was reproduced and therefore not original to Rebel News. Specifically, the Assistant Commissioner noted that under sections 2.34 and 2.35 of the Guidance, respectively, the "rewriting, translation, reproduction or aggregation of news from external sources" were not considered original and "lightly edited reproductions of news content" were not considered original news content.

[50] While the Assistant Commissioner found that an "insufficient portion" of the content produced by Rebel News on an ongoing basis was original news content, they recognized that subparagraph (*a*)(v) of the QCJO definition did not set a quantitative threshold of news content that an organization must meet to be designated as a QCJO. Moreover, the Assistant Commissioner acknowledged that, under section 2.25 of the Guidance, an organization is considered to be engaged in the production of original news content where it demonstrates a commitment to producing original news content on an ongoing basis. However, based on the plain meaning of "engaged", organizations could show they were engaged in the production of original news content through "the consistent, intentional creation of original news content on more than an infrequent basis." In the Assistant Commissioner's view, if section 2.27 of the Guidance was taken into account, Rebel News did not meet this requirement.

[51] Noting that they had taken into account the Independent Advisory Board's second assessment and its recommendation that Rebel News had not met the requirement that it be engaged in the production of original news content, the Assistant Commissioner concluded that Rebel News' production of original news content was insufficient to satisfy that requirement and denied its application for QCJO designation.

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[52] Rebel News' challenge to the reasonableness of the Second Decision, aside from its Charter-based argument, can be divided into three arguments. First, it submits the process used by the CRA to assess whether it is engaged in the production of original news content and thus satisfies subparagraph (*a*)(v) of the QCJO definition is unreasonable and/or unfair. Specifically, it objects to the CRA's decision to focus its assessment on a review of Rebel News' content over the Three-week Period. Second, it submits that the Assistant Commissioner unreasonably interpreted key provisions of the QCJO regime. Third, it submits that the Assistant Commissioner's application of the QCJO regime to the facts is unreasonable. I address each of these arguments in turn.

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(2) Rebel News has not shown that it was unfair or unreasonable for the Minister to base their assessment on an analysis of content over a three-week period

[53] Rebel News submits that, in light of the Act, the Guidance and internal documents, the Minister erred in relying on the content produced by Rebel News in the Three-week Period to decide whether it is engaged in the production of original news content and failed to consider the Additional Content. Rebel News claims that the Additional Content provided examples of news content that was researched, analyzed and explained by its journalists, where journalists showed a practice of asking for comment from a variety of perspectives.

[54] I disagree.

[55] Absent statutory provisions to the contrary, administrative decision-makers enjoy considerable discretion in determining their own procedure, including aspects that fall within the

scope of procedural fairness (*Re: Sound v. Fitness Industry Council of Canada*, 2014 FCA 48, 120 C.P.R. (4th) 287 at para. 37). As long as the requirements of procedural fairness are met, they are masters of their own procedure (*Prasad v. Canada (M.E.I.)*, [1989] 1 S.C.R. 560, 57 D.L.R. (4th) 663 at 568–569).

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[56] The Act requires the Minister to determine whether an organization that applies for a QCJO designation meets specified conditions. With regards to subparagraph (*a*)(v) of the QCJO definition, the Minister must decide whether the applicant "at any time [is] a corporation, partnership or trust that… is engaged in the production of original news content" or, as this requirement has been interpreted in the Guidance, whether the applicant has demonstrated "the consistent, intentional creation of original news content on more than an infrequent basis."

[57] The justification for assessing whether an organization meets this condition by reviewing three weeks of published content is set out in the First Officer's Report, the Second Officer's Decision Review Report and the Second Decision.

[58] The First Officer stated that, on its initial analysis of a QCJO application, the CRA reviewed a minimum of three weeks of published digital (website-based) content to "ensure consistency, transparency, and fairness in determining whether an organization is engaged in the production of original news content…"

[59] The Second Officer observed that, in analyzing a request for decision review based on the original news content criterion, the CRA's policy of reviewing a period of three consecutive

weeks of digital content selected by the organization is intended to "mirror the amount of content that is reviewed during the initial analysis of a QCJO application; maintain consistency and fairness among organizations that request decision review; and allow an organization to put its best foot forward."

[60] In the Second Decision, the Assistant Commissioner stated that the CRA chose a three-week period for its initial analysis of original news content because such a period was "generally representative of an organization's activities." They justified a three-week period for a decision review on the same basis, and because it "allows the organization to present its case."

[61] While the CRA had a number of options open to it to structure its analysis of an organization's content in order to decide whether it "is engaged in the production of original news content", Rebel News has not established that the approach chosen by the CRA rests on an unreasonable interpretation of this statutory duty or is otherwise unreasonable. I agree with the Federal Court that Rebel News did not demonstrate that a three-week period is an unreasonably narrow or short period of time from which to assess its engagement in the production of original news content. I note that, by the end of the decision review process, the CRA had, since Rebel News' 2021 application, reviewed close to 700 items of content produced over six weeks.

[62] There is no merit to Rebel News' argument that the approach chosen by the CRA is unreasonable because it is not set out in the Guidance. While the CRA would likely have been required to justify any inconsistencies between its chosen approach and the Guidance (*Vavilov* at

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para. 131), Rebel News has not demonstrated that this approach is in any way contrary to the Guidance.

[63] Nor has Rebel News established that the CRA's chosen approach is procedurally unfair.

[64] The content of procedural fairness varies with the circumstances of each case and the legislative and administrative context (*Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504 at para. 39 [*Mavi*]). To determine the requirements of procedural fairness, Courts have regard to a non-exhaustive list of five factors: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the agency (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 1999 CanLII 699 at paras. 23–27).

[65] These factors indicate that the requirements of procedural fairness for the Minister's determination in this case were minimal. The decision as to whether an applicant is entitled to a QCJO designation is administrative in nature and does not resemble judicial decision-making, nor does the Act contemplate a judicial procedure. While a QCJO designation would allow Rebel News to apply for certain tax benefits under the Act, such economic interests do not militate in favour of a high level of procedures (*Canada (Attorney General) v. Zone3-XXXVI Inc.*, 2016 FCA 242 at para. 44). Rebel News has pointed to no clear, unambiguous and unqualified representations on the part of the CRA that it would be afforded procedural

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safeguards over and above those it received (*Mavi* at para. 68). Finally, since the Act has left to the CRA the ability to choose its own procedures, important weight must be given to the CRA's choices in this regard and its institutional constraints. Rebel News has not seriously challenged any of the justifications offered by the CRA for deciding whether an applicant for a QCJO designation "is engaged in the production of original news content" based on its analysis of the content produced by the applicant within a three-week period selected by the applicant.

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[66] Based on the First Decision and the recommendation of the Independent Advisory Board that accompanied it, Rebel News knew the case it had to meet. It was aware that to succeed on the decision review, it would have to establish that its content was based on facts and multiple perspectives actively pursued, researched, analyzed and explained by a Rebel News journalist. It was given the opportunity to respond by selecting the three-week period of content that would, in its view, be most likely to satisfy the Minister that it met this criterion.

[67] In light of the process afforded by the CRA, I find unconvincing Rebel News' complaint, at the hearing of this appeal, that the CRA insufficiently accounted for the fact that the "on location" coverage of the "Freedom Convoy" protests included in the content it produced in the Three-week Period provided fewer opportunities for rebuttal and to verify claims. The CRA cannot be faulted if Rebel News itself selected a three-week period of content for the CRA's review that it knew might not convincingly demonstrate that it pursued multiple perspectives or followed journalistic processes and principles.

[68] In sum, Rebel News has not satisfied me that there was anything unreasonable or unfair about the process chosen by the CRA to consider applications for QCJO designation.

(3) Rebel News has not shown that the Minister's interpretation of the requirement that an applicant be engaged in the production of original news content is unreasonable

[69] I preface my analysis by noting that, in reasonableness review, the statutory language is one of the contextual constraints that dictate the limits and contours within which an administrative decision maker may act (*Vavilov* at para. 90). Whether an interpretation is justified will depend, in part, on the language chosen by Parliament. Where Parliament chooses to use broad, open-ended or highly qualitative language, it contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language (*Vavilov* at para. 110). The language chosen by Parliament to define a QCJO, particularly with regards to the requirement that it "is engaged in the production of original news content," falls at the "broad, open-ended" end of the spectrum of statutory language.

(a) *Rebel News has not shown that the Minister's interpretation of "original news content" is unreasonable*

[70] Rebel News argues that the Assistant Commissioner's interpretation of "original news content" is unreasonable for several reasons.

[71] First, it submits that the interpretation is inconsistent with the purpose of the tax measures to support Canadian journalism, which, in its view, is to allow the greatest number of

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organizations possible to qualify for the support through low thresholds that should be liberally interpreted. It argues that the CRA has adopted an "onerous, challenging and strict" application process that is inconsistent with the "simplicity" of the application form for a QCJO designation, revisions to the Act that eliminated the requirement that QCJOs be "primarily engaged" in the production of original news content, and the recommendation by an internal CRA training document that CRA determination officers "skim" the content submitted by organizations that apply for a QCJO designation. In Rebel News' view, the CRA's approach is contrary to the purpose of the Act and the CRA's internal guidance.

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[72] I disagree.

[73] In establishing the QCJO regime, Parliament provided for the creation, at paragraph (1)(*b*) of the QCJO definition, of an independent advisory board for the very purpose of advising the Minister on whether an organization is engaged in the production of original news content under subparagraph (*a*)(v) of the QCJO definition. This shows that Parliament attached significant importance to whether applicants for the QCJO designation satisfied this criterion and supports the Minister's adoption of a robust process to conduct this review.

[74] As acknowledged by the Assistant Commissioner in the Second Decision, the provisions of the Act do not disqualify from QCJO designation organizations that produce content other than original news content or that are not primarily engaged in the production of original news content, and internal guidance does not hold a QCJO to a specific "quantifiable threshold" of such content. However, as noted by the Assistant Commissioner in the Second Decision, to

successfully apply for a QCJO designation, applicants must still establish that they are "engaged in the production of original news content."

[75] And while CRA internal documents encourage determination officers to "skim" through applicants' content in regard to its substance, which they are not expected to understand, the documents confirm that officers must still review this content for the purpose of deciding whether it qualifies as original news content.

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[76] Second, Rebel News submits that it was unreasonable for the Minister, in accordance with section 2.27 of the Guidance, to interpret "original news content" as generally referring to content produced in accordance with "journalistic processes and principles", a concept not expressly found in the Act, and that the CRA "exceeded its authority" in doing so.

[77] I disagree. In deciding whether an organization is a qualified Canadian journalism organization for the purpose of accessing tax benefits aimed at supporting Canadian journalism organizations producing original news content, there is nothing unreasonable in interpreting "original news content" as generally referring to content produced according to journalistic processes and principles.

[78] No doubt, removing the "journalism component" from the definition of "original news content," whose production is a key statutory condition to designating an organization as a QCJO, would make it easier for organizations to earn the designation. However, this would do violence to the text and the purpose of the Act and would be inconsistent with Parliament's

decision to create an independent board—one that is staffed by journalism experts—to advise the Minister on the definition of a QCJO, including the meaning of "original news content".

[79] Rebel News has thus not convinced me that the robust approach adopted by the CRA and the Assistant Commissioner to decide whether the content produced by Rebel News is original news content was unreasonable.

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(b) *Rebel News has not shown that the Minister's interpretation of "engaged" in the production of original news content is unreasonable*

[80] Rebel News submits that the Assistant Commissioner's interpretation of the requirement that an organization be "engaged" in the production of original news content is unreasonable. It claims that the Assistant Commissioner failed to acknowledge that this requirement could not preclude Rebel News from producing both original news content and non-original news content.

[81] I disagree. The Assistant Commissioner expressly recognized "that concurrent engagement in the production of original news content and other activities, including the production of other content, is acceptable for purposes of QCJO designation." So did the Second Officer. But, as noted previously, the Assistant Commissioner maintained that an applicant must still establish that it is engaged in the production of original news content to be eligible for the designation.

[82] Rebel News also insists that there is no "quantitative requirement" that organizations must meet to establish that they are engaged in the production of original news content. It

follows, in its view, that the Second Officer and the Assistant Commissioner unreasonably interpreted the requirement that Rebel News be "engaged" in the production of original news content by basing their finding on a quantitative requirement. The Second Officer concluded that Rebel News' level of production of content that could be considered original news content was "so low" that it could not satisfy the condition. The Assistant Commissioner held that "an insufficient portion" of Rebel News' content was original news content required to satisfy subparagraph (*a*)(v) of the QCJO definition.

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[83] This argument too must fail.

[84] Both the Assistant Commissioner and the Second Officer acknowledged that, as noted in section 2.26 of the Guidance, the plain meaning of "engaged" did not set a quantitative threshold of original news content to be met. However, based on this plain meaning, they held that "engaged in the production of original news content" generally means "the consistent, intentional creation of original news content on more than an infrequent basis."

[85] So interpreted, this standard is qualitative rather than quantitative, in the sense that it does not prescribe a specific number or relative percentage of items of original news content required to satisfy subparagraph (*a*)(v) of the QCJO definition. However, this does not mean that the frequency with which an applicant produces original news content is irrelevant to deciding whether its creation is consistent or intentional, as implied by the use of the term "engaged" (see, for example, *Academic Journalism Society v. Canada (Attorney General)*, 2024 FC 1604 at para. 33).

[86] As noted by the Attorney General, Rebel News' proposed interpretation would read the term "engaged in the production" out of the Act and replace this key condition to QCJO designation with one that would deem it sufficient for an organization to "produce" some amount of original news content. Rebel News applies that lower standard in its memorandum of fact and law, when it observes that it should be denied a QCJO designation only if the CRA "conclude[s] that **all** news items published by Rebel News since its inception failed to meet the definition of 'original news content'" (emphasis in the original).

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[87] In conclusion, given the broad language used by Parliament to define a QCJO, Rebel News has not established that the Assistant Commissioner's interpretation of the requirement that an applicant be "engaged in the production of original news content" suffers from shortcomings or flaws sufficiently central or significant to render it unreasonable. I turn next to Rebel News' challenge of the Minister's application of these statutory provisions to the facts.

(c) *Rebel News has not shown that the Assistant Commissioner's application of the statutory provisions to the facts was unreasonable*

[88] Rebel News submits that, on the evidence, it satisfied the statutory conditions for QCJO designation, and the Assistant Commissioner unreasonably applied the statutory regime to the facts.

[89] For the most part, Rebel News repeats the submissions it made to the CRA in its request for reconsideration. In doing so, it effectively invites the Court to reweigh and reassess the

evidence considered by the Independent Advisory Board and the Second Officer in formulating their recommendations and, ultimately, by the Assistant Commissioner in coming to the Second Decision.

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[90] As I have previously explained, that is not the Court's role. On reasonableness review, the Court will interfere with factual findings only in exceptional circumstances, including where a decision maker fundamentally misapprehends or fails to account for the evidence before it. Rebel News identified no such circumstances. I nevertheless review its submissions in support of this aspect of its challenge to the Assistant Commissioner's decision.

[91] Rebel News submits that it was unreasonable for the Assistant Commissioner to conclude that its content was not based on facts and multiple perspectives that are analyzed and explained by a journalist for Rebel News. In its reconsideration request, Rebel News asserted that the news it published does not come from a unitary perspective, that it seeks out multiple perspectives, regularly reaches out for comment "from the other side" and grants opportunities for rebuttal or to simply comment on the story.

[92] The Assistant Commissioner acknowledged Rebel News' submissions in the Second Decision as did the Second Officer in the Decision Review Report. Based on their review and on the Independent Advisory Board's second assessment of the content produced by Rebel News in the Three-week Period, the Second Officer concluded that "the type of content produced by [Rebel News] does not demonstrate that [it] is engaged in the production of original news

content.” Similarly, the Assistant Commissioner held that in most instances, the reviewed content of Rebel News does not include content based on multiple perspectives.

[93] Rebel News has not established that, having considered Rebel News’ submissions regarding the perspectives it pursued and the practices it followed, it was unreasonable for the Second Officer and the Assistant Commissioner to afford greater weight to their analysis—and that of the Independent Advisory Board—of the content produced by Rebel News in the Three-week Period.

[94] Following the First Officer’s Report, the Independent Advisory Board’s first assessment, and the First Decision refusing its application for QCJO designation, Rebel News was on notice that one of the CRA’s main preoccupations was that its content focused on the promotion of one perspective.

[95] In its first assessment, the Independent Advisory Board concluded that:

> The content reviewed is consistent with [Rebel News’] stated mandate: “at Rebel News, we tell the other side of the story.” Nearly all of the first-hand items generated by [Rebel News’] journalists reviewed by the Board were found to represent a specific perspective and set of opinions and not to be original news content as required in subparagraph (a)(v) of the [QCJO definition].

[96] Notably, it is in the context of discussing whether Rebel News’ content was, in the words of paragraph 2.27(c) of the Guidance, “based on facts and multiple perspectives actively pursued, researched, analyzed, and explained by a journalist [from Rebel News]” and whether, in the

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words of section 2.36 of the Guidance, it reflected "a consistent practice of… presenting alternative perspectives, interpretations and analyses," that the Independent Advisory Board held that almost all of Rebel News' content had "an activist point of view," noting that it "focused on and promoted one perspective" contrary to the above-noted sections of the Guidance.

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[97] In its request for reconsideration, other than asserting that it "seeks multiple perspectives", Rebel News did not explain how it based its content on multiple perspectives actively pursued, researched, analyzed and explained by its journalists or how it consistently presented alternate perspectives. Instead, it stated that

> "The 'perspective' that Rebel News promotes consistently is the alternate perspective. … Legacy media reports on one perspective; Rebel News was founded to report on the opposite perspective, whatever that may be."

[98] Similarly, Rebel News stated that it references other media stories to provide a "rebuttal perspective" and "present[ed] a contrarian perspective from mainstream media." In its second assessment, the Independent Advisory Board expressly responded to this claim, noting that "'[p]roviding rebuttal opportunity' requires seeking comment directly from the person or group. It does not include the use of published work by other media."

[99] Rebel News' statements in its reconsideration request support the Independent Advisory Board's conclusion in its first assessment that Rebel News' content focuses on a single perspective. The Independent Advisory Board came to the same conclusion in its second assessment of the content produced by Rebel News during the Three-week Period. The Board

concluded that Rebel News had, by espousing the cause of the protesters it was covering, taken on an "activist stance, clearly and repeatedly expressed in the reviewed content" that was contrary to several sections of the Guidance, including that original news generally referred to content being based on facts and multiple perspectives. Taking the Independent Advisory Board's view into account, the Second Officer concluded that "it ha[d] been consistently observed – by both determinations officers and by the Advisory Board in its two recommendations – that the majority of [Rebel News'] content that has been reviewed is not based on facts and multiple perspectives…".

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[100] In light of this evidence, and despite Rebel News' submissions to the contrary, the Assistant Commissioner concluded that, "in most instances," Rebel News' reviewed content was not based on facts and multiple perspectives and that, "when taking into account section 2.27 of the Guidance," which includes this requirement, Rebel News "does not demonstrate consistent, intentional production of content that could be considered original news content." Rebel News has not satisfied me that this conclusion is unreasonable.

[101] Nor am I persuaded by Rebel News' submission that disqualifying it from a QCJO designation because of its activist stance was unreasonable because this constitutes censorship and because activism is not prohibited by the Act, the Guidance or the CRA's internal documents. The Second Decision must be read in its proper context, which includes the two assessments of the Independent Advisory Board. A fair reading of these assessments shows that the "activism" to which the Board objects is Rebel News' focus on and promotion or espousal of a single cause or perspective, which is inconsistent with the production of content based on

multiple perspectives, a concern that is distinct from and unrelated to the substance of the single cause or perspective espoused by Rebel News.

[102] Moreover, I agree with the Federal Court that *Lawton* does not assist Rebel News. In that decision, the Federal Court found that the Leaders' debates Commission's attempt to justify its refusal to deny Rebel News' reporters accreditation for the 2019 federal leaders' debate was based on an undefined and apparently unevenly applied "no-activism requirement." The Federal Court held that there was a strong likelihood that the Commissioner's decision was unreasonable because it was neither rational nor transparent. In contrast, the Second Decision, when read in the context of the record before the Assistant Commissioner, including the assessments of the Independent Advisory Board, justifies the denial of Rebel News' QCJO designation in relation to the relevant provisions of the Act, the Guidance and the facts.

[103] I am also not convinced by Rebel News' claim that the Assistant Commissioner's description of paragraph 2.27(c) of the Guidance as requiring that an organization's content be based on input "from a range of people, with a range of perspectives on issues or events" (emphasis in the original) is materially different than requiring that, in producing original news content, an organization actively pursue, research, analyze and explain multiple perspectives, and that it is thus inconsistent with the Guidance.

[104] Finally, it was in my view open to the Second Officer, the Independent Advisory Board and the Assistant Commissioner to come to a conclusion regarding whether Rebel News is engaged in the production of original news content, including whether that content is based on

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facts and multiple perspectives, based on their review of the content produced by Rebel News in the Three-week Period, even if this conclusion differed from Rebel News' submissions, in its reconsideration request, about how its journalists go about their work. They were entitled to give greater weight to what the content revealed, and, so to speak, judge the tree by its fruit.

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[105] I turn next to Rebel News' constitutional arguments.

B. *The Minister did not err in its treatment of Rebel News' constitutional arguments*

[106] Rebel News submits that the Minister denied it a QCJO designation because they disagreed with its style of reporting, perspectives or advocacy, and in doing so, disregarded the right to freedom of the press in paragraph 2(*b*) of the Charter. Rebel News claims that it raised this constitutional issue in its reconsideration request and, relying on *Doré*, argues that the Assistant Commissioner's failure to address the issue in its Second Decision renders that decision unreasonable.

[107] Rebel News submitted in its reconsideration request that, in faulting Rebel News' content for its activist point of view, the Independent Advisory Board had recommended against approving a QCJO designation because it "generally disagree[d] with the perceived perspective presented by Rebel News." Refusing a QCJO designation based on the particular perspective of an organization, Rebel News claimed, was censorship.

[108] Rebel News also argued in its reconsideration request that it should not be rejected for QCJO designation because it was committed to a free press independent from government or because "the government's" advisory board disagreed with its stories. Raising the spectre of government regulation of the press "considered by some to be anti-journalism efforts, driven largely by governments", Rebel News submitted that QCJO designation should not be used to suppress diversity of opinion in journalism.

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[109] I agree with the Federal Court that Rebel News did not directly refer to paragraph 2(*b*) of the Charter in its request for reconsideration. However, for the purposes of the analysis that follows, I am prepared to assume that Rebel News raised the Charter right to freedom of the press in its submission that it had effectively been denied a QCJO designation because the Independent Advisory Board disagreed with the substance of the perceived perspective presented by Rebel News in its reporting. In my view, there is a clear connection between Rebel News' claim – that interpreting and applying the QCJO regime in such a manner amounted to censorship and could suppress diversity of opinion in journalism – and the Charter right to freedom of the press.

[110] The duty of administrative decision makers to address Charter rights or values in their decisions was recently summarized by the Court in *Toth*:

> 40 The [*Doré*] framework requires a court to examine whether the Charter is engaged by an administrative decision. If so, the second step requires an examination of whether the decision maker properly balanced the relevant Charter "values" with the statutory provision and its objectives. [*York Region*] teaches that the first question, that of engagement, is answered on a correctness basis; the second, whether the balancing was done appropriately, is on a reasonableness

> basis. Sometimes the second stage is not reached. If Charter rights arguments are not considered, it may be that the decision is neither correct nor reasonable:
>
> > ...where, as in this case, a Charter protection is squarely raised by a party, the unexplained failure to address whether the Charter was engaged cannot survive reasonableness review. The reasons were not responsive to the question as framed in circumstances where it was called on to be answered (*Vavilov* at paras. 81 and 86) and the decision fails on both the transparency and justification metrics.
> >
> > [*Canada (Attorney General) v. Robinson*, 2022 FCA 59, at para. 28 [*Robinson*].]
>
> 41 As a corollary of this, a decision maker is not required to address the Charter in every decision ([*Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12] at para. 4). A decision maker's obligation to address Charter interests can be no greater than the Charter interests themselves. As noted by this Court in *Robinson*, regard must be had to context and whether the circumstances call for an answer.

[111] In *Toth*, several healthcare practitioners had challenged the decision of the Minister of Mental Health and Addictions (the Minister of Health) to refuse their requests for exemptions from the prohibition, under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, on the possession of psilocybin, a psychoactive compound found in certain mushrooms. They argued that this denial violated their rights and that of their patients under section 7 of the Charter.

[112] The Court held that the Minister of Health had founded her decision on certain facts and reasonably-held opinions that, in essence, disagreed with the factual premise on which the applicants' Charter arguments were based: the Minister of Health had thus dealt with these arguments implicitly by "addressing their very foundation" (*Toth* at para. 49).

[113] In my view, the Court's reasoning in *Toth* is a complete answer to Rebel News' constitutional objection. In the Second Decision, the Assistant Commissioner acknowledged

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Rebel News' argument that a QCJO designation could not be based on or influenced by an organization's perceived perspective by expressly noting Rebel News' submission that "the perspective that an organization brings to the production of original news content is irrelevant, and a QCJO designation decision should not be made on this basis." The Assistant Commissioner agreed with Rebel News that "a perspective that may be broadly discernible in an organization's content is irrelevant to whether that organization is eligible for QCJO designation." Nevertheless, they reiterated that "the majority of Rebel News' content [was] not based on facts and multiple perspectives that are analyzed and explored by a journalist for Rebel News." Accordingly, while the Assistant Commissioner did not expressly mention paragraph 2(*b*) or conduct a Charter analysis, they addressed the very foundation of Rebel News' Charter claim when they confirmed that they were denying QCJO designation not because a specific perspective was discernible in Rebel News' content, but because that content was not based on multiple perspectives and was therefore not original news content.

[114] The Assistant Commissioner's conclusion is entirely consistent with the assessments and recommendations of the Independent Advisory Board. As previously noted, the Board did not ground its concern over Rebel News' "activist point of view" in the substance of the particular perspective adopted by Rebel News but in the fact that Rebel News' content "focused on and promoted one perspective" contrary to, among others, paragraph 2.27(c) of the Guidance, which states that original news is based on facts and multiple perspectives (my emphasis).

[115] It follows that the Assistant Commissioner directly addressed Rebel News' claim that the First Decision had interpreted and applied the QCJO regime in a manner that was akin to

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censorship, that suppressed diversity of opinion in journalism and that was inconsistent with fundamental principles of press freedom when they rejected the very foundation of that argument: that the CRA and the Independent Advisory Board had excluded Rebel News from a QCJO designation on the basis of a perceived perspective in its content. The Assistant Commissioner thereby fulfilled their obligation to address Rebel News' constitutional arguments.

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[116] At the end of the day, the Assistant Commissioner confirmed that they were not interpreting and applying the QCJO definition, including the requirement that organizations be engaged in the production of original news content, based on an organization's perceived perspective. In doing so, the Assistant Commissioner interpreted and applied the QCJO provisions in a manner consistent with the Charter and fulfilled their obligation to address Rebel News' argument. No further analysis was required.

[117] Rebel News appears to argue before this Court that its constitutional argument extended beyond its submission that QCJO designations should not depend on the substance of the perceived perspective discernible in an organization's content to a more general claim that the QCJO regime itself offends the freedom of the press by enabling the government to regulate journalism through the selective distribution of tax benefits. I agree with the Federal Court that such a claim was not made before the CRA and is unsupported by the record. The Assistant Commissioner's reasons were responsive to the question as framed by Rebel News.

[118] I finally consider Rebel News' submission that the Federal Court erred in deciding not to consider certain paragraphs of the Levant and Gunn affidavits.

C. *The Federal Court committed no reviewable error in refusing to consider some of Rebel News' affidavit evidence*

[119] The general rule that only the evidentiary record that was before the administrative decision maker is admissible on judicial review (*Tsleil-Waututh v. Canada (Attorney General)*, 2017 FCA 128 at para. 86 [*Tsleil-Waututh*]) prevents a reviewing court from allowing itself to become a forum for fact-finding on the merits of the matter (*Delios v. Canada (Attorney General)*, 2015 FCA 117 at para. 41 [*Delios*]). In the case before us, Parliament delegated this fact-finding role to the Minister and the officials acting on their behalf.

[120] The Court has recognized three exceptions to the general rule, though this list is not closed (*Tsleil-Waututh* at para. 98).

[121] First, a party can file an affidavit providing general background in circumstances where that information might assist the reviewing court to understand the issues relevant to the judicial review (*Access Copyright* at para. 20a). The Court has described the "general background" allowed by this exception as follows:

> The "general background" exception applies to non-argumentative orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision-maker. In judicial reviews of complex administrative decisions where there is procedural and factual complexity and a record comprised of hundreds or thousands of documents,

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> reviewing courts find it useful to receive an affidavit that briefly reviews in a neutral and uncontroversial way the procedures that took place below and the categories of evidence that the parties placed before the administrator. As long as the affidavit does not engage in spin or advocacy – that is the role of the memorandum of fact and law – it is admissible as an exception to the general rule.
>
> (*Delios* at para. 45)

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[122] However, the Court has warned that an affidavit cannot go further and provide evidence relevant to the merits of the matter decided by the administrative decision maker.

[123] Second, an affidavit may be necessary to raise procedural defects, such as bias by reason of pecuniary interests or of an association between a party and the decision maker, that cannot be found in the evidentiary record of the administrative decision maker, to enable review for procedural unfairness (*Access Copyright* at para. 20b).

[124] Third, affidavit evidence may be received to outline the complete absence of evidence before an administrative decision maker when it made a particular finding (*Access Copyright* at para. 20c).

[125] This third exception was illustrated in *Re Keeprite Workers' Independent Union et al. and Keeprite Products Ltd.*, (1980) 29 O.R. (2d) 513, 1980 CanLII 1877 (ONCA) [*Keeprite*], which involved an application for judicial review of a grievance arbitrator's award dismissing a grievance filed by an employee against his employer's decision to terminate him for fighting with another employee. The arbitrator had found as a fact that, in a meeting held to consider the incident, the griever had admitted that he had thrown coffee in the other employee's face. The

union and the griever filed affidavit evidence that established that there was no evidence before the arbitrator that could support his finding that the griever had admitted the impugned conduct.

[126] Noting that the affidavit was directed to showing what evidence was given before the arbitrator rather than introducing fresh evidence of what happened during the fight, the Ontario Court of Appeal held that it was receivable to allow the reviewing court to decide whether the arbitrator had committed a reviewable error by making a finding of fact in the complete absence of any evidence to support that finding.

[127] Rebel News submits that the reconsideration process followed by the CRA left it unable to ensure that "all evidence that could be considered [was] before the CRA" or to "correct any assumptions and speculations that the CRA may be making…". It claims that, having refused to speak to any person at Rebel News and ignored its submissions and its reconsideration request, the CRA made conclusions, including on the inclusion of alternate perspectives, that were based on speculation. For this reason, it argues, it was appropriate and necessary for Rebel News to submit the impugned affidavits to "highlight the complete absence of evidence" before the CRA when it made its findings. Rebel News submits that, rather than supplementing the factual record, the affidavits "confirm the details of the Reconsideration Request and provide the evidence that was available if the CRA had agreed to speak to anyone at Rebel News before issuing a decision reliant on speculation."

[128] There is no merit to these submissions.

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[129] When it filed its request for reconsideration, Rebel News had before it the First Decision and a copy of the Independent Advisory Board's first assessment that found, based on a review of three weeks of articles and 39 videos, that Rebel News was not engaged in the production of original news content. This was so mainly because, contrary to several paragraphs of the Guidance, its content focused on the promotion of one perspective and was not based on facts and multiple perspectives. Rebel News was thus well aware of the issues the CRA had identified with the content it had analyzed in its first review.

[130] Rebel News was also aware that, in its decision review, the CRA would base its assessment of whether Rebel News was engaged in the production of original news content on its analysis of three weeks' worth of content selected by Rebel News. Rebel News had the opportunity, at the reconsideration stage, to choose its three-week period wisely to convince the CRA that its content was based on facts and multiple perspectives.

[131] I agree with the Federal Court that Rebel News had the opportunity to put its best foot forward and provide much of the information contained in the impugned affidavits to the CRA at the reconsideration stage, rather than attempting to supplement the record on judicial review with evidence that seeks to "confirm the details of its reconsideration request" and that it recognizes "was available" at the time of the reconsideration. I agree with the Federal Court that the information in the impugned paragraphs goes beyond general background information about the procedures that took place before the CRA and the categories of evidence placed before it. I also agree with the Federal Court that statements in the impugned paragraphs of the affidavits contained argument and were not the "non-argumentative orienting statements" allowed by the

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general background exception to the general rule against adducing evidence on judicial review that was not before the decision maker.

[132] In my view, the alleged procedural defects raised by the affidavits, including the fact that the CRA did not question individuals affiliated with Rebel News, were apparent from the record, and identified in Rebel News' reconsideration request, and did not fall within the second *Access Copyright* exception. To the extent that some paragraphs of the Levant affidavit sought to introduce internal CRA guidance documents to show they were not before the Assistant Commissioner when they rendered the Second Decision, I note that the Federal Court did not strike these paragraphs and admitted the documents.

[133] Moreover, this was clearly not a case where there was no evidence before the Assistant Commissioner that could justify their findings. The Assistant Commissioner had before them three weeks worth of Rebel News' content selected by Rebel News to make its case. Rebel News is effectively claiming not that there was no evidence before the Assistant Commissioner, but that in making the Second Decision, the Assistant Commissioner erred in relying on the evidence that was before them and should have considered additional evidence.

[134] Contrary to Rebel News' submission, the Assistant Commissioner also expressly considered the arguments presented by Rebel News in its reconsideration request. For example, they agreed with Rebel News that the concurrent production of original news content and of other content was acceptable and that – so long as an organization's content was based on facts and multiple perspectives – its adoption of a particular perspective in its content was irrelevant to

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a QCJO designation. The Assistant Commissioner also acknowledged but dismissed Rebel News objection to the CRA's practice of reviewing content produced in a three-week period to assess whether an organization is engaged in the production of original news content.

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[135] In sum, the impugned paragraphs in the Levant and Gunn affidavits were not directed to showing what evidence was adduced before the Assistant Commissioner and that there was no evidence before the CRA that could justify their findings. They did not fall within the third *Access Copyright* exception.

[136] It follows that Rebel News has not met its burden of persuading me that the Federal Court committed either an error of law or a palpable and overriding error of fact or mixed fact and law by excluding the impugned paragraphs because they did not fall within the *Access Copyright* exceptions.

VII. DISPOSITION

[137] Based on the foregoing reasons, I would dismiss the appeal with costs.

"Gerald Heckman"
J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
Monica Biringer J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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