

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN

SOCIÉTÉ RADIO-CANADA / CANADIAN BROADCASTING
CORPORATION, LA PRESSE INC., COOPÉRATIVE NATIONALE DE
L'INFORMATION INDÉPENDANTE (CN21), CANADIAN PRESS
ENTERPRISES INC., MEDIAQMI INC., and GROUPE TVA INC.

APPELLANTS

and

HIS MAJESTY THE KING and NAMED PERSON

RESPONDENTS

(continued)

MOTION FOR LEAVE TO INTERVENE

**(AD IDEM/CANADIAN MEDIA LAWYERS ASSOCIATION, POSTMEDIA
NETWORK INC., GLOBAL NEWS, A DIVISION OF CORUS TELEVISION
LIMITED PARTNERSHIP, TORSTAR CORPORATION, and GLACIER
MEDIA INC., PROPOSED INTERVENERS)**

(COLLECTIVELY, THE “MEDIA COALITION”)

(Pursuant to Rules 47, 55 to 59 of the *Rules of the Supreme Court of Canada*)

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Corporation, and Glacier Media Inc.
(Collectively, The “Media Coalition”)**

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ENTERPRISES INC., MEDIAQMI INC., and GROUPE TVA INC.

APPELLANTS

and

HIS MAJESTY THE KING and NAMED PERSON

RESPONDENTS

and

AND BETWEEN

ATTORNEY GENERAL OF QUÉBEC

APPELLANT

and

HIS MAJESTY THE KING and NAMED PERSON

RESPONDENTS

and

SOCIÉTÉ RADIO-CANADA / CANADIAN BROADCASTING
CORPORATION, LA PRESSE INC., COOPÉRATIVE NATIONALE DE
L'INFORMATION INDÉPENDANTE (CN21), CANADIAN PRESS
ENTERPRISES INC., MEDIAQMI INC., GROUPE TVA INC., LUCIE
RONDEAU, IN HER CAPACITY AS CHIEF JUSTICE OF
THE COURT OF QUÉBEC

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ENTERPRISES INC., MEDIAQMI INC., and GROUPE TVA INC.

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and

HIS MAJESTY THE KING and NAMED PERSON

RESPONDENTS

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AND BETWEEN

ATTORNEY GENERAL OF QUÉBEC

APPELLANT

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CORPORATION, LA PRESSE INC., COOPÉRATIVE NATIONALE DE
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ENTERPRISES INC., MEDIAQMI INC., GROUPE TVA INC., LUCIE
RONDEAU, IN HER CAPACITY AS CHIEF JUSTICE OF
THE COURT OF QUÉBEC

INTERVENERS

NOTICE OF MOTION FOR LEAVE TO INTERVENE

**AD IDEM/CANADIAN MEDIA LAWYERS ASSOCIATION, POSTMEDIA NETWORK
INC., GLOBAL NEWS, A DIVISION OF CORUS TELEVISION LIMITED
PARTNERSHIP, TORSTAR CORPORATION, and GLACIER MEDIA INC.**

(COLLECTIVELY, THE “MEDIA COALITION”)

(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the Ad IDEM/Canadian Media Lawyers Association (“**CMLA**”), Postmedia Network Inc. (“**Postmedia**”), Global News, a Division of Corus Television Limited Partnership (“**Global News**”), Torstar Corporation (“**Torstar**”) and Glacier Media Inc. (“**Glacier**”) (collectively, the “**Media Coalition**”) hereby apply to a Judge under Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada* for an Order:

1. Granting the Media Coalition leave to intervene in the hearing of this appeal;
2. Permitting the Media Coalition to file a factum not exceeding 10 pages;
3. Permitting the Media Coalition to make oral argument at the hearing of this appeal of such length as this Honourable Court may deem appropriate; and
4. such further or other relief as counsel may advise and as the Judge may permit.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

The Media Coalition

5. The Media Coalition has a direct and significant interest in the issues raised in this appeal. As set out in more detail below, its members have a significant interest in protecting freedom of expression and the ability of journalists to gather and report news. The reporting of members of the Media Coalition that are media organizations often relates to court proceedings and files, and access to the courts and to documents filed in court registries has been a repeated subject of Media Coalition members’ participation in court proceedings. The issues raised by this appeal engage this interest directly.

6. CMLA was founded in 1994. It is the only national organization of media lawyers in Canada. CMLA is dedicated to the protection and enhancement of free expression in Canada and abroad. It seeks to achieve this objective through public and professional education, advocacy and law reform initiatives and cooperation with related professional organizations. CMLA’s membership is comprised of approximately 100 lawyers who represent the media, both traditional and digital, across Canada. CMLA members represent most of the major media organizations and their journalists across Canada. Members of CMLA have day-to-day experience in dealing with laws that impact upon freedom of expression and which affect the

role of journalists and other persons involved in reporting, recording and communicating information.

7. Postmedia is a Canadian newsmedia company representing more than 130 brands across multiple print, online, and mobile platforms. Its flagship newspaper is the nationally-circulated daily newspaper, the *National Post*. Postmedia also publishes various other daily newspapers in major cities across Canada, plus dozens of smaller-market daily and weekly newspapers. The other daily newspapers include the *Vancouver Sun*, the *Province*, the *Calgary Herald*, the *Calgary Sun*, the *Edmonton Journal*, the *Regina Leader-Post*, the *Saskatoon StarPhoenix*, the *Winnipeg Sun*, the *Toronto Sun*, the *Ottawa Citizen*, the *Windsor Star*, the *Montreal Gazette* and various others. Postmedia operates individual websites for its print publications, which publish digital and video news content across the country. Postmedia has a monthly readership of approximately 17.4 million across all of its print and digital platforms. Postmedia also licenses its content to third party publishers, including online publishers. Postmedia publishes and broadcasts news stories on matters of public interest on a daily basis.

8. Global News is the multi-platform news and current affairs division of the Global Television Network in Canada, operated by Corus Television Limited Partnership. Global News produces award-winning local, regional, national and international news content for 15 conventional television news stations across Canada, 14 ‘over-the-top’ streaming channels on digital platforms, and supplies/provides news and information to 39 Corus Radio Stations (AM news talk and FM music) from coast to coast, streaming services and its news website, Globalnews.ca. On broadcast, Global News properties have reached more than 22 million Canadians in its current fiscal year. In the Comscore industry online news rankings which were compiled in May 2023, Globalnews.ca ranked third in Canada reaching 56.1 million page views, 38.8 million visits, 11.42 million unique visitors, and 16.7 million video views. Global News’ digital platforms include text, video, photographs and interactive features accessible to audiences around the world. Global News publishes and broadcasts news stories on matters of public interest on a daily basis and also licenses its content to third party publishers, broadcasters and social media platforms. Its stated mission is to report news and information with courage and accuracy, holding power to account, so Canadians of all backgrounds can make informed choices; uncover stories that matter most to individuals and communities, reflecting diversity of

thought and opinion; pursue the truth, through enterprise and investigative coverage with engaging storytelling.

9. Torstar is a Canadian newsmedia company, representing a number of brands across print and online platforms. Its subsidiary, Toronto Star Newspapers Limited, publishes the daily newspaper the *Toronto Star*. Another subsidiary, Metroland Media Group Ltd., publishes the daily papers the *Hamilton Spectator*, the *Waterloo Region Record*, the *St. Catharines Standard*, the *Niagara Falls Review*, the *Welland Tribune*, and the *Peterborough Examiner*, as well as more than 70 weekly community newspapers. Together, Torstar-owned publications have a combined print distribution of approximately 2.8 million copies a week, along with award-winning community news websites which provide local news and information to readers on the go, receiving millions of unique monthly visitors.

10. Glacier publishes community newspapers in British Columbia and elsewhere, and on a number of platforms. The titles Glacier publishes include traditional newspapers such as the *Times Colonist* in Victoria, the *North Shore News* in North Vancouver, and the *Pique Newsmagazine* in Whistler; online community news sites such as *Vancouver is Awesome*, which focuses its coverage on matters related to Vancouver; and periodical newsmagazines such as, for instance, *Business in Vancouver*. Glacier's webpages are viewed approximately 6.39 million times a month, and there are approximately 1.44 million monthly users of Glacier's webpages. Glacier publishes news stories on matters of public interest on a daily basis and has an international audience.

11. Members of the Media Coalition, individually or in various combinations or components, have participated in numerous court proceedings related to freedom of expression and the open court principle, including at the Supreme Court of Canada. Past court proceedings in which one or more of the Media Coalition have participated, as interveners or more directly, include *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33; *MediaQMI inc. v. Kamel*, 2021 SCC 23; *Sherman Estate v. Donovan*, 2021 SCC 25; *Bent v. Platnick*, 2020 SCC 23; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22; *R. v. Moazami*, 2020 BCCA 350; *Denis v. Côté*, 2019 SCC 44; *R. v. Barton*, 2019 SCC 33; *R. v. Vice Media Canada Inc.*, 2018 SCC 53; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *R. v. Vice Media Canada Inc.*, 2017 ONCA 231;

Crookes v. Newton, 2011 SCC 47; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25; *Bou Malhab v. Diffusion Metromedia CMR Inc.*, 2011 SCC 9; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2; *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *Toronto Star Newspapers Ltd v. Canada*, 2010 SCC 21; *R. v. National Post*, 2010 SCC 16; *Quan v. Cusson*, 2009 SCC 62; *Grant v. Torstar Corp.*, 2009 SCC 61; *WIC Radio Ltd. v. Simpson*, 2008 SCC 40; and *Cusson v. Quan*, 2007 ONCA 771.

Media Coalition's Proposed Submissions

12. The Media Coalition has extensive experience drawn from across Canada, not simply in print but also television, radio and digital sectors. If granted leave to intervene, the Media Coalition will present this Court with legal arguments drawn from its members' expertise in freedom of expression and media law and in particular in dealing with questions of court openness and access. These submissions will be independent, relevant, useful to the court, and different from the submissions of the parties.

13. The Media Coalition will (as advised by counsel and subject to further consideration) address the matters and advance the arguments set out in more detail in the Memorandum of Argument filed in this motion, including as follows:

- a. There should be no secret judicial proceedings in Canada. A minimum amount of neutral information should be made available to the public in a timely way in every case.
- b. In the usual case, those who would defend the public right of court openness should have access to all or substantially all of the material said to justify a restriction on court openness solely to defend the public's right to court openness. However, in those unusual cases where the parties are aligned in favour of restrictions on court openness and the presiding judge considers the material to be so extremely confidential that it cannot be provided to those who would defend the public's right to court openness, even on undertakings of confidentiality, then the judge should add *amicus curiae* to the

adversarial debate to ensure the matter is fully argued and to enhance public confidence in the administration of justice.

- c. The appointment of *amicus curiae* must not displace the role in the adversarial process concerning court openness from those who would seek to defend it.

14. Granting leave to intervene to the Media Coalition will not prejudice any party.

15. The Media Coalition will take the record as it finds it and will not seek to supplement the record but will seek to refer to the access protocols in use by various Canadian courts, including by providing links in the interveners' factum to the relevant protocols.

16. The Media Coalition will abide by any schedule set by this Court.

17. The Media Coalition will not seek costs in the intervention and will respectfully request that none be awarded against it.

18. The Media Coalition relies on Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, and such further or other grounds as counsel may advise and this Court may permit.

Dated at Vancouver, British Columbia this 10th day of July, 2023.

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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

IN THE SUPREME COURT OF CANADA
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BETWEEN:

**CANADIAN BROADCASTING CORPORATION/SOCIETE RADIO-CANADA
LA PRESSE INC., COOPERATIVE NATIONALE DE L'INFORMATION
INDEPENDANTE (CN21), CANADIAN PRESS ENTERPRISES INC.
MEDIAQMI INC., GROUPE TVA INC.**

APPELLANTS

AND

**HIS MAJESTY THE KING
PERSONNE DESIGNEE**

RESPONDENTS

AND

**LUCIE RONDEAU, in her capacity as Chief Justice of the Court of Quebec
ATTORNEY GENERAL OF QUEBEC**

INTERVENERS

**AFFIDAVIT OF PATRICK BOURBEAU FILED BY THE PROPOSED INTERVENERS,
AD IDEM/CANADIAN MEDIA LAWYERS ASSOCIATION, POSTMEDIA NETWORK
INC., GLOBAL NEWS, A DIVISION OF CORUS TELEVISION LIMITED
PARTNERSHIP, TORSTAR CORPORATION, GLACIER MEDIA INC.**

(COLLECTIVELY, THE “MEDIA COALITION”)

(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*)

I, Patrick Bourbeau, Lawyer of the City of Montreal in the Province of Quebec, SOLEMNLY
AFFIRM AND SAY THAT:

1. I am the president and current member of the board of the Ad IDEM/Canadian Media
Lawyers Association (“CMLA”). I have personal knowledge of the facts and matters

deposed to in this affidavit and where they are stated to be based on information and belief, I believe those facts and matters to be true.

2. I am a lawyer with La Presse Inc. and was called to the bar in Quebec in 2002. My practice includes a focus in the areas of media and communications. I regularly provide opinions on matters with respect to defamation, publication bans, search warrants, and access to court documents.
3. I make this affidavit in support of the motion for leave to intervene in these proceedings brought by the CMLA, Postmedia Network Inc., Global News, a division of Corus Television Limited Partnership, Torstar Corporation, and Glacier Media Inc. (together, the “**Media Coalition**”).
4. The Media Coalition was formed for the purpose of seeking leave to intervene in this appeal. The proposed Media Coalition interveners include some of the largest Canada-wide media organizations, as well as the only Canada-wide law organization dedicated to media law and to freedom of the media (the CMLA). Members of the Media Coalition (individually, or in various combinations or components) have intervened in all significant Supreme Court of Canada cases in the past decade involving freedom of the media and freedom of expression. The Media Coalition members’ expertise and experience make them uniquely placed to assist the Court in this appeal.

Request for Leave to Intervene on the Appeal

5. The Media Coalition seeks leave to file a factum and to have the opportunity to present oral argument at the hearing of this appeal.
6. The Media Coalition does not seek leave to adduce any additional evidence on the appeal.
7. If leave is granted, the Media Coalition will abide by the schedule that this Court may set for the filing of its materials.

Media Coalition Members

CMLA

8. Founded in 1994, CMLA is the only national organization of media lawyers in Canada.
9. Its alternative name, Ad IDEM, is derived from the phrase, “*Advocates in Defence of Expression in the Media*”.
10. CMLA is dedicated to the protection and enhancement of free expression in Canada and abroad. CMLA seeks to achieve this objective through (a) public and professional education; (b) advocacy and law reform initiatives; and (c) cooperation with related professional organizations.
11. CMLA’s membership is comprised of approximately 100 lawyers who represent the media, both traditional and digital, across Canada. Associate members, some of whom are not lawyers, also have experience in free expression issues and share the objectives of CMLA. Our members represent most of the major media organizations and their journalists across Canada. Our members also represent many international media organizations.
12. Our members have day-to-day experience in dealing with laws that impact upon freedom of expression and which affect the role of journalists and other persons involved in reporting, recording, and communicating information. Our members frequently advise, speak and write on court access issues, sealing orders, publication bans, defamation and issues relating to digital technology.
13. Our members work and communicate with other advocates for freedom of expression values around the world as well as participate in international conferences, projects, reforms, and advocacy. Our conferences have speakers, presentations, and materials on the latest cases and developments in expression law in the United States, United Kingdom, and other countries. Along with our members’ representation of international media and communications organizations and companies, CMLA’s international affiliations provide CMLA with a unique perspective: an international approach to free expression issues and an international appreciation of Canadian law.

14. CMLA has been granted intervener status at the Supreme Court of Canada and in other cases where freedom of expression or media law is at issue. In addition and notably, CMLA was appointed *Amicus Curiae* by the Supreme Court of Canada in *A.B. v. Bragg Communications Inc.*, 2012 SCC 46. Interventions by CMLA include *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33; *MediaQMI inc. v. Kamel*, 2021 SCC 23; *Sherman Estate v. Donovan*, 2021 SCC 25; *Bent v. Platnick*, 2020 SCC 23; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22; *R. v. Moazami*, 2020 BCCA 350; *Denis v. Côté*, 2019 SCC 44; *R. v. Barton*, 2019 SCC 33; *R. v. Vice Media Canada Inc.*, 2018 SCC 53; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *R. v. Vice Media Canada Inc.*, 2017 ONCA 231; *Crookes v. Newton*, 2011 SCC 47; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25; *Bou Malhab v. Diffusion Metromedia CMR Inc.*, 2011 SCC 9; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2; *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21; *R. v. National Post*, 2010 SCC 16; *Quan v. Cusson*, 2009 SCC 62; *Grant v. Torstar Corp.*, 2009 SCC 61; *WIC Radio Ltd. v. Simpson*, 2008 SCC 40; and *Cusson v. Quan*, 2007 ONCA 771.
15. CMLA has made oral and written submissions to House of Commons and Senate committees respecting proposed legislation, as well as to the Canadian Judicial Council, to various Chief Justices and courts across the country, to the Department of Justice and to provincial Crown Prosecution Services in respect of various aspects of freedom of expression and the principle of open courts. CMLA was also solicited to make and made submissions respecting libel reform to the UK Parliament's joint committee on the Draft Defamation Bill.
16. CMLA has worked with judicial committees in, for example, developing Practice Directions and procedures for notifying journalists and lawyers of applications for discretionary publication bans.

Postmedia Network Inc.

17. I am informed by Rene McKnight, Editor-In-Chief Postmedia Editorial Services and Executive Editor at Postmedia News with Postmedia Network Inc. (“**Postmedia**”), and believe to be true, that Postmedia is a Canadian news media company representing more than 130 brands across multiple print, online, and mobile platforms. Its flagship newspaper is the nationally circulated daily newspaper, the *National Post*. Postmedia also publishes various other daily newspapers in major cities across Canada, plus dozens of smaller market daily and weekly newspapers. The other daily newspapers include the *Vancouver Sun*, the *Province*, the *Calgary Herald*, the *Calgary Sun*, the *Edmonton Journal*, the *Regina Leader-Post*, the *Saskatoon StarPhoenix*, the *Winnipeg Sun*, the *Toronto Sun*, the *Ottawa Citizen*, the *Windsor Star*, the *Montreal Gazette* and various others. Postmedia operates individual websites for its print publications, which publish digital and video news content across the country. Postmedia has a monthly readership of approximately 17.4 million across all of its print and digital platforms. Postmedia also licenses its content to third party publishers, including online publishers. Postmedia publishes and broadcasts news stories on matters of public interest on a daily basis.
18. Postmedia outlets, as well as the organization as a whole, have a history of participation in the courts on matters related to freedom of expression and journalists’ freedom to gather information and report, including in relation to the use of confidential sources. Court appearances on related issues, including before the Supreme Court of Canada, include the following: *Canadian Broadcasting Corporation, et al. v. Aydin Coban, et al.* (judgment reserved on May 17, 2023, SCC file no. 40223); *Postmedia Network Inc. v. Named Persons*, 2022 BCCA 431; *Bent v. Platnick*, 2020 SCC 23; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22; *Denis v. Cote*, 2019 SCC 44; *Postmedia Network Inc. v. HMTQ*, 2019 BCSC 929; *Postmedia Network Inc. v. Her Majesty the Queen*, 2019 BCPC 267; *Canadian Broadcasting Corporation and Postmedia Inc. v. Sidhu*, 2019 SKPC 10; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *Postmedia Network Inc. v. Her Majesty the Queen*, 2017 ONSC 1433; *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21; *R. v. National Post*, 2010 SCC 16; *Grant v. Torstar Corp.*, 2009 SCC 61; *R. v. Bryan*, 2007 SCC 12; *Named Person v. Vancouver Sun*, 2007 SCC 43; *Vancouver Sun (Re)*,

2004 SCC 43; *Phillips v. Vancouver Sun*, 2004 BCCA 14; *Calgary Herald Group Inc. v. Alberta (Director of Child Welfare)*, 2002 ABPC 167; *R. v. O.N.E.*, 2001 SCC 77; and *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326.

Global News, a division of Corus Television Limited Partnership

19. I am informed by Chris Bassett, Vice President, Editorial Standards, Network Content, Production and Distribution for Global News, and believe to be true, that Global News is the multi-platform news and current affairs division of the Global Television Network in Canada, operated by Corus Television Limited Partnership. Global News produces award-winning local, regional, national and international news content for 15 conventional television news stations across Canada, 14 ‘over-the-top’ streaming channels on digital platforms, supplies/provides news and information to 39 Corus Radio Stations (AM news talk and FM music) from coast to coast, streaming services and its news website, Globalnews.ca. On broadcast, Global News properties have reached more than 22 million Canadians in its current fiscal year. In the Comscore industry online news rankings which were compiled in May 2023, Globalnews.ca ranked third in Canada reaching 56.1 million page views, 38.8 million visits, 11.42 million unique visitors, and 16.7 million video views. Global News’ digital platforms include text, video, photographs and interactive features accessible to audiences around the world. Global News publishes and broadcasts news stories on matters of public interest on a daily basis and also licenses its content to third party publishers, broadcasters and social media platforms. Its stated mission is to report news and information with courage and accuracy, holding power to account, so Canadians of all backgrounds can make informed choices; uncover stories that matter most to individuals and communities, reflecting diversity of thought and opinion; pursue the truth, through enterprise and investigative coverage with engaging storytelling.
20. Global News has participated in numerous court proceedings related to freedom of expression, including *Canadian Broadcasting Corporation, et al. v. Aydin Coban, et al.* (judgment reserved on May 17, 2023, SCC file no. 40223); *Bent v. Platnick*, 2020 SCC 23; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22; *R. v. Moazami*, 2020 BCCA 350; *Denis v. Cote*, 2019 SCC 44; *R v. Minassian*, 2019 ONSC 4455; *R. v.*

Canadian Broadcasting Corp., 2018 SCC 5; *R. v. Global News et al.*, 2011 ONCJ 381; and *Global BC, A Division of Canwest Media Inc. v. British Columbia*, 2010 BCCA 169.

Torstar Corporation

21. I am informed by Emma Carver, General Counsel to Torstar Corporation (“**Torstar**”), and believe to be true, that Torstar is a Canadian newsmedia company, representing a number of brands across print and online platforms. Its subsidiary, Toronto Star Newspapers Limited, publishes the daily newspaper the *Toronto Star*. Another subsidiary, Metroland Media Group Ltd., publishes the daily papers the *Hamilton Spectator*, the *Waterloo Region Record*, the *St. Catharines Standard*, the *Niagara Falls Review*, the *Welland Tribune*, and the *Peterborough Examiner*, as well as more than 70 weekly community newspapers. Together, Torstar-owned publications have a combined print distribution of approximately 2.8 million copies a week, along with award-winning community news websites which provide local news and information to readers on the go, receiving millions of unique monthly visitors.
22. Torstar and its subsidiaries have participated in numerous court proceedings related to freedom of expression, including *Canadian Broadcasting Corporation, et al. v. Aydin Coban, et al.* (judgment reserved on May 17, 2023, SCC file no. 40223); *Sherman Estate v. Donovan*, 2021 SCC 25; *Toronto Star v. AG Ontario*, 2018 ONSC 2586; *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21; *Quan v. Cusson*, 2009 SCC 62 (intervention by Toronto Star Newspapers Ltd.); *Grant v. Torstar Corp.*, 2009 SCC 61; *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41.

Glacier Media Inc.

23. I am informed by Kirk LaPointe, Vice-President, Editorial of Glacier Media Inc. (“**Glacier**”), and believe to be true, that Glacier publishes community newspapers in British Columbia and elsewhere, and on a number of platforms. The titles Glacier publishes include: traditional newspapers such as the *Times Colonist* in Victoria, the *North Shore News* in North Vancouver, and the *Pique Newsmagazine* in Whistler; online community news sites such as *Vancouver is Awesome*, which focuses its coverage on matters related

to Vancouver; and periodical newsmagazines such as, for instance, *Business in Vancouver*. Glacier's webpages are viewed approximately 6.39 million times a month, and there are approximately 1.44 million monthly users of Glacier's webpages. Glacier publishes news stories on matters of public interest on a daily basis and has an international audience.

24. Glacier has participated in a number of court proceedings related to freedom of expression, including *Canadian Broadcasting Corporation, et al. v. Aydin Coban, et al.* (judgment reserved on May 17, 2023, SCC file no. 40223) and *R. v. Virtanen*, 2022 BCCA 246.

Media Coalition's interest in the issues raised by this appeal

25. The Media Coalition has a significant interest in protecting freedom of expression and the ability of journalists to gather and report news. The issues raised by this appeal engage this interest directly.
26. The reporting of members of the Media Coalition that are media organizations often relates to court proceedings and files. Access to the courts and to documents filed in court registries has been a repeated subject of the Media Coalition's participation in court proceedings.
27. As more fully described in the Notice of Motion and the Memorandum of Argument filed with this application for leave to intervene, the submissions that the Media Coalition proposes to advance in this appeal if granted intervener status are:
- (a) There should be no secret judicial proceedings in Canada. A minimum amount of neutral information should be made available to the public in a timely way in every case.
 - (b) In the usual case, those who would defend the public right of court openness should have access to all or substantially all of the material said to justify a restriction on court openness solely to defend the public's right to court openness. However, in those unusual cases where the parties are aligned in favour of restrictions on court openness and the presiding judge considers the material to be so extremely confidential that it cannot be provided to those who would defend the public's right to

court openness, even on undertakings of confidentiality, then the judge should add *amicus curiae* to the adversarial debate to ensure the matter is fully argued and to enhance public confidence in the administration of justice.

- (c) The appointment of *amicus curiae* must not displace the role in the adversarial process concerning court openness from those who would seek to defend it.
28. The Media Coalition’s submissions would build on the experience of the interveners including the observations recently made by the British Columbia Court of Appeal in *Postmedia v. Named Persons*, 2022 BCCA 431 (the “**Named Persons Appeal**”), a case that bears many similarities to the instant appeal.
29. The *Named Persons Appeal* proceeded roughly contemporaneously with the Quebec appeal proceedings in the instant matter and also involved extensive restrictions on court openness. The trial level proceedings in both matters proceeded in near-total secrecy.
30. The British Columbia Court of Appeal dismissed Postmedia’s application for access in the *Named Persons Appeal*, in part on the basis of (i) a record not made available to Postmedia and (ii) submissions made to the court *ex parte* Postmedia. The appeal court concluded in that case even “*revealing the very nature of the confidential information would disclose it*” yet expressed dissatisfaction with the process, observing:
- ...Postmedia and the public at large must accept the word of now two courts that their *Charter* rights to freedom of expression and freedom of the press are being limited in a justifiable way on the basis of a record that they cannot see.
31. The court in the *Named Persons Appeal* offered guidance as to how courts might in the future address applications to so significantly restrict court openness by providing a minimal level of public information in every case and by involving *amicus curiae*.

No prejudice to parties or proceedings

32. If the Media Coalition is permitted to intervene, the intervention of the Media Coalition will not delay or prejudice the main parties.

- 33. The Media Coalition does not seek to supplement the record on the appeal. The Media Coalition does intend to refer to aspects of the court access policies and directives promulgated by Canada’s superior courts but intends to do so simply by hyperlinking to the relevant courts’ policies/directives.
- 34. No costs are sought, and the Media Coalition’s members are prepared to abide by any order of this Court respecting their intervention.

AFFIRMED BEFORE ME at Montreal,)
 Quebec, on July 7th, 2023)

Sandra Bubair)
 _____)
 A Commissioner for oaths for the)
 province of Quebec)



DocuSigned by:
Patrick Bourbeau

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Patrick Bourbeau

MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENERS**PART I– OVERVIEW AND FACTS****A. OVERVIEW**

1. The Canadian Media Lawyers Association (“**CMLA**”), Postmedia Network Inc. (“**Postmedia**”), Global News, a division of Corus Television Limited Partnership (“**Global News**”), Torstar Corporation (“**Torstar**”) and Glacier Media Inc. (“**Glacier**”) (collectively, the “**Media Coalition**”) seek leave to intervene in this appeal.

2. This appeal relates to issues at the core of freedom of expression and the open court principle. Members of the Media Coalition deal with these issues on a daily basis in the course of their work across Canada in the print, television, radio and digital sectors. They have shown their commitment and expertise in relation to dealing with these issues through repeated participation in related court proceedings. If granted leave to intervene, they intend to make submissions distinct from those made by the parties and which will be useful to this Honourable Court.

B. MEMBERS OF THE MEDIA COALITION

3. CMLA was founded in 1994 and is the only national organization of media lawyers in Canada. It is dedicated to the protection and enhancement of free expression in Canada and abroad. CMLA seeks to achieve this objective through: (a) public and professional education; (b) advocacy and law reform initiatives; and (c) cooperation with related professional organizations.¹

4. CMLA’s membership is comprised of approximately 100 lawyers who represent the media, both traditional and digital, across Canada. Associate members, some of whom are not lawyers, also have experience in free expression issues and share CMLA’s objectives. CMLA’s members represent most of the major media organizations and their journalists across Canada, as well as many international media organizations.²

¹ Affidavit of Patrick Bourbeau, affirmed July 7, 2023 (“**Bourbeau Affidavit**”), paras. 8-10

² Bourbeau Affidavit, para. 11

5. CMLA's members have day-to-day experience in dealing with laws that impact upon freedom of expression and that affect the role of journalists and other persons involved in reporting, recording, and communicating information. Its members frequently advise, speak and write on court access issues, sealing orders, publication bans, defamation and issues relating to digital technology.³

6. CMLA's members work and communicate with other advocates for freedom of expression values around the world as well as participate in international conferences, projects, reforms, and advocacy. Its conferences have speakers, presentations, and materials on the latest cases and developments in expression law in the United States, United Kingdom, and other countries. Along with its members' representation of international media and communications organizations and companies, CMLA's international affiliations provide CMLA with a unique perspective: an international approach to free expression issues and an international appreciation of Canadian law.⁴

7. Postmedia is a Canadian newsmedia company representing more than 130 brands across multiple print, online, and mobile platforms. Its flagship newspaper is the nationally circulated daily newspaper, the *National Post*. Postmedia also publishes various other daily newspapers in major cities across Canada (including the *Vancouver Sun*, the *Province*, the *Calgary Herald*, the *Calgary Sun*, the *Edmonton Journal*, the *Regina Leader-Post*, the *Saskatoon StarPhoenix*, the *Winnipeg Sun*, the *Toronto Sun*, the *Ottawa Citizen*, the *Windsor Star*, and the *Montreal Gazette*), plus various small-market daily and weekly newspapers. Postmedia operates individual websites for its print publications, which publish digital and video news content across the country. Postmedia has a monthly readership of approximately 17.4 million across all of its print and digital platforms. Postmedia also licenses its content to third party publishers, including online publishers. It publishes and broadcasts daily news stories on matters of public interest.⁵

³ Bourbeau Affidavit, para. 12

⁴ Bourbeau Affidavit, para. 13

⁵ Bourbeau Affidavit, para. 17

8. Global News is the multi-platform news and current affairs division of the Global Television Network in Canada, operated by Corus Television Limited Partnership. Global News produces award-winning local, regional, national and international news content for 15 conventional television news stations across Canada, 14 ‘over-the-top’ streaming channels on digital platforms, and supplies/provides news and information to 39 Corus Radio Stations (AM news talk and FM music) from coast to coast, streaming services and its news website, Globalnews.ca. On broadcast, Global News properties have reached more than 22 million Canadians in its current fiscal year. In the Comscore industry online news rankings which were compiled in May 2023, Globalnews.ca ranked third in Canada reaching 56.1 million page views, 38.8 million visits, 11.42 million unique visitors, and 16.7 million video views. Global News’ digital platforms include text, video, photographs and interactive features accessible to audiences around the world. Global News publishes and broadcasts news stories on matters of public interest on a daily basis and also licenses its content to third party publishers, broadcasters and social media platforms. Its stated mission is to report news and information with courage and accuracy, holding power to account, so Canadians of all backgrounds can make informed choices; uncover stories that matter most to individuals and communities, reflecting diversity of thought and opinion; pursue the truth, through enterprise and investigative coverage with engaging storytelling.⁶

9. Torstar is a Canadian newsmedia company, representing a number of brands across print and online platforms. Its subsidiary, Toronto Star Newspapers Limited, publishes the daily newspaper the *Toronto Star*. Another subsidiary, Metroland Media Group Ltd., publishes the daily papers the *Hamilton Spectator*, the *Waterloo Region Record*, the *St. Catharines Standard*, the *Niagara Falls Review*, the *Welland Tribune*, and the *Peterborough Examiner*, as well as more than 70 weekly community newspapers. Together, Torstar-owned publications have a combined print distribution of approximately 2.8 million copies a week, along with award-winning community news websites which provide local news and information to readers on the go, receiving millions of unique monthly visitors.⁷

⁶ Bourbeau Affidavit, para. 19

⁷ Bourbeau Affidavit, para. 21

10. Glacier publishes community newspapers in British Columbia and elsewhere, and on a number of platforms. The titles Glacier publishes include traditional newspapers such as the *Times Colonist* in Victoria, the *North Shore News* in North Vancouver, and the *Pique Newsmagazine* in Whistler; online community news sites such as *Vancouver is Awesome*, which focuses its coverage on matters related to Vancouver; and periodical newsmagazines such as, for instance, *Business in Vancouver*. Glacier's webpages are viewed approximately 6.39 million times a month, and there are approximately 1.44 million monthly users of Glacier's webpages. Glacier publishes news stories on matters of public interest on a daily basis and has an international audience.⁸

C. PAST PARTICIPATION IN COURT PROCEEDINGS

11. Members of the Media Coalition, individually or in various combinations or components, have participated in numerous court proceedings related to freedom of expression and the open court principle, including at the Supreme Court of Canada. Past court proceedings in which one or more of the Media Coalition have participated, as interveners or more directly, include *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33; *MediaQMI inc. v. Kamel*, 2021 SCC 23; *Sherman Estate v. Donovan*, 2021 SCC 25; *Bent v. Platnick*, 2020 SCC 23; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22; *R. v. Moazami*, 2020 BCCA 350; *Denis v. Côté*, 2019 SCC 44; *R. v. Barton*, 2019 SCC 33; *R. v. Vice Media Canada Inc.*, 2018 SCC 53; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *R. v. Vice Media Canada Inc.*, 2017 ONCA 231; *Crookes v. Newton*, 2011 SCC 47; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25; *Bou Malhab v. Diffusion Metromedia CMR Inc.*, 2011 SCC 9; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2; *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *Toronto Star Newspapers Ltd v. Canada*, 2010 SCC 21; *R. v. National Post*, 2010 SCC 16; *Quan v. Cusson*, 2009 SCC 62; *Grant v. Torstar Corp.*, 2009 SCC 61; *WIC Radio Ltd. v. Simpson*, 2008 SCC 40; *Cusson v. Quan*, 2007 ONCA 771; *Canadian Broadcasting Corporation, et al. v. Aydin Coban, et al.* (judgement reserved on May 17, 2023, SCC file no. 40223); *Postmedia Network Inc. v. Named Persons*, 2022 BCCA 431; *Postmedia Network Inc. v*

⁸ Bourbeau Affidavit, para. 23

HMTQ, 2019 BCSC 929; *Postmedia Network Inc. v. Her Majesty the Queen*, 2019 BCPC 267; *Canadian Broadcasting Corporation and Postmedia Inc. v. Sidhu*, 2019 SKPC 10; *Postmedia Network Inc. v Her Majesty the Queen*, 2017 ONSC 1433; *R. v. Bryan*, 2007 SCC 12; *Named Person v. Vancouver Sun*, 2007 SCC 43; *Vancouver Sun (Re)*, 2004 SCC 43; *Phillips v. Vancouver Sun*, 2004 BCCA 14; *Calgary Herald Group Inc. v. Alberta (Director of Child Welfare)*, 2002 ABPC 167; *R. v. O.N.E.*, 2001 SCC 77; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 SCR 1326; *R v. Minassian*, 2019 ONSC 4455; *R. v. Global News et al.*, 2011 ONCJ 381; *Global BC, A Division of Canwest Media Inc. v. British Columbia*, 2010 BCCA 169; and *R. v. Virtanen*, 2022 BCCA 246.⁹

PART II – ISSUES ON THE MOTION

12. The issues on this motion are whether the Media Coalition should be granted leave to intervene in this appeal and, in particular: (a) whether the Media Coalition has a real interest in the subject matter of the appeal; (b) whether the Media Coalition’s submissions will be useful to the Court and different from those of other parties; and (c) if the Media Coalition is granted leave to intervene, on what terms, including whether it should be permitted to make both written and oral submissions on the appeal.

PART III - STATEMENT OF ARGUMENT

A. TEST FOR LEAVE TO INTERVENE

13. The Rules of this Court authorize the Court to grant leave to intervene to any person interested in an appeal.¹⁰ Leave to intervene may be granted if the prospective intervener shows that (a) it has an interest in the appeal, and (b) it will make submissions that will be relevant, useful and different from those of the parties. The term “interest” in the rules has been interpreted broadly. Any interest is sufficient to support an application to intervene, subject to the Court’s discretion.¹¹

14. The Media Coalition submits that it meets the test for leave to intervene. It has a strong

⁹ Bourbeau Affidavit, paras. 14, 18, 20, 22, 24

¹⁰ [Rules of the Supreme Court of Canada, SOR/2002-156 at Rules 55-59](#)

¹¹ [Reference re Workers’ Compensation Act 1983 \(Nfld.\), \[1989\] 2 S.C.R. 335](#)

interest in the subject matter of this appeal and can provide a unique and useful perspective on the issues in this appeal.

B. MEDIA COALITION’S INTEREST IN THE ISSUES RAISED BY THIS APPEAL

15. The members of the Media Coalition have a significant interest in protecting freedom of expression and the ability of journalists to gather and report news. The reporting of members of the Media Coalition that are media organizations often relates to court proceedings, and access to the courts and to documents filed in court registries has been a repeated subject of Media Coalition members’ participation in court proceedings.¹²

16. The Court’s ruling is likely to have an impact beyond the interests of the immediate parties to the appeal. It is clear – as discussed in more detail below – that there are circumstances in the Canadian courts where extreme restrictions on court openness are ordered on an urgent basis without notice to the public or the media, where the basis for the restrictions is not disclosed to the public or the media, and where the order(s) pronouncing the restrictions on court openness might themselves be sealed. Journalists across the country who seek to defend the public’s right to court openness will therefore be impacted by the outcome of this appeal and the statements issued by this Court with respect to the principles of court openness in circumstances like those at issue in the within appeal.

17. The issues raised by this appeal thus engage the Media Coalition’s interest directly.

C. MEDIA COALITION’S SUBMISSIONS WILL BE USEFUL AND DIFFERENT

18. As well as having a profound interest in the subject matter of this appeal, the Media Coalition is in a position to bring a unique perspective to the issues before this Court. The members of the Media Coalition are not limited to just one type of media or just one province; they have experience drawn from across Canada, not only in print but also television, radio and digital sectors. The breadth and depth of their experience and expertise can offer an invaluable perspective on the issues in the appeal.

¹² Bourbeau Affidavit, para. 26

19. Members of the Media Coalition have also been directly involved in access-related issues in other secret proceedings giving them a unique perspective and set of experiences to draw on. For instance, around the same time that the within matter was proceeding in the Court of Appeal of Quebec, members of the Media Coalition were involved in attempts to gain access to a secret proceeding in British Columbia, as described in *Postmedia Network Inc. v. Named Persons*, 2022 BCCA 431 (the “*Named Persons Appeal*”).

20. The *Named Persons Appeal* involved a proceeding that is also subject extensive restrictions on court openness. On June 27, 2022 – just three months after Court of Appeal for Quebec first decried the use of a “secret trial” procedure in the within matter – the British Columbia Supreme Court commenced a civil trial before the Chief Justice of that court, set for 35 days and styled *Named Persons v. Attorney General of Canada, Vancouver Registry No. S2013431* (the “**BC Secret Trial**”). On June 28, 2022, one of the members of the Media Coalition, Postmedia, attempted to apply for access to the BC Secret Trial. That application was dismissed two days later, resulting in an appeal before the British Columbia Court of Appeal. Before that appeal was heard, the Court of Appeal for Quebec dismissed the applications to open in the within matter.

21. In December 2022, the British Columbia Court of Appeal dismissed Postmedia’s application for access in the *Named Persons Appeal*, in part on the basis of (i) a record not made available to Postmedia and (ii) submissions made to the court *ex parte* Postmedia. The appeal court concluded that even “*revealing the very nature of the confidential information would disclose it,*” leaving the public with even less information about the court proceeding at hand than is available about the within appeal. The Court of Appeal nevertheless expressed dissatisfaction with the process, observing:

...Postmedia and the public at large must accept the word of now two courts that their *Charter* rights to freedom of expression and freedom of the press are being limited in a justifiable way on the basis of a record that they cannot see.¹³

¹³ [Postmedia Network Inc. v. Named Persons, 2022 BCCA 431](#) at paras. 74-75

22. The court in the *Named Persons* Appeal went on to offer guidance as to how courts might in the future address applications to so significantly restrict court openness by providing a minimal level of public information in every case and by involving *amicus curiae*.

23. The Media Coalition can offer a perspective of direct relevance to the issues on appeal and in doing so be of assistance to the Court, just as similar interventions have proved of value in prior appeals which raised issues affecting the media.

D. INTENDED ARGUMENT

24. If granted intervener status, the Media Coalition's submissions would build on the pan-Canadian experience of the interveners with these types of issues, including the experience with the *Named Persons* Appeal and the observations it occasioned in the British Columbia Court of Appeal, to address the framework for approaching orders that restrict court openness and those situations where courts cannot supply the evidence justifying such restrictions to those who would advocate to preserve court openness.

25. In particular, the Media Coalition intends to submit as follows:

- (a) There should be no secret judicial proceedings in Canada. A minimum amount of neutral information should be made available to the public in a timely way in every case.
- (b) In the usual case, those who would defend the public right of court openness should have access to all or substantially all of the material said to justify a restriction on court openness solely to defend the public's right of court openness. In the unusual case where the parties are aligned in favour of restrictions on court openness, and the presiding judge considers the material is so extremely confidential that it cannot be provided, even on undertakings of confidentiality, to those who would defend the public's right to court openness, then the judge should add *amicus curiae* to the adversarial debate to ensure the matter is fully argued and to enhance public confidence in the administration of justice.

- (c) The appointment of *amicus curiae* must not displace the role in the adversarial process concerning court openness of those who would seek to defend it.

26. The Media Coalition respectfully submit each of these matters arises implicitly from the issues framed by the appellants, which presume a base level of information is made available to those who would seek to defend the public's right to court openness.

PART IV– SUBMISSIONS ON COSTS

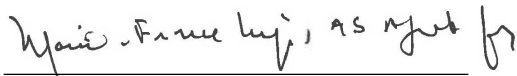
27. The Media Coalition will not seek costs in the intervention and respectfully request that none be awarded against it.

PART V – ORDER SOUGHT

28. The Media Coalition seeks an Order:

- (a) granting the Media Coalition leave to intervene in this appeal;
- (b) permitting the Media Coalition to file a factum not exceeding 10 pages;
- (c) permitting the Media Coalition to make oral argument at the hearing of this appeal;
and
- (d) granting such further and other relief as counsel may advise and the Judge may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of July, 2023.



Scott Dawson and Catherine George
Counsel for the Media Coalition

PART VI – TABLE OF AUTHORITIES

AUTHORITY	PARAGRAPH(S)
<i>Postmedia Network Inc. v. Named Persons</i>, 2022 BCCA 431	19-22, 24
<i>Reference re Workers' Compensation Act 1983 (Nfld.)</i>, [1989] 2 S.C.R. 335	13
LEGISLATION	SECTION(S)
<i>Rules of the Supreme Court of Canada</i> , SOR/2002-156	<u>55-59</u>
<i>Règles de la Cour suprême du Canada</i> , (DORS/2002-156)	<u>55-59</u>