



BY ELECTRONIC MAIL (information@fca-caf.gc.ca)

May 8, 2020

Mr. François Desrosiers – Registrar
Registry Office – Federal Court of Appeal
Thomas D'Arcy McGee Building
5th Floor – 90 Sparks Street
Ottawa, ON K1A 0H9

Re: Motion for Leave to Intervene – British Columbia Civil Liberties Association
Teksavvy Solutions Inc. v. Bell Media Inc. et al, Court File No. A-440-19

Dear Mr. Desrosiers:

We write further to the Directions of the Court dated February 21, 2020 and April 24, 2020 to advise of the position of the British Columbia Civil Liberties Association (“BCCLA”) on its motion for leave to intervene in light of the arguments raised by the appellant and the Directions of this Court.

The BCCLA’s motion for leave to intervene, filed February 12, 2020, advances different and valuable insights and perspectives that will further the Court’s determination of this matter. Freedom of expression is among the most fundamental rights possessed by Canadians. The scope and application of this right, particularly in the modern context of internet regulation, is a matter that has assumed “a public, important and complex dimension”, which necessitates exposure to perspectives beyond those offered by the particular parties to the Court: *Canada (Attorney General) v. Pictou Landing First Nation*, 2014 FCA 21 at para. 11. Decisions that engage *Charter* rights have ramifications for a broad range of interests. The BCCLA’s interest and perspective on issues of freedom of expression in this appeal is fundamentally different than those of the parties, who come to this appeal seeking to protect their own commercial interests. The BCCLA is a non-partisan, unaffiliated advocacy group with a longstanding interest and expertise in issues of freedom of

expression. The BCCLA seeks to protect the interests of a healthy civil society, not a healthy ISP or Canadian broadcaster. Given the central importance of free expression to the Canadian polity, it is unsurprising that more than one party may wish to bring to bear its perspectives on a novel exercise of the court’s discretion to grant relief that limits expressive activity. A diversity of perspectives and positions on such an important issue will further the Court’s determination of this matter.

This Court has previously granted leave to intervene in an appeal where proposed interveners sought to make arguments on the same provisions of the *Charter* raised by the appellant, where those interveners made additional or different arguments: *Revell v. Canada (Citizenship and Immigration)*, 2018 FCA 138 at paras. 7-12. The arguments proposed by the BCCLA differ from the appellant’s in three key respects. First, the BCCLA seeks to balance the right to free expression with other important and potentially conflicting rights engaged by this appeal, namely the need for access to justice and some form of meaningful relief from expression-related harms. Second, the BCCLA’s proposed argument draws from case law on other forms of extraordinary relief, such as *Norwich* orders and *Mareva* injunctions to guide the court’s exercise of discretion. Finally, the BCCLA’s proposed approach takes into account the nature of expressive content at issue and its connection with the core values underlying the right to freedom of expression as expressed in *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, and advocates for an approach that is carefully attenuated to the circumstances of an individual case.

The BCCLA has been actively coordinating with other similarly-situated proposed interveners in this appeal, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“CIPPIC”) and the Canadian Internet Registration Authority (“CIRA”) since January 2020. Should the BCCLA be granted leave to intervene in this appeal, the BCCLA will not duplicate the submissions of CIPPIC or CIRA and will provide a perspective distinct from those parties.

In all other respects, the BCCLA repeats and relies on its motion record filed February 12, 2020.

Yours truly,



Emily Lapper
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cc: Gib van Ert (counsel for the Proposed Intervener, BCCLA)

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