Federal Court  Cour fédérale

Date: 20211022

Docket: T-1505-19

Citation: 2021 FC 1133

Ottawa, Ontario, October 22, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

JOSEPH ("JOE") VOLPE, PC AND CORRCAN MEDIA GROUP INC.

Applicants

and

HER EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL (on the recommendation of the Minister of Canadian Heritage, pursuant to s.28 of the Broadcasting Act), MINISTER OF CANADIAN HERITAGE, HER MAJESTY THE QUEEN, and THE ATTORNEY GENERAL OF CANADA

Respondents

ORDER AND REASONS

I. Overview

[1] In 2017, the Canadian Radio-television and Telecommunications Commission [CRTC] recognized the need for a national, multilingual, multi-ethnic discretionary service that would provide Canadians with affordable news coverage and events programming in multiple

languages [OMNI Regional] to address and reflect the needs and interests of Canada's diverse ethnic and third-language communities. Not fully satisfied that Rogers Media Inc. [Rogers] met the CRTC's expectations regarding this service, nonetheless the CRTC approved Rogers' application for a licence as an interim measure and issued a call for applications that, if approved, would result in a licence for the mandatory distribution on the digital basic service, meaning the rights to broadcast OMNI Regional.

[2] The Applicant, Corrcan Media Group Inc. [Corrcan] was among eight applicants for a licence to operate OMNI Regional. On May 23, 2019, the CRTC approved only Rogers' application, in part, granting a three-year licence, and denied the remaining applications: Broadcasting Decision CRTC 2019-172 and Broadcasting Order CRTC 2019-173 [together, CRTC Decision 2019].

[3] Corrcan was entitled to appeal the CRTC Broadcasting Decision 2019, under section 31 of the *Broadcasting Act*, SC 1991, c 11, but did not do so, unlike Independent Community Television Montreal which unsuccessfully sought leave to appeal the decision to the Federal Court of Appeal: (unreported Order dismissing motion) File No. 19-A-29, August 15, 2019. Instead, Corrcan and others petitioned the Governor in Council [GIC] under section 28 of the *Broadcasting Act* to set aside the CRTC Decision 2019 and to refer the matter back to the CRTC for reconsideration and hearing.

[4] On August 17, 2019, the GIC, on the recommendation of the Minister of Canadian Heritage, declined the petitions, including Corrcan's petition: PC 2019-1227 [GIC Decision

2019]. Having considered the petitions, the GIC was satisfied that the CRTC Decision 2019 does not derogate from subsection 3(1) of the *Broadcasting Act*. Corrcan and its president, the Applicant Joseph ("Joe") Volpe, a former Cabinet Minister and a current member of the Queen's Privy Council, seek judicial review of the GIC Decision 2019.

[5] In the context of their judicial review application, the Applicants move under Rules 317 and 318 of the *Federal Courts Rules*, SOR/98-106 [*FCR*] for, among other things: a declaration that Cabinet privilege or Cabinet confidence does not apply, at common law, to a statutory recourse under section 28 of the *Broadcasting Act*, and in particular, with respect to deliberations and documentary material; an order that the GIC provide the GIC's records pertaining to, including documentation touching on, the CRTC Decision 2019; and an order that the GIC provide written reasons for its GIC Decision 2019.

[6] The Respondent, the Attorney General of Canada [AGC] brings a cross-motion to strike out the Applicants' Notice of Application without leave to amend, and dismissing the application for judicial review in its entirety.

[7] The Court heard the parties' motions in series, starting with the AGC's motion to strike. In my view, it is not so plain and obvious that the Applicants' judicial review application cannot succeed.

[8] Regarding the Applicants' motion under Rules 317 and 318, section 39 of the *Canada Evidence Act*, RSC 1985, c C-5, which operates as a modification of the common law approach

to Cabinet confidence, is applicable and impacts the outcome. Here, the Applicants have not established that the power to certify information under section 39 was exercised improperly, or that the information certified, on its face, does not fall within the ambit of section 39.

[9] For the more detailed reasons that follow, I thus dismiss the AGC's motion to strike and the Applicants' motion under the *FCR* Rules 317 and 318.

[10] See Annex "A" for relevant legislative provisions.

II. AGC's Motion to Strike

[11] I agree with the AGC that the same test applies to an application as to an action: *Wenham v Canada (Attorney General)*, 2018 FCA 199 [*Wenham*] at paras 32-33. Contrary to the AGC's position, however, I am not satisfied that the Applicants' application for judicial review in this matter is so "bereft of any possibility of success" that it warrants being struck out: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, at para 47; *Wenham*, above at para 33; *Canjura v Canada (Attorney General)*, 2021 FC 1022 [*Canjura*] at para 14. First, I am not convinced that this is a case where there was another remedial recourse available to the Applicants that should have been exhausted before resorting to section 28 of the *Broadcasting Act*, or that the Applicants' complaint is outside the scope of such provision: *Canjura*, above at para 15. Second, I disagree that the GIC Decision 2019 is not reviewable and third, that the Applicants' allegations of procedural unfairness are necessarily or inherently untenable.

[12] Addressing first the contentions regarding sections 31 and 28 of the *Broadcasting Act*, I note that section 31 does not provide an unrestricted right of appeal from a decision or order of the CRTC but rather an appeal lies, subject to leave being obtained, on a question of law or jurisdiction only. Subsection 28(1), however, expansively provides that "any person," which phrase is not qualified or limited by "interested," may petition the GIC, within the mandated period of time, to set aside or refer back a decision of the CRTC to **issue, amend or renew a licence**.

[13] Although the Applicants complain about being denied a licence and do not complain *per se* about a licence having been granted to Rogers, in my view the denial of a licence (or several in this case) is inherent in the CRTC's decision to grant a single licence to Rogers. In other words, the Applicants' challenge is rooted in the CRTC's decision to issue a (single) licence. I find this conclusion is evident on a plain reading of the Applicants' Notice of Application, which refers, for example, to "monopoly granted to a single corporate entity" and "the type of licence refused the Applicants… should not be issued to one exclusive corporate entity…" in connection with the various declarations that the Applicants seek. As held by the Federal Court of Appeal, "the moving party must take the opposing party's pleadings as they find them, and cannot resort to reading into a claim something which is not there [or] which it does not say": *Canada v Arsenault*, 2009 FCA 242 at para 10.

[14] Turning next to the assertion that the GIC Decision 2019 is not reviewable, the AGC points, in support, to the broad, fundamentally policy-based, discretionary authority vested in the GIC, with reference to sections 3, 5 and 28 of the *Broadcasting Act* and as described in

jurisprudence such as, *League for Human Rights of B'Nai Brith Canada v Odynsky*, 2010 FCA 307 [*B'Nai Brith*] at paras 76-78. Notwithstanding the GIC's broad discretion, in my view it must be exercised within the confines of the applicable law, including relevant jurisprudence, and thus, it is not shielded from judicial review: *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 [*Entertainment Software*] at paras 33, 35. This is evident in the *B'Nai Brith* decision itself which involved the Federal Court of Appeal's review, at the AGC's behest I add, of the GIC's decisions to reject the recommendations of the Minister of Citizenship and Immigration to revoke certain citizenships: *B'Nai Brith*, at paras 83-91.

[15] Further, there may be greater scope for judicial intervention where, as here, there is a challenge under the *Canadian Charter of Rights and Freedoms*, or where the decision is of great significance to the individual: *Dixon v Canada (Governor in Council)*, [1997] 3 FC 169 (FCA) at para 17; *Entertainment Software*, above at para 36. Just because a decision may be harder to set aside, does not mean necessarily, in my view, that it is "bereft of any possibility" to do so. For substantially the same reasons, I am not persuaded, for the purpose of the AGC's motion to strike and based on the parties' motion records, that the GIC Decision 2019 is not justiciable.

[16] In addition, even if it is arguable that section 28 of the *Broadcasting Act* does not provide authority for the GIC to order the CRTC to issue the applied for licence to the Applicants, I note that the Applicants have pleaded, in the alternative, for the matter to be returned to the CRTC for reconsideration. Again, for the purpose of the AGC's motion and based on the parties' motion records, I am not persuaded the alternative relief the Applicants seek falls outside the scope of

section 28 or that the relief is outside the purview of this Court in the context of a judicial review application: *Entertainment Software*, above at para 101. Thus, in my view, this issue is best left to the judge who will hear the merits of the judicial review application to determine.

[17] Regarding the issue of whether the GIC Decision 2019 was "defiant of procedural fairness" as alleged by the Applicants in their Notice of Application, I note for the purpose of the AGC's motion that the GIC's decision was of great significance to the Applicants notwithstanding that it was open to any person to petition the GIC under section 28 of the *Broadcasting Act*: *Entertainment Software*, above at para 36.

[18] Finally, I agree with the Applicants that the fact they have requested declaratory relief, among other remedies, is not a bar to their judicial review application: *FCR* Rule 64.

[19] For the foregoing reasons, I dismiss the AGC's motion to strike out the Applicants' Notice of Application without leave to amend, and dismissing the application for judicial review in its entirety.

III. Applicants' Motion under Rules 317 and 318

[20] Together, the *FCR* Rules 317 and 318 describe procedures for parties to request material relevant to a judicial review application and in the decision maker's possession, and to object to such requests. I am satisfied that the Applicants' motion under these Rules cannot succeed because of the operation of section 39 of the *Canada Evidence Act*, for the more detailed reasons below.

[21] The Applicants' Notice of Application contains the substance of their request for information under Rules 317 and 318 (essentially all material "touching on" the GIC Decision 2019). That request is reproduced in Annex "B" below.

[22] As a preliminary matter, I note that in connection with their motion under these rules (and further to the information they requested), the Applicants request an order in the nature of *mandamus* to compel written reasons. I agree with the AGC, however, that the GIC did provide reasons, albeit brief and mirroring the language of section 28 of the *Broadcasting Act*, i.e. that the CRTC Decision 2019 "does not derogate from the attainment of the objectives of the broadcasting policy for Canada set out in subsection 3(1)."

[23] In my view, the issue of whether the GIC should have provided more detailed reasons is best left for the judge who will hear the merits of the judicial review application. As the Supreme Court recently cautioned, reviewing courts must remain "acutely" cognizant that administrative justice may not look like judicial justice: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 92. Further, I observe that, "formal reasons for a decision will not always be necessary and may, where required, take different forms[; …i]n many cases, however, neither the duty of procedural fairness nor the statutory scheme will require that formal reasons be given at all": *Vavilov*, above at paras 95, 136.

[24] The AGC resists the Applicants' motion and asserts confidence of the Queen's Privy Council for Canada (also known as Cabinet confidence or privilege) under section 39 of the *Canada Evidence Act*. Subsection 39(1) provides in part that, where the Clerk of the Privy

Council (or a minister of the Crown) certifies in writing that the information sought is a confidence of the Queen's Privy Council (which is defined to include Cabinet and committees of Cabinet), the disclosure of the information shall be refused **without examination or hearing of the information by the court** (or other applicable person or body). The requisite Certificate of the Clerk of the Privy Council (and Secretary to the Cabinet), under subsection 39(1) is in evidence on this motion (unlike the situation that confronted the Associate Chief Justice in *Parker*, below.)

[25] As recently recognized by this Court, section 39 of the *Canada Evidence Act* represents a modification of the common law approach to Cabinet confidence, the latter involving judicial weighing of the "public interest in preserving confidentiality against the public interest in the disclosure to determine the material that should be disclosed, if any": *Parker v Canada (Attorney General)*, 2021 FC 496 [*Parker*] at paras 27-28. Here, section 39 contains the applicable statutory framework that is relevant to the disposition of the Applicants' motion before me.

[26] Contrary to the Applicants' assertion, I am not persuaded that an exemption under subparagraph 39(4)(b)(i) is available to them in the circumstances of this matter, simply because the information certified by the Clerk, on its face, does not involve a discussion paper. Further, in my view, their oral submissions at the hearing of this motion in particular were an effort to reargue the constitutional validity of section 39 of the *Canada Evidence Act* laid to rest by the Supreme Court of Canada in *Babcock v Canada (Attorney General)*, 2002 SCC 57 [*Babcock*] at paras 53-61.

[27] Unless the Clerk decertifies the information, the only other options for challenging the Clerk's certification in the motion before me involve establishing either that the power to certify information under section 39 was exercised improperly, or that the information on its face does not fall under section 39 given that the court is otherwise enjoined from examining or hearing the certified information: *Babcock*, above at paras 28, 31, 39-40; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 [*Tsleil-Waututh*] at paras 27-28, 31. I am not satisfied the Applicants have demonstrated that either situation is applicable in the circumstances.

[28] In addition, I note the Supreme Court's decision in *Babcock* suggests, at para 39, that the appropriate way to challenge whether the Clerk has exercised power improperly under section 39 is through judicial review of the Clerk's Certificate. The AGC, however, only indirectly raised such an argument in a footnote in his written representations. Further, I note that the section 39 certificate in issue in *Tsleil-Waututh* was challenged in respect of a motion under the *FCR* Rule 317.

[29] Leaving aside, therefore, the appropriateness of the manner in which the Applicants have challenged the Clerk's Certificate, I address first whether the certified information falls within section 39. Having regard to subsection 39(2) which provides a non-exhaustive list of examples of Privy Council confidences, in my view the following material sought by the Applicants and covered by the Clerk's certification, on its face, falls within section 39:

- Letter to the Honourable Joyce Murray, President of the Treasury Board and Minister of Digital Government of August 2019, from the Honourable Pablo Rodriguez, Minister of Canadian Heritage and Multiculturalism, regarding the scheduling of consideration of a proposed Order in Council [OIC] concerning the Broadcasting Decision CRTC 2019-172 dated May 23, 2019, and enclosing the Minister's submission to the GIC regarding the proposed OIC; the Clerk's Certificate describes this document, including the entirety of

all attachments stated to be integral to the document, as "a record reflecting communications between ministers of the Crown concerning proposals or recommendations to Council, and an agendum of Council," and the Clerk thus asserts that the information falls within paragraphs 39(2)(a), 39(2)(c) and 39(2)(d) of the *Canada Evidence Act*; and

- Signed and approved Order in Council of August 2019, concerning the Broadcasting Decision CRTC 2019-172 of May 23, 2019; the Clerk's Certificate describes this document as a record of deliberations and decisions of Council, and the Clerk thus asserts that the information falls within paragraph 39(2)(c) of the *Canada Evidence Act*.

[30] I note that the first of these descriptions is similar to those considered by Justice Stratas in *Tsleil-Waututh*, above. In fact, the first of these descriptions contain elements of those pertaining to both documents #1 and #2 at issue in *Tsleil-Waututh*, at para 29:

> #1: Letter to the Honourable Scott Brison, President of the Treasury Board, in November 2016 from the Honourable Jim Carr, Minister of Natural Resources, regarding the scheduling of consideration of a proposed Order in Council concerning the Trans Mountain Expansion Project.
>
> This information is a record reflecting communications between ministers of the Crown concerning agenda of Council. The information is therefore within the meaning of paragraphs 39(2)(c) and 39(2)(d) respectively of the *Canada Evidence Act*.
>
> #2: Submission to the Governor in Council in November, 2016 in English and French from the Honourable Jim Carr, Minister of Natural Resources, regarding a proposed Order in Council concerning the Trans Mountain Expansion Project, including signed Ministerial recommendation, summary and accompanying materials.
>
> This information, including all its attachments in their entirety which are integral parts of the document, constitutes a memorandum the purpose of which is to present proposals or recommendations to Council. The information is therefore within the meaning of paragraphs 39(2)(a) of the *Canada Evidence Act*.

[31] Justice Stratas found the document #2 description sufficient, at paras 29-34, 40-42. He expressed doubt, at paras 43-45, however, about whether a document merely concerned with scheduling a consideration of a proposed OIC and referring to an agenda (i.e. document #1) falls within subsection 39(2). He nonetheless was not prepared to grant the relief sought (i.e. disclosure) because a document concerned "only [with] timing and nothing more" is irrelevant and, therefore, inadmissible: *Tsleil-Waututh*, above at para 47.

[32] In the motion before me, I find the first described document involves more than just scheduling a consideration and an agenda. Rather, it provides background and context for consideration in the form of the Minister's submission to the GIC regarding the proposed OIC, as well as communications between ministers concerning proposals or recommendations to the GIC. I am prepared to infer that all such information could "shed light on substantive reasons that might affect the timing": *Tsleil-Waututh*, above at para 44. As such, I am satisfied the first described document in the Clerk's Certificate falls within subsection 39(2).

[33] Regarding the next document described in the Clerk's Certificate, although the GIC Decision 2019 is of public record, I am prepared to infer that the "record of deliberations and decisions of Council" that resulted in the approved version of the GIC Decision 2019 fall within subsection 39(2).

[34] I conclude this issue with an observation. More detailed descriptions of the documents likely would have made the task of assessing whether they fall within the ambit of section 39 easier. I am mindful, however, of Justice Stratas' caution that exact dates and other specific

information could enable parties to "deduce exactly what was placed before and discussed by the Governor in Council, undercutting the protective purpose of section 39 of the *Canada Evidence Act*": *Tsleil-Waututh*, above at paras 41-42.

[35] This leaves for the Court's determination, the issue of whether the Clerk improperly exercised the discretionary power conferred by subsection 39(1) of the *Canada Evidence Act*. I am convinced that in the context of the motion before me, the exercise was proper. My conclusion is driven in large measure by my findings regarding the sufficiency of the information descriptions contained in the Clerk's Certificate: *Tsleil-Waututh*, above at para 42. As noted by the Supreme Court, a "challenge based on wrongful exercise of power is similarly confined to information on the face of the certificate and such external evidence as the challenger may be able to provide": *Babcock*, above at para 40

[36] In addition, the Applicants' motion record filed on January 27, 2020 contains external evidence in the form of the affidavit of the individual Applicant, Joseph ("Joe") Volpe dated January 24, 2020, which I also have considered. Mr. Volpe contends, based on his experience as a former federal Cabinet Minister and a current member of the Privy Council, that CRTC petitions are not considered Cabinet confidences. Further, Mr. Volpe complains that no details, basis, grounds or reasons have been provided for the "blanket and arbitrary assertion" of Cabinet confidence.

[37] I note that the Applicants' motion record was filed before the Clerk's Certificate was signed on July 8, 2020. As such, their motion was premised on the application of common law

principles to the question of Cabinet confidentiality, in response to the October 3, 2019 letter from the Privy Council Office [PCO] to this Court. With that letter, the PCO filed a certified copy of the GIC Decision 2019 in reply to the Applicants' Rule 317 production request, but otherwise objected to the production of any other material on the basis that it "is a confidence of the Queen's Privy Council for Canada, which cannot be disclosed because of its confidentiality."

[38] The subsequent Clerk's Certificate under section 39 of the *Canada Evidence Act*, however, eclipses that premise (and is the main reason why the motion before me is distinguishable from the situation in *Parker*, above). Underscoring the broad discretionary power this provision vests in the Clerk of the Privy Council (or a minister of the Crown) is the absence of any requirement to provide any details (beyond a sufficient description of the information), basis, grounds or reasons for the certification of the applicable information.

[39] Further, notwithstanding Mr. Volpe's previous experience, the operation of section 39 of the *Canada Evidence Act*, coupled with the absence of any evidence about any third party CRTC petitions under 28 of the *Broadcasting Act*, precludes the Court from considering whether the Applicants' petition was similar or different from other CRTC petitions where Cabinet confidentiality was not asserted or not in issue. In other words, I find there is insufficient external evidence from which a conclusion regarding the alleged impropriety of the Clerk's exercise of power can be drawn.

[40] For the foregoing reasons, I therefore dismiss the Applicants' motion under the *FCR* Rules 317 and 318.

IV. Conclusion

[41] The end result is that neither motion succeeds. The AGC has not persuaded me that the Applicants' application for judicial review is so "bereft of any possibility of success" that it warrants being struck out. The Applicants' have not persuaded me that the power to certify information under section 39 of the *Canada Evidence Act* was exercised improperly, or that the information certified, on its face, does not fall within the ambit of section 39.

V. Costs

[42] Because neither the AGC nor the Applicants were successful in their respective motions, I exercise my discretion to award no costs in either motion.

ORDER in T-1505-19

THIS COURT ORDERS that:

1. The Attorney General of Canada's motion to strike the out the Applicants' Notice of Application without leave to amend, and dismissing the application for judicial review in its entirety, is dismissed.
2. The Applicants' motion under Rules 317 and 318 of the *Federal Courts Rules* is dismissed.
3. No costs are awarded on either motion.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Broadcasting Act,* SC 1991, c 11 - Version of document from 2020-07-01 to 2021-10-07**
***Loi sur la radiodiffusion* (L.C. 1991, ch. 11) - Version du document du 2020-07-01 au 2021-10-07**

Setting aside or referring decisions back to Commission	**Annulation ou renvoi au Conseil**
28 (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).	**28 (1)** Le gouverneur en conseil peut, par décret pris dans les quatre-vingt-dix jours suivant la décision en cause, sur demande écrite reçue dans les quarante-cinq jours suivant celle-ci ou de sa propre initiative, annuler ou renvoyer au Conseil pour réexamen et nouvelle audience la décision de celui-ci d'attribuer, de modifier ou de renouveler une licence, s'il est convaincu que la décision en cause ne va pas dans le sens des objectifs de la politique canadienne de radiodiffusion.
Decisions and orders final	**Caractère définitif**
31 (1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.	**31 (1)** Sauf exceptions prévues par la présente partie, les décisions et ordonnances du Conseil sont définitives et sans appel.
Appeal to Federal Court of Appeal	**Cas d'appel : Cour fédérale**
(2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.	**(2)** Les décisions et ordonnances du Conseil sont susceptibles d'appel, sur une question de droit ou de compétence, devant la Cour d'appel fédérale. L'exercice de cet appel est toutefois subordonné à l'autorisation de la cour, la demande en ce sens devant être présentée dans le mois qui suit la prise de la décision ou ordonnance attaquée ou dans le délai supplémentaire accordé par la cour dans des circonstances particulières.
Entry of appeal	**Délai d'appel**
(3) No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.	**(3)** L'appel doit être interjeté dans les soixante jours suivant l'autorisation.

Document deemed decision or order **(4)** Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission.	**Assimilation à des décisions ou ordonnances du Conseil** **(4)** Les documents émanant du Conseil sous forme de décision ou d'ordonnance, s'ils concernent l'attribution, la modification, le renouvellement, l'annulation, ou la suspension d'une licence, sont censés être, pour l'application du présent article, des décisions ou ordonnances du Conseil.

***Canada Evidence Act,* RSC 1985, c C-5 - Version of document from 2019-07-12 to 2021-10-07**
***Loi sur la preuve au Canada* (L.R.C. (1985), ch. C-5) - Version du document du 2019-07-12 au 2021-10-07**

Objection relating to a confidence of the Queen's Privy Council **39 (1)** Where a minister of the Crown or the Clerk of the Privy Council objects to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying in writing that the information constitutes a confidence of the Queen's Privy Council for Canada, disclosure of the information shall be refused without examination or hearing of the information by the court, person or body.	**Opposition relative à un renseignement confidentiel du Conseil privé de la Reine pour le Canada** **39 (1)** Le tribunal, l'organisme ou la personne qui ont le pouvoir de contraindre à la production de renseignements sont, dans les cas où un ministre ou le greffier du Conseil privé s'opposent à la divulgation d'un renseignement, tenus d'en refuser la divulgation, sans l'examiner ni tenir d'audition à son sujet, si le ministre ou le greffier attestent par écrit que le renseignement constitue un renseignement confidentiel du Conseil privé de la Reine pour le Canada.
Definition **39 (2)** For the purpose of subsection (1), **a confidence of the Queen's Privy Council for Canada** includes, without restricting the generality thereof, information contained in; **(a)** a memorandum the purpose of which is to present proposals or recommendations to Council **(b)** a discussion paper the purpose of which is to present background explanations, analyses of problems or	**Définition** **(2)** Pour l'application du paragraphe (1), un **renseignement confidentiel du Conseil privé de la Reine pour le Canada** s'entend notamment d'un renseignement contenu dans : **a)** une note destinée à soumettre des propositions ou recommandations au Conseil; **b)** un document de travail destiné à présenter des problèmes, des analyses ou

policy options to Council for consideration by Council in making decisions; **(c)** an agendum of Council or a record recording deliberations or decisions of Council; **(d)** a record used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy; **(e)** a record the purpose of which is to brief Ministers of the Crown in relation to matters that are brought before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and **(f)** draft legislation.	des options politiques à l'examen du Conseil; **c)** un ordre du jour du Conseil ou un procès-verbal de ses délibérations ou décisions; **d)** un document employé en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du gouvernement ou à la formulation de sa politique; **e)** un document d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa d); **f)** un avant-projet de loi ou projet de règlement.
Definition of Council **39 (3)** For the purposes of subsection (2), **Council** means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.	**Définition de Conseil** **39 (3)** Pour l'application du paragraphe (2), **Conseil** s'entend du Conseil privé de la Reine pour le Canada, du Cabinet et de leurs comités respectifs.
Exception **39 (4)** Subsection (1) does not apply in respect of **(a)** a confidence of the Queen's Privy Council for Canada that has been in existence for more than twenty years; or **(b)** a discussion paper described in paragraph (2)(b) **(i)** if the decisions to which the discussion paper relates have been made public, or	**Exception** **39 (4)** Le paragraphe (1) ne s'applique pas : **a)** à un renseignement confidentiel du Conseil privé de la Reine pour le Canada dont l'existence remonte à plus de vingt ans; **b)** à un document de travail visé à l'alinéa (2)b), dans les cas où les décisions auxquelles il se rapporte ont été rendues publiques ou, à défaut de publicité, ont été rendues quatre ans auparavant.

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.	

Annex "B": Request for Information from Notice of Application

THE APPLICANT REQUESTS, pursuant to Rules 317 and 218 of the *Federal Court Rules,* that the Tribunal send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Tribunal, to the applicants, and to the Registry:

1. a copy of any and all documents, memos, electronic or otherwise, with respect to Decisions 2019-172 and 173, as well as all other decisions with respect other applications, for the same broadcasting license, before the Commission (CRTC), in turn dealt with and disposed of at the same time by the within Tribunal(Governor General in Council), under judicial review herein;

2. a copy of the Tribunal's entire file(s) with the Tribunal touching upon the decision the subject of the within judicial review;

3. a copy of the written reasons and/or any other notes and file whatsoever touching upon the decision;

4. a copy of the recommendations of the Minister of Canadian Heritage to the Respondent Governor General in Council;

5. such further or other documents forming the Record herein and/or touching upon the decision under review, and/or the relief sought by the Applicants, as counsel may advise and this Honourable Court order.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1505-19
STYLE OF CAUSE:	JOSEPH ("JOE") VOLPE, PC AND CORRCAN MEDIA GROUP INC. v HER EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL (on the recommendation of the Minister of Canadian Heritage, pursuant to s.28 of the Broadcasting Act), MINISTER OF CANADIAN HERITAGE, HER MAJESTY THE QUEEN, THE ATTORNEY GENERAL OF CANADA, and ROGERS MEDIA INC.
PLACE OF HEARING:	TORONTO, ONTARIO (VIA VIDEOCONFERENCE)
DATE OF HEARING:	NOVEMBER 26, 2020
ORDER AND REASONS:	FUHRER J.
DATED:	OCTOBER 22, 2021

APPEARANCES:

Rocco Galati	FOR THE APPLICANTS
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