

Federal Court



Cour fédérale

**Date: 20241010**

**Docket: T-1462-23**

**Citation: 2024 FC 1604**

**Ottawa, Ontario, October 10, 2024**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**ACADEMIC JOURNALISM SOCIETY**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] On this application for judicial review, Academic Journalism Society (AJS) challenges a decision of the Minister of National Revenue (Minister) that refused its application for designation as a qualified Canadian journalism organization (QCJO) under subsection 248(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*]. QCJOs are entitled to benefits under the *ITA*, such as the ability to claim certain tax credits.

[2] The Minister found that AJS did not satisfy one of the conditions of QCJO status, because it was not engaged in the production of original news content within the meaning of subparagraph 248(1)(a)(v) of the *ITA*.

[3] Since June 2017, AJS has issued and distributed a digital publication called *The Conversation Canada / La Conversation Canada*. According to AJS, the publication operates under a model of explanatory journalism and produces news content based on expert analysis of current events, often supported by accurate and fulsome academic research. The contributors are primarily academics who collaborate with AJS editors to create evidence- and research-based articles intended to inform the public on a variety of current events.

[4] AJS applied for designation as a QCJO in December 2020.

[5] QCJO applications are considered by Canada Revenue Agency (CRA) officers with delegated authority to exercise the Minister's powers. The decisions are made in consultation with the Independent Advisory Board on Eligibility for Journalism and Tax Measures (Advisory Board). The Advisory Board was established to make recommendations to the Minister on whether an organization is eligible for designation as a QCJO.

[6] On March 11, 2022, the CRA issued a letter refusing AJS's application. The letter noted that the Advisory Board had assessed AJS's publications and found that AJS did not satisfy a condition of QCJO status because it was not engaged in the production of original news content. The letter explained that the CRA reached the same conclusion as the Advisory Board, based on its own review of AJS's application and publications.

[7] AJS asked the CRA to reconsider the refusal. The CRA sent a request for additional information, asking AJS to select a three-week period for review. AJS selected September 6 to September 26, 2021 and submitted 94 articles it had published during the period.

[8] On reconsideration, an officer from the CRA's Journalism Division conducted an initial assessment. Since AJS satisfied the other conditions for QCJO status, the assessment focussed on whether AJS provided original news content within the meaning of the subparagraph 248(1)(a)(v) of the *ITA*. The officer found that 26 of the 94 articles could be considered original news content, and that AJS appeared to be engaged in the production of original news content so as to satisfy subparagraph 248(1)(a)(v) of the *ITA*.

[9] The CRA then sent AJS's application to the Advisory Board, as it was required to do before making a final decision. The CRA asked the Advisory Board for its recommendations on whether AJS satisfied the condition of subparagraph 248(1)(a)(v).

[10] The Advisory Board reviewed the CRA's initial assessment of the 94 articles as well as articles that AJS published between October 17, 2022 and November 6, 2022, to assess whether AJS was engaged in the production of original news content on an ongoing basis. The Advisory Board recommended that AJS does not meet the criteria for designation as a QCJO.

[11] The matter was then returned to the CRA. An officer prepared a Decision Review Report. The Decision Review Report set out the officer's analysis on reconsideration and concluded with the Journalism Division's final recommendation:

Based on the analysis of Academic Journalism Society's decision review request and additional information provided, including the published content selected for review, and considering the recommendations of the Advisory Board, it is our view that Academic Journalism Society **does not satisfy** the conditions under subparagraph (a)(v) of the QCJO definition in subsection 248(1) of the Act because it is not engaged in the production of original news content. Therefore, the original decision not to grant QCJO designation should stand.

[Emphasis in original.]

[12] The Minister confirmed this position in a June 15, 2023 decision letter that maintained the original March 11, 2022 decision and refused AJS's request for QCJO designation.

[13] The Minister explained that the analysis on reconsideration focussed on whether AJS was engaged in the production of original news content under subparagraph 248(1)(a)(v) of the *ITA*, since the original decision concluded that AJS satisfied the other conditions for QCJO designation. The Minister's assessment was based on a review of AJS's published content during the three-week period in September 2021, taking into account the Advisory Board's recommendation (which was attached) and the CRA's online *Guidance on the income tax measures to support journalism* [Guidance].

[14] The Minister's decision summarized AJS's submissions, the requirements of original news content under subparagraph 248(1)(a)(v) of the *ITA*, and the CRA's interpretation of "original news content" in the Guidance.

[15] The Minister specifically referred to section 2.27 of the Guidance, which provides:

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.

[16] The Minister found that the vast majority of AJS's reviewed content was based on academic research that was conducted by and for other organizations, repurposed for general public consumption in collaboration with AJS's journalists. While informative and valuable, the content was not based on facts and multiple perspectives researched by a journalist for AJS.

[17] The Minister also referred to section 2.33 of the Guidance, which provides:

The term original news content includes content for which research, writing, editing and formatting are conducted by and for the organization. Therefore, whether news content is original depends on the active involvement of a journalist in its creation. Original news content is produced through gathering facts and should show evidence of first-hand reporting, such as independent research, interviews, and fieldwork. For example, a news article or report about an event would be original if it is written or reported by a journalist and is based on first-hand knowledge that journalist gained by conducting independent research, attending or witnessing the event, or interviewing people who organized, attended, or witnessed the event.

[18] While the reviewed content focused on current events, the Minister found that it did not include evidence of first-hand reports of current events.

[19] Finally, the Minister noted that clause (A) of subparagraph 248(1)(a)(v) requires that an organization be “engaged” in the production of original news content, and section 2.25 of the Guidance states that 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. The Minister acknowledged that neither the legislation nor the Guidance sets an amount, but based on a plain meaning of “engaged” the CRA’s interpretation was that it generally means the consistent, intentional creation of original news content on more than an infrequent basis. The Minister found that AJS did not demonstrate consistent, intentional production of content that could be considered original news content, taking into account sections 2.27 and 2.33 of the Guidance.

[20] For these reasons, the Minister concluded that AJS’s production of original news content was insufficient to satisfy the requirement of subparagraph 248(1)(a)(v) of the *ITA*.

[21] AJS alleges the decision was unreasonable because the Minister misunderstood the relevant facts, misapplied the law, and placed undue reliance on the Advisory Board’s recommendation. AJS submits the Minister also breached procedural fairness, by failing to identify the exact grounds for the refusal and failing to provide any analysis of the articles AJS published during the three-week review period in September 2021 it had chosen.

[22] The parties agree, as do I, that the reasonableness standard of review applies when reviewing the merits of the Minister's decision. This is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12-15 [*Vavilov*]. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 85, 99.

[23] Issues of procedural fairness are reviewed on a standard akin to correctness. The central question is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

## II. Analysis

### A. *Was the Minister's decision unreasonable?*

[24] AJS alleges that the Minister denied its application for QCJO designation based on a misunderstanding of the relevant facts, and an unjustifiably restrictive interpretation of original news content.

[25] AJS contends the Minister erred by characterizing the content of AJS's publications as repurposed academic research conducted by and for other organizations, and by improperly describing AJS's activities as "provid[ing] an edited platform for curated expert and academic research on current topics". According to AJS, the Minister seemed to take the position that an

organization that employs academic research in its published content cannot be engaged in original news content. However, academics can be journalists, the *ITA* and Guidance do not prohibit content that is based on existing academic research, and the Minister has designated organizations that rely on academic research as QCJOs. In any event, AJS states that its editorial staff is comprised of traditional journalists who are actively involved in the production of AJS's content and maintain oversight over academic writers throughout the process.

[26] Furthermore, AJS states the Minister fundamentally misunderstood AJS's journalistic process and conflated the authors' previous academic research with the additional, independent research required to contribute to *The Conversation Canada*. AJS states that its editorial guidelines require authors to conduct their own research, separate and apart from their existing academic work. This may involve independent research (academic or otherwise) or more traditional approaches to creating news content (such as interviews or eyewitness accounts). Authors are also required to gather facts and actively pursue multiple perspectives. AJS submits these requirements are indicative of the production of original news content and first-hand reporting contemplated by sections 2.27 and 2.33 of the Guidance. AJS states it provided supplemental materials to explain its activities and describe the changing media landscape, which the CRA ignored based on a purported policy that it would only receive documents submitted through its online portal.

[27] Finally, AJS submits that there is an inconsistency or logical disconnect between the Minister's final decision, and the CRA's preliminary assessment that found that AJS met the criteria for being designated as a QCJO on the basis that 26 of the 94 articles published in the September 2021 review period could be considered original news content. AJS states the



Minister ultimately decided that AJS was not eligible for the designation based on a flawed Advisory Board report that found, without providing any analysis of the articles in the September 2021 review period, that none of the articles reviewed were original news content, and that there were “no examples of first-hand reporting, interviews, fieldwork, independent verification or firsthand coverage of current events”. AJS states that even a cursory review of content published in the September 2021 review period shows that the authors engaged in additional independent research. Furthermore, the Minister ignored section 2.33 of the Guidance that confirms independent research is indicative of first-hand reporting, and the Minister committed a serious error by relying on the Advisory Board’s inaccurate conclusion that AJS’s content is repurposed research that is not original news content as contemplated by the *ITA* and the Guidance.

[28] For the reasons below, I am not persuaded that the Minister’s decision was unreasonable. AJS’s submissions on judicial review largely repeat the arguments it made in support of the reconsideration of the March 2022 refusal. These included arguments that the CRA had erred by changing its initial assessment to accord with a non-binding and flawed assessment by the Advisory Board that misinterpreted the facts and incorrectly applied the QCJO criteria. I agree with the respondent that the alleged errors AJS raises amount to a disagreement with the Minister’s findings and a request to reweigh and reassess the evidence—something this Court should not do on judicial review: *Vavilov* at para 125.

[29] In the decision under review, AJS points to no error in the Minister’s summary of the applicable legislative framework and Guidance, or her summary of AJS’s position. AJS’s arguments that the Minister improperly described its activities, mischaracterized the content of its publications, or misunderstood its journalistic process are disagreements with how the

Minister applied the legal principles to the facts of the case. While AJS strongly believes that the Minister reached the wrong result, it has not identified a reviewable error with the Minister's application of the legal principles to the content of AJS's publications.

[30] I disagree with AJS that the Minister restricted the meaning of original news content to exclude academic research or academic journalists. The Minister acknowledged AJS's arguments that *The Conversation Canada* operates under a model of explanatory journalism and that the Guidance encompasses different forms of journalism, and agreed that organizations engaged in different forms of journalism could qualify as QCJOs—as long as they are also engaged in original news content. In AJS's case, however, the Minister found that the vast majority of reviewed content did not “meet the elements of original news content outlined in section 2.27 of the Guidance”.

[31] I am not persuaded of any error arising from the CRA's failure to accept a document that was not properly submitted. Despite multiple reminders, AJS did not submit the document through the CRA's online portal as requested. Furthermore, I fail to see how the document in question would have materially impacted the issue the Minister had to decide.

[32] The Minister's task was to determine whether AJS was ineligible for QCJO designation because it was not engaged in the production of original news content. The *ITA* does not define original news content, but the CRA articulates an interpretation of “original news content” at sections 2.23 to 2.38 of the Guidance. The Guidance “is intended to provide further information on each of the tax measures, as well as to clarify the requirements that need to be met for QCJO

designation”: Guidance, s 1.6. In my view, the Minister’s approach was in line with the Guidance.

[33] There is no inconsistency or logical disconnect between the CRA’s preliminary assessment of the articles published in the September 2021 review period and the Minister’s final decision. The CRA was required to submit AJS’s reconsideration request to the Advisory Board before making a final decision, and properly took the Advisory Board’s recommendation into account. Furthermore, the Minister recognized that some of the reviewed content may be original news content when she stated that the “vast majority” of the reviewed content did not meet the elements of original news content. The Minister acknowledged that neither the legislation nor the Guidance sets a threshold amount, and relied on the CRA’s interpretation that an organization is considered to be engaged in the production of original news content if it demonstrates a commitment to producing original news content on an ongoing basis. It was open to the Minister to conclude that AJS did not demonstrate consistent, intentional production of original news content.

[34] The Minister noted that original news content should be based on facts and multiple perspectives that have been researched by and for the organization, but found that the vast majority of AJS’s content was based on academic research conducted by and for other organizations. AJS states this was an error because its editorial guidelines require authors to conduct research that is separate and apart from their existing academic work. It states that even a cursory review of content published in the September 2021 review period shows that the academic authors engaged in additional, independent research, pointing to three articles as examples. It is not apparent that the authors of the articles conducted additional research, and

AJS's arguments rest on assertions that are not supported by evidence. AJS has not established a reviewable error in the Minister's determination that the "vast majority" of AJS's content was based on research done for other organizations.

[35] The party challenging a decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100. AJS has not met its onus. It has not established any error in the Minister's or the Advisory Board's interpretation of subsection 248(1) of the *ITA* and the Guidance on original news content, or their findings on whether AJS's publications met the requirements. In my view, the Minister's decision that AJS is not eligible for QCJO designation was transparent, intelligible, and justified.

B. *Was the process fair?*

[36] AJS alleges that it was not afforded procedural fairness.

[37] AJS states the Minister relied on the Advisory Board's report without referring to any of its findings. AJS argues it was deprived of a meaningful opportunity to respond to the Minister's concerns because it did not know precisely which grounds from the Advisory Board's report the Minister relied on to justify the refusal.

[38] In addition, AJS submits it was asked to choose a review period, yet the Minister's decision provided no analysis of the 94 articles published in the September 2021 review period it chose. AJS says this is particularly concerning since the Minister relied on an Advisory Board report that focussed on articles that were published after the September 2021 review period. Since the Minister's decision states that she based her decision on content published in the

September 2021 review period, AJS argues that the Minister's reasoning is opaque and incapable of scrutiny, and AJS was denied the opportunity to know the case it had to meet.

[39] I agree with the respondent that AJS's arguments do not give rise to procedural unfairness.

[40] Procedural fairness is concerned with the decision-making process: *Canadian Pacific* at paras 53-54; see also *Vavilov* at paras 12-13. A failure to refer to particular findings of the Advisory Board or provide an analysis of the 94 articles in the Minister's final decision did not give rise to any unfairness in the reconsideration process. In any event, the Minister's reasoning is not opaque. The Minister clearly set out the grounds for the refusal and adequately explained the basis for her decision.

[41] The Minister was not confined to a review of articles in the period AJS chose. The respondent correctly notes that the Advisory Board's review of publically available content published by AJS does not automatically trigger a duty to provide an opportunity to respond: *Alves v Canada (Citizenship and Immigration)*, 2022 FC 672 at para 29; *Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705 at para 33.

[42] The CRA communicated with AJS throughout the process. AJS was informed and aware of the legislative requirements and the Guidance. In addition, AJS had the initial Advisory Board report and decision, which explained the concerns that AJS was not engaged in the production of original news content and was not eligible for QCJO designation. The record in this case establishes that AJS knew the case to meet, and it had full and fair opportunity to meet it.

III. **Conclusion**

[43] AJS has not established that the Minister's decision was unreasonable or procedurally unfair. The Minister reasonably considered the legislative framework and AJS's submissions, and made a decision that was justified in relation to the facts and law. AJS knew the case to meet and had a full opportunity to be heard. As I see no basis to interfere with the decision, the application is dismissed.

[44] The parties agree that costs of \$2,807.62 should be awarded to the successful party. The amount is based on Column III under Tariff B of the *Federal Courts Rules*, SOR/98-106.

[45] I find that costs should be ordered in favour of the respondent. I am satisfied that \$2,807.62 represents a reasonable cost award in this case.

**JUDGMENT IN T-1462-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. Costs are awarded to the respondent, in the amount of \$2,807.62.

"Christine M. Pallotta"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1462-23

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