Federal Court Cour fédérale

Date: 20260217

Docket: T-616-25

Citation: 2026 FC 226

Ottawa, Ontario, February 17, 2026

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

CANADIAN TAXPAYERS FEDERATION and RYAN THORPE

Applicants

and

CANADIAN BROADCASTING CORPORATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] At the heart of the Canadian constitutional system lies the principle of democracy, a fundamental principle that binds all people and institutions under its governance. The *Access to Information Act, RSC 1985, c A-1* [*ATIA*], precisely section 2 of the *ATIA*, enshrines this principle by ensuring that federal institutions remain accountable and transparent in order to

promote an open and democratic society, and enable public debate on the conduct of those institutions (*Dagg v Canada (Minister of Finance*), 1997 CanLII 358 (CSC), [1997] 2 SCR 403 at para 61; *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at para 22 [*Merck*]; *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23 at para 1 [*Criminal Lawyers' Association*]; *Conseil scolaire francophone provincial de Terre-Neuve-et-Labrador c Canada (Patrimoine canadien)*, 2025 CF 1963 at para 99; subsection 2(1) of the *ATIA*).

[2] The Federal Court of Appeal noted that a broad interpretation of the right of access under subsection 4(1) of the *ATIA* was required since its object is "quasi-constitutional" (*Export Development Canada v Canada (Information Commissioner)*, 2025 FCA 50 at para 20 [*Export Development Canada*], citing *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25).

[3] However, this commitment to transparency is not absolute. Paragraph 18(b) of the *ATIA* establishes an exception under which the head of a government institution may refuse to release any record that contains information that could reasonably be expected to prejudice its competitive position or interfere with its contractual or other negotiations.

[4] This case seeks to address the tension between the commitment to transparency and the exceptions to such commitment, understanding that exemptions should be interpreted restrictively to minimize any limitation on the public's right of access to information (*Export*

Development Canada at para 20, citing *Rubin v Canada (Canada Mortgage and Housing Corp.)*, [1989] 1 FC 265 at 274).

[5] In this Application, the Canadian Taxpayers Federation [CTF], a not-for-profit corporation incorporated under the *Canada Not-for-Profit Corporations Act* (SC 2009, c. 23), and Ryan Thorpe, an investigative journalist [the Applicants], submitted an access to information request to obtain the Canadian Broadcasting Corporation's [CBC or the Respondent] aggregate annual advertising expenditures for the calendar years of 2020, 2021, 2022, and 2023 [Requested Records].

[6] Following the Applicants' request, CBC issued a decision refusing to disclose portions of the Requested Records on the basis that the redacted information was subject to an exemption under paragraph 18(b) of the *ATIA* [the Exemption], as the disclosure of the information would prejudice CBC's competitive position and interfere with its contractual negotiations.

[7] Seeking to obtain the Requested Records unredacted, the Applicants filed a complaint before the Office of the Information Commissioner of Canada [the OIC] arguing that the Respondent's exercise of the exemption under paragraph 18(b) of the *ATIA* was improperly applied. The OIC rejected the Applicants' complaint and concluded that CBC reasonably exercised its discretion to withhold the information under paragraph 18(b) of the *ATIA*.

[8] Pursuant to paragraph 41(1) of the *ATIA*, the Applicants filed this Application, submitting that CBC improperly applied the Exemption under paragraph 18(b). They also submit that

CBC's refusal to disclose the Requested Records constitutes a violation of their rights under section 2(b) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[9] For the reasons that follow, I find that CBC properly interpreted the scope of the exception to disclosure under paragraph 18(b) of the *ATIA* and properly exercised its discretionary power to submit a redacted version of the Requested Records. I also find that CBC's decision does not breach the Applicants' right under section 2(b) of the *Charter*. The Application is therefore dismissed.

II. Background Facts

[10] CTF is a not-for-profit corporation whose mission is to advocate for the efficient use of taxpayer dollars and to promote government accountability. Ryan Thorpe was an investigative journalist for CTF at the time of the events. In order to fulfill CTF's mandate, the Applicants notably engage in research and public awareness campaigns, and have previously scrutinized, commented and testified before the House of Commons regarding the Respondent's use of public funds.

[11] In June 2022, CBC published an annual report for the year 2021-2022, providing information regarding its activities and management of public resources as a government institution. Following its publication, the Applicants sought to obtain information regarding the Respondent's aggregate annual advertising expenditures.

[12] On January 26, 2024, the Applicants submitted an access to information request to the Respondent under the *ATIA*, seeking to obtain the disclosure of its aggregate annual advertising expenditures for the calendar years of 2020, 2021, 2022, and 2023.

[13] On March 15, 2024, CBC issued a decision [the Decision] withholding portions of the Requested Records under paragraph 18(b) of the *ATIA*. In response to the Decision, the Applicants filed a complaint with the OIC on March 18, 2024, pursuant to paragraph 30(1)(a) of the *ATIA*.

III. Office of the Information Commissioner of Canada Report

[14] CTF asserted in their complaint before the OIC that CBC improperly applied the Exemption, asserting that paragraph 18(b) of the *ATIA* should be applied with a higher threshold due to CBC's use of public funds (OIC Report at p 3, Application Record [AR] at p 12).

[15] CBC argued that due to the highly competitive nature of the television and online advertising market, the complete disclosure of its aggregate advertising expenditures could be used by competitors to develop predictive models, refine their strategies and gain an unfair advantage in the marketplace (OIC Report at p 2, AR at p 11). CBC further explained that the disclosure of its advertising costs could result in political interference and pressure to modify its spending, thereby affecting its competitive position in the market, negating its ability to make its own arms-length decisions in the best interests of CBC and its mandate (OIC Report at p 2, AR at p 11). The Respondent stated that the information could hinder future negotiations, which

includes negotiations and contracts related to advertising, advertising creation services, programming agreements, and promotional commitments (OIC Report at p 2, AR at p 11).

[16] Furthermore, CBC submitted that the disclosure of the Requested Records could reasonably be expected to cause prejudice as the industry recognizes that this type of information could interfere with negotiations or injure competitive positions. CBC argued that neither its competitors nor the Canadian Radio-television and Telecommunications Commission [CRTC], nor similar government-funded media corporations in other countries, have disclosed their aggregate annual advertising expenditures due to the competitive nature of the market (OIC Report at p 2, AR at p 11).

[17] On January 14, 2025, the OIC released a report concluding that CBC reasonably exercised its discretion under paragraph 18(b) of the *ATIA*. The report established that an institution's explanation can be sufficient when the institution provides details of how it made the decision and when the documents related to the decision-making process explain the rationale behind the institution's conclusion (OIC Report at p 3, AR at p 12). CBC submitted the factors that it considered when deciding not to release a complete and unredacted version of the Requested Records, including CBC's likelihood of harm, and its consideration of the public interest (OIC Report at p 3, AR at p 12).

[18] On February 24, 2025, the Applicants filed this application for judicial review under paragraph 41(1) of the *ATIA*, submitting that the Exemption was improperly applied by the OIC and that the Requested Records should be disclosed in full.

IV. Issues

[19] The parties have asked this Court to address the two following issues:

a) Did CBC properly apply paragraph 18(b) of the *ATIA* when it decided to withhold the Requested Records?

b) Did CBC's refusal to disclose the Requested Records constitute a violation of the Applicants' right to freedom of expression and of the press under section 2(b) of the *Charter*?

[20] Under sections 41(1) and 44.1 of the *ATIA*, an Application for a review of a matter following the reception of a report from to the OIC is heard and determined as a *de novo* proceeding (*Association des pêcheurs propriétaires des Îles-de-la-Madelaine c Canada (Pêche et Océans)*, 2026 CF 13 at para 28 citing *Matas v Canada (Global Affairs)*, 2024 FC 88 at para 11). The Court may hear new arguments and evidence, establish its own findings of facts and undertake a new and independent review of the case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83; *Export Development Canada v Canada (Information Commissioner)*, 2023 FC 1538 at para 27; *Preventous Collaborative Health v Canada (Health)*, 2020 CanLII 103848 (FC) at para 21; *Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 at para 14; *Merck* at paras 250-251; *Schoendorfer v Canada (Attorney General)*, 2021 FC 896 at para 43).

[21] This Application under section 41 of the *ATIA* requires the Court to determine whether the Requested Records, which partially remain undisclosed by CBC, are subject to the exemption of paragraph 18(b) of the *ATIA*. Pursuant to section 48(1) of the *ATIA*, CBC, who asserts that the Exemption applies, bears the burden of proving, on a balance of probabilities, that the redacted

portions of the Requested Records fall within paragraph 18(b) of the *ATIA* (*Merck* at paras 92-95; *Criminal Lawyers' Association* at para 23; *St Joseph Corp. v Canada (Public Works and Government Services)*, 2002 FCT 274 at paras 32, 34–35; *Martin v Canada (Health)*, 2016 FC 796 at para 34).

V. Analysis

A. *The Standard of proof*

[22] Paragraph 18(b) of the *ATIA* provides that a government institution may refuse the disclosure of information where the disclosure could prejudice its competitive position or interfere with contractual or other negotiations. Section 18 therefore contains a discretionary exemption that applies to protect the economic interests of Canada and requires the application of a harms-based test (*Export Development Canada* at para 14). Section 18 provides:

Economic interests of Canada	**Intérêts économiques du Canada**
18 The head of a government institution may refuse to disclose any record requested under this Part that contains	**18** Le responsable d'une institution fédérale peut refuser la communication de documents contenant :
(b) information the disclosure of which could reasonably be expected to prejudice the competitive position of a government institution or to interfere with contractual or other negotiations of a government institution;	**b)** des renseignements dont la communication risquerait vraisemblablement de nuire à la compétitivité d'une institution fédérale ou d'entraver des négociations — contractuelles ou autres — menées par une institution fédérale;

[23] Paragraph 18(b) of the *ATIA* constitutes an exception to the purpose of the *ATIA* set forth at paragraphs 2(1) and (2), which provide:

Purpose of Act	**Objet de la loi**
2 (1) The purpose of this Act is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions.	**2 (1)** La présente loi a pour objet d'accroître la responsabilité et la transparence des institutions de l'État afin de favoriser une société ouverte et démocratique et de permettre le débat public sur la conduite de ces institutions.
(2) In furtherance of that purpose,	**(2)** À cet égard :
(a) Part 1 extends the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government; and	**a)** la partie 1 élargit l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptibles de recours indépendants du pouvoir exécutif;
(b) Part 2 sets out requirements for the proactive publication of information.	**b)** la partie 2 fixe des exigences visant la publication proactive de renseignements.

[24] In *Merck*, the Supreme Court of Canada [SCC] clarified the purpose of the *Act*, holding that:

> [21] The purpose of the *Act* is to provide a right of access to information in records under the control of a government institution. The *Act* has three guiding principles: first, that government information should be available to the public; second, that necessary exceptions to the right of access should be limited and specific; and third, that decisions on the disclosure of government information should be reviewed independently of government (s. 2(1)).

> [22] In *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403, at para. 61, La Forest J. (dissenting, but not on this point) underlined that the overarching purpose of the Act is to facilitate democracy and that it does this in two related ways: by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and officials may be held meaningfully to account to the public. This purpose was reiterated by the Court very recently, in the context of Ontario's access to information legislation, in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815. The Court noted, at para. 1, that access to information legislation "can increase transparency in government, contribute to an informed public, and enhance an open and democratic society". Thus, access to information legislation is intended to facilitate one of the foundations of our society, democracy. The legislation must be given a broad and purposive interpretation, and due account must be taken of s. 4(1), that the *Act* is to apply notwithstanding the provision of any other Act of Parliament: *Canada Post Corp. v. Canada (Minister of Public Works)*, [1995] 2 F.C. 110, at p. 128; *Canada (Privacy Commissioner) v. Canada (Labour Relations Board)*, [1996] 3 F.C. 609, at para. 49, aff'd (2000), 25 Admin. L.R. (3d) 305 (F.C.A.).

[25] The *ATIA* was thus adopted with the purpose of enhancing the transparency and accountability of government institutions. Consequently, the use of exceptions such as paragraph 18(b) must be applied in a manner that should not undermine the *ATIA*'s presumption of access to information.

[26] While the jurisprudence on paragraph 18(b) remains limited, interpretative guidance may be drawn from analyzing jurisprudence on section 20 of the *ATIA*, as both provisions share common legislative structures (*Canada (Information Commissioner) v Toronto Port Authority*, 2016 FC 683 at paras 78-79, 83 [*Toronto Port Authority*]). Notably, section 20(1)(c) allows the head of a government institution to refuse disclosure of information that "could reasonably be expected to prejudice the competitive position of, a third party"; while paragraph 18(b) allows a

head of a government institution to also refuse disclosure of information that "could reasonably be expected to prejudice the competitive position of a government institution". The same legal test must apply in both circumstances.

[27] In order to apply the exemption pursuant to section 18 of the *ATIA*, the party invoking the exception has the burden of demonstrating, on the balance of probabilities, that there is a "reasonable expectation of probable harm" that would result from the disclosure of the information (*Merck* at para 196; *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54; *Toronto Port Authority* at para 83; *Canadian Pacific Hotels Corp. v Canada (Attorney General)*, 2004 FC 444 at paras 34-35 [*Canadian Pacific Hotels*]; *Brainhunter (Ottawa) Inc. v Canada (Attorney General)*, 2009 FC 1172 at para 32 [*Brainhunter*]). As the SCC held in *Merck :*

> [196] It may be questioned what the word "probable" adds to the test. At first reading, the "reasonable expectation of probable harm" test is perhaps somewhat opaque because it compounds levels of uncertainty. Something that is "probable" is more likely than not to occur. A "reasonable expectation" is something that is at least foreseen and perhaps likely to occur, but not necessarily probable. When the two expressions are used in combination – "a reasonable expectation of probable harm" -- the resulting standard is perhaps not immediately apparent. However, I conclude that this long-accepted formulation is intended to capture an important point: while the third party need not show on a balance of probabilities that the harm will in fact come to pass if the records are disclosed, the third party must nonetheless do more than show that such harm is simply possible. Understood in that way, I see no reason to reformulate the way the test has been expressed.
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> […]
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> [206] To conclude, the accepted formulation of "reasonable expectation of probable harm" captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but also that it need not be proved

> on the balance of probabilities that disclosure will in fact result in such harm.

[28] This being said, to meet its burden of establishing that the disclosure of the requested information could reasonably be expected to prejudice its competitive position or interfere with contractual or other negotiations, a government institution must show "a direct link between the disclosure and the alleged harm" (*Canadian Pacific Hotels Corp.* at para 34; *Brainhunter* at para 32).

[29] Evidence that is vague or speculative, or that requires a "leap of faith", will not be sufficient to justify the non-disclosure of information under section 18 of the *ATIA*. Speculative harm of interference, or general concerns with competitive positions or contractual negotiations, is insufficient on its own to establish a "reasonable expectation of probable harm" (*Toronto Port Authority* at para 78, citing *Canada Post Corp v Canada (Minister of Public Works and Government Services)*, 2004 FC 270, 247 FTR 110 at paras 45-46 [*Canada Post Corp*]; *American Iron & Metal Company Inc. v Saint John Port Authority*, 2023 FC 1267 at paras 55-58, 75 [*American Iron & Metal*]; *Attaran v Canada (Foreign Affairs)*, 2011 FCA 182 at para 32). For example, in *Canadian Pacific Hotels*, the Court held that a party intending to protect information must demonstrate, on a balance of probabilities, that there is a reasonable expectation of probable harm to their competitive position that would result from disclosure. The evidence must be detailed, convincing and demonstrate a direct link between the disclosure and the alleged harm. The fact that the evidence simply demonstrates "a more competitive environment does not give rise to a reasonable expectation of a material financial loss or a

prejudice to the [party's] competitive position. […] The connection is too tenuous and not sufficiently proven in this case" (*Canadian Pacific Hotels* at paras 34-35).

[30] Nevertheless, as held by the SCC in *Merck* at paragraph 196, the government institution does not need to show on a balance of probabilities that the harm will in fact occur if the records are disclosed, but must do more than show that such harm is simply possible. In that sense, a degree of uncertainty or speculation is inherent in assessing the reasonable probability of the harm (*A Inc. v Canadian Museum for Human Rights*, 2022 FC 1115 at para 89, citing *AstraZeneca Canada Inc v Health Canada*, 2005 FC 1451 at para 90 [*AstraZeneca*]). The government institution therefore does not have to show a probability of harm, but a "confident belief" that the harm is likely to occur (*Merck* at para 197).

B. *The Applicants' Arguments*

[31] The Applicants and Respondent generally agree on the legal principles applicable in this Application.

[32] The main issue relates to whether CBC has met its burden, with Ms. Kane's affidavit [Kane Affidavit] as evidence, to demonstrate a reasonable expectation of probable harm to CBC if the Requested Records are disclosed.

[33] The Applicants argue that in light of the applicable principles, the Respondent's partial disclosure of the Requested Records is contrary to paragraph 18(b) of the *ATIA* because CBC did not establish, on the balance of probabilities, that the Exemption applies. They submit that the

Decision constitutes an improper application of the Exemption, as the disclosure of the Requested Records would only provide a general overview of the Respondent's budget allocation and not specific strategies, proprietary data, or confidential negotiations. Furthermore, they submit that the alleged harm is speculative because CBC's aggregate financial data lacks the specificity needed to cause prejudice to its competitive position or interfere with its contractual negotiations.

[34] The Applicants rely on *Brainhunter* at paragraph 32 to argue that the party claiming the Exemption must establish a reasonable expectation of probable harm by demonstrating a direct link between the disclosure and the alleged harm, and that an affidavit simply attesting that probable harm will occur if the Requested Records are disclosed is not sufficient. The Applicants also refer to *Canada Post Corp* at paragraphs 45–46, submitting that the evidentiary evidence has to be specific, grounded in fact and that any speculative statement, even if detailed, is not sufficient to meet the burden.

[35] The Applicants cite *American Iron & Metal* where this Court held that the party invoking a harm-based exemption under paragraphs 20(1)(b), (c) and (d) must provide evidence of a "clear and direct linkage between the disclosure and the alleged harm", in order to meet its burden (*American Iron & Metal* at paras 56-58). The Applicants argue that the same test applies to paragraph 18(b) and that since CBC's evidence does not demonstrate a "clear and direct linkage between the disclosure and the alleged harm", the mere possibility and vague assertion of increased competition as a result of the disclosure does not meet the required evidentiary

standard of demonstrating a reasonable expectation of probable harm (*American Iron & Metal* at paras 71-75).

[36] The Applicants refer to Ms. Kane's affidavit, an Executive Director of Marketing and Communications for CBC who has 25 years of experience in marketing and strategic communications, in which she declares that disclosing the Requested Records would be a valuable piece of competitive information as it would lead to competitors adjusting their budgets in an attempt to outspend CBC (Kane Affidavit at para 12, Respondent's Record [RR] at p 5). Ms. Kane also attests that disclosure might jeopardize CBC's ability to secure marquee programming or sponsorships because competitors could acquire a competitive advantage while bidding or it could incentivize rights-holders to increase their asking prices during biddings (Kane Affidavit at paras 16-18, RR at p 6). The Applicants argue that CBC did not provide any evidentiary basis on which to support their argument.

[37] The Applicants submit that during Ms. Kane's cross-examination, she admitted to not knowing "how [competitors] would go about spending" on advertising if the aggregate advertising expenditure was disclosed (Kane cross-examination at pp 28, 30, AR at pp 443, 445). Furthermore, while recognizing the competitive nature of the market, the Applicants argue that Ms. Kane accepted that any effect of disclosure on spending behaviour would be speculative, acknowledging that competitors may not be able to outspend CBC "easily" (Applicants' Memorandum of Fact and Law at para 43, AR at p 474; Kane cross-examination at p 30, AR at p 445).

[38] The Applicants also claim that CBC did not submit any evidence confirming that rights-holders or sponsors consider aggregate advertising expenditures as part of their decision-making criteria. They claim that CBC's alleged harm under paragraph 18(b) rests on the possibility that disclosing the Requested Record "might" negatively affect them in the future, a possibility which CBC did not attempt to quantify or substantiate.

[39] The Applicants also claim that Ms. Kane provides no evidence that, if the Requested Records were disclosed, competitors will be able to track when and where CBC advertises, potentially allowing them to respond strategically. During her cross-examination, she was unable to confirm whether CBC's competitors would be able to use the information to track its competitors (Applicants' Memorandum of Fact and Law at paras 46-48, AR at p 475; Kane cross-examination at pp 21-22, AR at pp 437-439).

[40] The Applicants also submit that Ms. Kane is too far removed from the ad-buying process to give probative evidence and that her affidavit lacks probative value as she does not have operational insight into how CBC's advertising is purchased or analyzed. During her cross-examination, she confirmed that many aspects related to ad-buying, placement, pricing, and platform strategy are handled entirely by the Respondent's external agency, because the Respondent does not have the media-buying capacity in-house (Applicants' Memorandum of Fact and Law at paras 38-41, AR at p 473; Kane cross-examination at pp 9-11, AR at pp 424-426). Since her affidavit is not grounded in direct and firsthand knowledge, the Applicants submit that the alleged harm is speculative on this basis alone.

[41] In the end, the Applicants claim that CBC's alleged competitive harm requires a "leap of faith" as it is solely based on the assumptions that i) competitors use monitoring tools, ii) these tools can provide meaningful data when paired with annual totals, iii) competitors would respond strategically; and iv) this would harm the Respondent's competitive position.

C. *The Respondent's Arguments*

[42] CBC argues that Ms. Kane's affidavit, which is based on her many years of experience in marketing, explains in detail how revealing the Requested Records can reasonably result in harming its competitive position in the marketplace or interfere with its contractual negotiations.

[43] CBC submits that the evidence of Ms. Kane establishes that even if CBC receives a significant parliamentary appropriation, one-third of its revenue is derived from advertising sales (Kane Affidavit at para 5, RR at p 4; Kane cross-examination at p 46, AR at p 461). CBC programming is important because the rate it can charge for advertising on its platform is determined by the number of viewers and the amount of time those viewers engage with a particular platform (Kane Affidavit at para 6, RR at p 4). Media outlets therefore continuously seek to attract larger audiences and/or to increase the duration of viewers' engagement by participating in marketing campaigns in order to promote their platforms. Given that a viewer's attention can only be focused on one media platform at a time, CBC operates in a highly competitive media market (Kane Affidavit at paras 8-9, RR at p 4).

[44] Consequently, if the Requested Record were disclosed, competitors will know CBC's expenditure for a particular period and the percentage of its overall advertising funding for a

certain event or campaign, resulting in them likely being capable of adjusting their own budget in an effort to outspend CBC and succeed in future bids for programming. Moreover, competitors can use what are referred to as “monitors” to determine how much CBC spent on the advertisement of a particular campaign or event by assessing how much that campaign cost as a function of the number of ads purchased over the amount spent on advertising overall (Kane Affidavit at paras 12-13, RR at p 5). As a result, competitors will likely know CBC’s marketing priorities which may lead them to adjust their own budgets and marketing strategies to the detriment of CBC in order to attract a larger audience (Kane Affidavit at paras 12, 17, RR at pp 5-6; Kane cross-examination at pp 28-30, AR at pp 443-445). Additionally, no other broadcaster has disclosed the type of information requested by the Applicants (Kane Affidavit at para 14, RR at p 5; CBC Memorandum of Fact and Law at paras 19-21, RR at pp 38-39). Finally, as bids often include a promotional commitment and the spending of a certain amount on advertising of the event to increase the event itself and the value to its sponsors, the right-holders may learn how much CBC spends on advertising overall and attempt to obtain an increased amount of any future bids, impacting CBC’s future contractual negotiations (Kane Affidavit at paras 15-16, RR at pp 5-6).

[45] CBC argues that the evidence presented by Ms. Kane is not purely speculative but rather sets out clearly the means with which competitors could use the Requested Records along with tools that exist in the marketplace to identify CBC’s marketing priorities and approximate its associated expenditures. They could then use that information to adjust their own budgets and priorities to the detriment of CBC (CBC’s Memorandum of Fact and Law at para 22, RR at pp 39-40).

[46] CBC also argues that requiring evidence of how precisely a competitor is likely to act in the future goes well beyond the requirement to establish a confident belief that CBC's competitors will likely act in some manner that serves to prejudice its competitive position (CBC's Memorandum of Fact and Law at para 23, RR at p 40).

[47] For example, Ms. Kane stated that when important programs such as the Junos Awards are upcoming, broadcasting corporations and other media outlets will bid for those programs with other media competitors (Kane Affidavit at para 15, RR at p 5). The highest bidder will have a multi-year negotiated license with a specialized program that they will broadcast on their platforms (Kane cross-examination at p 29, AR at p 444). If the Requested Records are disclosed, when CBC does not have access to the same information on its competitors, this will create an "unlevel playing field" where competitors could outbid the Respondent, thus not allowing CBC to air the content of that event to Canadians, thus affecting its competitive position (Kane cross-examination at pp 28-30, AR at pp 443-445).

[48] Ms. Kane also mentioned in her affidavit that the disclosure of the Requested Records is also likely to result in rights-holders requesting an increase of the promotional component of future bids for important events. Those bids often include a component under which CBC is obligated to invest a certain amount of advertising funds to promote the broadcast of the event (in order to increase viewership to bring increased value to the event sponsors). If any of these rights-holders is able to learn how much CBC spends on its advertising overall, it is likely that they will attempt to squeeze more out of CBC by demanding that CBC increases the promotional component of any future bids, resulting in the disclosure having an impact on CBC's contractual

negotiations. It will also allow competitors to adjust their offer on their own competitive bids for the same events during the next round of competitive bids (CBC Memorandum of Fact and Law at para 24, RR at pp 40-41; Kane Affidavit at para 16, RR at p 6; Kane cross-examination at pp 28-30, 42-44, AR at pp 443-445, 457-459).

[49] CBC argues that the risk of harm identified by Ms. Kane is rooted in her knowledge of the market. In a competitive market such as the television and online advertising market, information regarding how much a media company spends in advertisement is a valuable piece of competitive information that would be used by competitors to adjust their rates and budgets in order to outspend CBC in future bids or important events (Kane cross-examination at pp 29-30, AR at pp 447-448).

[50] CBC further submits that the Applicants' position that Ms. Kane's evidence should be discounted because she does not have firsthand and detailed knowledge of how competitors will use the records is misplaced because asking CBC to provide evidence on how its competitors will likely affect CBC's competitive position in the market establishes a burden that goes beyond the applicable burden of proof (CBC Memorandum of Fact and Law at para 23, RR at p 40). CBC also argues that compared to the Applicants who have no knowledge of the industry or of the marketing strategies used in the market, the evidence submitted by CBC supports the logical inference that in a competitive market such as the television and online advertising market, the complete disclosure of the Requested Records is likely to harm its competitive position, and ultimately its revenues (CBC Memorandum of Fact and Law at para 23.1, RR at p 40).

[51] CBC further submits that the evidence establishes a clear and direct linkage between the disclosure of sensitive marketing information that has not been disclosed by competitors themselves due to the competitiveness of the market, and the alleged harm it is likely to cause. Indeed, Ms. Kane's evidence meets the burden to establish a "confident belief" that competitors will use that commercially sensitive information to adjust their own marketing strategies and budgets in order to attract audiences away from CBC, leading to a reasonable expectation of prejudice to its competitive position. Conversely, the Applicants did not provide evidence on the matter and simply claims that CBC has not met its burden (CBC Memorandum of Fact and Law at paras 28-29, RR at pp 42-43).

[52] CBC concludes by mentioning that the OIC has assessed and weighed the same arguments presented before this Court and has concluded that CBC had properly applied paragraph 18(b) of the *ATIA* (OIC's final report at p 2, AR at p 11):

> The CBC explained the amount of money spent on advertising and promotion in a given market is highly competitive, as it reflects the specific expenditures by CBC/Radio-Canada to promote its services and programming. The information could be used by competitors to develop predictive models, refine their strategies and gain an unfair advantage in the marketplace. […]
>
> The CBC further explained that disclosing the information could disrupt various future negotiations, including those related to advertising, advertising creation services, programming agreements, and promotional commitments.
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> The CBC was also able to provide representations demonstrating that the harm could reasonably be expected to occur as the industry itself acknowledges that this information could interfere with negotiations or injure competitive position. Notably, neither the CBC's competitors nor the CRTC disclose this type of information due to the intense competition in advertising and marketing, nor do similar government funded media corporations in other countries.

> The OIC concludes that the information meets the requirements of paragraph 18(b).5.

[53] Thus, CBC submits that even if no deference is owed to the OIC's decision, nothing in the evidence submitted by the Applicants allows this Court to come to a different conclusion.

D. *CBC properly applied the Exemption pursuant to section 18(b) of the ATIA*

[54] I find that CBC has discharged its burden to establish a reasonable expectation of probable harm to its competitive position and its contractual negotiations, under section 18(b) of the *ATIA*, if the Requested Records are disclosed. The affidavit and cross-examination of Ms. Kane clearly establish "a direct link between the disclosure and the alleged harm" (*Canadian Pacific Hotels* at para 34; *Brainhunter* at para 32).

[55] I accept Ms. Kane's evidence that the disclosure of the Requested Records could likely harm CBC's competitive position in a highly competitive market, as well as CBC's contractual negotiations with rights-holders. First, CBC's competitors could use the information to improve their marketing strategy as well as bids for future events. Second, rights-holders could also use that information to seek increased promotional content in CBC's future negotiations on contracts and licences for future events. Those uses of the Requested Records would be to the detriment of CBC and harm its competitive position and contractual negotiations. The evidence of Ms. Kane in relation to two different potential uses of the Requested Records demonstrates a reasonable expectation of probable harm that is directly linked with the disclosure of the Requested Records.

[56] The Applicants claimed that Ms. Kane's affidavit and responses on cross-examination, in which she addresses the harm that could result if the Requested Records were disclosed, require a "leap of faith" because she lacked operational insight on how CBC's advertising is purchased or analyzed, and because she does not oversee the use of monitoring tools on advertising expenses. To support their argument, they cite *American Iron & Metal* and submit that CBC's arguments can be reduced to vague assertions of competitive pressure or general business disadvantage, instead of demonstrating a direct and probable link to probable harm. As such, they claim that CBC failed to meet its burden under paragraph 18(b) of the *ATIA* (Applicants' Memorandum of Fact and Law at para 45, AR at p 474; *American Iron & Metal* at paras 56-57, 71).

[57] I disagree. *American Iron & Metal* mainly stands for the principle that affidavit evidence simply attesting that harm will result, or that is couched in generalities, bald assertions and speculation, is insufficient to discharge a burden to demonstrate a "reasonable expectation of probable harm" (*American Iron & Metal* at paras 44, 57-58, citing *Toronto Port Authority* at para 78; *Brainhunter* at para 32; *AstraZeneca* at para 90).

[58] In that case, CBC sought disclosure of a property lease agreement between Port Saint John and *American Iron & Metal*. Port Saint John refused to disclose part of the lease agreement and other related documents, and redacted the rent and wharfage amounts payable under the agreements, pursuant to paragraphs 20(1)(b), (c) and/or (d). Not satisfied with that decision, *American Iron & Metal* sought the intervention of this Court to preclude the disclosure of additional information. *American Iron & Metal* asserted that the non-disclosure of additional

parts of the agreements was necessary in order to protect its confidential commercial information, and that disclosure could result in material losses, prejudice its competitive position, and interfere with its contractual and other negotiations, pursuant to paragraphs 20(1)(b), (c) and (d) of the *ATIA* (*American Iron & Metal* at paras 13, 15-16). The Court found that *American Iron & Metal* provided no compelling and specific evidence demonstrating how disclosure of the unredacted information found in the lease agreement would prejudice its competitive position or its contractual negotiations, beyond a mere statement in an affidavit stating that the information could be used by competitors, thus failing to establish "a direct link between the disclosure and the alleged harm" (*American Iron & Metal* at paras 44, 58-59, 66, 74-77).

[59] In contrast, in this case, CBC has presented evidence that convincingly demonstrates the direct linkage between the disclosure of the Requested Records and the alleged harms. The evidence from Ms. Kane, who has 25 years of experience in marketing and strategic communications in the media industry, depicts clearly how the television and advertisement market operates and how competitors would likely use and improve their marketing strategies, or adjust their budget, to the detriment of CBC if the Requested Records were to be disclosed, something that was not established by the Applicant in *American Iron & Metal* (at paras 59, 66).

[60] For instance, Ms. Kane attested in her affidavit that considering the competitive market, competitors could order "monitors" to determine when and where a competitor has advertised and "if a competitor knows CBC spends $X in an average year, with Y% of its overall monitored advertising being placed around the Junos for example, a competitor may be able to assess how much that campaign costs as a function of the number of ads purchased over the amount spent on

advertising overall". Competitors may in response use this information to increase their personal budgets to outspend CBC and decide how much to offer for the promotional aspect of their own bids for events such as the Olympic Games, which could harm CBC for the following round of competitive bidding (Kane Affidavit at paras 12-15 and 17, RR at p 5; Kane cross-examination at pp 33-37, 40-44, AR pp 448-452, 455-459).

[61] I accept CBC's evidence establishing that these "monitors" exist in the market, and that other research firms and media buying companies may have access to them to acquire information. Due to the competitiveness of this particular market, other competitors could use these "monitors" to obtain directional spending information on CBC, which could reasonably put the Respondent in a situation where the Requested Records could be used by competitors to refine their strategies, thus harming CBC's competitive position in the market.

[62] Furthermore, the evidence before the Court demonstrates that the type of information requested by the Applicants is not disclosed by other broadcasting or media companies (Kane Affidavit at para 14, RR at p 5) and that if these records were to be disclosed, it would result in an "unlevel playing field" were competitors could outbid CBC, therefore not allowing the Respondent to broadcast certain content to Canadians (Kane cross-examination at p 29, AR at p 447). This asymmetry is not speculative but represent a reasonable expectation of probable harm deriving from unilateral disclosure, particularly in a competitive industry such as the television and advertisement market.

[63] These findings have not been disputed by the Applicants. While the burden to establish a reasonable expectation of probable harm rests with CBC, the Applicants still have not provided any convincing or even contradicting evidence on the existence of these “monitors” or of their use by media buying companies. The Applicants have only claimed that Ms. Kane’s evidence should be dismissed because of her lack of direct operational knowledge as to how advertising is purchased or analyzed, or how “monitors” are used by CBC or its competitors. As a result, they argue that her evidence is lacking the evidentiary foundation needed to justify non-disclosure of the Requested Records (Applicants’ Memorandum of Fact and Law at paras 36-47, AR at pp 472-473).

[64] I reject that argument. Ms. Kane has 25 years of experience in marketing and strategic communications in the media industry. While the Applicants’ critic that Ms. Kane does not have operational knowledge as to how advertising is purchased or analyzed, or how “monitors” are used by CBC or its competitors, her evidence that such “monitors” exist and that in a highly competitive industry, competitors strive and use all tools to gain an advantage, is ample factual foundation on which to find that disclosure of the Requested Records in this Application is reasonably expected to prejudice the competitive position of CBC. Competitors and rights-holders, knowing the advertising budget of CBC, would likely try to use that information to their advantage either by adjusting their own marketing or rights-bidding strategies, or for the rights-holders, by insisting on a larger share of CBC’s marketing budget during licensing negotiations.

[65] As a senior employee responsible for marketing strategies, Ms. Kane is well placed to analyze how media companies spend in advertising and how knowledge of a competitor’s

advertising budget may influence marketing strategies. Nothing in her cross-examination demonstrated that she was not sufficiently qualified to make these assessments. The fact that Ms. Kane does not have direct operative knowledge as to how advertising is purchased or analyzed, or on whether "monitors" are used by CBC's competitors, does not impact nor detract from her evidence that "monitors" do exist and that knowledge of CBC's advertising budget would likely allow CBC's competitors to take advantage of the existing tools and accordingly adjust their strategies to the disadvantage of CBC.

[66] As the SCC held in *Merck*, the Respondent is only required to establish, on the balance of probabilities, that there is a reasonable expectation "that disclosure will result in a risk of harm that is well beyond the merely possible or speculative". CBC is not required to prove "on the balance of probabilities that disclosure will in fact result in such harm" (*Merck* at para 206). This evidentiary burden recognizes that absolute certainty of harm is neither achievable nor required when a court is required to assess future harm.

[67] Indeed, a degree of uncertainty or speculation is inherent in assessing the reasonable probability of the harm (*A Inc. v Canadian Museum for Human Rights*, 2022 FC 1115 at para 89). The government institution therefore does not have to show a probability of harm, but a "reasonable expectation of probable harm" which implies a "confident belief" that the harm is likely to occur (*Merck* at para 197).

[68] Ms. Kane's evidence is sufficiently credible to establish that armed with knowledge of CBC's advertising budget, competitors are able, if they choose, to use the information for their

benefit and to the detriment of CBC. Ms. Kane's evidence is also sufficiently credible to establish that in an industry as competitive as the media industry, competitors are likely to use "monitors" if they know they can provide useful information. While Ms. Kane may not know firsthand if CBC's competitors use "monitors", she is aware that they exist and in possession of CBC's advertising budget, may then see a use for them and purchase access. In other words, even if CBC's competitors do not yet use "monitors", it may be because it does not provide sufficient benefits. But with knowledge of CBC's advertising budget, access to information from "monitors" thereby becomes useful—leading CBC's competitors to use them. Far from speculative, in a highly competitive field such as media, it is reasonably probable that competitors would use whatever tool and information for their own benefit and to attract as much audience as possible away from CBC and to their own platforms.

[69] Likewise, Ms. Kane is sufficiently qualified to explain the structure of agreements with rights-holders and demonstrate that knowledge of CBC's advertising budget may lead rights-holders to maximize their value and request an additional "advertising spending" as part of their licensing agreement. Indeed, Ms. Kane's evidence provides details as to how the disclosure of the Requested Records could affect CBC's contractual negotiations with rights-holders. Once CBC successfully obtains a bid for the broadcasting rights of an important event such as the Olympics or the Junos Awards, or acquires a sublicence to broadcast NHL games, the agreement will often stipulate that CBC will invest a specified amount for the promotion of the event, to increase the value of the overall bid to the rights-holders (Kane Affidavit at para 15, RR at p 5). Therefore, if the Requested Records are disclosed, rights-holders are likely to demand CBC to increase the value of their investment for the promotion of the event (Kane Affidavit at para 16,

RR at p 6). The information may also allow competitors to outbid CBC for that same feature content. The Applicants' criticism of Ms. Kane's experience does not relate to these issues.

[70] As a result, the Applicants' criticism of Ms. Kane's evidence is mainly related to her potential lack of direct knowledge related to actual ad-buying, placement and pricing, or the use of "monitors" to track that spending. However, that criticism does not relate to the affiant's more specific knowledge of marketing, how bids are conducted to obtain content, and how licensing agreement with rights-holders are concluded including for a specific amount of "advertising spending". That knowledge is tailored to the issue in this Application as to whether there could be a "reasonable expectation of probable harm" to CBC's competitive position or contractual negotiations if the Requested Records are disclosed.

[71] CBC's evidence and aforementioned arguments illustrate how competitors—including foreign competitors from the private sector who have access to a bigger budget than the Respondent—could use CBC's Requested Records to modify their strategy, adjust their budget and target the same bidding opportunities to outcompete the Respondent for certain large-scale programs (Kane cross-examination at pp 29-31, AR at pp 444-446). The same consideration applies to rights-holders who could also use the same information to extract more revenue from CBC. This evidence clearly demonstrates that the complete disclosure of the Requested Records could reasonably be expected to harm CBC's competitive position in the market or interfere with its contractual negotiations.

[72] Consequently, I accept that the Requested Records are subject to the exemption of paragraph 18(b) of the *ATIA* and accept the Respondent's evidence that if those Requested Records were to be disclosed, it could reasonably be expected to prejudice CBC's competitive position or interfere with its future contractual or other negotiations with rights-holders.

E. *The partial discloser of the Requested Records does not violate section 2(b) of the Charter*

[73] The Applicants also argue that CBC's refusal to disclose the Requested Records constitutes a violation of their rights to freedom of expression and of the press under section 2(b) of the *Charter*.

[74] In *Criminal Lawyers Association*, the SCC recognized the right to access government-held information as a derivative right to freedom of expression under section 2(b) of the *Charter* where such access is "necessary to permit meaningful expression on the functioning of government" (*Criminal Lawyers Association* at para 30), and that the scope of section 2(b) of the *Charter* includes a right to access information only where that access is "necessary to permit meaningful discussion on a matter of public importance" (*Criminal Lawyers Association* at paras 5, 31).

[75] However, notwithstanding the guarantees enshrined in section 2(b) of the *Charter*, the SCC held that access to government-held information is constitutionally protected only where it is proven to be an essential precondition for meaningful expression or commentary, does not encroach on protected privileges, and is compatible with the function of the institution concerned

(*Criminal Lawyers Association* at paras 5, 31, 33). Thus, section 2(b) does not guarantee access to all government-held information.

[76] The SCC formulated a two-stage inquiry to assess whether legislative restrictions on access to certain government-held information breach the right to freedom of expression and of the press guaranteed by the *Charter*.

[77] Under the first step, the claimant requesting access must prove that access to the requested information is necessary for the meaningful exercise of freedom of expression or commentary on matters of public or political interest and that without access, meaningful public discussion on these matters would be substantially impeded (*Criminal Lawyers Association* at paras 32-34, 36-37). Once the first burden is met, a *prima facie* case for disclosure is established (*Criminal Lawyers Association* at paras 37-38).

[78] Under the second step, the claimant must prove that the protection is not removed by countervailing considerations that are inconsistent with disclosure, such as access that interferes with the proper functioning of the government institution (*Criminal Lawyers Association* at paras 33, 38-40).

[79] With regards to the first step, the Applicants contend that they publicly scrutinize CBC's uses of public funds in the course of their advocacy work—notably through the publication of articles in national media outlets and while testifying before parliamentary committees of the House of Common. Hence, they submit that the partial disclosure of the Requested Records

substantially impedes them from engaging in meaningful public discussion pertaining to CBC's use of public funds.

[80] Referring to *Stevens v Canada (Prime Minister) (C.A.)*, 1998 CanLII 9075 (FCA) at paragraph 48, wherein the Federal Court of Appeal held that government expenditures are a matter of public interest, the Applicants argue that having access to CBC's aggregate advertising expenditure is both central to their advocacy work and a matter of public interest given that CBC receives over a billion dollars per year in funding from taxpayers. Since advertising expenditures concerning specific contracts or vendors are likely to be properly exempt from disclosure under the *ATIA*, they assert that the disclosure of the Requested Records will conversely allow for "meaningful scrutiny" of CBC's use of public funds on advertising, without revealing information that might interfere with CBC's current or future negotiations (Applicants' Memorandum of Fact and Law at paras 56-61, AR at p 477-478).

[81] On the second step of the test, the Applicants allege that no countervailing factors justify the non-disclosure of the Requested Records. There are no common law privileges nor functional constraints that justify withholding the records. Although disclosure could increase the competitiveness of the market, this consequence does not negate CBC's ability to fulfill its mission.

[82] In response, CBC submits that the Applicants' arguments are devoid of merit because they failed to submit convincing evidence to support their claim. CBC also advances that if there was a constitutional right to have access to all government institutions' expenses of public funds

as suggested by the Applicants, the numerous exemptions contained in the *ATIA* would have no practical value.

[83] Moreover, the test set forth in *Criminal Lawyers Association* requires the Applicants to provide evidence that the Requested Records are related to a specific matter of public interest and not the generic concept of "overseeing government spending". CBC argues that the Applicants did not provide such evidence. CBC further submits that Mr. Thorpe, who confirmed not having experience in the marketing and advertisement industry, admitted that he has no reason to believe that there is an actual and ongoing issue related to the appropriateness of CBC's marketing expenditures (CBC Memorandum of Fact and Law at para 33, RR at p 44). Therefore, the Applicants' claim under section 2(b) of the *Charter* must be dismissed.

(1) Non-disclosure will not impede meaningful public discussion

[84] In *Criminal Lawyers Association*, the SCC held that statutory exemptions, such as section 18 of the *ATIA*, were enacted with the purpose of "protect[ing] the public interest in getting full and frank disclosure in the course of investigating and reporting on matters involving the administration of justice", but that other interests, whether public or private, may outweigh this public interest (*Criminal Lawyers Association* at para 50).

[85] The Applicants attest that public funding to CBC is of public interest. The Applicants' evidence is that access to the Requested Records is important for public discourse as the Applicant CTF has, as one of its missions, to advocate for the defunding of CBC (Thorpe cross-examination at p 6-7, RR at p 12-13). The evidence also established that the Applicants have

made numerous commentaries and journalistic articles on the issue, having had access to CBC's annual reports which discloses CBC's annual public funding.

[86] On that basis, the Applicants have the burden of demonstrating that access to CBC's advertising expenditure specifically— through the Requested Records— is necessary to foster "meaningful discussion" regarding CBC's advertising expenditure or general funding, that the issue is of public or political importance and that without access, meaningful public discussion on CBC's use of advertising and public funds will be substantially impeded (*Criminal Lawyers Association* at paras 5, 31-33, 36-37).

[87] I find that the Applicants have failed to establish that meaningful public discourse on CBC's advertising expenditure is of sufficient public or political importance and that without access to the Requested Records, meaningful public discussion on CBC's use of public funds cannot occur. The Applicants have failed to establish with sufficient evidence that the disclosure of the Requested Records is necessary to allow meaningful public discussion on CBC's funding (*Criminal Lawyers Association* at para 59).

[88] The only evidence adduced in support of the Applicants' position consists of an affidavit by Mr. Thorpe reiterating that government expenditures are matters of public interest and as a result, CBC's aggregate advertising expenditure should be accessible to the public (Thorpe Affidavit at para 14, AR at p 16). That evidence is not sufficient to establish a breach of section 2(b) of the *Charter* in this case.

[89] Mr. Thorpe does not provide any explanation as to the possible public discourse that could emerge from disclosing CBC's advertising expenditure. Indeed, Mr. Thorpe stated in cross-examination that he has never seen an argument on CBC's marketing budget and reliance thereon to argue that CBC should be defunded, which is a mission of the CTF. He also stated that he does not think anyone knows about the marketing budget (Thorpe cross-examination at pp 20-21, RR at pp 26-27).

[90] The evidence provided by the Applicants therefore does not establish a *prima facie* case for disclosure because they failed to provide evidence demonstrating that CBC's aggregate advertising expenditure—as opposed to its general public funding disclosed in CBC's annual reports—will meaningfully contribute to existing or new discourse on CBC's use of public funds. In addition, the Applicants have failed to establish that the disclosure of the Requested Records is necessary to allow meaningful public discussion on CBC's funding. Finally, the Applicants do not make a distinction between existing discourse and future discourses that could result specifically from the disclosure of the Requested Records, and they omitted to provide sufficient evidence to establish that the disclosure of the Requested Records is necessary for the latter.

[91] As a result, I find that the Applicants did not provide sufficient evidence or explanation as to why or how having access to the Requested Records and CBC's aggregate advertising expenditure for the years of 2020, 2021, 2022 and 2023, is necessary for the meaningful exercise of freedom of expression and of the press on matters of public importance — indeed there is no evidence that the issue of CBC's aggregate advertising expenditure is of public importance at all.

[92] It is important to distinguish the information from the Requested Records, and the annual public funding received by CBC. There is definitely a matter of public importance on the latter, which is in the public domain and subject to numerous public commentary and criticism. There is no evidence that the former, which represents a subset of the latter, is important or adds anything to the public discourse, commentary, or criticism. For instance, CBC's 2021-2022 annual report adduced as evidence by the Applicants states that CBC received 1,139.7 million dollars in government funding. In the report, CBC asserts that "[a]s Canada's national public broadcaster, [they] take very seriously [their] obligation to be transparent and accountable to Canadians. [Their] corporate website provides information about [their] activities and the way [they] manage [their] public" (CBC 2021-2022 Annual Report at p 26, AR at p 26). Hence, CBC, through its annual reports, has already provided information to the public. The information contained therein has contributed to public discourse, notably before the House of Commons (Thorpe Affidavit at para 7, AR at p 15).

[93] However, there is no evidence that the Requested Records are relevant, or important, and necessary for the meaningful exercise of freedom of expression or commentary on matters of public importance. There is also no evidence that without access, meaningful public discussion on the issue is substantially impeded (*Criminal Lawyers Association* at paras 5, 31-33, 36-37).

[94] Therefore, Applicants did not meet the first step of the test of establishing that not disclosing CBC's aggregate advertising expenditure will impede meaningfully on public discussion and undermine the purpose of section 2(b) of the *Charter* (*Criminal Lawyers Association* at paras 33, 37).

(2) Protection remains due to countervailing considerations

[95] Even if the Applicants had met the first step of the test, the protection of the records would have been maintained due to countervailing considerations that favour non-disclosure, because disclosure of the Requested Records in this case would interfere with the proper functioning of CBC (*Criminal Lawyers Association* at paras 33, 38-40, 60).

[96] As stated above, I find that disclosing the Requested Records could cause prejudice to CBC and impair its proper functioning. Specifically, it could compromise CBC's competitive position in the markets, as CBC's competitors could use the information to develop predictive models, refine their strategies and gain an unfair advantage in the market (Kane Affidavit at paras 15-16, RR at pp 5-6). Additionally, disclosure could encourage rights-holders to increase their asking prices during biddings or negotiations for licenses, thereby interfering with CBC's negotiations and proper functioning (Kane Affidavit at paragraph 17, RR at p 6).

[97] Consequently, even if a *prima facie* case for production was established, the Applicants' request for access would be outweighed by countervailing considerations. The disclosure could interfere with CBC's proper functioning (*Criminal Lawyer Association* at paras 54, 60).

VI. Conclusion

[98] For these reasons, the Application is dismissed.

[99] The parties have agreed that no costs should be awarded on this Application.

JUDGMENT in T-616-25

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed, without costs.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	OTTAWA (ONTARIO)
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APPEARANCES:

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Canadian Broadcasting Corporation Toronto (Ontario)	FOR THE RESPONDENT