

21 March 2019

Our Ref: JR /0043430001/MPC/AS

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**URGENT**  
**Via Electronic Mail & Hand Delivery**

Dear Sir/Madam

**Re: In the Matter of an Application by Fine Point Films Limited & Trevor Birney for Judicial Review. Reference No. 18/082539, and Matter of an Application by Barry McCaffrey for Judicial Review. Reference No. 18/105542**  
**Instructing client: Reporters Committee for Freedom of the Press**

This office has been instructed by the Reporters Committee for Freedom of the Press (the “Reporters Committee”) a Washington, D.C.-based nonprofit organization that advocates on behalf of the news media, which seeks liberty to apply to intervene in this Judicial Review, pursuant to Practice Direction 1/2013. It is considered pursuant to the guidance of Practice Direction 1/2013, given the Reporters Committee’s background, that it would be more appropriate to seek leave to intervene, rather than apply to make submissions as an *amicus curiae*, unless the Court considers otherwise.

We are advised that this matter has been listed for hearing before the Honourable Court on the 28th through to the 30th May 2019.

## I. Introduction

The Proposed Intervenor seeks liberty to file written submissions, on a date to be designated by the Honourable Court, if the application to intervene is accepted, and to make short oral submissions at the above-referenced hearing, if the Court will permit.

Our client has appeared as *amicus curiae* on matters touching on freedom of the press in Courts in the United States on several occasions, as well as before the Court of Justice of the European Union and as an Intervenor before the Supreme Court of Canada. The Reporters Committee submits that the outcome of this matter will also have an impact on print and broadcast outlets in the United States.

### I. About the Reporters Committee

The Reporters Committee provides *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee serves the United States' leading news organizations; thousands of reporters, editors, and media lawyers; and many more who use its online and mobile resources.

The Proposed Intervenor regularly submits *amicus curiae* briefs in state, federal, and U.S. Supreme Court cases where the news media brings an important perspective. The Reporters Committee has expertise in building broad coalitions of major news and transparency organizations, and provides a voice in support of the public's right to freely gather and disseminate information in the public interest.

In addition, Reporters Committee attorneys provide *pro bono* pre-publication legal services to freelance and independent journalists, including independent documentary filmmakers; operate a Legal Defense Hotline for working journalists and media lawyers and special event hotlines for reporters covering major events such as elections, presidential inaugurations, Olympics, political party conventions; and publish free legal guides. The Reporters Committee offers fellowships and internships to build the next generation of free press reporters and media lawyers.

The Reporters Committee has engaged in numerous high-impact litigation matters, as set out in the attached Litigation page of its website, including most recently *In re the Application of Reporters Committee for Freedom of the Press to Unseal Criminal Prosecution of Julian Assange*, Eastern District of Virginia, Case No. 1:18-mc-37 (filed Nov. 16, 2018), where the Reporters Committee moved to unseal the docket and records related to the United States' criminal prosecution of Julian Assange.

## II. The Proposal for Intervention

### (i) Nature of the Proposed Intervenor's interest in the proceedings

The purpose of the proposed intervention would be to provide the Honourable Court with assistance in relation to matters about which the Reporters Committee has expertise. It is submitted that the Honourable Court would benefit from the Reporters Committee's experience of the exercise of police powers in matters of press freedom in another common law jurisdiction.

We understand that the applications for judicial review raise important questions of press freedom, and concerns the utilization of police powers which may have the effect of inhibiting investigations into alleged wrongdoing on the part of the police. In particular, the judicial review application raises issues concerning the security of information imparted to journalists in confidence, source protection, and compelled disclosure of confidential information. We understand that the Applicant journalists were arrested in relation to the receipt of confidential materials from the office of the Police Ombudsman for Northern Ireland, leading to the search of their homes and business premises and the seizure of a wide range of materials.

If liberty is granted, the Proposed Intervenor respectfully seeks leave of the Court for their instructed solicitors to receive a copy of the papers in the judicial review applications in order to assist in the drafting of submissions.

The interest of news organization and journalists from the United States is manifest. The documentary, *No Stone Unturned*, which forms the subject matter of the background in this case, was directed by Alex Gibney, a multi-award winning film-maker and member of the Steering Committee of the Reporters Committee. Mr. Gibney has been called "*the most important documentarian of our time*" by Esquire Magazine and "*one of America's most successful and prolific documentary filmmakers*" by *The New York Times*. The documentary was first broadcast at the New York Film Festival on the 30<sup>th</sup> September 2017, and has generated reviews in U.S. publications. The outcome of these judicial review applications will undoubtedly have resonance among media organizations in the United States.

### (ii) Content of the proposed intervention

It is proposed that the Reporters Committee's written submissions would address the following matters:

1. The legal protections afforded to U.S. journalists under the First Amendment to the U.S. Constitution to receive, retain, and publish material from a source, and decisions from the U.S. Supreme Court which confirm this protection;

2. In relation to the search of journalists' homes and workplaces, the statutory protection for journalists under the federal Privacy Protection Act, which limits the opportunity for interference by the Government, as well as guidelines adopted by the U.S. Department of Justice that do the same for the Federal Bureau of Investigation. The Reporters Committee would likewise survey the history of constitutional protections for public interest reporting that may disclose government secrets and provide examples for the Court of the importance of constitutional protections in this area;

3. The "Shield Laws" enacted by various U.S. States that protect journalists from having to disclose confidential sources and/or work product, and the policy reasons which underpin this type of legislation, including the adverse effect on the right of the public to receipt of information in the public interest absent such protection.

It is anticipated that the Reporters Committee submissions will be lodged on behalf of a wider consortium of news organisations and NGOs. Previous submissions have represented the interests of *The Washington Post*, *The New York Times*, Reporters Without Borders, and the Society of Professional Journalists, amongst others.

(iii) Proposed means of intervention

The Reporters Committee proposes written submissions, limited by word count at the Court's direction, and short oral submissions of no longer than 15 minutes.

(iv) Consent of the parties

The Reporters Committee has obtained the oral consent of the Applicants but has not yet obtained written consent of Applicants, Respondents or Notice Parties. This correspondence is being copied to the parties.

(v) Details of any previous applications for leave to intervene

No previous application for leave to intervene has been made in these proceedings, but the Proposed Interveners' admission as *amici* in other cases touching on the freedom of the press is detailed above.

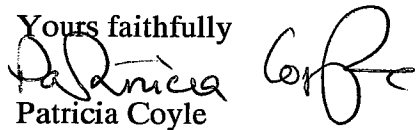
(vi) Costs and/or application for protective costs order

It is submitted, pursuant to paragraph 18 of Practice Direction 1/2013, that the Reporters Committee will bear its own costs. The Reporters Committee appreciates that orders for costs will not normally be made for or against interveners, unless the Court considers it just to do so.

This office and counsel have agreed to represent the Reporters Committee on a *pro bono* basis. The

Reporters Committee is not authorized to incur adverse costs. In that respect, the Proposed Intervener respectfully requests undertakings from the parties that no order for costs will be sought against the Reporters Committee, and the Reporters Committee confirms, as a matter of course, that no order for costs against any of the parties will be sought by the Reporters Committee. Such undertakings would avoid any need for any application for a protective costs order. In the event that such undertakings are not forthcoming, an application for a protective costs order will be moved on behalf of the Proposed Intervener.

Yours faithfully



Patricia Coyle

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