

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250610**

**Docket: A-245-24**

**Citation: 2025 FCA 114**

**Present: WALKER J.A.**

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA INC.  
FONDS NATIONAL JUIF DU CANADA INC.**

**Appellant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 10, 2025.

**REASONS FOR ORDER BY:**

**WALKER J.A.**

Federal Court of Appeal



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**REASONS FOR ORDER**

**WALKER J.A.**

I. Introduction

[1] I have before me a motion by the appellant, Jewish National Fund of Canada Inc./ Fonds national juif du Canada Inc. (JNF), seeking an Order pursuant to Rule 318(4) of the *Federal*

*Courts Rules*, S.O.R./98-106, requiring the respondent, Minister of National Revenue (Minister), to:

- (a) transmit a certified copy of the material requested by JNF in its Amended Notice of Appeal to the Registry and to JNF, within 30 days after the date of the order granting the motion, such material to be unredacted; and
- (b) provide an affidavit from a senior official of the Charities Directorate of the Canada Revenue Agency (CRA) that outlines the nature and scope of the further search conducted of its records and explains why any documents that fall within the relevant categories of materials requested are not disclosed.

[2] By way of background, JNF appeals to this Court under subsection 168(4) and paragraph 172(3)(a.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), from the Minister's June 26, 2024 notice of confirmation (Confirmation) of his intention to revoke JNF's registration as a charity. The Minister's notice of intention to revoke JNF's charitable status was issued on August 20, 2019 (NITR).

[3] In its Notice of Appeal filed on July 24, 2024, JNF alleged that: (1) there was a reasonable apprehension of bias on the part of the Minister in issuing the Confirmation; (2) the Minister erred in fact and law in issuing the NITR and Confirmation; and (3) the process followed by the Minister was procedurally unfair. JNF filed an Amended Notice of Appeal on April 7, 2025, alleging the same grounds but providing further particulars in support of its appeal.

[4] In both the original and amended Notices of Appeal, JNF requested that the Minister send to it pursuant to Rule 317, unredacted, certified copies of a broad range of materials compiled, prepared or considered by CRA or by the Minister in their decision-making processes regarding

JNF's charitable status, and all documents and records of conversations and meetings related thereto; all documents received from or sent to third parties by CRA in respect of JNF (e.g. letters, petitions, emails, press releases) prior to the issuance of the NITR; materials related to the audit of JNF; and documents and records of communications from CRA offices to the head of the Charities Directorate and other individuals.

[5] In response, the Minister provided an extensive Certified Tribunal Record (CTR) to the Registry and JNF. The Minister did not file an objection under Rule 318(2) to the material requested by JNF and takes the position that he has provided all relevant material in CRA's possession as requested by JNF and that the proposed CTR is complete. The Minister relies on an affidavit sworn by Ms. Holly Brant, Manager of the Charities Section, Tax and Charities Appeals Directorate of CRA, in which she describes searching for the documents requested, including documents that were not before the Appeals Branch when she issued the Confirmation (Brant Affidavit).

[6] JNF disagrees with the Minister, arguing that the proposed CTR is missing four categories of materials:

- A. Materials relating to the allegation that the Minister was biased in making his initial decision to issue the NITR and final decision to issue the Confirmation;
- B. Materials from the Charities Directorate which form part of the Minister's decision to revoke JNF's charitable status;
- C. Specific materials attached or referred to in documents contained in the proposed CTR which have not been produced, specifically a package of materials relayed to the Charities Directorate from a group in Ramallah, Palestinian Authority via Global Affairs; and
- D. Materials that should have been included in the CTR but were not, as a result of the Minister's failure to conduct a proper search of his records.

[7] JNF also argues in its motion that the Minister has not provided sufficient reasons for his redactions in certain documents contained in the proposed CTR.

[8] I have read the parties' submissions and, for the reasons that follow, will grant JNF's motion in part and order the Minister to provide certain further materials together with an updated affidavit explaining the scope of CRA's supplementary search of its records and certifying that no further relevant materials are within its possession.

## II. Rules 317 and 318

[9] The principles governing a tribunal's obligation under Rules 317 and 318 to produce material relevant to an application for judicial review or to an appeal are well established and summarized in a number of decisions of this Court: *Ron W. Cameron Charitable Foundation v. Canada (National Revenue)*, 2023 FCA 175 at paras. 7–11 (*Ron W. Cameron*); *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at paras. 106–115; *Lukács v. Canada (Transportation Agency)*, 2016 FCA 103 at paras. 5–18 (*Lukács*).

[10] Rule 317 provides that a “party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application”. The purpose of Rule 317 was set out in *Canadian National Railway Company v. Canada (Transportation Agency)*, 2019 FCA 257 (*Canadian National*) at para. 12: Rule 317 embodies the principle that judicial review is premised on review of the record before the tribunal. Further, a requesting party is entitled under Rule 318 “to be sent everything that it does not have in its possession and

that was before the decision-maker at the time it made the decision under review, unless the decision-maker objects under Rule 318(2)”: *Lukács* at para. 6, citing *Access Information Agency Inc. v. Canada (Attorney General)*, 2007 FCA 224 at para. 7; *1185740 Ontario Ltd. v. Canada (Minister of National Revenue)* (1999), 247 N.R. 287 (F.C.A.).

[11] Rule 317’s scope is, however, limited. Only material relevant to an application or appeal must be produced and, in an appeal, relevance is defined by the grounds of appeal in the Notice of Appeal: *Ron W. Cameron* at para. 10.

[12] In determining a Rule 318 motion, the Court seeks to reconcile, as far as possible, three objectives: (1) meaningful review of administrative decisions, which the reviewing court will be unable to engage in without being satisfied that the record before it is sufficient; (2) procedural fairness; and (3) the protection of any legitimate confidentiality interests while ensuring that court proceedings are as open as possible: *Girouard v. Canadian Judicial Council*, 2019 FCA 252 at para. 18, citing *Lukács* at para. 15. The first of these objectives recognizes that an inadequate evidentiary record on judicial review or appeal may effectively immunize administrative decision-makers from review and undermine the accountability of public decision-makers in their decision-making.

### III. The contested materials

#### A. *Materials relating to allegation of bias*

[13] Where there is an allegation of breach of procedural fairness, reasonable apprehension of bias, or bias, in a notice of application or notice of appeal, the general rule that only relevant material before the decision-maker must be produced is broadened. Additional documents relevant to the allegation may be subject to disclosure: *Humane Society of Canada Foundation v. Canada (National Revenue)*, 2018 FCA 66 at para. 6 (*Humane Society*); *Air Passenger Rights v. Canada (Attorney General)*, 2021 FCA 201 at para. 21 (*Air Passenger Rights 2021*). In *Air Passenger Rights 2021*, this Court held:

[21] Turning to the first of the foregoing assertions, as the applicant rightly notes, the breadth of materials that are subject to disclosure under Rules 317 and 318 of the *Federal Courts Rules* is broader where bias or breach of procedural fairness is alleged, particularly where, as here, relief in the nature of prohibition is sought. In such circumstances, disclosure is not limited to the materials that were before the tribunal when an order was made. Rather, where such arguments are raised, documents in the possession, control or power of a tribunal that are relevant to the allegations of bias or breach of procedural fairness are subject to disclosure. Indeed, were it otherwise, this Court would be deprived of evidence necessary for the disposition of an applicant's claims of bias or breach of procedural fairness and the availability of relief in the nature of prohibition would be largely illusory.

(references omitted, emphasis added)

[14] Nevertheless, the greater scope of disclosure does not permit a party to embark on a fishing expedition in the hope of discovering material to establish their claim: *Humane Society* at

para. 8; *Heiltsuk Horizon Maritime Services Ltd. v. Atlantic Towing Limited*, 2021 FCA 26 at para. 111.

[15] JNF alleges that the Minister was biased in making his decision to revoke its charitable status as he acted in part in response to significant public pressure. In its written representations and affidavits, JNF sets out examples of public and media pressure (commentary, petitions, letters, emails, press releases) on CRA reflected in internal communications and documents among CRA personnel, including personnel who were not involved in CRA's audit of JNF.

[16] The Minister does not challenge the sufficiency of JNF's bias allegation but asserts that he has met his heightened disclosure obligation of materials relevant to the allegation. The Minister relies on the Brant Affidavit and highlights materials included in the proposed CTR that respond to JNF's bias arguments.

[17] I first find that JNF's allegation of bias is a tenable ground of appeal. It is raised in the Notice of Appeal and explained in some detail in the Amended Notice of Appeal.

[18] Accordingly, I will order the Minister to disclose any further materials within CRA's possession and not included in the proposed CTR in respect of the allegation that the Minister was biased in making his initial decision to issue the NITR and final decision to issue the Confirmation, such disclosure to include relevant material in the possession of CRA relating to communications from and to the public, whether involving the Charities Directorate or the Appeals Branch. To the extent all such materials have been disclosed, the Minister shall serve

and file an updated affidavit (described in paragraph 28 of these Reasons) detailing his compliance with this disclosure obligation.

[19] In making this Order, I express no view as to whether the decision to issue the NITR and the decision to issue the Confirmation (or decision to publish) are separate decisions or whether the decision to publish is amenable to judicial review.

B. *Materials from the Charities Directorate*

[20] JNF submits that the proposed CTR contains an incomplete record of the materials that were considered by the Charities Directorate in issuing the NITR. JNF acknowledges the Minister's position that he did not exclude from the CTR documents that were before the Charities Directorate (proposed CTR Tabs 151-200 (Correspondence and Other Documents related to the Appellant's Charitable Registration (documents not before the Appeals Branch)) and Tabs 111-150, 201 and 202 (Documents that were before the Charities Directorate and reviewed by the Appeals Branch)). JNF maintains that either additional documents considered solely by the Charities Directorate have been omitted from the proposed CTR or the search undertaken by the Minister in this regard was inadequate.

[21] Subject to one exception, the Minister states that all relevant documents considered by the Charities Directorate in the possession of CRA are included in the proposed CTR, as stated in the Brant Affidavit. The Minister submits that JNF's reference to unspecified documents obtained through an Access to Information request does not establish the exclusion or omission of relevant documents and I agree.

[22] I conclude that, with the exception of draft media lines intended for use by CRA spokespersons, which the Minister concedes are not and should be added to the CTR, JNF has not persuaded me of the existence of further relevant materials considered by the Charities Directorate. As a result, other than production of the draft media lines, I will order no further production of documents in this respect.

C. *Specific materials that should have been included in the proposed CTR*

[23] JNF submits that certain materials contained in the proposed CTR refer to other relevant documents that have not been included, for example documents and attachments referred to in emails. JNF also sets out specific documents it alleges are relevant to its appeal, including its allegation of bias, which do not appear in the proposed CTR but which it received in response to its Access to Information request. The Minister does not address the documents identified by JNF and continues to take the position that full disclosure of relevant materials has been made.

[24] JNF has presented persuasive arguments that suggest the omission of specific, relevant materials from the proposed CTR. Therefore, I will order production of the documents identified by JNF in paragraphs 63-65 and 70-72 inclusive of its written representations.

D. *The Minister's failure to conduct a proper search of his records*

[25] JNF submits that the Minister has failed to conduct a proper search of his records in response to Rules 317 and 318. JNF argues that the issues identified in this motion warrant a

second search of the Minister's and CRA's records and a corresponding updated affidavit from a senior CRA official outlining the nature and scope of the search conducted.

[26] The Minister does not argue that JNF's disclosure requests are overly broad or unfounded. Rather, the Minister maintains that all relevant materials have been produced or simply do not exist. The Minister relies on the Brant Affidavit, notably paragraphs 13 to 16:

13. Because the Appellant alleged in its July 24, 2024 notice of appeal that bias and breaches of procedural fairness were made in the decision to revoke, I sought out and included documents relevant to the issues under appeal that were before other areas of the CRA, but not before the Appeals Branch when I made the decision to confirm the revocation.

14. If materials and documents referenced in the CTR were not produced as part of the CTR, that is because they are either no longer in the CRA's possession or were not relevant to the Minister's decision to revoke.

15. In August of 2024, Independent Jewish Voices Canada Inc. (IJVC) brought a motion to amend the style of cause in this appeal to have IJVC, Rabbi David Mivasir, and Dr. Ismail Zayed added as respondents. The affidavit evidence in support of their motion revealed that Charities Directorate employees had met with IJVC representatives in 2017. No information, including the fact that the meeting had taken place, or documents with respect to the meeting, were before the Appeals Branch when I made the decision to confirm the revocation. My Appeals Branch colleagues and I sought out documents related to this meeting from other areas of the CRA. I am informed by my colleagues in the Charities Directorate and I believe that there are only two documents still in the CRA's possession that relate to this meeting. These two documents are included in the CTR.

16. In compiling the CTR with the assistance of the Respondent's counsel and paralegals with the Department of Justice, Tax Litigation Section in Ottawa, Canada, I reviewed all of the documents in their redacted and unredacted form. I did not withhold any relevant documents or information, other than some documents that are in the Appellant's possession and redactions

shown on the face of the CTR to protect solicitor-client privilege, litigation privilege, and certain taxpayer information.

[27] Given the issues that have arisen with the disclosure in the proposed CTR, I will order that a supplementary search of CRA's records, including records of the Charities Directorate, be undertaken by senior representatives of CRA to ensure the required disclosure has been made.

[28] The Minister will be required to serve and file an updated affidavit detailing the nature and scope of the supplementary search to ensure there are no remaining omissions of relevant material from the CTR. I would expect the updated affidavit to address who at CRA conducted the supplementary search and to confirm that relevant material considered by the Charities Directorate in issuing the NITR has been included in the CTR.

[29] The Minister's updated affidavit will be served and filed within 30 days of the date of the Order that accompanies these Reasons. The Minister will also serve and file an updated certificate, attesting to the authenticity of the additional documents it is required to disclose in accordance with these Reasons, as well as copies of the aforementioned documents, also within 30 days of the date of the accompanying Order.

#### IV. Redacted materials

[30] JNF submits that the Minister has failed to adequately support the redactions made in certain documents within the proposed CTR. In its view, the statement in the Brant Affidavit that "redactions shown on the face of the CTR to protect solicitor-client privilege, litigation privilege,

and certain taxpayer information” is nothing more than a bald assertion. Specifically, JNF states that the Minister is required to file evidence by way of affidavit to support the assertion of solicitor-client privilege. JNF argues that redactions cannot be used to immunize the Minister’s decision and that personal and third-party information (currently redacted) may assist it in demonstrating its case.

[31] The Minister argues that the limited redactions made to protect solicitor-client privilege and litigation privilege in the proposed CTR are not remarkable and that there is no requirement to accompany an assertion of privilege with an affidavit. The Minister also argues that JNF’s general complaint regarding the redaction of taxpayer information is akin to a fishing expedition and disregards the Minister’s obligation to keep certain information confidential.

[32] I conclude that JNF’s argument that “the disclosure of personal information and third-party information may assist it in demonstrating its case and may assist the Court in conducting a meaningful review” is not persuasive. It is speculative and seeks the disclosure of information that may be protected under applicable privacy laws. I will not order the removal of redactions made to taxpayer information in the proposed CTR. Any new documents added to the revised CTR may also contain redactions of personal and third-party information.

[33] Conversely, I agree with JNF that the Minister has not sufficiently justified his redactions made in reliance on privilege. While the redactions are not extensive, the Minister has provided no basis for the Court to assess their scope and necessity. As a result, I will include in the Order accompanying these Reasons a timetable for the filing of written representations, (a) from JNF setting out the specific redactions based on privilege it challenges, and (b) from the Minister

regarding the redactions challenged and, in a sealed envelope, a copy of the challenged materials in unredacted form for consideration by the Court.

[34] On April 23, 2025, the Minister filed a motion seeking to replace the CTR transmitted to JNF and to the Court on October 15, 2024 because some pages inadvertently disclosed privileged and taxpayer information that the Minister intended to redact. The Court will hold the motion in abeyance pending finalization of the CTR in accordance with these Reasons and their accompanying Order. The Registry shall, in the interim, continue to segregate the proposed CTR from the public record and to not provide copies of the proposed CTR to the public if any such copies are requested.

V. Conclusion

[35] An order will issue in accordance with these reasons.

[36] All further steps for the perfection of this application shall be governed by the Rules.

[37] Costs of this motion are in the cause.

“Elizabeth Walker”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-245-24

**STYLE OF CAUSE:** JEWISH NATIONAL FUND OF  
CANADA INC., FONDS  
NATIONAL JUIF DU CANADA  
INC. v. MINISTER OF  
NATIONAL REVENUE

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** WALKER J.A.

**DATED:** JUNE 10, 2025

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