Federal Court Cour fédérale

**Date: 20260218**

**Docket: T-2628-25**



**Ottawa, Ontario, February 18, 2026**

**PRESENT: Mr. Associate Judge Shannon**

**BETWEEN:**

**TREENA DELISLE**
**d.b.a. THE KANNABIS SHOP**

**Applicant**

**and**

**KAHNAWAKE CANNABIS CONTROL BOARD**
**and MOHAWK COUNCIL OF KAHNAWAKE**

**Respondents**

# ORDER AND REASONS

## I. Overview

[1] The Applicant brings a motion pursuant to Rule 318 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], seeking an Order that compels the Respondent Mohawk Council of Kahnawà:ke ("Council") to transmit a certified tribunal record of requested material to the Applicant and the Registry.

[2] The Respondent Council opposes the motion, arguing that it has no material in its possession that is relevant to the application for judicial review and, in any event, that the

Council cannot be compelled to produce documents pursuant to Rule 317 as it is not the "tribunal whose order is the subject of the application."

[3] The Respondent Kahnawà:ke Cannabis Control Board ("Board") made no submissions on this motion and took no part in the motion hearing.

[4] For the reasons that follow, the motion is dismissed.

## II. Background

[5] The Applicant Treena Delisle d.b.a. The Kannabis Shop ("TKS") is a cannabis processor start-up based in the Mohawk Territory of Kahnawà:ke. The underlying application for judicial review challenges an October 25, 2024 decision, issued by the Respondent Board, refusing TKS's application for a standard processing licence.

[6] By way of its Notice of Application and pursuant to Rule 317 of the *Rules*, the Applicant requested a certified tribunal record ("CTR") from the Respondent Board. The Board delivered these CTR materials within the time limits set by the *Rules*. The Applicant does not challenge the CTR provided by the Respondent Board.

[7] On August 21, 2025, the Applicant sought and was ultimately granted leave of the Court to make a further request for materials under Rule 317. This request consisted of:

a) Mohawk Council of Kahnawà:ke records pertaining to TKS, including meeting minutes of any open or in camera sessions;
b) Internal communications between or among members of either respondent tribunal, pertaining to TKS, sent or received between June 2022 and October 2024, inclusive, to the extent such material is in the respondents' possession; and

c) Any and all correspondence, meeting minutes, or other material to, from, or about Mr. Ryan McComber in the respondents' possession.

[8] The Respondent Council then filed a Rule 318(2) objection to the Applicant's further request, claiming that: i) the Council is not a Tribunal pursuant to Rule 317 and it did not render any decision or judgement; and ii) the only relevant documents are those that were in the possession of the Board when it rendered the impugned decision.

[9] By way of the current motion, the Applicant asks this Court to compel the Respondent Council to produce the documents requested.

## III. Applicable Law

[10] Rule 317 permits a party to request material relevant to their application for judicial review that is in the possession of the tribunal whose order is the subject of the application:

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| **317(1)** 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 and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested. | **317(1)** Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés. |

[11] The courts have made clear that Rule 317 is a "limited purpose tool to obtain an administrator's record on a judicial review" (*Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 at para 10). The Rule ensures "that the reviewing court has access to the

same record and information as did the original decision-maker upon making their decision" (*China Mobile Communications Group Co, Ltd v Canada (Attorney General)*, 2023 FCA 202 [*China Mobile*] at para 38).

[12] Only documents that are relevant to the application need be disclosed under Rules 317 and 318. Relevant materials are those that are responsive to the grounds and relief as set out in the notice of application *(China Mobile* at para 40; *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 [*Iris Technologies*] at para 40). Material will be considered relevant if it is able to affect the Court's decision regarding the impugned decision under review (*Canada (Human Rights Commission) v Pathak (CA)*, [1995] 2 FC 455, 1995 CanLII 3591 (FCA) at page 460, as cited by *Iris Technologies* at para 37).

[13] When bias or a breach of procedural fairness is alleged in the notice of application, the scope of materials subject to disclosure under Rules 317 and 318 is broader. This increased scope ensures that the Court will have the evidence necessary for the disposition of these claims (*Air Passenger Rights v Canada (Attorney General)*, 2021 FCA 201 at para 21). Accordingly, where bias or a breach procedural fairness is alleged, documents relevant to such allegations must be disclosed (*Ron W Cameron Charitable Foundation v Canada (National Revenue)*, 2023 FCA 175 [*Ron W Cameron*] at para 26).

[14] It must be noted, however, that Rule 317 is not akin to discovery: it is more limited in scope (*Ron W Cameron* at para 48; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 [*Tsleil-Waututh Nation*] at para 115). An applicant bears the burden of filing evidence to support its arguments on the merits of an application; however, Rule 317 cannot be used in hopes of finding relevant material to support otherwise unsubstantiated grounds of judicial

review. In other words, fishing expeditions are not permitted (*Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204 at para 15; *Canadian National Railway Company v Canada (Transportation Agency)*, 2023 FCA 245 at para 15; *Tsleil-Waututh Nation* at paras 106-108).

[15] The courts have also been clear that "material sought under Rule 317 must come from the administrative decision-maker in question, not others" (*China Mobile* at para 38; *Tsleil-Waututh Nation* at paras 107 and 111). Put another way, only the entity that rendered the administrative decision is required to disclose documents under Rules 317 and 318.

[16] Before proceeding with my analysis, it is also important to understand the legislative scheme at issue. The *Kahnawà:ke Cannabis Control Law*, KRL, c C-4 [*KCC Law*] prohibits "the cultivation, processing, distribution, sale, possession and use of cannabis" within and from the Mohawk Territory of Kahnawà:ke, unless it is authorized by the *KCC Law* or the accompanying regulations. At section 16.2, the legislation sets out a licensing regime for commercial cannabis activity within or from the Mohawk Territory of Kahnawà:ke and includes details regarding applications for standard processing licences.

[17] The *KCC Law* also establishes the Board, explicitly for the purpose of regulating, enforcing and administering the law. The Board has the authority to "issue, suspend and revoke the licences provided in this Law and the regulations" (paragraph 12.1(a)). Pursuant to section 13.1, the Board functions "at arm's length from the Council."

[18] The Council also enacted the *Regulation Concerning Licensing Requirements and Procedures*, KRL, c C-4, r-3 [*Regulation*]. The *Regulation* sets out application requirements for cannabis-related licences and gives the Board the discretion to approve or deny all such applications.

[19] Neither the *KCC Law* nor the *Regulation* gives the Council any role in the decision-making process in respect of applications for standard processing licences.

## IV. Analysis

[20] As set out in the Notice of Application, the Applicant seeks judicial review of the Board's October 25, 2024 decision to refuse its application for a standard processing licence. Even though the Board – and not the Council – issued the decision under review, the Applicant forcefully argues that the Respondent Council "acted and operated as a *de facto* tribunal in conjunction with the [Board]." The Applicant therefore claims that, as a *de facto* tribunal, the Council must disclose the documents requested pursuant to Rules 317 and 318.

[21] I do not agree.

[22] As set out above, Rule 317 grants access to documents relevant to an application that are in the possession of the "tribunal whose order is the subject of the application" (see also *China Mobile* at para 38; *Tsleil-Waututh Nation* at paras 107 and 111). The order in this case was issued by the Board, on Board letterhead. There is no indication in the text of the Board's October 25, 2024 decision that it was being issued in conjunction with – or at the direction of – the Respondent Council.

[23] The affidavit evidence filed on the motion supports this finding. Chief Tonya Perron testified that the Council did not participate in or influence any decision of the Board and that "no members of the Council were involved in the Board's Decision to refuse TKS's application for a standard processing license" (Chief Perron Affidavit, para 12). The evidence proffered by the Applicant does not directly contradict or undermine Chief Perron's testimony on this point,

and the Applicant chose neither to object to Chief Perron's evidence nor to cross-examine her on her affidavit.

[24] The provisions of the *KCC Law* and the *Regulation* are consistent with this evidence. The legislative scheme does not give the Council any role as a decision-maker in respect of applications for standard processing licences. In fact, section 13.1 of the *KCC Law* explicitly states that the Board functions "at arm's length from the Council." The *Regulation* similarly gives only the Board – and not the Council – the power to approve or deny applications for standard processing licenses (see sections 10 and following).

[25] Furthermore, the Applicant was unable to point to any court decision wherein an entity that did not issue the administrative decision under review was deemed to be a *de facto* tribunal and therefore ordered to release documents pursuant to Rules 317 and 318.

[26] The Applicant nevertheless argues that the Council improperly influenced the Board's decision in this case, thereby transforming the Council into the "tribunal" within the meaning of Rule 317. Based on the evidence before me, I am not persuaded by this argument.

[27] As counsel for the Applicant rightly acknowledged during the motion hearing, there is no direct evidence of any involvement by the Council in the decision-making process that led to the October 25, 2024 decision issued by the Board.

[28] The evidence before me instead details a difficult history of dealings between the Applicant and the Council. This includes:

i. Discussions and negotiations between the Council and the Applicant ultimately resulting in a proposed agreement between TKS and the Council, wherein the Council agreed to

forego any ownership interest in TKS's proposed "Kannabis Shop". The text of the proposed agreement expressly states that the Council "does not make any guarantees that the Applicant will be awarded a licence from Health Canada or the [Board]";

ii. Evidence that the Council interacted with Health Canada to prevent the Applicant from receiving a Health Canada license, which ultimately would have been necessary for the Applicant to operate its business. At the hearing, counsel for the Applicant acknowledged that the Health Canada's licensing process was separate and distinct from the Board's application process for standard processing licenses;

iii. Evidence of dismissals and resignations among Board members and staff;

iv. Evidence that, after some confusion, the Applicant was instructed to make any payments for application fees to the Council and not the Board; and

v. Evidence that, after the release of the October 25, 2024 decision, the Board and the Council refused to communicate with the Applicant, instead referring the Applicant to an administrative tribunal that was not yet operational.

[29] This evidence does not establish, on a balance of probabilities, that the Council was directly or indirectly involved as a "tribunal" within the meaning of Rule 317. In fact, this evidence is not directly relevant to the question of whether the Council acted as a *de facto* tribunal in conjunction with the Board. While it may, for example, tend to show that the Council intervened in the parallel Health Canada licensing process, that is not relevant to the Rule 317 issue before me.

[30] As is made plain in paragraph 1 of the Notice of Application, the only decision under review in this Application is the Board's October 25, 2024 decision regarding the *KCC Law*'s standard processing license, not the Health Canada licensing process. Rules 317 and 318 only

require disclosure from the administrative decision-maker who rendered the decision in question, not another entity (*China Mobile* at para 38; *Tsleil-Waututh Nation* at para 107). The evidence provided by the Applicant on this motion, considered in its totality and on a balance of probabilities, does not establish that the Council played a role in the Board's October 25, 2024 decision.

[31] Furthermore, I note that when characterizing the totality of the evidence described at paragraph 27 above, Applicant's counsel argued that this constellation of facts was "too convenient", later stating, "we smell gun powder, we are looking for the smoking gun."

[32] This is a classic example of a fishing expedition. Even where, as here, there are allegations of bias, Rule 317 does not allow a party to engage in a fishing expedition in the hopes of discovering documents to establish their claim (*Humane Society of Canada Foundation v Canada (National Revenue)*, 2018 FCA 66 at para 8).

[33] Accordingly, and for the limited purpose of determining the motion before me, I find that the Applicant has failed to provide sufficient evidence to show that the Council acted as *de facto* tribunal within the meaning of Rule 317. The Applicant is therefore not entitled to receive a CTR from the Council.

[34] Furthermore, I decline to consider the Applicant's request, raised for the first time at the hearing, for an order pursuant to Rules 4 and 313 for the disclosure of the same documents requested under Rule 317. Having failed to include this request and these arguments in their written motion materials, the Respondent Council was not given proper notice and has therefore had inadequate time to provide a response.

[35] The motion is dismissed.

[36] As the Respondent Council is successful on this motion, I award costs of this motion to the Respondent Council hereby fixed in the amount of $2,000.00, inclusive of disbursements and taxes, to be paid by the Applicant to the Respondent Council.

**ORDER in T-2628-25**

**THIS COURT ORDERS that**:

1. The motion is dismissed.

2. Costs of the motion, hereby fixed in the amount of $2,000.00, inclusive of disbursements and taxes, shall be paid forthwith by the Applicant to the Respondent Mohawk Council of Kahnawà:ke.

3. All cross-examinations on affidavits shall be completed in accordance with Rule 308 of the *Rules* by no later than April 30, 2026.

"Kirk G. Shannon"
Associate Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-2628-25 |
| **STYLE OF CAUSE:** | TREENA DELISLE d.b.a. THE KANNABIS SHOP v KAHNAWAKE CANNABIS CONTROL BOARD ET AL. |
| **PLACE OF HEARING:** | HEARD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | FEBRUARY 11, 2026 |
| **ORDER AND REASONS:** | ASSOCIATE JUDGE SHANNON |
| **DATED:** | FEBRUARY 18, 2026 |

**APPEARANCES:**

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