

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Torr Metals Inc. v. Senior Permitting
Inspector of Mines*,
2026 BCSC 966

Date: 20260527
Docket: S-S-100329
Registry: Nanaimo

Between:

Torr Metals Inc.

Petitioner

And:

Senior Permitting Inspector of Mines, Nadia Bruemmer

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment on Application of the Petitioner (Production of Record and Privilege Log)

Counsel for the Petitioner:

J.M. Young

Counsel for the Respondent Senior
Permitting Inspector of Mines:

L. Greathead
M. Merryfield

Counsel for the Respondent Tahltan Central
Government, on behalf of the Tahltan
Nation:

T.A. Arsenault

Place and Date of Hearing:

Nanaimo, B.C.
August 14-15, 2025

Further Submissions Received:

November 18, 2025
and March 11, 2026

Place and Date of Judgment:

Nanaimo, B.C.
May 27, 2026

[1] In the within petition, the petitioner is seeking judicial review of the respondent's denial of an exploratory drilling permit under the *Mines Act*, R.S.B.C. 1996, c. 293 [the "*Act*"]. In this application, the petitioner seeks orders which it says are necessary to determine fully the record that was before the respondent.

Background

[2] Torr Metals Inc. ("Torr") is a junior mineral exploration company. It holds various mineral tenures in northeastern British Columbia, in an area known as the "Golden Triangle", south of Dease Lake. It developed plans for a five-year exploratory diamond drilling program (the "Latham Project"), and to that end in February 2022, Torr applied to the Ministry of Energy, Mines and Low Carbon Innovation ("EMLI") for the permit required by s. 10 of the *Act*.

[3] Statutory authority for the issuance of such permits lies with the chief permitting officer, who may delegate statutory decision-making powers, pursuant to s. 8.3 of the *Act*. The role of decision maker on Torr's permit application was assigned to the respondent.

[4] The respondent undertook a lengthy process of consultation with Tahltan Nation, in whose traditional territory the Latham Project lies, through Tahltan Central Government ("TCG") and sought input from Torr as to how concerns raised by TCG could be addressed.

[5] On August 18, 2023, the respondent issued an 11-page decision refusing to issue the permit (the "Decision").

[6] Torr filed the within petition for judicial review on July 11, 2024. The petition seeks an order quashing the Decision, and declarations that the respondent:

- a) impermissibly delegated her decision-making authority to TCG, or alternatively impermissibly fettered her own discretion;
- b) erred in law by failing to undertake the required balancing of aboriginal and non-aboriginal interests;

- c) erred in finding Tahltan Nation's asserted cultural connection to the lands constituted a "cultural heritage resource";
- d) violated Torr's right to be provided sufficient opportunity to make submissions.

Production of the Record

[7] On December 3, 2024, the respondent filed her response to petition along with four affidavits. Two of the affidavits set out exhibits that the respondent submits should, with one additional document, form the record for the purpose of judicial review:

- a) The affiant Emily Watson was EMLI's Senior Advisor, Indigenous Relations, and led the Province's consultation with TCG on Torr's application. Ms. Watson's Affidavit #1 describes the consultation process and the document management system used by EMLI to track documents, the Consultation Record Tracking System ("CRTS"). Exhibited to that affidavit are nine documents that I would describe as related to the consultation process generally and Ms. Watson's role (280 pages); 22 exhibits comprising summaries of the record created by Ms. Watson, forwarded by her to the respondent on three separate occasions in October 2022, April 2023, and August 2023, and copies of all communication referred to in those summaries, which the respondent was able to access (407 pages); and 28 exhibits of additional email communications with TCG representatives and/or EMLI colleagues, sent to or received by Ms. Watson (96 pages); all told, more than 700 pages.
- b) The affiant Justin Schroff was at the material time EMLI's Regional Director of the Northwest Mining Region; his Affidavit #1 describes his peripheral involvement. Exhibited to his affidavit are documents he retrieved from the respondent's own file correspondence, and other records of his office, (exclusive for the most part, he explains, of

communications between Ms. Watson and the respondent, to avoid duplication). These documents, he says, form (1) “as comprehensive a collection as I have been able to assemble of the correspondence exchanged between Torr and EMLI in relation to the Torr Application”, and (2) “non-privileged internal government communications relating the Torr Application that are either emails showing the timing of steps in the processing of the application or emails that provided information of a substantive nature to [the respondent].” Further, Mr. Schroff includes contextual materials such as published guides related to the permitting process and geological survey records relating to the geographic area. The external correspondence and internal communications documents, and attachments, amount to 91 exhibits, of approximately 770 pages (not including cover pages bearing only the exhibit stamps); the more contextual material exhibited is found in a further 21 exhibits, of approximately 330 pages.

The document production is substantial.

[8] Counsel for the petitioner, by way of a letter to counsel for the respondent dated May 29, 2025, expressed their opinion that the record was incomplete, and they requested production of further documents, broken down into eight categories.

[9] Counsel for the respondent responded in a letter dated July 2, 2025. They stated that with a few exceptions, the non-privileged documents sought either did not exist or had already been produced. The letter enclosed one document described as an inadvertent omission from the previous disclosure, that being a two-page email from Ms. Watson to Mr. Schroff, the respondent, and others dated November 7, 2022. It further enclosed a series of documents not conceded to form part of the record or to be admissible on the judicial review:

- a) a collection of screenshots of meeting and task entries from the respondent’s Outlook calendar (not producible, it is submitted, by reason of their ephemeral or insubstantial nature);

- b) copies of meeting notes of Ms. Watson and Mr. Schroff (not forming part of the record by reason of not being material provided to the respondent); and,
- c) copies of 36 separate email chains, set out in 104 pages, exchanged between the respondent and EMLI staff which it is submitted either are irrelevant by reason of being ephemeral (“transitory”), or would be properly classified as non-disclosable by reason of deliberative secrecy. As to these documents, the respondent submits – and I agree – that the final determination as to whether they form part of the record should lie with the judge hearing the petition.

[10] In response to this application, the respondent has filed further affidavits, from Ms. Watson, Mr. Schroff, and Assistant Deputy Minister George Warnock, that describe further searches undertaken and broadly confirm the statements made in respondent counsel’s July 2, 2025 letter as to the lack of meeting notes and as to disclosure previously having been made.

Application

[11] The petitioner, compendiously, characterizes the production to date as having been piecemeal, selective, and incomplete. It points to the lack of affidavit evidence from the respondent personally attesting to the content of the record before her, and generally as to the lack of notes of meetings and telephone calls. Without such evidence, Torr submits it is unable to confirm what the record before the respondent actually consisted of, and is unable to obtain evidence which could support the allegations of impermissible delegation and fettering. The petitioner therefore seeks orders,

- a) pursuant to s. 17 of the *Judicial Review Procedure Act* [“JRPA”], directing the respondent to file with the court the complete record of proceedings before the respondent, including all non-privileged documents considered

by the respondent in the making of the impugned decision, including but not limited to documents falling within certain specific categories;

- b) pursuant to R. 22-1(4)(b), compelling the respondent to attend before a court reporter to be cross-examined by counsel for the petitioner in relation to the within Petition; and
- c) that the respondent provide a description of each document over which the respondent claims privilege.

[12] As to the order sought respecting cross-examination, the petitioner says that it would be limited to questions as to what documents were reviewed and what information received by the respondent, and the content of discussions she had with interested parties. It will not involve questions as to the substance of the Decision, the process by which the respondent arrived at the Decision, nor how information provided was used.

Discussion

[13] I find no reason to conclude that the record of materials before the respondent as decision-maker has not already been produced. Given the scope of the document disclosure in the exhibits to the affidavits filed on the respondent's behalf, and given the explanations in those affidavits as to the process by which those documents were searched for and retrieved, and as to the absence of notes of meetings, there is no reason to believe that a record production order under s. 17 of *JRPA* would serve any useful purpose.

[14] There is nothing irregular in the record having been presented in the form of affidavits sworn by persons other than the respondent. There are provisions governing judicial review in the statutes of some other provinces that are analogous to s. 17 of the *JRPA* which appear phrased so as to make the decision maker personally responsible for the record (e.g. s.10 of the *Ontario Judicial Review Procedure Act*, R.S.O. 1990, c. J.1; s. 8 of the *Prince Edward Island Judicial Review Act*, R.S.P.E.I. 1988, c. J-3; R. 3-58 of the *Saskatchewan King's Bench Rules*, Sask

Gaz December 27, 2013, 2684). Section 17 of *JRPA* however is phrased impersonally; it empowers the Court to order that the record “be filed”. Judicial review practice in British Columbia, in cases of both quasi-judicial and administrative decision-making, is that responsibility for filing of the record rests with the institution or body within which the decision maker operates, not on the decision maker personally. In this province, decision makers are not ordinarily compellable to personally attest to the content of the record underlying their decision. Their reasons speak for themselves.

[15] The petitioner says that the volume of additional materials disclosed in answer to their counsel’s May 29, 2025 demand raises grounds to believe that EMLI staff have been overly selective in producing the record. While it is that case that further documents were disclosed after the initial affidavit filings – one additional substantive document that is said to have been initially overlooked, and numerous other documents of contested relevance – in answer to the petitioner’s counsel’s demand of May 29, this cannot reasonably be said to evidence the respondent having only undertaken “selective” disclosure, as the petitioner contends. Given the complexity of the respondent’s investigation, the variety of documents that the record contains, the lengthy time period over which the record was generated, and the number of different databases in which electronic documents were stored, it would not be unreasonable for finalizing the record to be an iterative process to some degree. Here there is no evidence that EMLI staff have improperly withheld producible material.

[16] In *Duncan v. British Columbia (Minister of Education and Child Care)*, 2025 BCSC 2011, aff’d 2026 BCCA 91, Justice Leblanc ordered additional document production, reasoning that,

[w]here allegations of bad faith or procedural fairness are advanced on judicial review, further discovery may be ordered if there is “some basis” in the evidence for objectively reasonable concerns that the allegations have merit; this can include evidence that was not before the decision-maker: *Chestacow [v. British Columbia (Workers’ Compensation Appeal Tribunal)]*, 2023 BCCA 389] at para. 38; *Mink Breeders [British Columbia (Lieutenant Governor in Council) v. Canada Mink Breeders Association]*, 2023 BCCA 310]

at para. 76; *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 at para. 60.

Justice LeBlanc found that, cumulatively, the circumstances did establish “some basis” for a tailored production order. I reach the opposite conclusion in this present case. While I express no opinion as to whether the Decision itself discloses fettering or delegation as a matter of law, I find no basis in the evidence before me of the respondent having engaged in conduct that would amount to fettering or delegation as alleged.

[17] Nor do I find any basis for an order for cross-examination. The process leading to the respondent’s refusal of the petitioner’s application is protected by the principle of deliberative secrecy. And that process, and the Decision itself, are also subject to the presumption of regularity: that the respondent has “followed proper and lawful parameters in the administrative process, absent evidence to the contrary”: *Interlake Reserves Tribal Council Inc. et al. v. Manitoba*, 2022 MBQB 131 at para. 126. That presumption may only be overcome on evidence, not conjecture: *Chestacow v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2023 BCCA 389 at para. 34; *Eastside Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2019 BCCA 60 at para. 50.

[18] The petitioner says that without cross-examination of the respondent, it will have no means of establishing whether or to what extent the Decision may have been based on verbal information or advice the respondent may have received through undocumented meetings or conversations with EMLI staff or with TCG. That, however, is true in any case of adjudication or statutory decision making to which the presumption of regularity applies. That presumption is not overcome simply because it imposes a heavier burden on a petitioner seeking judicial review. In *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4 (CanLII), [2001] 1 SCR 221, the majority clearly indicated, at paras. 52-55, that the “tough hurdles” an applicant faces in attempting to obtain discovery of a decision-making process is the price that must be paid to protect the consistency and independence of such processes.

[19] Neither the Decision itself nor the substantial volume of affidavit evidence disclose any impropriety or irregularity, nor any other basis for subjecting the respondent to the extraordinary remedy of cross-examination.

[20] Likewise, I find no grounds for an order that the respondent produce a log of privileged documents. The petitioner asserts that the Court of Appeal has held that one of the “overarching propositions” governing legal advice provided to decision makers is that “certain kinds of legal advice provided to a decision-maker should be disclosed to permit the opposing party to make submissions”, citing the decision of Madam Justice Saunders in *Bui v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 168. That statement, however, was not a holding in *Bui*; rather, it was a statement of propositions that the lower court had extracted (at 2016 BCSC 1572, paras. 31-32) from the decision of Chief Justice Hinkson in *British Columbia (Attorney General) v. Lee*, 2016 BCSC 707, rev’d on other grounds, 2017 BCCA 219. The specific “kinds of legal advice” alleged to have been in issue in the cases relied on by Hinkson C.J. were advice as to jurisdiction and the participation of legal counsel in the decision drafting process: *Hammami v. College of Physicians and Surgeons*, 2000 BCSC 1555; *Dhillon v. University of Alberta*, 1999 ABQB 683; *Khan v. College of Physicians and Surgeons of Ontario*, [1992] O.J. No. 1725 (ONCA). None of those cases stand for the broad proposition advanced by the petitioner that legal privilege ought to be waived to allow for a full examination of the record on judicial review. Moreover, both *Bui* (in the petition hearing and on appeal) and *Dhillon* strongly endorse the principle that challenges to privilege must be based on evidence sufficient to overcome the presumption of regularity.

[21] For these reasons, the application is dismissed.

“A. Saunders J.”