

CANADA / JUDGMENT

Capin v. Canada (Attorney General)

2026 FC 337

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Decision Content

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Docket: T-1732-25

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Ottawa, Ontario, March 12, 2026

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DANIELLE CAPIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction [1] This is an application for judicial review of a Health Canada, Controlled Substances and Cannabis Branch security clearance decision (the “Decision”) refusing to grant the Applicant’s request for a security clearance under the Cannabis Act, SC 2018, c 16 and the Cannabis Regulations, SOR/2018-144.

[2] For the reasons that follow, the application is granted.

II. Background [3] The Applicant sought a security clearance to occupy an “Alternate Quality Assurance Person” position requiring a clearance. The position is with Pur Botanicals Ltd., a federal cannabis licence holder. The statutory decision maker for the Decision was the Executive Director, Controlled Substances and Cannabis Branch, Health Canada (the “Executive Director”), acting on behalf of the Minister of Health (the “Minister”).

[4] The Applicant was involved with law enforcement occurrences in June 2013, August 2013, and February 2014 (the “2013/2014 Occurrences”). The June 2013 occurrence involved search warrants executed at two commercial properties, seizures of cannabis plants and processed cannabis, hash oil, and magic mushrooms, and charges laid against the Applicant that were later withdrawn in August 2015. The August 2013 occurrence involved police searches and indoor cannabis grow operations, wherein police returned the seized cannabis to the Applicant as the legal licence holder for the address from where it was seized, while noting that the licence stipulated cannabis storage at a different location. Police did not proceed with criminal charges. The February 2014 occurrence involved a traffic stop, the Applicant’s arrest for possession of cannabis under 30 grams, and a breach of recognizance allegation, with charges later withdrawn.

[5] The record includes an internal recommendation from the Health Canada Personnel Security Manager dated February 5, 2024, which recommended that the Applicant’s clearance be granted. That recommendation was overturned; on February 12, 2024, the Director General marked “Refuse clearance” and the file proceeded through a notice of intent to refuse process.

[6] An internal “Action Steps” form records Health Canada’s processing of the Applicant’s file, including receipt of law enforcement checks, completion of open-source searches, issuance of the notice of intent, receipt of representations, peer review, and routing to the Executive Director.

[7] Health Canada sought additional RCMP information in the spring of 2024. On May 9, 2024, Health Canada sent another request to the RCMP to include “links to organized crime in the notes”. Health Canada received two special law enforcement record check reports on April 25, 2024, and June 10, 2024.

- [8] On June 21, 2024, the Executive Director issued a notice of intent to refuse (the “Notice of Intent to Refuse”), which included Annexes A to E containing news articles, a police social media post, and Facebook screenshots showing the Applicant and her common-law spouse as Facebook “friends” with a third-party. The notice of intent to refuse provided 30 days for the Applicant to make written representations. The Applicant provided written representations dated July 17, 2024.
- [9] On December 9, 2024, the Executive Director sent a final refusal letter to the Applicant and a separate letter to the employer, Pur Botanicals Ltd., notifying it that the Applicant was refused a clearance and therefore must not perform duties requiring a clearance.

III. The Decision [10] The letter to Pur Botanicals Ltd. dated December 9, 2024, simply communicated that Health Canada had refused the Applicant a security clearance under the Cannabis Act and its regulations, and it directed that the Applicant must not perform duties requiring a security clearance.

- [11] The letter to the Applicant dated December 9, 2024, sets out the reasons for refusal. The Executive Director confirmed that the Applicant had been informed by the Notice of Intent to Refuse that the checks conducted, including a criminal record check and law enforcement file checks, revealed the 2013/2014 Occurrences involving cannabis-related investigations, charges, and release outcomes. The letter summarized the 2013/2014 Occurrences and noted, among other things, that charges arising from the June 2013 occurrence were withdrawn in August 2015.
- [12] The Executive Director also listed information obtained through open-source internet searches, including news articles, a police social media post, and Facebook screenshots (Annexes A to E of the December 9, 2024 letter to the Applicant). Annex E contains screenshots showing the Applicant and her common-law spouse as Facebook “friends” with a third-party.
- [13] The Executive Director identified the governing test under subsection 53(1) of the Cannabis Regulations and stated that, based on all relevant information, it was her opinion that the Applicant posed an unacceptable risk to public health or public safety, including the risk of diversion of cannabis to an illicit market or activity.
- [14] The Executive Director identified two factors as “most relevant” to the refusal:
- (a) clause 53(2)(b)(vii)(B) of the Cannabis Regulations, concerning association with an individual linked to certain organized crime categories; and
 - (b) paragraph 53(2)(c) of the Cannabis Regulations, concerning reasonable grounds to suspect that the Applicant could be induced to commit an act, or to aid or abet any person to commit an act, that might constitute a risk to public health or public safety.

- [15] The Executive Director expressly accepted the Applicant's explanations regarding the 2013/2014 Occurrences. She stated that the concerns connected to the Applicant's "involvement in the illicit production of cannabis" in June 2013, August 2013, and February 2014 had been alleviated and that the Applicant was "no longer in a situation contemplated" by subparagraphs 53(2)(b)(i) and 53(2)(b)(ii).
- [16] The Decision therefore turned on a remaining concern that was communicated to the Applicant in the Notice of Intent to Refuse: the Applicant's "ties to an individual, with whom you are friends on Facebook", and who is "well known to be involved in organized crime". The Decision summarizes the Applicant's response "that being Facebook friends is insufficient evidence of a relationship that could induce you to commit an act - or to aid and abet any person to commit an act - that might constitute a risk to public health or public safety". The Decision states that the Applicant did not "concretely explain the connection and demonstrate that there is no risk".
- [17] On that basis, the Executive Director concluded the Applicant was in a situation contemplated by clause 53(2)(b)(vii)(B) of the Cannabis Regulations. She further concluded that the Applicant's connection to an individual associated with organized crime would jeopardize the integrity of the legal cannabis framework and meant the Applicant could be induced or coerced into conducting illicit activities on behalf of a criminal organization. The Executive Director therefore concluded the Applicant was also in a situation contemplated by paragraph 53(2)(c) of the Cannabis Regulations.

IV. Issues [18] There are two issues in this application:

Was the Decision reasonable?

Did the process breach procedural fairness?

[19] The Respondent has also raised the preliminary issue:

Who is the proper respondent to this application under Rule 303 of the Federal Courts Rules, SOR/98-106?

V. Standard of Review [20] The standard of review with respect to the Executive Director's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25; *Lum v Canada (Attorney General)*, 2020 FC 797 [Lum] at para 25).

[21] The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

VI. Analysis A. Preliminary Issue – Proper Respondent [22] The Applicant named the Executive Director, Controlled Substances and Cannabis Branch, Health Canada as the respondent. The proper responding party is the Attorney General of Canada, and the style of cause is hereby amended accordingly.

B. Statutory Framework [23] Under the Cannabis Act and the Cannabis Regulations, certain personnel working in the legalized cannabis sector must hold a security clearance. Section 50 of the Cannabis Regulations prohibits an individual from performing the duties of a position requiring a security clearance if the individual does not hold such a clearance.

[24] The Cannabis Regulations establish a risk-based screening scheme. Subsection 53(1) requires that, before granting a security clearance, the decision maker must determine, taking into account any licence conditions imposed under the Cannabis Act, that an applicant does not pose an unacceptable risk to public health or public safety, including the risk of cannabis being diverted to an illicit market or activity.

[25] Subsection 53(2) of the Cannabis Regulations lists factors that may be considered in assessing risk. Two factors were central to the Decision:

- (a) clause 53(2)(b)(vii)(B), which addresses association with an individual who is a member of, or involved in, a criminal organization as defined in the Criminal Code; and
- (b) paragraph 53(2)(c), which addresses whether there are reasonable grounds to suspect the applicant could be induced to commit, or to aid or abet, an act that might constitute a risk to public health or public safety.

C. Reasonableness [26] Subsection 53(1) of the Cannabis Regulations requires the decision maker to determine that an applicant does not pose an unacceptable risk to public health or public safety, including the risk of diversion to an illicit market or activity. The Decision therefore required a risk assessment grounded in the statutory purpose and the information in the Applicant's file.

[27] The Executive Director expressly accepted the Applicant's explanations regarding the 2013/2014 Occurrences and set out that those occurrences were no longer treated as driving the risk assessment. The determinative reasoning therefore has two components:

- (a) the Executive Director concluded that the Applicant was in a situation contemplated by clause 53(2)(b)(vii)(B) because the Applicant was "associated" with an individual "well known to be involved in organized crime"; and
- (b) the Executive Director concluded that this association created reasonable grounds to suspect that the Applicant could be induced or coerced into illicit activity, engaging paragraph 53(2)(c), and therefore that the Applicant posed an unacceptable risk under subsection 53(1).

- [28] Under reasonableness review the Court does not reweigh evidence or decide whether it would have reached the same result (Vavilov at paras 83, 125). The Court must nevertheless be able to trace the decision maker's reasoning and be satisfied that the outcome is justified in light of the record and the governing scheme (Vavilov at paras 99, 102-105).
- [29] While the Decision does not explain, even at a high level, what information supports the characterization of the third-party as being connected to organized crime, the central difficulty is not the description of the third-party. Rather, it is the absence of reasoning explaining how the Applicant's Facebook "friend" connection to the third-party could support the Decision's conclusion. The Decision includes evidence of Facebook "friend" connections shown in screenshots presented in Annex E to the Decision. While it is possible that the Executive Director intended that the Applicant infer that the person depicted in the Annex E Facebook screenshots is the person referenced in the Executive Director's concerns, and while the Applicant could, and ideally would, have explained the context of that Facebook connection, the Executive Director does not state in the Decision that the person shown is the organized crime-connected individual to whom she refers.
- [30] The reasons do not identify any other indicia of a relationship between the Applicant and an organized crime-linked third-party, such as in-person dealings, ongoing interaction, family or household connection, financial ties, shared enterprise, or any other factual basis that explains why the Applicant is "associated" with the individual in the sense contemplated by the Cannabis Regulations.
- [31] Canadian courts have treated the bare fact of a social media connection as weak and equivocal evidence of any real-world relationship. In *DeMaria v Law Society of Saskatchewan*, 2015 SKCA 106 [DeMaria], the Court of Appeal for Saskatchewan held that a reasonable and informed person would place "little or no weight" on the unadorned fact that two people are Facebook friends because, without more, it is indicative of nothing more than the individuals know each other (DeMaria at para 49). While DeMaria arose in a different legal context, its caution is directly relevant where the Decision treats Facebook friendship as sufficient to meet a statutory factor focused on association as a risk indicator. The interpretation of Facebook friendship expressed in DeMaria has also been accepted by the Ontario Superior Court of Justice: "in today's world, a reasonable and informed person would place little or no weight on the fact that two persons are 'friends' on Facebook" (*Costco Wholesale Corporation v TicketOps Corporation*, 2023 ONSC 573 at para 88). Facebook "friend" is a platform status label, not a reliable descriptor of a real-world friendship or close connection between people.
- [32] While other people are mentioned in connection to the Applicant in the news articles and police social media post presented in Annexes A to D to the Decision, there is no evidence in the record that those other people are connected to organized crime or that they are Facebook "friends" with the Applicant. The third-party shown in the Annex E Facebook screenshots is not one of the people mentioned in Annexes A to D.

- [33] The Respondent relies on *Rossi v Canada (Attorney General)*, 2015 FC 961 to argue that merely having a connection to an organized crime-connected third-party is enough to establish a refusal of security clearance. The facts of that case are clearly distinguishable.
- [34] On inducement or coercion under paragraph 53(2)(c), the Decision moves from the existence of a “link” to the conclusion that the Applicant “could be induced or coerced” to commit an act — or to aid or abet any person to commit an act — that might constitute a risk to public health or public safety. The Respondent argues that the statutory scheme is preventative, and risk-based and that a decision maker can draw reasonable inferences about vulnerability to inducement based on relationship evidence, context, and the regulated environment.
- [35] However, the Decision does not explain why the connection described in the reasons supports the inference of inducement or coercion. The reasons characterize the connection as “friends on Facebook”. The reasons do not identify any other features of the relationship, such as frequency of contact, dependence, shared enterprise, financial ties, or repeated interactions, that might support a predictive assessment about inducement.
- [36] The Executive Director’s reasoning on inducement effectively proceeds as follows: the Applicant is linked to an organized crime-connected individual, therefore she could be induced or coerced into conducting illicit activities on behalf of a criminal organization. That reasoning depends on the first premise being established in a way that is transparent, intelligible, and justified. As explained above, the Decision does not supply that justification on the record before the Court. It then compounds the problem by drawing the inducement inference based on Facebook friendship, without explaining why the nature of the relationship results in reasonable grounds to suspect risk of inducement or coercion. Without any explanation of why Facebook friendship amounts to association in the statutory sense, and without an explanation of why that connection provides reasonable grounds to suspect inducement or coercion, the reasoning is merely conclusory with no reasonable factual basis.
- [37] This Court’s decision in *Lum* is instructive on the point that where a refusal turns on association and risk, the decision must analyze the nature of the relationship and explain how it translates into an unacceptable risk to public health or public safety, including diversion risk (*Lum* at paras 107-113). Absent an assessment of the nature of the relationship, it is difficult to understand why there are reasonable grounds to suspect that an applicant could be induced to commit an act – or to aid or abet any person to commit an act – that might constitute a risk to public health or public safety (*Lum* at paras 114-117). Those concerns arise here, where the reasons identify the relationship evidence as a Facebook friendship and then draw determinative risk inferences without explaining why a Facebook “friend” connection, with nothing more, supports them.

- [38] In her response to the Notice of Intent to Refuse, the Applicant did argue that a Facebook friendship, without more, does not establish a relationship that could induce her to commit acts presenting a risk to public safety or health. The Decision responds by stating that the Applicant did not “concretely explain the connection and demonstrate that there is no risk”. However, when Health Canada sent the Notice of Intent to Refuse and asked the Applicant to disprove her association with an organized crime-connected third-party, they did not provide sufficient transparency, clarity, or evidence for the Applicant to rebut the asserted association.
- [39] The Executive Director’s statement that the Applicant did not “concretely explain the connection and demonstrate that there is no risk” shifts focus away from the decision maker’s obligation to ground the refusal in reasonable grounds supported by the record. The Applicant’s failure to explain a connection that was not transparently identified or evidenced, or her failure to demonstrate that there is no risk, does not itself supply the missing explanation of why a Facebook “friend” connection constitutes an association within the meaning of clause 53(2)(b)(vii)(B), or one that further engages paragraph 53(2)(c).
- [40] The Respondent submits, relying on *Henri v Canada (Attorney General)*, 2014 FC 1141 [Henri], *affd* 2016 FCA 38 and *Lum*, that the Executive Director could rely on law enforcement checks, that the assessment is preventive and risk-based, and that a decision maker may draw reasonable inferences in a forward-looking risk assessment and may err on the side of public safety within statutory bounds. The Executive Director only needed to be convinced that there are reasonable grounds to suspect that the Applicant could commit or aid in the commission of an act that may constitute a risk to public safety or health (*Henri* at para 27 citing *MacDonnell v Canada (Attorney General)*, 2013 FC 719 at para 29). However, those principles do not relieve the Executive Director of the obligation to demonstrate a transparent and rational connection between the evidence and the determinative conclusions. The Court must look at the reasons actually given, read in light of the record, to assess whether the decision is justified in relation to the constraints that bear on it (*Vavilov* at paras 94, 99, 103, 105).
- [41] The Respondent argues that the Court owes deference to the Executive Director based on her specialized expertise and the forward-looking nature of risk assessment. Indeed, “[r]espectful attention to a decision maker’s demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision” (*Vavilov* at para 93). However, deference cannot cure an absence of justification on the determinative point.
- [42] Where a refusal under the Cannabis Regulations turns on association and risk, the decision must explain why and how the association supports the conclusion of unacceptable risk within the statutory scheme (*Lum* at paras 107-118). On this record, where the reasons identify the core association evidence as being “friends on Facebook” and then move to the

conclusion that inducement could be reasonably suspected, the Decision does not allow the Court to follow the reasoning path from evidence to outcome. The Decision therefore lacks the justification, intelligibility, and transparency required under reasonableness review (Vavilov at paras 99, 102), and cannot stand.

D. Procedural Fairness [43] The Applicant submits that the process was procedurally unfair because the Executive Director did not provide sufficient information about the individual said to be involved in organized crime. The Applicant emphasizes that the Notice of Intent to Refuse and final refusal did not name a specific individual, a specific criminal organization, or specific criminal activity. The Applicant submits that without particulars, she could not know the case to meet and could not meaningfully respond.

[44] The process included the Notice of Intent to Refuse in advance of the final decision and an opportunity for the Applicant to make written representations within 30 days, which she did. The Executive Director considered the Applicant's representations and accepted them on the 2013/2014 Occurrences. The Executive Director concluded that the earlier concerns tied to 2013/2014 Occurrences were alleviated and no longer engaged the regulatory factors she had previously identified. The Applicant therefore had, and used, an opportunity to respond. Indeed, the Applicant's response affected the Executive Director's reasoning.

[45] The remaining question is whether procedural fairness required disclosure of additional particulars about the "ties to an individual" who is "well-known to be involved in organized crime" aspect of the Executive Director's concern. In comparable security clearance contexts, courts have held that procedural fairness does not necessarily require the disclosure of names or complete intelligence detail contained in law enforcement checks (Henri at paras 29-32). This Court has held that a lower level of procedural fairness applies to security clearance evaluation under the Cannabis Regulations; however, the affected person must know Health Canada's concerns and have a meaningful opportunity to respond (Lum at paras 38, 78).

[46] The Applicant was notified of the statutory scheme, the factors Health Canada considered relevant, and the substance of the concern that remained determinative. Both the Notice of Intent to Refuse and the Decision include:

- (a) a description of concerns arising from Facebook ties to an individual who is well known to be involved in organized crime; and
- (b) an Annex E with screenshots indicating that a third-party is a Facebook "friend" of the Applicant and her common-law spouse.

[47] While my concerns on the reasonableness analysis about the transparency, clarity, and evidentiary basis for the Applicant's alleged connection to a third-party described as having ties to organized crime may also raise issues of procedural fairness, I need not decide this application on that basis as I have found the Decision unreasonable.

E. Costs [48] The Respondent sought costs, and the Applicant sought reimbursement of expenses associated with pursuing the application.

[49] As the successful party, the Applicant is entitled to costs. The Court does not order broad “reimbursement” of expenses outside the costs regime. Costs will be payable in accordance with Column 2 of Tariff B.

VII. Conclusion [50] The application is granted. The Decision is set aside, and the matter is remitted for redetermination.

[51] The style of cause shall be amended to substitute the Attorney General of Canada as the Respondent.

[52] The Applicant is awarded costs in accordance with Column 2 of Tariff B.

JUDGMENT in T-1732-25

THIS COURT’S JUDGMENT is that:

The application is granted. The Decision is set aside, and the matter is remitted for redetermination.

The style of cause shall be amended to substitute the Attorney General of Canada as the Respondent.

The Applicant is awarded costs in accordance with Column 2 of Tariff B.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:

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MANSON J.

DATED:

March 12, 2026

APPEARANCES:

Danielle Capin

For The Applicant

(ON HER OWN BEHALF)

Sahar Mir

For The Respondent

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Toronto, Ontario

For The Respondent

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