

VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street
Burlington VT 05401
802-863-3467
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 26-CV-03448

Trichome VT LLC, Petitioner v. Vermont Cannabis Control Board, Respondent	DECISION ON MOTION
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RULING ON MOTION TO DISMISS

This case concerns a cannabis cultivation business operating in a residential area of Essex Junction. Jason Struthers owns the property where Trichome VT LLC (“Trichome”) is located. By letter dated November 24, 2025, the Vermont Cannabis Control Board (the “Board”) informed Struthers that he was required to “halt all licensed cultivation activities” due to the revocation by the Essex Junction Local Cannabis Control Commission (“LCCC”) of Trichome’s license. In May 2026, Struthers sent an email to the Board asking for a review of its November 2025 letter pursuant to 7 V.S.A. § 847. The Board denied Struthers’ request by email on May 18, explaining that he had no appellate right under § 847. Pursuant to Rule 75 of the Vermont Rules of Civil Procedure, Trichome now seeks judicial review of (1) the Board’s directive in the November 24, 2025 letter that Trichome “immediately halt all licensed cultivation activities” and (2) the Board’s May 2026 refusal to consider Trichome’s appeal under 7 V.S.A. § 847. The Board has moved to dismiss Trichome’s petition pursuant to Rule 12(b)(1), arguing the Court lacks subject matter jurisdiction. The Board is represented by Assistant Attorney General Alison L.T. Powers, and Trichome appears through Mr. Struthers, who is not a licensed attorney, but was provisionally granted permission to represent the business in this action. For the reasons discussed below, the Board’s motion to dismiss is GRANTED.

Procedural History

On November 24, 2025, the Board sent Struthers and Trichome a letter informing them that it had received notice that on November 12, 2025, the LCCC voted to revoke the local license of Trichome’s cannabis cultivation operation. In the letter, the Board stated: “Because there has been a final administrative determination that you do not hold an LCCC cultivation license, you must immediately halt all licensed cultivation activities unless the decision is stayed by a court of competent jurisdiction.” Following an unsuccessful appeal to this Court of the

LCCC's decision to revoke Trichome's cultivation license,¹ Struthers sent an email to the Board on May 14, 2026, seeking review of its November 24, 2025 letter, under the procedures provided by 7 V.S.A. § 847. The Board denied Struthers' request by email on May 18, 2026, and Trichome filed an appeal of the Board's denial with the Vermont Supreme Court. The Supreme Court dismissed the appeal for lack of jurisdiction, stating: "There is no decision by the Board that is ripe for review at this juncture." *In re Trichome VT LLC*, Case No. 26-AP-247, Entry Order, dated Aug. 10, 2026. Following a second unsuccessful appeal to this Court of the LCCC's revocation decision,² Trichome filed the current action against the Board.

Discussion

"'Subject matter jurisdiction' refers to the power of a court to hear and determine a general class or category of cases." *Lamell Lumber Corp. v. Newstress Int'l, Inc.*, 2007 VT 83, ¶ 6, 182 Vt. 282 (citation omitted); *see also Baron v. McGinty*, 2021 VT 6, ¶ 31, 214 Vt. 141 (stating that because subject matter jurisdiction refers to a court's power to hear a case, "a court either has subject matter jurisdiction or it does not"). A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may not be granted "unless it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Wool v. Office of Prof'l Regulation*, 2020 VT 44, ¶ 8, 212 Vt. 305 (quotation omitted)). Before the Court can reach the parties' arguments regarding the merits of Trichome's appeal, it must first determine whether it has the authority to hear it. *Cf. Denlinger v. Mudgett*, 151 Vt. 208, 211, 559 A.2d 661, 663 (1989) (holding that a court cannot "accept appeals over which it has no jurisdiction").

Trichome brings this appeal pursuant to Rule 75. "Rule 75 permits judicial review of '[a]ny action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any . . . commission . . . that is not reviewable or appealable under Rule 74 . . . if such review is otherwise available by law.'" *Maple Run Unified Sch. Dist. v. Vt. Human Rights Comm'n*, 2023 VT 63, ¶ 10, 218 Vt. 496 (quoting V.R.C.P. 75(a)). In other words, Rule 75 applies when the "legislation is silent on the mode of review" and appellate procedure is available as a matter of law. *Preston v. Burlington City Ret. Sys.*, 2013 VT 56, ¶ 13, 194 Vt. 147; *see also Friends of Pine St. v. City of Burlington*, 2020 VT 43, ¶ 22, 212 Vt. 342 ("Rule 75 is limited to those instances where Rule 74 does not apply."). The "otherwise available by law" language of Rule 75 refers to "review 'under the traditional writs for extraordinary relief' including mandamus, prohibition, scire facias, certiorari, and quo warranto." *Preston*, 2013 VT 56, ¶ 13.³ These traditional writs have been abolished, and "[r]eview of any action or failure to

¹ *See Trichome VT LLC v. Essex Junction Local Cannabis Control Commission*, Case No. 25-CV-05447. In that case, Trichome sought appellate review pursuant to Rule 74. On March 31, 2026, the Court granted the City of Essex Junction's motion to dismiss the appeal on the grounds that it lacked subject matter jurisdiction under Rule 74, given that such review was not authorized by statute.

² *See Trichome VT LLC v. City of Essex Junction*, Case No. 26-CV-03449. In that case, Trichome sought to appeal the LCCC's revocation decision pursuant to Rule 75. On September 3, 2026, the Court dismissed his second appeal on the grounds that it was untimely.

³ Mandamus is a command from a court for a ministerial duty to be performed and issues only "(1) when a party has a clear and certain right to the action sought by the request for

act by a governmental agency shall be in accordance with the procedure prescribed by Rule 74 or 75.” V.R.C.P. 81(b).

The problem with Trichome’s petition is that Vermont’s Cannabis Control Board legislation is not “silent on the mode of review.” On the contrary, 7 V.S.A. § 847 plainly establishes a right of appeal and the process Trichome must follow. It provides that a “party aggrieved by a final decision of the Board” may appeal that decision to the Board’s executive director, “who shall assign the case to an appellate officer.” 7 V.S.A. § 847(a)(1). If the party is not satisfied with the appellate officer’s decision, the party may appeal that decision to the Vermont Supreme Court. *Id.* § 847(c). The statute does not provide for the review of any decision by the Board other than a final decision, and of equal importance, there is no right of appeal to the Civil Division of the Superior Court under this statutory framework. *See In re Holland Cannabis, LLC*, 2025 VT 61, ¶ 19, 350 A.3d 397 (noting steps for appealing a decision of a cannabis board).

Where such an express appellate process and remedies are available, there is no jurisdiction under Rule 75. Indeed, the Supreme Court has cautioned that a party may not circumvent the Legislature’s intent by obtaining review of a decision pursuant to Rule 75 that would not be permitted under Rule 74. *See, e.g., Friends of Pine Street*, 2020 VT 43, ¶ 23 (rejecting party’s “assertion that because it is not entitled to appeal pursuant to Rule 74 and the statutory appeal process, it is entitled to review through Rule 75,” and explaining there “is no absolute right to appellate review of administrative decisions”); *In re Cabot Creamery Co-op.*, 164 Vt. 26, 28-29, 663 A.2d 940, 941 (1995) (where statute excludes certain individuals from appellate process, appeal will not be allowed under Rule 75 because “such an end run” would “circumvent[] the Legislature’s intent”). Thus, where, as here, the Legislature has determined the process and manner of taking an appeal, and limited such appellate rights to final decisions of Board, Trichome may not appeal notices or other non-final decisions to the Superior Court.

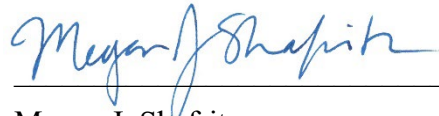
Accordingly, because the Court concludes that it lacks subject matter jurisdiction over Trichome’s appeal of the actions by the Board, its petition must be dismissed.

[mandamus]; (2) [the request] is for the enforcement of ministerial duties, not those that involve the exercise of an official’s judgment or discretion; and (3) there is no other adequate remedy at law.” *Island Indus., LLC v. Town of Grand Isle*, 2021 VT 49, ¶ 21, 215 Vt. 162 (quotation omitted). A writ of prohibition referred to an order to a lower tribunal “to cease abusing or usurping judicial functions.” *Maple Run Unified Sch. Dist.*, 2023 VT 63, ¶ 21 (quoting *Gould v. Parker*, 114 Vt. 186, 188, 42 A.2d 416, 417 (1945)). “Scire facias” referred to a “writ of requiring the person against whom it is issued to appear and show cause why some matter of record should not be enforced, annulled, or vacated, or why a dormant judgment against that person should not be revived.” *Black’s Law Dictionary*, scire facias (12th ed. 2024). A writ of certiorari seeks judicial review of “substantial questions of law affecting the merits of a case which involve the judicial action of inferior courts, special tribunals, public officers, [or] bodies exercising judicial functions.” *Petition of Town of Essex*, 125 Vt. 170, 170, 212 A.2d 623, 625 (1965). A writ for “quo warranto” was used to question the authority under which a public office was held. *McCormack v. Scott*, 2025 VT 7, ¶ 15, 220 Vt. 544.

Order

For the foregoing reasons, the Vermont Cannabis Control Board's Motion to Dismiss (Mot. #4) is GRANTED.

Electronically signed on September 18, 2026 at 11:40 AM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge