

Federal Court



Cour fédérale

Date: 20260415

Docket: T-977-25

Ottawa, Ontario, April 15, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

AMIT ARORA

Applicant

and

CANADIAN NATIONAL RAILWAY

Respondent

ORDER AND REASONS

I. Overview

[1] The self-represented Applicant, Amit Arora, has brought a motion in writing pursuant to Rules 51 and 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], appealing the January 19, 2026 Order [January 2026 Order] of Associate Judge Kathleen Ring [AJ] that dismissed his motions under Rules 312 and 369 for leave to file additional affidavit evidence.

[2] The Applicant has failed to demonstrate any reviewable error on the part of the AJ. The motion will therefore be dismissed for the reasons that follow.

II. Background

[3] The Applicant initiated a complaint under the *Canadian Human Rights Act*, RSC 1985, c H-6, in 2019, alleging a number of incidents of differential treatment and discrimination involving the Respondent. In the underlying application, the Applicant seeks judicial review of a February 19, 2025 decision of the Canadian Human Rights Commission [CHRC] to refer only one of the alleged incidents for inquiry.

[4] In pursuing his application for judicial review, the Applicant brought a motion seeking leave to file an additional affidavit under Rule 312 following the service and filing of the Respondent's Rule 307 affidavit on May 20, 2025 [CN Affidavit]. Associate Judge Martha Milczynski found the motion record to be deficient, and in an Order dated July 18, 2025, she dismissed the motion without prejudice to the Applicant's ability to bring a further and more complete motion.

[5] On August 15, 2025, the Applicant again brought a motion under Rule 312 [Rule 312 Motion] seeking leave to serve and file a revised additional affidavit affirmed on August 14, 2025 [Revised Second Affidavit], submitting it responded to new assertions in the CN Affidavit. In a responding motion record dated August 25, 2025 [CN Motion Record], the Respondent opposed the admission of the Revised Second Affidavit, arguing it was not responsive to the CN Affidavit, and that it addressed matters and contained exhibits that were foreseeable and

available, or could have been available with the exercise of due diligence, at the time of the service of the Applicant's Rule 306 affidavit on April 23, 2025.

[6] The Applicant filed a second motion on September 18, 2025 [Reply Motion], seeking an extension of time to file submissions under Rule 369(3) in reply to the CN Motion Record, and leave to file a supplementary affidavit as part of that reply [Reply Affidavit].

[7] The January 2026 Order allowed the Applicant's Reply Motion in part – the AJ granted the Applicant an extension of time to file reply submissions, but refused the request for leave to file the Reply Affidavit. The Rule 312 Motion, which sought leave to file the Revised Second Affidavit, was dismissed.

[8] On February 9, 2026, the Applicant filed a motion under Rules 51 and 369 seeking to appeal the January 2026 Order and, in particular, the following relief:

- A. An Order extending the time to bring the motion pursuant to Rule 51(2) and Rule 369 of the *Rules*, by six (6) days, *nunc pro tunc* to February 5, 2026;
- B. An Order staying the January 2026 Order, pending determination of the motion;
- C. An Order staying the requirement to serve and file the Applicant's record in the underlying judicial review pending determination of the motion, in order to preserve the effectiveness of the motion;
- D. In the alternative, an Order extending the time to serve and file the Applicant's record to a reasonable period following the disposition of the motion;

- E. For greater certainty, the motion seeks procedural relief only and does not ask the Court to determine the merits, credibility, or ultimate validity of the underlying allegation; and
- F. Such further and other relief as the Court may deem just.

[9] In an Order issued on March 2, 2026, [March 2026 Order] Justice Alan Diner considered the motion. In addressing the relief sought by the Applicant, the March 2026 Order granted the request for an extension of time to serve and file the motion, and deemed the Applicant's notice of motion to be the Rule 51 motion appealing the January 2026 Order. The March 2026 Order dismissed the Applicant's request for a stay of the January 2026 Order and the request to stay or extend the requirement to serve and file the Applicant's record.

[10] As a result, the only issue before the Court now is the determination of the merits of the Applicant's motion under Rule 51 appealing the January 2026 Order. In considering this motion, I have reviewed the Applicant's motion record filed on February 9, 2026, including his written submissions, the Respondent's written submissions filed on March 12, 2026, and the Applicant's reply submissions filed on March 17, 2026.

III. The January 2026 Order

A. *The Reply Motion*

[11] The AJ first considered the request for leave to file the Reply Affidavit.

[12] The AJ noted that, on its face, the Reply Affidavit did not explain why the Applicant should be allowed to file a late reply with affidavit evidence; rather, the Reply Affidavit appeared to be a reply to the Rule 312 Motion, as were the written representations filed in support of the Reply Motion.

[13] The AJ noted that Rule 369(3) does not contemplate the filing of supplementary affidavits in reply and cited the following principles set out in *Amgen Canada Inc v Apotex Inc*, 2016 FCA 121 at paras 7, 10–11, 13 [*Amgen*] – leave of the court is required to file reply evidence on a motion; leave is provided only in unusual circumstances relating to procedural fairness concerns and the need to reach a proper determination; and the court must have regard to whether the evidence will assist the court, whether admission will cause substantial or serious prejudice to the other side, and whether the evidence was available when the party filed its affidavits or could have been discovered with the exercise of due diligence.

[14] The AJ refused leave to file the Reply Affidavit, the principles identified in *Amgen* not having been established. She found the affidavit consisted almost entirely of opinion evidence, argument, and conjecture, addressing matters more properly the subject of submissions, and therefore was not admissible evidence. She further held that, to the extent evidence was advanced, the evidence was available, or discoverable through the exercise of due diligence, at the time the Rule 312 Motion was filed.

[15] In considering the request for an extension of time to file reply submissions, the AJ noted the deadline for filing a reply was August 29, 2025, and the Reply Motion was not filed until

September 18, 2025. The only explanation provided by the Applicant for the delay was that he “acted diligently in seeking consent after the [Respondent’s] August 25 filing, but consent was refused” and that “[a]ny delay is procedural, required by Rule 369(4), and causes no prejudice to the Respondent.”

[16] The AJ characterized this justification as weak and found the explanation did not account for the entire delay period. However, the AJ also noted that deficiencies in both the Rule 312 Motion and the CN Motion Record may have created some confusion regarding the timing to file the Reply Motion. Citing *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) at para 3, the AJ found it to be in the interests of justice to grant the extension of time.

B. *The Rule 312 Motion*

[17] Before considering the legal test under Rule 312, the AJ first identified a concern with misstatements of the law and reliance upon non-existent jurisprudence in the Applicant’s submissions. The AJ attributed this to the Applicant’s undeclared reliance on generative artificial intelligence [AI], contrary to this Court’s practice direction *The Use of Artificial Intelligence in Court Proceedings*, dated May 7, 2024 [AI Practice Direction]. Recognizing that the Applicant was self-represented but also noting the obligations of self-education that accompany self-representation, the AJ set out the Court’s expectations with respect to the Applicant’s use of AI in any future filings before the Court.

[18] The AJ then identified the legal test for admitting additional affidavit evidence as set out in *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at paras 4–6 [*Forest Ethics*].

[19] Noting a moving party bears the onus of demonstrating the evidence is admissible on the application for judicial review and relevant to an issue before the reviewing court, the AJ concluded the Applicant had failed to do so. The AJ first found the Applicant had failed to establish that any of the exceptions to the general rule that limits the evidentiary record before a reviewing court on judicial review to the record that was before the decision-maker were of application (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20). The AJ also found the Revised Second Affidavit consisted of largely impermissible opinion, argument, and conjecture contrary to Rule 81, and was inadmissible on that basis as well.

[20] The AJ then found that even if the evidence were admissible, the Applicant had not established it was relevant to any issue properly before the Court in the underlying application as the Revised Second Affidavit did not confine itself to the discreet incident that was before the CHRC in rendering the decision under review.

[21] Finally, the AJ held that even if the evidence were admissible and relevant, granting leave to admit the Revised Second Affidavit would not be in the interests of justice because it contained evidence that had been available to the Applicant with the exercise of due diligence at the time of serving his Rule 306 affidavit on April 23, 2025. The AJ rejected the Applicant's

argument that the relevance of the evidence only became apparent following the filing of the CN Affidavit on May 20, 2025, and noted the principle that it is not open to an applicant to repair perceived deficiencies in their case after the expiration of the time for cross-examinations.

IV. Issues

[22] The core issue, as identified by the Applicant in his reply submissions filed on March 17, 2026, is “whether the Associate Judge applied the correct legal framework” when assessing the evidence the Applicant sought to admit through the Revised Second Affidavit and the Reply Affidavit. The Applicant also asserts the AJ made “adverse credibility-related observations” without providing notice or an opportunity to respond. This motion therefore raises two issues:

- A. Did the AJ err in refusing to admit the Applicant’s Revised Second Affidavit and Reply Affidavit?
- B. Was there a breach of procedural fairness?

V. Standard of Review

[23] The standard of review on an appeal of a discretionary decision of an associate judge is correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law for which there are no extricable questions of law (*Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215; *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36).

[24] Justice Denis Gascon noted the highly deferential nature of the “palpable and overriding error” standard in *Lessard-Gauvin v Canada (Attorney General)*, 2020 FC 730:

[43] The FCA has repeatedly declared that the “palpable and overriding error” standard is a “highly deferential standard” (*Figueroa v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 12 at para 3; *Montana v Canada (National Revenue)*, 2017 FCA 194 at para 3; *1395804 Ontario Ltd (Blacklock’s Reporter) v Canada (Attorney General)*, 2017 FCA 185 at para 3; *NOV Downhole Eurasia Limited v TLL Oilfield Consulting Ltd*, 2017 FCA 32 at para 7; *Revcon Oilfield Constructors Incorporated v Canada (National Revenue)*, 2017 FCA 22 at para 2). This is a heavy burden for an applicant to meet. As Justice Stratas metaphorically stated in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] and in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 [*South Yukon*], in order to meet this standard “it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall” (*Mahjoub* at para 61; *South Yukon* at para 46), cited with approval by the SCC in *Benhaim v St-Germain*, 2016 SCC 48 [*Benhaim*] at para 38).

[Emphasis added.]

[25] Questions of procedural fairness are to be reviewed on a standard akin to correctness. This requires the court to ask whether the procedure followed by the decision-maker was fair and just having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). The ultimate question is whether the party knew the case to meet and had a full and fair chance to respond (*Canadian Pacific* at para 56).

VI. AnalysisA. *The AJ did not err in refusing to admit the Applicant's Revised Second Affidavit or Reply Affidavit*

[26] The Applicant takes the position that (1) the need for filing the Reply Affidavit arose from new legal authorities cited in the CN Motion Record, and (2) the Revised Second Affidavit sought to advance evidence to explain an alleged evidentiary and procedural gap that has resulted in evidence underlying his human rights complaint having not been reviewed by any decision-maker. The Applicant further particularizes his arguments in various forms, submitting the AJ erred in:

- A. failing to meaningfully engage with the question of whether the Revised Second Affidavit fell within the scope of the recognized exceptions for admitting evidence on judicial review that was not before the decision-maker.
- B. treating the question of admissibility by almost exclusively considering whether the evidence was before the CHRC, thereby “effectively collapsing Rule 312 into a categorical exclusion.”
- C. characterizing the evidence as going to the merits of the underlying application for judicial review, whereas that was not the limited purpose for which it was tendered.
- D. failing to have regard to the procedural history between the Parties, both before the CHRC and on the Rule 312 Motion, and the Applicant's self-represented status.
- E. failing to consider the more proportionate and narrower remedy of striking portions of the Revised Second Affidavit and the Reply Affidavit.

[27] I am not persuaded the AJ erred.

[28] In considering the admission of the Reply Affidavit, the AJ, citing *Amgen*, correctly identified reply evidence on a motion is only permitted in “unusual circumstances” where considerations of procedural fairness and the need to make a proper determination require it, and where the evidence was not previously available or discoverable.

[29] Having correctly identified the applicable law and the legal test to be applied, the AJ then considered the contents of the Reply Affidavit and the surrounding circumstances. In doing so, the AJ determined the Reply Affidavit did not satisfy the “unusual circumstances” test, that the evidence was discoverable at the time the Rule 312 Motion was filed, and that, in any event, Rule 81 was of application and the Reply Affidavit was not admissible as it almost entirely consisted of opinion, argument, and conjecture. In submitting the AJ erred in refusing to admit the Reply Affidavit, the Applicant does not assert the legal test was misstated.

[30] Nor does the Applicant identify any palpable and overriding error of fact. The Applicant submits the Reply Affidavit was filed only to reply to the legal authorities cited in the CN Motion Record, and suggests the AJ failed to consider this in dismissing the Reply Motion. However, the AJ did specifically note that the Applicant’s reply submissions, which also advanced this position, would be considered in deciding the Rule 312 Motion.

[31] In addressing the admissibility of the Revised Second Affidavit, the AJ acknowledged that the exercise of discretion under Rule 312 is to be undertaken with “great circumscription”

and then set out in some detail the legal test as established in *Forest Ethics* for admitting evidence pursuant to Rule 312. The AJ also noted that, in considering the preliminary requirement of admissibility, the general rule on judicial review – the record before the court is limited to that which was before the decision-maker – applies, but also identified the exceptions to this general rule and noted the list of recognized exceptions was not exhaustive.

[32] Again, having correctly identified the applicable legal framework and tests to be applied, the AJ then addressed the question of whether the Revised Second Affidavit was admissible and relevant. In refusing to grant leave to file the Revised Second Affidavit, the AJ engaged in a comprehensive analysis, supported by clear reasons, and concluded the evidence was inadmissible, non-compliant with Rule 81, not relevant to an issue before the court on judicial review, and available at the time of filing the Rule 306 affidavit. Any of these grounds was sufficient to dismiss the Rule 312 Motion.

[33] Contrary to the Applicant’s submissions, the AJ did consider whether the Revised Second Affidavit fell within one of the recognized exceptions to the general rule against the admission of new evidence on judicial review. The AJ specifically rejected that the evidence fell within the scope of the “general background” exception as it was not a neutral and uncontroversial summary of the evidence before the CHRC, but rather was intended to serve as additional evidence upon which the Court might form its own views of the facts and merits of the issues before the CHRC. Nor was the AJ persuaded that the evidence related to any alleged breach of procedural fairness as it simply alleged prior procedural defects that the decision under review failed to correct.

[34] That the AJ's reasons and conclusions do not align with the Applicant's assertion that the AJ should have determined that the Revised Second Affidavit explains an artificially constrained evidentiary record and was admissible for that background purpose establishes the Applicant's obvious disagreement with the AJ. However, the argument does not demonstrate any factual error, and certainly not a palpable and overriding error of fact, that would warrant intervention under Rule 51. The AJ correctly identified the applicable jurisprudence, engaged with the arguments that the evidence fell within a recognized exception allowing it to be admitted on judicial review, and concluded the evidence did not fall within the scope of a recognized exception.

[35] Nor is there any merit to the Applicant's submissions to the effect that the AJ's discretion was improperly or unfairly exercised because (1) the record is voluminous and (2) he is self-represented. A voluminous record does not alter the legal test for the admission of evidence on judicial review.

[36] Nor was the AJ required to apply a different legal standard because the Applicant is self-represented. As noted by the AJ, albeit in the context of her concerns with the Applicant's undeclared use of generative AI, self-represented applicants have an obligation to self-educate. Procedural rules do not change, nor are they applied differently where a party represents themselves – the law is the same whether a party is represented by counsel or represents themselves (*Boulet v Canada (Attorney General)*, 2014 FC 577 at para 5, citing *Scheuneman v Canada*, 2003 FCT 37; *MacDonald v Canada (Attorney General)*, 2017 FC 2 at paras 29–30).

B. *No breach of procedural fairness*

[37] The Applicant further argues that an issue of procedural fairness arises because an adverse credibility determination, made without notice, followed the AJ's concerns with misstatements of the law and the Applicant's reliance upon non-existent jurisprudence.

[38] The Applicant accepts the AJ's concerns as they relate to the importance of accurate written submissions and does not appear to dispute the inference drawn by the AJ – the Applicant relied on generative AI in the preparation of submissions, without verification and without declaring he had done so contrary to the AI Practice Direction.

[39] Nonetheless, the Applicant submits the AJ was required to assess these concerns proportionately and in context. The Applicant identifies the extensive jurisprudence cited by the Respondent and his status as self-represented as relevant context. The Applicant further relies on the absence of any prejudice to the Respondent and the absence of any impact on the Court's determination of the governing legal framework to suggest the accuracy concerns were of little consequence in this instance and they should not have been allowed to influence credibility concerns or the exercise of the AJ's discretion.

[40] There is no merit in the Applicant's procedural fairness argument. The AJ did not draw a negative credibility inference from the Applicant's failure to verify or declare the use of generative AI. Nor is there any basis upon which to argue the Applicant's conduct influenced the AJ's exercise of discretion. The AJ appropriately noted her concerns, detailed the reasons for

these concerns, identified the possibility of sanctions or other consequences for the Applicant's undisputed non-compliance with the AI Practice Direction, but imposed no such consequences. Further, contrary to the Applicant's submissions, the AJ acknowledged and addressed the Applicant's status as a self-represented litigant.

[41] In closing on this issue, I also note the Respondent has highlighted that the Applicant appears to continue to make assertions in this motion that do not cite supporting jurisprudence, and that the Applicant miscites cases and the proposition certain cases stand for. I again remind the Applicant of the importance of accurate written submissions. A party's unverified and inaccurate reliance on jurisprudence and AI-generated submissions is not limited to potential prejudice to the opposing party, as the Applicant suggests. While this risk is significant and consequential as it may well lead to a miscarriage of justice (*Zhang v Chen*, 2024 BCSC 285 at para 29), inaccuracy also misleads the Court and results in the waste of scarce resources, both judicial and those of the opposing party.

[42] Conclusion

[43] The Applicant's motion is dismissed.

[44] The Respondent seeks and shall have costs on the motion. Having considered the complexity of the issues raised and the Applicant's self-represented status, and guided by Tarriff B, Column 2 of the *Rules*, I have determined that fixed costs in the amount of \$600, inclusive of

disbursements and taxes, are payable by the Applicant to the Respondent in any event of the cause.

ORDER IN T-977-25

THIS COURT ORDERS that:

1. The motion brought by the Applicant pursuant to Rule 51, seeking to appeal and set aside the Order of Associate Judge Kathleen Ring dated January 19, 2026, is dismissed.
2. The Respondent shall have their costs in the fixed and all-inclusive amount of \$600 in any event of the cause.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-977-25

STYLE OF CAUSE: AMIT ARORA v CANADIAN NATIONAL RAILWAY

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: GLEESON J.

DATED: APRIL 15, 2026

WRITTEN REPRESENTATIONS BY:

Amit Arora

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Stephanie Lewis

FOR THE RESPONDENT

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FOR THE RESPONDENT