

Federal Court



Cour fédérale

Date: 20260119

Docket: T-977-25

Citation: 2026 FC 82

Vancouver, British Columbia, January 19, 2026

PRESENT: Madam Associate Judge Kathleen Ring

BETWEEN:

AMIT ARORA

Applicant

and

CANADIAN NATIONAL RAILWAY

Respondent

ORDER

I. Overview

[1] The self-represented Applicant, Amit Arora [Mr. Arora], has brought two motions in writing before the Court. The first motion is for an Order permitting Mr. Arora to file the second affidavit of Amit Arora, affirmed on August 14, 2025 [the “Second Affidavit”] as additional evidence pursuant to Rule 312 of the *Federal Courts Rules* [“Rules”], and suspending Mr. Arora’s deadline to serve and file the Applicant’s Record, pending determination of this motion [the “Rule 312 Motion”].

[2] The Respondent, Canadian National Railway Company [CN], objects to the admission of Mr. Arora's Second Affidavit on three grounds. First, CN argues that the Second Affidavit is not responsive to the Affidavit of Christine O'Neill, affirmed on May 16, 2025 and served on Mr. Arora pursuant to Rule 307 ["CN Affidavit"]. Second, CN contends that all items raised by Mr. Arora in the Second Affidavit were foreseeable at the time when Mr. Arora served his first affidavit or explicitly addressed in that affidavit. Third, CN says that all exhibits to Mr. Arora's Second Affidavit were available when Mr. Arora filed his first affidavit or could have been available with the exercise of due diligence.

[3] Mr. Arora's second motion is, in effect, a motion within a motion. The second motion was made necessary by the fact that Mr. Arora did not file his motion record in reply on the Rule 312 Motion [the "Rule 312 Reply"] within the deadline prescribed in Rule 369(3), and contrary to Rule 369(3), he included affidavit evidence as part of his Rule 312 Reply. In his second motion filed on September 18, 2025, Mr. Arora requests an extension of time to file his Rule 312 Reply, and leave to file an affidavit as part of his Rule 312 Reply [the "Rule 369 Reply Motion"].

[4] CN did not file a responding motion record on Mr. Arora's Rule 369 Reply Motion.

[5] Having considered the material before the Court, and for the reasons below, I conclude that Mr. Arora's Rule 312 Motion is dismissed. Mr. Arora's Rule 369 Reply Motion is granted in part.

II. **Background Facts**

[6] In his underlying judicial review application [the "Application"], Mr. Arora seeks judicial review of a decision of the Canadian Human Rights Commission ["CHRC"] dated

February 21, 2025 relating to Mr. Arora's complaint of discrimination against his former employer, CN [hereinafter the "Screening Decision"].

[7] On April 24, 2025, Mr. Arora served his first affidavit in support of the Application on CN pursuant to Rule 306 (*per* Court Order dated May 27, 2025) [the "First Affidavit"]. The First Affidavit contains 128 paragraphs and 606 pages of documentary evidence.

[8] On April 29, 2025, the CHRC transmitted the Certified Tribunal Record ["CTR"] to the Court Registry and to Mr. Arora.

[9] On May 20, 2025, CN served and filed its responding CN Affidavit under Rule 307.

[10] On June 10, 2025, Mr. Arora filed an initial motion record seeking leave to file the Second Affidavit.

[11] By Order dated July 18, 2025, the Court dismissed Mr. Arora's motion without prejudice to him bringing a further and more complete motion under Rule 312 of the *Rules*. Associate Judge Milczynski concluded that she could not "determine or evaluate whether any of the Applicant's proposed affidavit is proper reply (not simply repeating/emphasizing what is contained in the initial affidavit or disagreeing with the Respondent's evidence) and is adducing evidence that responds to new and unanticipated issues/evidence in the Respondent's affidavit, and is evidence that was not available or anticipated earlier", as Mr. Arora had not included his First Affidavit or the CN Affidavit in his motion record.

[12] Almost two months later, on September 12, 2025, Mr. Arora filed a new motion record on the Rule 312 Motion that is now before the Court.

III. **Should Mr. Arora be Allowed to File a Late Rule 312 Reply that Includes a Reply Affidavit?**

[13] I intend to dispose of Mr. Arora's Rule 369 Reply Motion first, since my decision on that Motion will determine whether I can consider any or all of Mr. Arora's proposed Rule 312 Reply in disposing of the Rule 312 Motion. As earlier stated, CN takes no position on the Rule 369 Reply Motion.

[14] Mr. Arora included a supporting affidavit ["Third Affidavit"] as part of his motion record on the Rule 369 Reply Motion. On its face, the Third Affidavit is intended to be Mr. Arora's proposed reply affidavit on his Rule 312 Motion, rather than being an affidavit intended to explain *why* Mr. Arora should be allowed to file a late Rule 312 Reply that includes reply evidence in the first place. The same may be said about Mr. Arora's written representations filed on his Rule 369 Reply Motion.

[15] I will begin by addressing Mr. Arora's request for permission to file the Third Affidavit as part of his Rule 312 Reply. Rule 369(3) provides that a moving party on a motion in writing may reply to a responding motion record by filing written representations in reply. Rule 369 does not allow for the filing of a supplementary affidavit or evidence at the reply stage. A party must seek leave of the Court in order to file reply evidence on a motion in writing pursuant to Rule 369: *Amgen Canada Inc. v Apotex Inc.*, 2016 FCA 121 at para 7 [*Amgen*].

[16] The filing of 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: *Amgen* at paras 10 and 11. The Court must have regard to whether: (a) the evidence will assist the Court (be relevant and of sufficient probative value); (b) admitting the evidence will

cause substantial or serious prejudice to the other side; and (c) the evidence was available when the party filed its affidavits or could have been discovered with the exercise of due diligence: *Amgen* at paras 10 and 11.

[17] Having carefully considered the materials before the Court, I conclude that the principles laid out in *Amgen* do not support making an order allowing Mr. Arora to file his proposed Third Affidavit as part of his Rule 312 Reply. First, I find that the proposed Third Affidavit is not admissible evidence. It is not confined to facts, but rather consists almost entirely of opinion, argument, and conjecture. This is contrary to Rule 81 and related case law: *Lubaki v Bank of Montreal*, 2020 FC 526 at para 51 [*Lubaki*]. Mr. Arora's assessment of the evidence and his views on the mistakes made by the CHRC are not factual evidence and could be made by way of written submissions.

[18] Second, I find that insofar as the proposed Third Affidavit contains evidence, that evidence was available when Mr. Arora first filed his Rule 312 Motion, or could have been discovered with the exercise of due diligence.

[19] Accordingly, Mr. Arora's motion for leave to file the proposed Third Affidavit as part of his Rule 312 Reply is dismissed.

[20] Turning next to Mr. Arora's request for an extension of time to file the Rule 312 Reply, without the Third Affidavit given my finding above, Rule 369(3) provides that that Mr. Arora was permitted to serve and file written representations in reply on the Rule 369 Reply Motion within four days of being served with CN's responding motion record. The Solicitor's Certificate of Service filed on behalf of CN states that counsel for CN caused Mr. Arora to be served with CN's

responding motion record on the Rule 312 Motion on August 25, 2025 by way of email to amit.arora22@hotmail.com (the email address set out in the Notice of Application). Accordingly, the deadline for Mr. Arora to serve and file his reply pursuant to Rule 369(3) was August 29, 2025.

[21] Mr. Arora did not file the Rule 369 Reply Motion until September 18, 2025 (20 days after being served with CN's responding motion record). The only purported explanation for the delay appears at paragraph 6 of the Notice of Motion, whereby Mr. Arora states that he "acted diligently in seeking consent after the August 25 filing, but consent was refused. Any delay is procedural, required by Rule 369(4), and causes no prejudice to the Respondent".

[22] Mr. Arora's purported justification for the delay is weak. It consists of bald allegations rather than presenting a reasonable explanation for the delay that accounts for the entire period in question. That being said, I note from my review of the recorded entries on the Court File that there were deficiencies with both Mr. Arora's motion record on the Rule 312 Motion and CN's responding motion record on that Motion. As a result, the Court issued Directions on September 12, 2025 allowing both motion records to be accepted for filing as of September 12, 2025. These complications may have created some confusion regarding the timing to file Mr. Arora's Rule 369 Reply Motion.

[23] Moreover, having regard to the other factors for the exercise of the Court's discretion to grant an extension of time, I am satisfied that the Mr. Arora has had a continuing intention to pursue the underling Application and that no prejudice to CN arises from the delay: *Canada (Attorney General) v Hennelly* [1999], 244 NR 399 (FCA) at para 3 [*Hennelly*].

[24] Taking all matters before the Court into account, I consider it in the interests of justice to grant Mr. Arora an extension of time file written representations in reply on his Rule 312 Motion.

[25] On their face, Mr. Arora's written representations that he filed on the Rule 369 Reply Motion are replying to CN's responding motion record on the Rule 312 Motion. As such, I intend to treat those written representations as constituting his Rule 312 Reply, and to take it into consideration in deciding the Rule 312 Motion.

IV. **Should Mr. Arora be Granted Leave to File the Second Affidavit?**

A. **Undeclared Use of Artificial Intelligence**

[26] Before I delve into a discussion on the legal test under Rule 312, I am deeply troubled by some of Mr. Arora's written representations on the Rule 312 Motion because they misstate the law and they cite hallucinated (*i.e.*, fake) case law. For example, paragraph 13 of his written representations states:

13. Jurisprudence confirms that reply affidavits served within the Rule 312(1) window do not require leave if they are properly responsive (see *Manitoba v. CHRC*, 2016 FC 836 at paras. 15-16; *CP Rail v. Canada (AG)*, 2015 FC 1348 at para. 11).

[27] As will be seen from the discussion that follows regarding the governing law on Rule 312, the so-called legal proposition articulated by Mr. Arora in the above passage is categorically false. Further, the case law cited by him in the above extract does not exist. There is no case known as *Manitoba v CHRC*, 2016 FC 836. The case with that neutral citation is *Dickson v Canada*, 2016 FC 836, and paragraphs 15 and 16 of that case do not stand for the erroneous proposition put forward by Mr. Arora. The same goes for the other case that Mr. Arora cited in the above passage.

[28] The only logical reason that I can comprehend for why Mr. Arora would have asserted erroneous legal propositions and cited hallucinated cases in his written representations is that he relied upon generative artificial intelligence [or “AI”] in preparing this document.

[29] This Court issued a practice direction entitled *The Use of Artificial Intelligence in Court Proceedings* dated May 7, 2024 which requires a litigant using AI to include a Declaration in the first paragraph of any document he or she submits to the Court stating that AI was used in preparing the document. As Associate Judge Moore held in *Hussein v Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1060 at para 39:

... The use of generative artificial intelligence is increasingly common and a perfectly valid tool for counsel to use; however, in this Court, its use must be declared and as a matter of both practice, good sense and professionalism, its output must be verified by a human. The Court cannot be expected to spend time hunting for cases which do not exist or considering erroneous propositions of law.

[my emphasis]

[30] Mr. Arora did not include the requisite Declaration in his written representations on the Rule 312 Motion. His failure to declare the use of AI and, of even greater importance, his manifest failure to verify the information in his written representations, is not a harmless endeavor. Presenting erroneous AI-generated content to the Court can mislead the Court, waste scarce judicial resources, put a litigant’s case at risk, cause reputational damage to a litigant and lead to sanctions. As the British Columbia Supreme Court recently stated, “[c]iting fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice”: *Zhang v Chen*, 2024 BCSC 285 at para 29, cited with approval in *Lloyd's Register Canada Ltd. v Choi*, 2025 FC 1233.

[31] I recognize that Mr. Arora is self-represented. However, being self-represented carries with it obligations of self-education: *Rooke v Canada (Attorney General)*, 2018 FC 204 at para 23. In light of the foregoing, Mr. Arora is expected to carefully review the Court's practice direction on AI and to verify any AI-generated information in his Applicant's Record before it is filed, failing which he may face sanctions for non-compliance.

B. Test for Allowing an Additional Affidavit Under Rule 312

[32] By exception, Rule 312 of the *Rules* allows a party, with leave of the Court, to file additional affidavits. Applications for judicial review are summary proceedings that should be determined without undue delay. Consequently, the discretion of the Court to permit the filing of additional material should be exercised with great circumspection: *Canada (Fisheries and Oceans) v Gwasslaam*, 2009 FCA 25 at para 4.

[33] The Federal Court of Appeal set out the test for admitting additional affidavit evidence under Rule 312 in *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at paras 4-6. To obtain leave pursuant to Rule 312(a), the moving party must first satisfy two preliminary requirements: (1) the evidence must be admissible on the application for judicial review; and (2) the evidence must be relevant to an issue that is properly before the reviewing court.

[34] If these two preliminary requirements are met, the moving party must then establish that admitting the additional affidavit evidence is in the interests of justice. The principles that guide the Court's discretion are:

- A. Was the evidence sought to be adduced available when the party filed its affidavits under Rules 306 and 307, or could it have been available with the exercise of due diligence?
- B. Will the evidence assist the Court, in the sense that it is relevant and sufficiently probative that it could affect the result?
- C. Will the evidence cause substantial or serious prejudice to the other party?

[35] The above-noted factors are not an exhaustive list. Given the discretionary nature of the decision, the Court may consider other factors that are specific to the circumstances of the case: *Campbell v Electoral Canada*, 2008 FC 1080 at paras 26-27.

[36] Rule 312 is not there to allow a party to split its case. A party must put its best foot forward at the first opportunity: *Rosenstein v Atlantic Engraving Ltd.*, 2002 FCA 503 at para 9.

C. Is the Preliminary Requirement of Admissibility Satisfied?

[37] As regards the preliminary requirement of admissibility, the Federal Court of Appeal stated in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] that, in determining the admissibility of an affidavit in support of an application for judicial review, the differing roles played by the Court and the administrative decision-maker (*i.e.*, the CHRC in this case) must be kept in mind. Parliament gave the administrative decision-maker, not the Court, jurisdiction to determine certain matters on their merits. On judicial review, this Court has only limited powers under the *Federal Courts Act* to review the decision of the administrative decision-maker.

[38] Because of this demarcation of roles, the Court cannot allow itself to become a forum for fact-finding on the merits of the matter. Accordingly, as a general rule, the evidentiary record before a reviewing Court on judicial review is restricted to the evidentiary record that was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter before the decision-maker is, with certain limited exceptions, not admissible: *Access Copyright* at para 19.

[39] The Federal Court of Appeal listed three such exceptions in *Access Copyright* at para 20, and noted that the list may not be closed. The exceptions are:

- (a) an affidavit that provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review;
- (b) an affidavit that brings to the attention of the judicial review Court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review Court can fulfil its role of reviewing for procedural unfairness; and
- (c) an affidavit that highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding.

[40] Mr. Arora bears the onus of establishing that the evidence in the Second Affidavit is admissible. Based on the material before me, I conclude that Mr. Arora has not discharged his onus to establish that the Second Affidavit contains evidence that is admissible in the sense that it was in the actual possession of and considered by the CRHC when it made the Screening Decision.

[41] The Screening Decision itself states at page 1 that the CHRC reviewed “the Complaint Form, the Report for Decision (“Report”), and the submissions of the parties filed in response to this Report”. The Certificate accompanying the CTR certifies that the materials listed below constituted all the material that was before the CHRC when it made its Screening Decision on February 19, 2025:

1. Summary of Complaint Form (page 1);
2. Complaint Form dated November 9, 2019 (pages 2 to 6);
3. Report for Decision dated January 3, 2025 (pages 7 to 34);
4. Submission of the Complainant undated (pages 35 to 44);
5. Submissions of the Respondent dated January 23, 2025 (pages 45 to 54).

[42] The entire CTR is only 66 pages in length, and Mr. Arora’s written submissions that were before the CHRC when it made its decision were ten (10) pages long. By comparison, the Second Affidavit which Mr. Arora seeks to have filed contains 107 paragraphs and appends eleven exhibits containing voluminous documentary evidence.

[43] Even if the documentary evidence in the Second Affidavit may have possibly been before an investigator or some other official at the CHRC at an earlier stage of the process, or may have otherwise been accessible to the CHRC, that does not establish that those documents were “before” the CHRC when it made the Screening Decision. To the contrary, this Court held in *Gray v Canada (Attorney General)*, 2019 FC 301 that:

[112] The weight of the jurisprudence supports a limited interpretation of what is meant by material “before” the actual decision-maker. The jurisprudence cannot be stretched to support the Applicants’ argument that documents accessible through the “chain of command” of the ECCC’s investigation into Volkswagen must be produced. Although there may be no limit to the size of the record, production is still limited to documents that are relevant and were

in the possession of and considered by the decision-maker—unless an exception applies.

[113] In *Pathak*, Justice MacGuigan, in his concurring reasons, clarified that only the documents that were actually before the decision-maker had to be produced. Justice MacGuigan concluded that even though documents consulted by the investigator were in the Commission’s custody and accessible, they were not actually before the Commission when it made its decision (at pages 463-464).

[my emphasis]

[44] Further, the Applicant has not advanced any cogent arguments or evidence to establish that the proposed evidence in the Second Affidavit comes within any of the aforementioned exceptions to the general rule prohibiting the admission of evidence that was not before the decision-maker.

[45] Insofar as Mr. Arora may be seeking to invoke the “background information” exception when he describes some of the evidence in the Second Affidavit as being “background evidence” or included for “contextual purposes”, I reject this argument as lacking merit. The Federal Court of Appeal has described the “general background” exception as applying to non-argumentative orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision-maker: *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45.

[46] Admissible background information does not include “evidence that varies or supplements the findings of the decision-maker” nor “additional evidence on the factual merits designed to encourage the reviewing court to form its own views of the factual merits contrary to the demarcation of roles between it and the decision-maker”: *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2020 FC 348 at para 79. The “background information” exception should not be a “backdoor” to allow in new evidence not before the decision-maker:

Responsible Plastic Use Coalition v Canada (Environment and Climate Change), 2022 FC 377 at para 29.

[47] In this case, the evidence in the Second Affidavit is not a neutral and uncontroversial orienting summary of the evidence that was before the CHRC when it made the Screening Decision. Instead, the evidence in the Second Affidavit is intended to serve as additional evidence that supplements the record before the CHRC and is plainly meant to encourage this Court to form its own views of the factual merits.

[48] To the extent that Mr. Arora is alleging a breach of procedural fairness on this Application, I am not persuaded on the material before the Court that the evidence in the Second Affidavit relates to alleged procedural defects by the CHRC when it made the Screening Decision on February 21, 2025, so as to engage the “procedural fairness” exception. Instead, the Second Affidavit asserts a litany of alleged procedural defects made by past decision-makers and entities seemingly reaching all the way back in time to 2016. Indeed, Mr. Arora alleges in the Second Affidavit at para 84 that the Screening Decision was flawed because it failed to correct “*earlier* procedural errors” [my emphasis].

[49] In addition to the above-noted reasons for finding the evidence in the Second Affidavit to be inadmissible, I find that it also consists largely of impermissible opinion, argument, and conjecture. This is contrary to Rule 81, which requires the content of an affidavit to be confined to facts within the Applicant’s personal knowledge: *Lubaki* at para 51.

[50] For all of these reasons, Mr. Arora has not satisfied the preliminary requirement of admissibility of the Second Affidavit, and the Rule 312 Motion must fail on that ground alone.

D. Is the Preliminary Requirement of Relevance Satisfied?

[51] Even if the Second Affidavit is admissible, I am not persuaded that the evidence contained in the Second Affidavit is relevant to an issue that is properly before the reviewing court.

[52] The impugned CHRC Screening Decision was made under section 49 of the *Canadian Human Rights Act*, RSC 1985, c H-6. That provision states that the CHRC may, at any stage after the filing of a complaint, request the Chairperson of the Canadian Human Rights Tribunal [the “Tribunal”] to institute an inquiry into the complaint if the Commission is satisfied that an inquiry is warranted. The relevant extracts of CHRC’s Screening Decision read as follows:

In his submission, the Complainant refers to an incident where he was asked to remove a pole as part of his work (“pole removal incident”). The Complainant asks the Commission to deal with all incidents and not just the pole removal incident. However, the Commission has already rendered a decision dated June 15, 2023, deciding to deal only with the pole removal incident. Had the Complainant wished to contest this decision, the appropriate avenue would have been to apply to the Federal Court for a judicial review. Reviewing this decision is not the task before me. The present decision is about whether, considering all the circumstances of the pole removal incident, an inquiry by the Canadian Human Rights Tribunal (“Tribunal”) into this incident is warranted.

...

Overall, considering all the circumstances of the complaint, I have decided that the Commission will refer this complaint to the Tribunal because an inquiry is warranted. The Commission requests that the Tribunal inquire only into the pole removal incident. Subject to the foregoing, I adopt the reasons in the Report.

[my emphasis]

[53] The Second Affidavit contains a myriad of evidence that deals with a wide range of incidents dating back to 2016. It does not confine itself to the so-called “pole removal incident”. Having considered the CRHC’s Screening Decision and the other material before the Court, I am not persuaded that the wide-ranging evidence in the Second Affidavit is relevant to the issue of

whether the CHRC acted contrary to law in determining that an inquiry by the Tribunal into the “pole removal incident” was warranted.

[54] Consequently, Mr. Arora has also failed to establish the preliminary requirement of relevance.

E. Is it in the Interests of Justice to Allow the Second Affidavit to be Filed?

[55] Even if the Second Affidavit was admissible and relevant, I conclude, on the basis of the material before the Court, that Mr. Arora has failed to establish that it would be just and appropriate to grant leave to file the Second Affidavit.

[56] It is well established that Rule 312 is not there to allow a party to “split its case” and a party must put its best case forward at the first opportunity. Accordingly, the Second Affidavit must not deal with evidence that was available at the time the First Affidavit was filed, or could have been available with the exercise of due diligence.

[57] As earlier stated, Mr. Arora served his First Affidavit in support of the Application on CN on April 24, 2025. Apart from Exhibits M and N, the evidence adduced in the Second Affidavit significantly pre-dates April 24, 2025 when he signed his First Affidavit. In other words, the vast majority of the evidence in the Second Affidavit was available to Mr. Arora and could have been included in the First Affidavit with the exercise of diligence. Indeed, Mr. Arora acknowledges in his Notice of Motion at para 4 that the evidence in the Second Affidavit is “[e]vidence that was in the Applicant’s possession”.

[58] The only two exhibits that appear to post-date the First Affidavit are Exhibits M and N. Exhibit M is entitled “Schedule A: Disclosure Requests Filed before the CHRT” dated June 2025.

Exhibit N is entitled “CHRT Allegation – Rebuttal – Evidence Table” dated July 2025. While I would agree that these two documents were not available when the First Affidavit was served, I find them to be both inadmissible and irrelevant, as they post-date the CHRC’s Screening Decision dated February 21, 2025, and they do not fall within any of the exceptions to the rule that evidence that was not before the decision-maker is inadmissible.

[59] Mr. Arora’s explanation for why he did not include the evidence from the Second Affidavit in the First Affidavit is that its relevance only became apparent after he was served with the CN Affidavit. He contends that “the proposed reply affidavit responds directly to new assertions in the Respondent’s evidence” (Notice of Motion at para 9).

[60] I find that Mr. Arora’s explanation to be lacking in merit. Having reviewed the CN Affidavit, I agree with CN that it does not contain any information that was “new” to Mr. Arora. The CN Affidavit describes Mr. Arora’s complaint to the CHRC and various correspondence from and decisions made by the CHRC in respect of the complaint. Mr. Arora received copies of all of those documents well before the First Affidavit was due, and in fact, some of those documents were exhibited to his First Affidavit.

[61] Moreover, it is apparent on its face of the Second Affidavit that its purpose was to “supplement” the evidence in Mr. Arora’s First Affidavit, not to respond to the CN Affidavit. It is generally not open to an applicant to repair perceived deficiencies in his case after the time for cross-examination has expired.

[62] In these circumstances, I conclude that it is not in the interests of justice to allow the Second Affidavit to be filed pursuant to Rule 312.

V. **Conclusion**

[63] For these reasons, I conclude that Mr. Arora's Rule 369 Reply Motion is granted in part. His Rule 312 Motion for leave to file the Second Affidavit is dismissed.

[64] CN seeks its costs in relation to Mr. Arora's Rule 312 Motion. I see no reason to deviate from the general rule that the successful party is entitled to his or her costs on a motion. Costs of the Rule 312 Motion, hereby fixed in the amount of \$1000.00, inclusive of disbursements and taxes, are payable by Mr. Arora to CN in any event of the cause.

THIS COURT ORDERS that:

1. Mr. Arora's motion for leave to file the Third Affidavit as part of his Rule 312 Reply is dismissed. The Court will therefore disregard the Third Affidavit in its determination of the Rule 312 Motion.
2. Mr. Arora's motion for an extension of time to file written representations in reply on his Rule 312 Motion is granted. The Court will treat Mr. Arora's written representations filed on the Rule 369 Reply Motion as being his written representations in reply on the Rule 312 Motion and consider them in deciding the Rule 312 Motion.
3. Mr. Arora's Rule 312 Motion for leave to file the Second Affidavit is dismissed.
4. Costs of the Rule 312 Motion, hereby fixed in the amount of \$1000.00, inclusive of disbursements and taxes, shall be paid by Mr. Arora to CN in any event of the cause.

5. Mr. Arora shall serve and file the Applicant's Record, along with proof of service, by February 9, 2026. If he chooses to use generative AI in preparing the Applicant's Record, he shall make a Declaration in accordance with this Court's practice direction and he shall verify the information generated by AI.
6. Subsequent steps in this application shall be completed in accordance with the deadlines set out in Part 5 of the *Federal Courts Rules*.

"Kathleen Ring"
Associate Judge