Federal Court Cour fédérale

**Date: 20250724**

**Docket: T-321-25**

**Citation: 2025 FC 1318**

**Toronto, Ontario, July 24, 2025**

**PRESENT: The Honourable Mr. Justice Duchesne**

**BETWEEN:**

**DARLENE CARREAU**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA AND LUCIA FEVRIER-PRESIDENT**

**Respondents**

# ORDER AND REASONS

[1] The Respondent, Ms. Lucia Fevrier-President [the Personal Respondent], appeals pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*], from the June 13, 2025, order made by the case management judge, Associate Judge Catharine Moore [the June 13 Order].

[2] The Personal Respondent seeks the following order:

1. An Order setting aside the June 13, 2025, Order of a prothonotary.

2. An order directing the Tribunal provide a complete copy of its record including, but not limited to,

    a. Copies of all correspondence, documentation, notes of the Investigator and other material in the possession of the department and/or the applicant when seeking to affirm or reject a finding of harassment made by the tribunal.

    b. The USB provided by Jo-Ann Fennessey (the investigator appointed by the department and agreed to by the parties to investigate allegations of harassment made by Lucia Fevrier-President against Darlene Carreau, the applicant to this application for judicial review).

    c. Copies of the USB provided to Adam Landriault by the department and/or the department and referred to at tabs 21, 24, and 26 of the record of the Certified Tribunal Record.

3. The respondent's cost of this motion.

[3] As will be discussed below, while the Personal Respondent disagrees with the Associate Judge's Order, she neither alleges nor identifies any error committed by the Associate Judge in the June 13 Order in her appeal materials. The Personal Respondent has also failed to identify any error beyond bald and conclusory allegations of error in her oral argument. These bald and conclusory allegations are not sufficient to permit the Court determine whether an error was made.

[4] This motion and appeal will therefore be dismissed as the Personal Respondent has not met her burden on this motion and appeal.

## I. **Background and the Appeal Material before the Court**

[5] The following general background is gleaned from the Order under appeal, from the amended notice of application [the ANOA] filed in this proceeding, and from the allegations and materials filed by the parties in connection with this motion. The Court notes that there was no motion records exchanged or filed, and no written representations as would be found in a motion record before the Associate Judge at the time of the June 13 Order. What was before the Associate Judge are the letters and submissions identified in these reasons.

### A. ***The Amended Notice of Application***

[6] The following is a summary of the allegations contained in the Applicant's ANOA. The original notice of application was filed on January 29, 2025.

[7] The Applicant, Darlene Carreau, alleges that she is the Deputy Head of the Courts Administration Service [the CAS]. In August 2023, the Personal Respondent submitted a harassment complaint against three senior CAS executives including the Applicant. The complaint contained allegations that the CAS had failed to take timely action in response to the Personal Respondent's September 2022 workplace harassment complaint made in connection with a conflict between the Personal Respondent and her director.

[8] A workplace investigation was carried out by an investigator retained by QMR Consulting [QMR]. The investigator retained by QMR produced an investigation report dated

May 28, 2024 [the Report]. The Report set out the investigator's conclusion that the allegations of harassment against the Applicant were founded and included a number of recommendations.

[9] The Applicant alleges that the CAS' Designated Recipient advised her that she and the other named responding parties would have the opportunity to provide their comments on the Report prior to it being finalized by QMR. The Applicant alleges having provided her comments on the Report to the investigator through the CAS' Designated Recipient on June 19, 2024. The comments are alleged to have noted, among other things, that:

a) the Applicant was not a properly named respondent;

b) there were a number of factual errors and unsupportable conclusions contained in the Report; and,

c) the allegation against the Applicant did not meet the definition of workplace harassment on a *prima facie* basis.

[10] The Applicant also alleges having highlighted several serious procedural failures committed by the investigator, including the investigator's failure to provide the Applicant with an opportunity to review and respond to much of the factual assertions in the Report.

[11] The Applicant alleges that in or around July 2024, CAS representatives advised her that the investigator was refusing to take any of the responding parties' comments into account and that the investigator was instead taking the position that the Report produced on May 28, 2024, was final.

[12] The Applicant alleges that CAS representatives assured her that the CAS, a) had advised QMR of the procedural fairness issues raised with its investigation process, and b) had informed QMR that it was obliged to consider the responding parties' comments prior to finalizing the report. The Applicant alleges that she had understood at the time that the CAS and QMR were engaged in a dialogue with respect to these issues following June 2024.

[13] The Applicant alleges that her solicitors wrote to the CAS on October 24, 2024, and requested confirmation of whether CAS was adopting or rejecting the Report and its findings. CAS did not provide the confirmation requested.

[14] The Applicant alleges that she was advised on November 28, 2024, that a new investigator had been assigned by QMR to finalize the Report in a procedurally fair manner. Notwithstanding this notification to her, she was further informed on January 10, 2025, by the CAS' Acting Designated Recipient that the Personal Respondent's solicitor had written to QMR and objected to a new investigator finalizing the Report in a procedurally fair manner.

[15] The Applicant alleges the CAS further informed her that QMR had resiled from its intended course of appointing a new investigator to finalize the Report due to the Personal Respondent's objection and was refusing to take any further steps with respect to correcting the procedural deficiencies of the Report.

[16] The Applicant alleges that the CAS advised her that, notwithstanding its continued stance that the process underlying the Report was flawed, the report's recommendations would be implemented in accordance with CAS' "Action Plan".

[17] The Applicant seeks the following by way of pleaded relief in her ANOA:

A. an order (in the form of a writ of *mandamus*) directing CAS to issue a decision explicitly rejecting the conclusions in the QMR Report, on the basis that it is substantively baseless and procedurally flawed, and,

B. in the alternate to, an order quashing CAS' decision to implicitly accept the Report's conclusion of harassment against the Applicant by implementing the recommendations from the Report, as conveyed to the Applicant by letter dated January 10, 2025, from Roland Desjardins (Acting Designated Recipient for CAS).

[18] The Applicant alleges in her ANOA that she meets all of the requirements for an order in the nature of a *mandamus* to issue and sets out the grounds in support of the relief she seeks.

[19] The Applicant also alleges in the alternative that the CAS' January 10, 2025, communication is a decision [the Decision] that is subject to judicial review. The judicial review is based on grounds of breach of procedural fairness and unreasonableness.

[20] The Applicant alleges that the CAS has violated her right to procedural fairness by failing to set the Report aside and mandate a new investigation to protect the procedural rights of all parties.

[21] The Applicant further alleges that the CAS' January 10, 2025, Decision is unreasonable because the Report is, "[…] is substantively baseless". She further alleges that the allegation of harassment against her does not meet the *prima facie* threshold of harassment under the *Work Place Violence and Harassment Prevention Regulations* and that, even if it did, the Report's conclusion is factually unsupportable as no finding of harassment can be made against the Applicant on any of the evidence contained within the Report itself.

## B. ***The Applicant's Rule 317 Request for a Certified Tribunal Record***

[22] At the end of her ANOA, the Applicant made a request pursuant to Rule 317 of the *Rules*. The request was worded as follows:

> "The applicant requests CAS to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of CAS to the Applicant and to the Registry:
>
> 1. Any and all correspondence, documentation, and other material relevant to the QMR Report and to QMR's decision not to appoint a new investigator to finalize that report, as well as CAS' decision under review as described above."

[23] The CAS transmitted a certified record to the Applicant and to the Court pursuant to Rule 318(1) of the *Rules,* without making any written objection pursuant to Rule 318(2) of the *Rules*.

## C. ***The Personal Respondent's Rule 317 Request for a Better Certified Tribunal Record***

[24] The Personal Respondent was added as a respondent party to this proceeding by way of an Order made on April 2, 2025. The costs portion of the April 2, 2025, order was appealed by the Personal Respondent and that appeal was heard immediately prior to the hearing of this motion and appeal. The Court's order and reasons for that appeal were issued on July 24, 2025 (*Carreau v Attorney General of Canada et al*, 2025 FC 1268).

[25] On April 17, 2025, the Personal Respondent sent a 5-page letter to the Applicant and to "The Attorney General of Canada representing the public interest, Respondent (through Counsel Sanderson Graham)" and filed a copy thereof with the Court. There is no indication on the letter itself that it was sent to or served upon the CAS. There is also no proof of service relating to the letter in the record before the Court on this appeal. The following was included as the second to last paragraph of the letter:

> "**Incomplete Certified Tribunal Records**
>
> The Respondent has reviewed the contents of the CTR provided by CAS and submits that the SUM of the records provided by CAS does not represent all the files and accordingly is incomplete. The information provided is intended to direct the review of the material and make the Applicant's case while excluding much of the files in support of the principal party's case. <u>As such the Respondent also the Principal Party in this investigation, respectfully request that this Honourable Court orders CAS to produce the complete set of tribunal records including, but not limited to, that included on the USB provided to Adam Landriault, referred to in the records received.</u>"
>
> (Emphasis added)

[26] More than one month later, on May 21, 2025, the Personal Respondent sent a letter to the AGC in which she made a Rule 317 request. The request was worded as follows:

> "**Re: Notice of Application for Judicial Review**

**Darlene Carreau – Federal Court File Number T-321-25-JD 1**
**Courts Administrative Service**

The Respondent and party to this Application for Judicial Review Requests the Tribunal (Courts Administrative Service) send a certified copy of the following material that is not in the possession of the Respondent but is in the possession of the CAS to the Respondent and to the Registry,

1. Copies of all correspondence, documentation, notes of the Investigator and other material in the possession of Courts Administrative Service when making the decision to affirm or reject a finding of harassment that is made in the harassment investigation.

2. Copies of the complete record of the tribunal (Courts Administrative Service).

3. Copies of the USB provided to Adam Landriault, referred to at tabs 21, 24, and 26 of the Certified Record of Courts Administrative Services.

4. The USB provided by Jo-Ann Fennessey (investigator) and received by the Tribunal as referred to at tabs 19, 22, and 23 of the Certified Record of Courts Administrative Services.

The request is served on you pursuant to Rule 317 of the Federal Court Rules.

Yours very truly,"

[27] Two days later, on May 23, 2025, the Personal Respondent filed a letter with the Court. The letter is very similar to the May 21, 2025, letter the Personal Respondent sent to the AGC, but it contained notable differences. The content of the Personal Respondent's May 23, 2025, letter is worded as follows:

"**Re: Notice of Application for Judicial Review**

**Darlene Carreau – Federal Court File Number T-321-25-JD 1**

**Courts Administrative Service**

Please bring this letter to the attention of Associate Judge Catharine Moore.

The Respondent and party to this Application for Judicial Review sent a request to the Tribunal (Courts Administrative Service) on April 17, 2025 requiring a certified copy of the material that is not in the possession of the Respondent but is in the possession of the CAS be provided to the Respondent and to the Registry including,

1. Copies of all correspondence, documentation, notes of the Investigator and other material in the possession of Courts Administrative Service when making the decision to affirm or reject a finding of harassment that is made in the harassment investigation.

2. Copies of the complete record of the tribunal (Courts Administrative Service).

3. Copies of the USB provided to Adam Landriault, referred to at tabs 21, 24, and 26 of the Certified Record of Courts Administrative Services.

4. The USB provided by Jo-Ann Fennessey (investigator) and received by the Tribunal as referred to at tabs 19, 22, and 23 of the Certified Record of Courts Administrative Services.

The request served was served pursuant to Rule 317 of the *Federal Court Rules*.

The Tribunal did not object to the request and did not provide the materials in 20 days as is required under Rule 318(1) of the Federal Court Rules.

The Tribunal has conceded Courts Administrative Service has in its possession,

1. The USB provided to Adam Landriault, referred to at tabs 21, 24, and 26 of the Certified Record of Courts Administrative Services.

2. The USB provided by Jo-Ann Fennessey (investigator) and received by the Tribunal as referred to at tabs 19, 22, and 23 of the Certified Record of Courts Administrative Services.

Rule 317 of the *Federal Court Rules* indicate,

> Material in the Possession of a Tribunal
>
> > **Material from tribunal**
> >
> > 317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.
>
> The Respondent requests this Honourable Court direct the Tribunal, pursuant to Rule 318(4) of the Federal Court Rules provide the materials requested and not in the Respondent's possession in the form attached as Schedule A hereto.
>
> Yours very truly,"

[28] On May 23, 2025, the Applicant's solicitor filed a letter further to the May 21, 2025, case management conference held in the proceeding. The Applicant's solicitor's letter spoke to timetable matters.

[29] Still on May 23, 2025, the Personal Respondent filed a letter with the Court in response to the Applicant's solicitor's May 23, 2025, letter. On page 2 of that letter, the Personal Respondent represented:

> "Having reviewed Ms. Vijaykumar's letter I confirm the Respondent's request was made April 17, 2025 and then reaffirmed May 20th, 2025 and then finally at the Case Conference.
>
> The request was served pursuant to Rule 317 of the *Federal Court Rules*. The Tribunal did not object to the request. Such an objection was required to be made within 20 days (see subsection 318 of the Federal Court Rules https://laws-lois.justice.gc.ca/eng/regulations/SOR-98-106/page-19.html#h-1014926)."

[30] On May 28, 2025, following a direction from the Court requesting submissions from the CAS, the CAS provided written submissions on the matter of producing an additional or better certified tribunal record consistent with the Personal Respondent's request.

[31] The CAS made its submissions through its legal counsel, Emond Harnden LLP. The May 28, 2025, letter sets out the CAS' objection to the Personal Respondent's request for more materials. The CAS' objection to the production of the materials requested was that only materials that were actually before the decision-maker for the purpose of making the decision ought to be produced and that Rule 317 does not require the production of materials that were merely available or hypothetically accessible but not reviewed or relied upon in reaching the decision. With particular attention to the issue of the USB materials from Ms. Fennessey (the original investigator), the CAS asserted that the materials were not reviewed by the CAS in rendering the decision under review, were forwarded to QMR in any event, and are immaterial to the proceeding.

[32] The AGC echoed the CAS' objection and reasoning in his May 29, 2025, submissions on the issue. The AGC argued that the materials sought by the Personal Respondent were not before the decision-maker at the time of the decision, do not form part of the record for judicial review, and do not therefore fall within the scope of the disclosure obligation under Rule 317 of the *Rules*. The AGC's submissions included a high-level summary of jurisprudence that deals with the scope of Rule 317 (*Ochapowace First Nation v Canada (Attorney General),* 2007 FC 920 at para 19, aff'd 2009 FCA; *Canada (Human Rights Commission) v Pathak,* [1995] 2 FC 455 (CA), at p 460; *Tsleil-Waututh Nation v. Canada (Attorney General),* 2017 FCA 128; *Access*

*Information Agency Inc v Canada (Attorney General)*, 2007 FCA 224 at para 17), emphasized that a Rule 317 request is not intended as a means of obtaining discovery of all documents that may be in a tribunal's possession, and that documents held elsewhere in a government institution need not be produced unless they were "before" the actual decision-maker.

[33] Finally, the Personal Respondent filed additional written submissions on the matter of her Rule 317 request on June 11, 2025. In those submissions, the Personal Respondent reiterated that she had made a Rule 317 request on April 17, 2025, and that documents produced elsewhere in the certified tribunal record confirm the content of the USB materials sought.

## II. **The Order under Appeal**

[34] The Associate Judge issued her order regarding the Personal Respondent's request for a better certified tribunal record on June 13, 2025. The Associate Judge determined that the CAS' Rule 318(2) objection to the Personal Respondent's Rule 317 request ought to be and was maintained. No additional or better certified tribunal record was ordered to be transmitted. No costs were awarded to any party.

[35] The Associate Judge's Order set out the issue before the Court as follows:

> [1] The Respondent, Ms. Fevrier-President, seeks an order that the Courts Administration Service (the "CAS") produce the complete set of tribunal records including, but not limited to, those included on the USB provided to Adam Landriault, referred to in the records received as part of the Certified Tribunal Record (the "CTR").

[36] The Associate Judge identified that the Personal Respondent's request for the Order was made in a letter dated April 17, 2025, and that additional submissions were made by the parties on the dates referred to above.

[37] The Associate Judge turned her mind to the general context of the underlying application and summarized some of the salient allegations set out in the Applicant's ANOA. She then referred to the Applicant's primary sought relief as well as the request for a certified tribunal record pursuant to Rule 317 of the *Rules* set out in the ANOA itself. The Associate Judge noted that the CAS served a certified tribunal record of approximately 750 pages on April 11, 2025.

[38] The Associate Judge then considered the Personal Respondent's submission of April 17, 2025, reproduced above, with respect to the served certified tribunal record.

[39] The Associate Judge summarized the Personal Respondent's position communicated during a May 21, 2025, case management conference that her April 17, 2025 submission as to the alleged incompleteness of the served certified tribunal record constituted an objection pursuant to Rule 318(2) of the *Rules* that should be adjudicated by the Court. The Associate Judge also noted that the Applicant and the AGC doubted that she had the jurisdiction to address that issue. The Associate Judge also noted the Applicant argued that the Court had no jurisdiction to add materials that were not before the decision-maker to the CTR and that the "USB documents" requested by the Personal Respondent were not before the decision-maker.

[40] The Associate Judge then considered the Personal Respondent's letter of May 23, 2025, in which she indicated that she had sent a Rule 317 request to the CAS on April 17, 2025, and that the CAS had not responded to her. The Personal Respondent's Rule 317 request would have required the transmission of a certified copy of the materials identified in the request, specifically:

1) All correspondence, documentation, notes of the Investigator and other material in the possession of Courts Administrative Service when making the decision to affirm or reject a finding of harassment that is made in the harassment investigation.
2) Copies of the complete record of the tribunal (Courts Administrative Service).
3) The USB provided by Courts Administrative Service to Adam Landriault.
4) The USB provided by Jo-Ann Fennessey (investigator) and received by Courts Administrative Service.

[41] Having noted that the alleged April 17, 2025, Rule 317 request by the Personal Respondent did not appear to be in the Court file, the Associate Judge sought clarification from the Personal Respondent through the Registry as to the whether a Rule 317 request was served on April 17, 2025.

[42] The Associate Judge noted that the Personal Respondent filed correspondence dated June 11, 2025, in response to the request for clarification which "which essentially repeated the text of the May 23, 2025, letter and, although the letter had seven attachments, it did not attach an April 17, 2025, letter or, indeed, any correspondence matching the description".

[43] The Associate Judge then set out the substance of the letter from counsel to the CAS dated May 28, 2025, which contained the CAS's objection to the Personal Respondent's Rule 317 request, as well as the thrust of the AGC's May 29, 2025, written submission as to whether the records sought by the Personal Respondent should be produced.

[44] The key portions of the Associate Judge's Order are as follows:

> [18] Rule 317 is not intended to be a mechanism for broad discovery of documents from a tribunal and is generally limited to the documents which were before the tribunal when the decision was made: *Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204. More importantly, the documents must be relevant, and Rule 317 may not be used as a fishing expedition: *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2021 FC 624.
>
> [19] Therefore, the Respondent Ms. Février-President's complaint that the CTR does not contain "all of the files" and her request that this Court order the CAS "to produce the complete set of tribunal records" is misplaced. In most cases, the tribunal record contains numerous documents that are not needed to deal with the issues raised in the application for judicial review: *Canada v Canada North Inc*, 2007 FCA 42. Relevance is determined in the context of the originating application, the grounds stated, and the relief required: *Pathak v Canada (Human Rights Commission),* 1995 CanLII 3591(FCA). I have carefully reviewed the application and am not persuaded that the materials are relevant to the narrow issue under review. The defect alleged is the refusal to consider the Applicant's comments and not whether the report, for example, properly reflected the information provided by the witnesses.
>
> [20] Furthermore, the CAS advises that the requested materials were neither reviewed nor considered nor relied upon by it in rendering the decision under review. This is another strong indication that they are not responsive to a Rule 317 request.

[45] The Associate Judge upheld the CAS' Rule 318(2) objection to the Personal Respondent's Rule 317 request and ordered that no further Rule 317 document production would be ordered as the April 11, 2025, certified tribunal record was complete.

## III. **The Standard of Review**

[46] Appeals from prothonotary or associate judge's orders pursuant to Rule 51 of the *Rules* are to be decided on the material that was before the prothonotary or associate judge at the time the order under appeal was made (*Canjura v. Canada (Attorney General)*, 2021 FC 102, at para 12; *Onischuk v Canada (Revenue Agency),* 2021 FC 486 at para 9, citing *Shaw v Canada*, 2010 FC 577 at para 8 and *Papequash v Brass*, 2018 FC 325 at para 10).

[47] The Federal Court of Appeal clarified in *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], at para 64, that discretionary orders of associate judges (referred to as "prothonotary" or "prothonotaries" prior to September 23, 2022, and the official name change to "associate judge" and "associate judges" effected pursuant to section 371 of the *Budget Implementation Act, 2022, No. 1*, SC 2022, c 10) should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts. This flows from the application of the standard of review applicable to appeals set out in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*] which the Federal Court of Appeal held in Hospira applies to appeals from orders made by associate judges.

[48] Pursuant to *Housen*, at para 8, "[o]n a pure question of law, the basic rule with respect to the review of a trial judge's findings is that an appellate court is free to replace the opinion of the trial judge with its own. Thus, the standard of review on a question of law is that of correctness." A palpable and overriding error, however, is an error that is both obvious and apparent, "the effect of which is to vitiate the integrity of the reasons" (*Maximova v Canada (Attorney*

*General)*, 2017 FCA 230 at para 5). The "palpable and overriding error" standard of review is highly deferential (*Collins v Canada (Attorney General),* 2023 FC 863 at para 17).

## IV. **The Law Applicable to a Rule 317 Request and a Rule 318(4) Order**

[49] Determining whether documents sought to be produced pursuant to Rule 318(4) requires some consideration of the framework set out in the *Rules* with respect to requests for a CTR pursuant to Rule 317 and the objection procedure set out in Rule 318.

[50] The operative Rules are as follow:

| | |
|---|---|
| **Material from tribunal** | **Matériel en la possession de l'office fédéral** |
| **317 (1)** A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested. | **317 (1)** Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés. |
| **Request in notice of application** | **Demande inclue dans l'avis de demande** |
| **(2)** An applicant may include a request under subsection (1) in its notice of application. | **(2)** Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande. |
| **Service of request** | **Signification de la demande de transmission** |
| **(3)** If an applicant does not include a request under subsection (1) in its notice of application, the applicant | **(3)** Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de |

shall serve the request on the other parties.

demande, il est tenu de signifier cette demande aux autres parties.

**Material to be transmitted**

**318 (1)** Within 20 days after service of a request under rule 317, the tribunal shall transmit

**Documents à transmettre**

**318 (1)** Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

**(a)** a certified copy of the requested material to the Registry and to the party making the request; or

**a)** au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

**(b)** where the material cannot be reproduced, the original material to the Registry.

**b)** au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

**Objection by tribunal**

**(2)** Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

**Opposition de l'office fédéral**

**(2)** Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

**Directions as to procedure**

The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

**Directives de la Cour**

**(3)** La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

**Order**

**(4)** The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

**Ordonnance**

**(4)** La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

[51] Rules 317(1) and (2) provides an applicant with the ability to make a request in its notice of application for a copy of the material relevant to their application that is in the possession of a tribunal whose order is the subject of the application and is not in the possession of the applicant. An applicant may, as provided in Rule 317, identify the material it seeks in its request although it is not strictly required to do so.

[52] Rule 317(1) also allows any party to make a request for material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party. They may do so by serving on the tribunal and filing a written request, identifying the material requested. The Rule therefore contemplates that a respondent party may make a request pursuant to Rule 317(1) of the *Rules* to the tribunal whose decision under review.

[53] As described by the Federal Court of Appeal in *Lukács v. Canada (Transportation Agency)*, 2016 FCA 103 at paras 5 to 18 [*Lukács*], Rules 317 and 318 do not exist in isolation. Their purpose is to enable a meaningful review of the decision that is the subject of the application in accordance with Rule 3 of the *Rules* and s.18.4 of the *Federal Courts Act* through the production of evidence of what the tribunal whose decision is under review has done or relied upon in coming to its decision. This enables the reviewing court to detect a reversible error on the part of the administrative decision-maker. It also avoids immunizing administrative decision-makers and furthers their accountability absent compelling reasons otherwise.

[54] The Federal Court of Appeal explained in *Canada (Attorney General) v. Iris Technologies Inc.*, 2021 FCA 244 [*Iris 2021*], at paras 36 to 43 that Rule 317 and its scope is limited by the grounds of review and the relief sought as pleaded in the notice of application itself:

> [36] This appeal thus turns on the relationship between rule 317 and rule 301. That relationship can be expressed in three propositions. First, a party may use rule 317 to obtain production only of material that is relevant to an application, in that it may affect the Court's decision on the application. Second, by rule 301, the Court's decision on an application for judicial review will be limited to the grounds of review and the relief set out in the notice of application. And third, production under rule 317 is therefore not available in relation to grounds and relief the notice of application fails, contrary to rule 301, to set out.
>
> [37] The first proposition flows directly from the text of rule 317(1), which allows a party to request only material "relevant to an application." As this Court explained in *Canada (Human Rights Commission) v. Pathak*, [1995] 2 F.C. 455 at 460, 1995 CanLII 3591 (F.C.A.), leave to appeal refused, [1995] S.C.C.A. No. 306, "[a] document is relevant to an application for judicial review if it may affect the decision that the Court will make on the application." See also *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at paras. 106-108.
>
> [38] The second proposition is also well established. Subject to limited exceptions, rule 301 is a mandatory provision.
>
> [39] In *Pathak*, for example, this Court went on to state that
>
> > [a]s the decision of the Court will deal only with the grounds of review invoked by the respondent [in that case the party seeking judicial review], the relevance of the documents requested must necessarily be determined in relation to the grounds of review set forth in the originating notice of motion and the affidavit filed by the respondent.
>
> (The reference to "the affidavit filed by the respondent" is an artifact of the former *Federal Court Rules*, C.R.C., c. 663. Under the former rules 1602 and 1603, an application for judicial review was commenced by serving and filing an originating notice of motion, together with "one or more affidavits verifying the facts relied on by the applicant." Under the current rules, the application

is commenced by a notice of application, and by rule 306, the applicant's supporting affidavits are to be served within 30 days of the issuance of the notice of application.)

[40] Other decisions of this Court since *Pathak* limiting judicial review to the grounds of review and the relief set out in the notice of application include *SC Prodal 94 SRL v. Spirits International B.V.*, 2009 FCA 88 at paras. 11-12; *Republic of Cyprus (Commerce and Industry) v. International Cheese Council of Canada*, 2011 FCA 201 at paras. 12-13, leave to appeal refused 34430 (April 12, 2012), citing with approval *Astrazeneca AB v. Apotex Inc.*, 2006 FC 7, affirmed 2007 FCA 327; *Apotex Inc. v. Canada (Health)*, 2019 FCA 97 at paras. 7-9; and *Makivik Corporation v. Canada (Attorney General)*, 2021 FCA 184 at para. 53.

[41] As this Court has recognized, the requirements of rule 301 are not merely technical; they ensure among other things that respondents have adequate notice of the case being brought against them so that they can meaningfully respond. They also leave it open to an applicant seeking *mandamus* relief to include in its notice of application a claim for alternative or supplementary non-*mandamus* relief, provided that the claim as pleaded complies with rule 301. If an applicant finds its initial description of the grounds and relief claimed in the notice of application too narrow, it may move for leave to amend under rule 75: *SC Prodal* at para. 15; *Astrazeneca* at para. 19. In these scenarios, rule 317 will apply in respect of any non-*mandamus* claim that challenges an administrative decision.

[42] It has been stated in decisions of the Federal Court that "there is some room for discretion [in applying the requirements of rule 301] where, for example, relevant matters have arisen after the notice was filed; the new issues have some merit, are related to those set out in the notice, and are supported by the evidentiary record; the respondent would not be prejudiced, and no undue delay would result": see, for instance, *Tl 'azt'en Nation v. Sam*, 2013 FC 226 at paras. 6-7. But this Court has resisted expanding the availability of an exception beyond cases in which the notice of application contains a "basket clause," and the applicant seeks declaratory relief that is necessarily ancillary to the relief expressly requested: *SC Prodal* at paras. 11-12.

[43] As for the third proposition, it follows from the first two. It is, again, that production under rule 317 is not available in relation to grounds and relief the notice of application fails, contrary to rule 301, to set out.

[55] As is required by Rule 301, the grounds to be argued in relation to the decision to be reviewed must be complete and concise and must be pleaded in the notice of application (*Iris 2021*, at para 24). A "complete" statement of grounds means all the legal bases and material facts that, if taken as true, will support granting the relief sought. A "concise" statement of grounds must include the material facts necessary to show that the Court can and should grant the relief sought (*JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue),* 2013 FCA 250, at paras 39 and 40).

[56] Rule 317 does not operate to allow a party to engage in a fishing expedition. It does not serve the same purpose as examination for discovery in an action *(Maax Bath Inc. v. Almag Aluminum Inc.*, 2009 FCA 204, at para 15; *Humane Society of Canada Foundation v. Canada (National Revenue)*, 2018 FCA 66, at para 16). It only operates to provide access to materials that are relevant to an application and in the possession of the administrative decision-maker (*Benga Mining Limited v. Canada (Environment and Climate Change),* 2023 FC 688 (CanLII), at para. 21; *Access Information Agency Inc v Canada (Attorney General)*, 2007 FCA 224 at paras 17, 20 and 21; *Lukács v Swoop Inc*, 2019 FCA 145 at para 16; *Tsleil-Waututh Nation v Canada (Attorney General),* 2017 FCA 128 at paras 106 to 119 [*Tsleil-Waututh*]).

[57] The tribunal who receives a request for material pursuant to Rule 317 has the right pursuant to Rule 318(2) to object to the Rule 317 request in whole or in part. The administrative decision-maker whose decision is under review cannot object to transmitting admissible materials, although it may validly oppose the transmission of materials that would be

inadmissible at the hearing of the application (*Rémillard v Canada (National Revenue)*, 2020 FC 1061 at para 20, aff'd 2022 FCA 63 [*Rémillard*]: *Lukács* at para 5).

[58] The status in the proceeding of a Rule 317 requestor as an applicant or a respondent does not change the scope or nature of the material that is to be transmitted by the tribunal pursuant to Rule 318(1) following its receipt of a Rule 317 request for a certified tribunal record. The material that is to be transmitted remains and is limited to material that is relevant to the application. A certified tribunal record does not serve the same function as an affidavit of documents does in an action. Its content is not determined by the "respondent's pleading" in a proceeding governed by Part 5 of the *Rules* as no "respondent's pleading" is contemplated by the *Rules*. Its content is also not determined by Rule 222 of the *Rules* or by what a party to an application intends to rely on.

[59] As discussed by the Federal Court of Appeal in *Iris 2021*, at paras 36 to 43, what is relevant on an application for judicial review is determined by the grounds and the relief sought as set out in the notice of application. This means that the material to be produced and that is in the possession of the tribunal whose decision is under review does not change depending on which party requests the material from the tribunal. This also means that the touchstone for the determination of relevance remains the grounds and relief set out in the notice of application rather than what a respondent party may wish to lead as evidence or argue on the merits of the application. This is consistent with the fact that the burden on the party seeking to establish that a decision is unreasonable rests with the applicant and not with the respondent (*Canada (Minister*

*of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 100 [*Vavilov*]; *Canada (Human Rights Commission) v. Pathak (C.A.)*, 1995 CanLII 3591 (FCA), [1995] 2 FC 455, at page 460).

[60] When determining the validity of an objection made pursuant to Rule 318(2), the Court is tasked with deciding the potential content of the evidentiary record that will come before the applications' judge (*Lukács* at para 12). The Court is not bound to accept the objection to the disclosure of material in the tribunal's possession and must not defer to the administrative decision-maker's view (*Lukács* at para 12). Rather, the Court may consider the objection and come to a determination where it furthers and reconciles three objectives: (1) a meaningful review of the administrative decision at issue, (2) procedural fairness, and (3) the protection of any legitimate interests such a solicitor-client privilege or any other privilege or confidentiality interest while permitting as much openness and transparency as possible (*Lukács* at para 12). The Court may be creative and can make any appropriate order (*Lukács* at para 18).

[61] To summarize then, Rule 317 is limited in its effect in that it may require the transmission of the material that was before the administrative decision-maker at the time the decision under review was made, that is relevant to the grounds and relief pleaded in a notice of application, and that is not in the requesting party's possession. It is not a tool for or similar to discovery and does not allow a fishing expedition in the decision-maker's file by a respondent who may wish to advance their own argument. It is also not a tool for a respondent to obtain material.

[62] Pursuant to Rule 318, the administrative decision-maker can also object to disclosure on the basis of privilege or confidentiality interests.

## V. **The Arguments**

### A. ***The Personal Respondent***

[63] The Personal Respondent's arguments must be considered in two phases. The first phase is concerned with the arguments set out in the Personal Respondent's written representations filed for this motion and appeal, while the second is concerned with the arguments the Personal Respondent made at the hearing of this motion and appeal in response to questions from the Court.

#### (1) **The Arguments in the Personal Respondent's Written Representations**

[64] The Personal Respondent characterizes the Applicant's proceeding as a proceeding to quash or set aside the investigator's decision and Report while acknowledging that the ANOA does not specify that the Applicant challenges the investigator's decision.

[65] The Personal Respondent argues that the Associate Judge determined in paragraph 4 of the June 13 Order that:

a) the record of the investigation was neither reviewed, considered, or relied upon by CAS when rendering "the decision under review";

b) that the decision under review was the investigator's refusal to consider the Applicant's comments;

c) the Applicant and other parties were interviewed then the investigator issued a report finding that the harassment allegation against the applicant was founded, and did thereby make a finding that the Applicant was denied procedural fairness.

[66] A plain reading of para 4 of the June 13 Order demonstrates that the Associate Judge did not make any of the determinations or findings as alleged by the Personal Respondent. Para 4 of the June 13 Order begins with the words, "The facts alleged are, generally […]" and then sets out a summary of the main allegations contained in the ANOA. No determinations or findings of fact are made by the Associate Judge in para 4 of the June 13 Order. Arguments otherwise reflect a misreading of the words used by the Associate Judge in her Order.

[67] The Personal Respondent argues that the communication that the Applicant alleges is a decision by the CAS is not a decision of a "tribunal" and therefore is not subject to judicial review. Similarly, the Personal Respondent argues that the CAS's decision to accept the investigator's decision and implement the investigator's decision is not a decision made by a "tribunal" within the meaning of the *Federal Courts Act* and therefore cannot be judicially reviewed. The Personal Respondent also argues that the Applicant did not commence her proceeding in a timely manner.

[68] These arguments do not appear to have been raised by the Personal Respondent in connection with the June 13 Order. As they constitute new issues on appeal, these arguments cannot be considered pursuant to the general rule prohibiting such practice (*Quan v Cusson*, 2009 SCC 62 at paras 36 to 38 [*Quan*]). This general rule is a matter of fairness. An exception to

this rule requires, in part, that a party seeking to raise new issues on appeal show that the relevant facts have been adduced at first instance and that no satisfactory response could have been offered by the opposite party (*Eli Lilly Canada Inc. v Teva Canada Limited*, 2018 FCA 53 at para 45, citing *Keus v Canada*, 2010 FCA 303 at paras 10-11). The Personal Respondent has not shown, nor do I find any basis to suggest that this Court should depart from the general rule. These arguments are in any event irrelevant to the issues on this appeal and do not suggest any error in the June 13 Order.

[69] The Personal Respondent argues that the information before the CAS in its capacity as a government department included the record of the investigator, but that that not all of those records were produced in the transmitted certified tribunal record. The Personal Respondent asserts that the certified tribunal record does not include documents related to the harassment investigation or the occurrences of harassment, information regarding the ongoing grievance initiated by the Personal Respondent, the evidence provided by witnesses, the complainant, or the responding parties to the investigator during the investigation. The Personal Respondent also argues that the CAS has not included the terms of the investigator's retention including any agreement the employer had with the investigator about the summaries of evidence in the transmitted certified tribunal record. The Personal Respondent argues that these failures to produce materials pursuant to her Rule 317 request is wrong and that those materials, as well as others as identified in her Rule 317 request, are relevant and ought to be produced by the CAS. How the failures to produce are wrong is not identified.

[70] The Personal Respondent here repeats the argument she had made before and was rejected by the Associate Judge.

[71] The Personal Respondent also argues that evidence that was presented by the Applicant and was before the investigator but was not referenced at all by the Applicant in either the ANOA, her affidavit in support of her application, or the certified tribunal record supports her request for additional documentary production from the CAS in a certified tribunal record The Personal Respondent argues that it is well established law that the record for consideration by the court in an application for judicial review is the same record that was before the decision maker (*Bekker v. Canada*, 2004 FCA 186 at para. 15), and that judge hearing the application must determine whether the investigation record supports the Applicant's allegation that "the investigator refused to take into account any of her comments".

[72] The Personal Respondent here repeats the argument she had made before and was rejected by the Associate Judge.

[73] The Personal Respondent argues that that the certified tribunal record must include the record of the investigation that was before the investigator. She argues that the investigation record will demonstrate that the Applicant participated in the investigation, fully understood the allegations made by the Personal Respondent during the investigation and was opportune to comment, reply, and respond to the allegations that she failed to take necessary and timely action to respond allegations of harassment against a senior manager of CAS thereby exacerbating the impact of harassment on the emotional, mental, physical health and well being, of the Personal

Respondent and other CAS employees. In short, the Personal Respondent intends to rely on the content of the full investigation documents to demonstrate that the investigation was procedurally fair, and that the Applicant fully participated in the investigation by providing her input and feedback on January 18, 2024, and in response to her interview notes.

[74] The Personal Respondent here argues in part an expanded form of a limited argument she made before and was rejected by the Associate Judice. The Personal Respondent did not otherwise make these arguments before the Associate Judge in connection with the June 13 Order. These are new arguments on appeal and cannot be considered (*Quan* at paras 36 to 38).

[75] The Personal Respondent argues that it is she, not the Applicant, who would be prejudiced if the record of the investigation were not produced since only one side of the story would be available for the Court to review in conducting a reasonableness review of the factual record by only reviewing the letters from the Applicant and CAS without any evidence about the investigation performed by the tribunal from the complainant, witnesses, and responding parties. She further argues that the produced certified tribunal record only contains the submissions made to the investigator by the department and the Applicant demanding the report be redrafted to include her additional comments.

[76] The Personal Respondent did not make this argument before the Associate Judge in connection with the June 13 Order. This is a new argument on appeal and cannot be considered (*Quan* at paras 36 to 38).).

[77] The Personal Respondent argues that the record of what was before the investigator is crucial evidence that was not produced by the Applicant or within the certified tribunal record transmitted by CAS. The Personal Respondent further argues that the Applicant is submitting that the decision-maker, being the investigator, failed to take account of the evidence before it. By limiting the scope of the certified tribunal record, the Personal Respondent argues, the Applicant seeks to prevent her from making part of her responding argument while ensuring that only its evidence when challenging the investigator's report is before the Court and not some of the key evidence that was before the investigator when her decision was made.

[78] The Personal Respondent did not make this argument before the Associate Judge in connection with the June 13 Order. This is a new argument on appeal and cannot be considered (*Quan* at paras 36 to 38).

[79] The Personal Respondent argues that what she seeks is not "irrelevant" evidence. She argues that the Federal Court is entitled to examine whether, on the evidence that was before the investigator, the investigator made significant errors. At a minimum, she argues further, the Personal Respondent should be entitled to raise these concerns before the Court.

[80] The Personal Respondent did not make this argument before the Associate Judge in connection with the June 13 Order. This is a new argument on appeal and cannot be considered (*Quan*, at paras 36 to 38).

[81] The Personal Respondent relies on *Hartwig v. Saskatchewan (Justice)*, 2007 SKCA 41, at para 24 and *SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611*, 2011 BCCA 353, in support of her argument that parties to a judicial review application should be able to put before a reviewing court all of the material which bears on the arguments they are entitled to make. She further notes that the Federal Court of Appeal has cited *SELI* with approval in *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, at para 28.

[82] The Personal Respondent did not make this argument before the Associate Judge in connection with the June 13 Order. This is a new argument on appeal and cannot be considered (*Quan*, at paras 36 to 38).

[83] The Personal Respondent's written representations do not identify any error allegedly made by the Associate Judge in the June 13 Order.

(2) **The Personal Respondent's Oral Arguments at the Hearing**

[84] The Court asked the Personal Respondent at the hearing of this appeal whether she could identify any error by the Associate Judge in the June 13 Order. The Personal Respondent responded by stating that the error was that the Court laid out in para 4 of the June 13 Order the facts of the matter as argued by the Applicant without taking into account the Personal Respondent's right to present a "defence and a response". The Personal Respondent did not provide any authority in support of this argument.

[85] When asked about the nature of the error she had identified, the Personal Respondent argued that the June 13 Order was “an error in totality”. The Personal Respondent took no position on whether the error she had identified was an error of law, mixed fact and law or of fact, and further argued that the nature of the error “makes no difference”.

[86] Finally, the Personal Respondent argued that the Associate Judge misapprehended the jurisprudence that had been cited for her consideration in connection with the Rule 317 request. When asked to identify the jurisprudence that she alleged had been misapprehended, the Personal Respondent indicated that the Associate Judge had misinterpreted the jurisprudence cited in the documents produced as Exhibits F and H of the AGC’s responding record on this appeal.

[87] The jurisprudence cited at Exhibit F of the AGC’s responding record is:

a) *Château d’Ivoire Stores Inc. v. Canada (Attorney General),* 2022 FC 405 at para 26;

b) *Slansky v Canada (Attorney General),* 2013 FCA 199 at para 275;

c) *Access Information Agency Inc. v Canada (Attorney General),* 2007 FCA 224 at para 7.

[88] The jurisprudence cited at Exhibit H of the AGC’s responding record is:

a) *Tsleil-Waututh Nation* at paras 106–109, citing *Canada (Human Rights Commission) v Pathak*, [1995], 2 FC 455 (CA), at p 460, leave to appeal to SCC refused, 24809;

b) *Ochapowace First Nation v Canada (Attorney General)*, 2007 FC 920 at para 19, aff'd 2009 FCA 124;

c) *Tsleil-Waututh Nation* at paras 78, 115;

d) *Atlantic Prudence Fund Minister of Citizenship and Immigration)*, [2000] FC No 1156 (TD) at para 11.

e) *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2021 FC 624 at para 23;

f) *Canadian Arctic Resources Committee Inc v Diavik Diamond Mines Inc* (2000), 183 FTR 267 at para 27; see also *Gray and Malas v Canada (Attorney General)*, 2019 FC 301 at paras 112–119.

[89] The Personal Respondent did not suggest or argue what the Associate Judge had misinterpreted in the jurisprudence, or what the effect of those misinterpretations are or could be in the June 13 Order.

B. ***The Applicant***

[90] The Applicant argued that the Personal Respondent is arguing a case that is not the case that is before the Court. She argued that she is not seeking to quash or set aside the investigator's decision and Report. She emphasized that the relief she was seeking was set out in the ANOA and that relief does not include quashing or setting aside the investigator's report.

[91] The Applicant referred to paras 23 and 24 of her ANOA in this regard. These paragraphs are included in the ANOA's pleaded grounds in support of the ANOA and are worded as follows:

> "23. CAS' decision is also unreasonable, because the QMR Report is substantively baseless. The allegation against the Applicant does not meet the prima facie threshold of harassment under *the Work Place Violence and Harassment Prevention Regulations*. Moreover, even if the allegation did meet this *prima facie* threshold, the QMR Report's conclusion is factually unsupportable as no finding of harassment can be made against the Applicant on any of the evidence contained within the Report.
>
> 24. These violations have caused and continue to cause the Applicant significant prejudice. <u>As a result, both the QMR Report and CAS' decision implicitly accepting its conclusions should be quashed."</u>

[92] The Applicant argued that the investigation that preceded and gave rise to the Report is not issue in the proceeding. She further argued that what is at issue with respect to the Report is limited to the Report's conclusion as to harassment as based on the content of the Report itself and the refusal to consider the Applicant's comments on the Report. The investigation that preceded the Report is not in issue. This narrow issue and the narrow relief sought, the Applicant argued, do not implicate or involve the investigation that had been carried out or the evidence provided to the investigator. The investigation itself and the investigator's collected documents etc., that preceded and gave rise to the Report are therefore not at issue and are not relevant to the application

[93] The Applicant argued that the Associate Judge did not make any error in the June 13 Order. The Applicant argued that the Associate Judge followed and applied the correct

jurisprudence and the correct principles in determining that the CAS' Rule 318(2) objection to the Personal Respondent's Rule 317 request should be upheld.

[94] The Applicant also argues that the Personal Respondent failed to identify any error made by the Associate Judge.

C. ***The Respondent AGC***

[95] Like the Applicant, the AGC argued that the June 13 Order is not affected by any error and ought not to be disturbed.

[96] The AGC relied on *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2021 FC 624 at para 23 and *Tsleil-Waututh Nation* at para 78, and argued that the disclosure obligation under Rule 317 has four core elements:

a) It only requires disclosure of material that is "relevant to an application" defined with reference to the wording of the application for judicial review;

b) It only requires disclosure of material that is "in the possession" of the administrative decision-maker, not others;

c) It is limited to material that was before the decision-maker when it made the decision under review, with certain exceptions where a party claims a denial of procedural fairness or bias; and,

d) It does not serve the same purpose as documentary discovery in an action and cannot be used on a fishing expedition.

[97] The AGC further argued that Rule 317 is restricted to the production of the actual material that the administrative decision-maker had before it when making the decision and nothing more (*Canada (Human Rights Commission) v Pathak*, [1995] 2 FC 455 (CA), at 460). The AGC also argued that only the information that was actually before the administrative decision-maker is obtainable under Rule 317 even in cases where some other entity has information and supplied some of it to the administrative decision-maker (*Tsleil-Waututh Nation* at para 114).

[98] The AGC argued that the matter at issue is whether the CAS was right to proceed as it did. The substantive merits of the investigation are not in issue in the proceeding. The AGC further argued that the reviewing court can address the alleged procedural fairness issue without requiring access to the investigator's interviews, notes and records as recorded on the USB or in any other format because the breach of procedural fairness is apparent from the correspondence exchanged between the Applicant, the CAS and the investigator. Indeed, the AGC argues, the CAS decision under review acknowledges that procedural fairness was overlooked.

[99] The AGC argues that the focus of the ANOA is not the investigation. Rather, it is the CAS' conduct in acknowledging the procedural irregularities – and the possibility that the substantive conclusions contained in the Report may be flawed because of them – and nevertheless implementing the Report and refusing to address those procedural irregularities.

[100] Finally, the AGC echoes the Applicant's argument that the June 13 Order is not affected by any error and that the Personal Respondent has not, in any event, identified any error. The

Personal Respondent' argument is but a repetition of earlier arguments made before the Associate Judge.

## VI. **Analysis**

[101] The onus on this motion and appeal is on the Personal Respondent to identify an error in the June 13 Order that would require this Court to intervene. The Personal Respondent has not identified any error that would require this Court's intervention, either in her written representations or in her oral argument.

[102] The Personal Respondent alleges that the Associate Judge erred in summarizing the allegations made in the ANOA without taking into account the Personal Respondent's right "to present a defence and a response". What is alleged as an error is not an error at all.

[103] There is plainly no error in the Associate Judge summarizing the salient allegations contained in an ANOA without summarizing the potential opposing view when identifying the grounds for judicial review and the relief sought in connection with the adjudication of an objection made pursuant to Rule 318(2) in response to a respondent's Rule 317 request. *Iris 2021*, at paras 36 to 43, citing and relying on *Pathak*, as well as on other decisions since *Pathak* that limit judicial review to the grounds of review and the relief set out in the notice of application, have made it clear that what the respondent may wish to argue and the evidence the respondent may wish to lead is not relevant to the determination of relevance within the meaning of Rule 317(1) of the *Rules*. The Court notes that in any event the applicant bears the onus on

judicial review to show that the decision under review is unreasonable (*Vavilov*, at para 100) while the respondent has no similar onus to "defend" the decision under review as reasonable.

[104] An argument that the June 13 Order is an "error in totality" is a bald argument without meaningful content. A bald conclusive assertion without more detail is precisely the type of assertion that must be rejected in line with the law applicable to appeals. An alleged error that is not particularized with sufficient detail to allow the Court to determine whether an error was made is not sufficient on an appeal (*Eisbrenner v. Canada*, 2020 FCA 93, at para 63). Asserting a general "error in totality" in an order appealed from does not provide the Court with a basis to intervene.

[105] The Personal Respondent's argument that the Associate Judge misinterpreted the jurisprudence applicable to determining whether a Rule 318(2) objection to a Rule 317 request is to be upheld must be rejected for the same reason. Referring to jurisprudence referred to in documents produced in a motion record on appeal and then submitting that the Associate Judge misapprehended the jurisprudence without any particularity or detail as to how the jurisprudence was misapprehended is not sufficient to permit the Court to determine whether an error was made.

[106] The Personal Respondent's lack of specificity in identifying any alleged error in the Associate Judge's consideration and application of *Château d'Ivoire Stores Inc. v. Canada (Attorney General)*, 2022 FC 405, *Slansky v Canada (Attorney General)*, 2013 FCA 199, *Access Information Agency Inc. v Canada (Attorney General)*, 2007 FCA 224,*Canada (Human Rights*

*Commission) v Pathak*, [1995], 2 FC 455 (CA), *Ochapowace First Nation v Canada (Attorney General)*, 2007 FC 920, *Atlantic Prudence Fund Minister of Citizenship and Immigration)*, [2000] FC No 1156, *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2021 FC 624 or *Canadian Arctic Resources Committee Inc v Diavik Diamond Mines Inc* (2000), 183 FTR 267 is fatal to the Personal Respondent's argument.

[107] Finally, although it does not need to be considered for the purposes of this appeal, the Personal Respondent's reliance on *Hartwig v. Saskatchewan (Justice)*, 2007 SKCA 41, at para 24 and *SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611*, 2011 BCCA 353 [*SELI*] is of no assistance to her. While it is correct that *SELI* was cited by Justice Stratas in *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, at para 28, the decision was not cited for the broad principle that the Personal Respondent relies on. The Federal Court of Appeal referred to the *SELI* decision in a discussion of the exceptions to the general rule that evidence that could have placed before the administrative decision-maker but was not is not admissible before the reviewing court. As noted above in *Iris 2021* and its consideration of *Pathak*, the broad statement that all of the material that was before the administrative decision-maker or may have an impact on the review decision should be produced in a certified tribunal record has been narrowed considerably by the jurisprudence decided since *Pathak*.

## VII. **Conclusion**

[108] The Personal Respondent has not identified any error in the June 13 Order that would permit or justify the Court to intervene or interfere with the Associate Judge's decision. Having failed to meet her burden, the Personal Respondent's appeal must be dismissed.

[109] The AGC is not seeking his costs of this appeal while the Applicant is seeking costs equivalent to 11.5 units of Column V of Tariff B.

[110] Upon considering the parties' respective costs submissions, the scope of my discretion to award costs on this appeal pursuant to Rules 400(1) and 401(1) of the *Rules*, and upon considering the Rule 400(3) factors in the award of costs as well as the tri-fold objective of costs, including that of deterring abusive behaviour, I find that an elevated costs award against the Personal Respondent is appropriate. I therefore apply column V of Tariff B rather than column III.

[111] The Personal Respondent shall be ordered to the Applicant her costs of this motion which I hereby fix at $ 2,250. These costs are fixed in accordance with column V of Tariff B, with respect to items 5 and 6 of the Tariff.

[112] This appeal was bound to fail from the outset given the Personal Respondent's failure to identify any error on the part of the Associate Judge or in the June 13 Order. As this motion should not have been brought or pursued, the Personal Respondent shall be ordered to pay these costs forthwith pursuant to Rule 400(7) of the *Rules*.

**ORDER in T-321-25**

**THIS COURT ORDERS that**:

1. The Respondent Lucia Fevrier-President's motion and appeal are dismissed.

2. The Respondent Lucia Fevrier-President shall forthwith pay to the Applicant her costs of this motion which are fixed in the amount of $2,250.

3. There are no costs awarded to the Attorney General of Canada as it did not seek its costs of this appeal.

"Benoit M. Duchesne"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-321-25 |
| **STYLE OF CAUSE:** | DARLENE CARREAU v. ATTORNEY GENERAL OF CANADA, LUCIA FEVRIER-PRESIDENT |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | JULY 15, 2025 |
| **ORDER AND REASONS:** | DUCHESNE, J. |
| **DATED:** | JULY 24, 2025 |

**APPEARANCES:**

| | |
|---|---|
| Malini Vijaykumar | FOR THE APPLICANT |
| Melynda Layton | FOR THE RESPONDENT (Lucia Fevrier-President) |
| J Sanderson Graham | FOR THE RESPONDENT (The AGC) |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Nelligan O'Brien Payne LLP<br>Ottawa, Ontario | FOR THE APPLICANT |
| Layton Law Office<br>Toronto, Ontario | FOR THE RESPONDENT (Lucia Fevrier-President) |
| Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT (The AGC) |