Federal Court Cour fédérale

Date: 20250724

Docket: T-321-25

Citation: 2025 FC 1268

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

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Overview

[1] The Respondent, Ms. Lucia Fevrier-President [the Personal Respondent], has brought an appeal pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*] from an order made on April 2, 2025 [the April 2 Order], by the case management judge assigned to this proceeding, Associate Judge Catharine Moore, that no costs be awarded to any party in connection with the Personal Respondent's granted but unsolicited motion to be added as a respondent party in this proceeding. Both the Applicant and the Respondent Attorney General of Canada [the AGC] consented to the Order sought by the Personal Respondent on a without costs basis within a few days of their receipt of the Personal Respondent's unsolicited 371-page motion record.

[2] The Personal Respondent's Notice of Motion sets out that she seeks an Order:

a) "setting aside the Associate Judge's determination that Rule 400 of the *Federal Courts Rules* was not satisfied and directing that Ms. Fevrier-President be permitted to make oral argument and provide written submissions detailing her entitlement to costs including solicitor and client costs incurred to prepare and serve the Notice of Motion, the Affidavit, and Factum;

b) permitting her to make oral argument and provide written submissions, including a Bill of Costs, that her costs be paid forthwith pursuant to Rule 403 of the *Federal Court Rules*,

c) appointing a different Associate Judge to case manage the proceeding;

d) costs of the motion; and,

e) such further and other relief as seems just to this Court."

[3] As will become apparent through these reasons, the Personal Respondent misreads the Associate Judge's Order and does not do justice to the Associate Judge's words. The Associate Judge did not find that Rule 400 was "not satisfied". The Associate Judge wrote in her April 2 Order that she had considered her discretion pursuant to Rule 400 of the *Rules* to make a costs award. She also wrote in the same Order that she was not satisfied that any party had displayed reprehensible, scandalous or outrageous conduct such that solicitor-client costs (or "substantial indemnity costs", as sought by the Personal Respondent in her Notice of Motion before the Associate Judge), should be awarded.

[4] The relief the Personal Respondent was actually seeking on this appeal, as argued at the hearing, was substantively different from that which she had set out in her motion and appeal record. The Personal Respondent argued during the hearing that she sought an order recusing the Associate Judge from her appointment as the case management judge for this proceeding by the Chief Justice in addition to an order setting aside that part of the April 2 Order that awarded no costs to the Personal Respondent in connection with her motion that was substantively resolved on consent.

[5] As the relief sought in the Personal Respondent's Notice of Motion makes clear, the Personal Respondent has not sought a recusal order on this appeal. When asked during the hearing of this appeal as to whether and when the Personal Respondent had asked the Associate Judge to recuse herself, the Personal Respondent responded that she had not asked the Associate Judge to recuse herself at any time but that the Associate Judge should have known that the Personal Respondent wanted her to recuse herself because that relief was set out in the Notice of Motion on this appeal. That the Associate Judge should recuse herself from this proceeding is clearly not set out in the Notice of Motion filed; the language used by the Personal Respondent in her Notice of Motion is verbatim set out in paragraph 2 above and the Personal Respondent's request for the Associate Judge's recusal is nowhere to be found within it.

[6] There is no evidence before the Court that the Personal Respondent has either asked the Associate Judge to recuse herself or brought a motion for recusal before the Associate Judge. As there is no order by the Associate Judge on the issue on her recusal, there is no order to be appealed from in this regard or considered on this appeal.

[7] The matter of the appointment or substitution of a case management judge is a matter that lies within the exclusive discretion of the Chief Justice pursuant to Rules 383 of the *Rules* and is not a matter that can be determined on this appeal.

[8] For the reasons that follow, the Personal Respondent's motion and appeal from the Associate Judge's costs order made in the April 2 Order is dismissed. The Personal Respondent

has not established that the Associate Judge made an error that requires this Court's intervention with respect to costs.

I. **Background and the Order under Appeal**

[9] The Applicant commenced an application for judicial on January 29, 2025 [the NOA]. The allegations set out in the NOA reflect that the proceeding was commenced in connection with an implied accepted conclusion contained in the investigative report of QMR Consulting, dated May 28, 2024 [the QMR Report], made pursuant to the *Canada Labour Code* (R.S.C. 1985, c. L-2) the "Code") and the *Work Place Harassment and Violence Prevention Regulations* (SOR/2020-130). The QMR Report was made following an August 2023 complaint by the Personal Respondent that the Courts Administrative Service [CAS] and the Applicant had failed to take timely action in response to the Personal Respondent's September 2022 harassment complaint against her director.

[10] The relief sought in the NOA consists of an order of *mandamus* applicable to the CAS and, in the alternative, an order quashing the CAS' decision to implicitly accept the QMR Report's conclusion of harassment against the Applicant on the basis that the CAS' decision was unreasonable.

[11] The Applicant did not name the Personal Respondent as a respondent party in her NOA.

[12] On February 21, 2025, Associate Judge Moore was appointed by the Chief Justice as the case management judge to manage the proceeding.

[13] On February 27, 2025, the Personal Respondent filed a document titled "Notice of Intention to Participate" in which she asserted that it was critical that she be allowed to participate "in this action". The record before the Court does not reflect whether or if this "Notice" was brought to the Associate Judge's attention on or about February 27, 2025.

[14] On March 12, 2025, the Associate Judge issued a direction to the Applicant and the AGC, the only parties to this proceeding at the time. The issued direction concerned the first case management conference of the proceeding and was worded as follows:

> "The Court acknowledges correspondence from the parties dated March 11, 2025, seeking a case management conference and directs that the first case management conference will take place by videoconference on March 20, 2025 at 2:00 pm Ottawa time. The parties are directed to consult and provide the Court with a draft agenda including a proposed schedule for the next steps in the proceeding."

[15] The March 12, 2025, direction was recorded in the Court file that could be accessed by the public, including by the Personal Respondent, through the Court's website.

[16] On March 13, 2025, the Associate Judge issued a Direction that was sent to the parties and to the Personal Respondent's solicitor. No case management conference had yet been held in the proceeding. The Direction was worded as follows:

> "The Court acknowledges the correspondence dated March 11, 2025, as well as the document entitled "Notice of Intention to Participation" from Ms. Fevrier-President. Neither document refers to any Rules, legislation or jurisprudence which would entitle Ms. Fevrier-President to participate as a party or otherwise in the proceeding before the Court. Ms. Fevrier-President is, therefore, directed to provide the Court **with brief written submissions** within 5 days of this Direction **setting out the legal basis for her participation in the proceeding**."

(Emphasis added)

[17] On March 19, 2024, pursuant to the March 12, 2025, direction, the Applicant sent the Court and the AGC a draft agenda for the first case management conference scheduled for March 20, 2025. The first point on proposed agenda was the Personal Respondent's participation and terms of participation in this proceeding, if any.

[18] On March 19, 2025, the Personal Respondent sought to file a 371-page motion record in response to the Associate Judge's March 13, 2025, direction to the Personal Respondent for "brief written submissions […] setting out the legal basis for her participation in the proceeding". On March 20, 2025, the Associate Judge issued a direction that read as follows:

> "The Court acknowledges receipt of the "Motion Record -Notice of Intention to Participate Lucia Fevrier-President" received on March 19, 2025, from Ms. Fevrier-President seeking to be added as a respondent. The Court notes that the document does not comply with the *Federal Courts Rules* in that it does not contain Written Representations as required by Rule 364(1)(e). The Court also notes that the pages are not numbered and the document does not contain a table of contents. The document will not be accepted for filing and Registry will return it to Ms. Février-President."

[19] The Personal Respondent took heed of the Associate Judge's direction and, on March 20, 2025, filed her 371-page motion record containing a 36 paragraph affidavit, 26 documentary exhibits and a 45 paragraph "Notice of Intention to Participate Lucia Fevrier-President Factum" for a motion described as "Allowing for the Addition of Lucia Fevrier-President as a Respondent to the Carreau Application For Judicial Review". The Notice of Motion indicated that the Personal Respondent relied, among others, on Rules 3, 4, 5, 300, 301, 302 and 303 of the *Rules*, for an Order "Adding Ms. Fevrier-President as a Respondent to Court File Number T-321-25-ID-

1", as well as for costs of the motion on a substantial indemnity basis. No other relief sought was set out in the notice of motion.

[20] The Personal Respondent's motion record had not been requested or solicited by the Court. There is nothing in the evidence before the Court that suggests that the Personal Respondent had sought any clarification from the Court as to whether she was required to bring a motion following the Associate Judge's March 13, 2025, direction. For reasons that remain unexplained, the Personal Respondent formed the belief that a full and lengthy motion record containing affidavit and documentary evidence, and formal written representations was responsive to the Court's March 13, 2025, direction for "brief written submissions", "setting out the legal basis for" participation to be delivered within a 5-day time frame. The March 13, 2025, direction does not suggest the filing of a nearly 400-page motion record with affidavit evidence, 26 documentary exhibits and a "factum" containing argument and a claim for costs. The Personal Respondent did not do justice to the words used by the Associate Judge in her March 13, 2025, direction.

[21] As had been directed by the Associate Judge on March 12, 2025, the Applicant and the AGC attended a virtual case management conference commencing at 1:57 pm on March 20, 2025. The case management conference lasted 18 minutes. There is nothing in the record before the Court that suggests that the March 20, 2025, case management conference was confidential. Rather, the documents in the Personal Respondent's motion record for this motion and appeal reflect that the March 20, 2025 case management conference was public and open to the public including to the Personal Respondent should she have wanted to observe the hearing (Rule 2 of

the *Rules* provides that a hearing includes a "conference held under the *Rules*", which includes a case management conference). The minutes of the March 20, 2025, case management conference reflect that there were no observers in attendance. The minutes also reflect the following:

2:07 pm	Mr. J. Sanderson Graham for the Respondent is addressing the Court regarding the proposed schedule for the next steps in this proceeding.
2:08 pm	The Court is referring regarding the Notice of morion [*sic!*] to participation and terms of participation of Ms. Fevrier-President.
2:08 pm	Mr. J. Sanderson Graham for the Respondent is addressing the Court regarding the Notice of morion [*sic!*] to participation and terms of participation of Ms. Fevrier-President.
2:09 pm	Ms. Malina Vijaykumar for the Applicant is addressing the Court regarding the Notice of morion [*sic!*] to participation and terms of participation of Ms. Fevrier-President.
2:11 pm	The Court is referring regarding the scheduled Order for the next steps in this proceeding

[22] Still on March 20, 2025, the Associate Judge issued a direction to the parties and to the Personal Respondent worded as follows:

> "The Court acknowledges receipt of a Motion Record containing written representations submitted March 20, 2025, by Ms. Février-President for filing. The Court directs the Motion Record be accepted for filing confidentially as of March 20, 2025. The parties will serve and file any responding records by March 28, 2025 and, further, by March 21, 2025 the parties will confer with Ms. Février-President and advise the Court of their joint availability for a half-day hearing on April 7, 8, 14, 15, or 17, whether they would prefer the hearing in person or virtually and, if in person, where."

[23] Having been made alive to communication and/or scheduling difficulties between the Applicant, the AGC and the Personal Respondent with respect to the hearing of the Personal Respondent's motion, the Associate Judge issued another direction to the parties and to the Personal Respondent on March 24, 2025, worded as follows:

> "The Court acknowledges several email communications from Ms. Février-President and notes that the motion to be added as a

> Respondent was filed as an oral motion where there is no right to a written reply or amended factum. The Court has set a schedule for the delivery of materials and, being advised that the Applicant and Respondent have indicated April 8, 2025 is a convenient date and having no response on this point from Ms. Février-President, the Court directs the motion for Ms. Février-President to be added as a Respondent will be heard virtually on April 8, 2025 commencing at 10:00 Ottawa time. The Court further directs Ms. Février-President to cease sending "without prejudice" emails to the Court and provide any communications in a formal letter copied to the parties."

[24] On March 25, 2025, the Associate Judge issued a direction scheduling the hearing of the Personal Respondent's motion to be added as a respondent party for April 8, 2025, commencing at 10:00 am in Ottawa.

[25] On the same date, the AGC wrote to the Court, the Applicant and the Personal Respondent. The AGC communicated that he consented to the Personal Respondent being added as a respondent party in this proceeding. The AGC also wrote that, "No order of costs is warranted as against the Attorney General in the circumstances".

[26] On March 26, 2025, the Applicant wrote to the Court, the AGC and to the Personal Respondent to communicate her consent to the Personal Respondent being added as a respondent party in this proceeding. The Applicant wrote in salient part as follows:

> "The Applicant, Darlene Carreau, consents to the inclusion of the proposed party, Lucia Février-President, as a Respondent to this application. The Applicant submits that no costs should be awarded against her with respect to Ms. Février-President's motion for inclusion given this consent. Should the issue of costs be contested, the Applicant reserves the right to provide further submissions in respect of same."

[27] The Associate Judge issued the April 2 Order on April 2, 2025. The Order reads as follows:

> "**UPON** reading the Motion Record – Notice of Intention to Participate Lucia Fevrier-President dated March 19, 2025 for an Order adding Ms. Fevrier-President as a Respondent to this proceeding and awarding Ms. Fevrier-President the costs of the motion on a substantial indemnity basis;
>
> **AND NOTING** the consent of the parties to the addition of Ms. Fevrier-President as a Respondent;
>
> **AND CONSIDERING** Rule 303 of the Federal Courts Rules and finding that the relief sought in the application will affect a Ms. Fevrier-President's legal rights, impose legal obligations on or prejudicially affect Ms. Février-President in some direct way: Forest Ethics Advocacy Association v. Canada (National Energy Board) 2013 FCA 236;
>
> **AND CONSIDERING** Rule 400 of the Federal Courts Rules and not being satisfied that any party has displayed reprehensible, scandalous or outrageous conduct such that solicitor-client costs should be awarded: Louis Vuitton Malletier S.A. v. Yang (2007) FC 1179.
>
> THIS COURT ORDERS that:
>
> 1. Ms. Fevrier-President is hereby added as a Respondent to the proceeding;
>
> 2. Ms. Fevrier-President will comply with all Orders and Directions made in this proceeding, including the Scheduling Order of March 24, 2025;
>
> 3. The style of cause in this proceeding is amended to read as follows as of the date of this order:
>
> BETWEEN:
>
> DARLENE CARREAU
>
> Applicant
>
> and
>
> ATTORNEY GENERAL OF CANADA

LUCIA FEVRIER-PRESIDENT

Respondents

4. The whole, without costs."

[28] Still on April 2, 2025, the Associate Judge issued the following direction to the Applicant, the AGC and to the Personal Respondent:

> "The Court confirms that the April 8 hearing date is vacated subject to the following: the Court would like to convene a brief case management conference by videoconference as quickly as possible to discuss the next steps in the proceeding and set a date for the hearing of the judicial review. The Court will make itself available after 1pm on 3 April or any time on April 4 or 7. If none of those times are acceptable to the parties, the case management conference will be held by videoconference commencing at 10:00am Ottawa time on April 8, 2025 for no more than one hour. The Court directs that the parties confer and advise as to their availability by noon on April 3, 2025."

[29] There is no evidence in the record before the Court on this appeal that the Personal Respondent sought any clarification from the Court with respect to this direction or its effect.

[30] The Applicant, the AGC and the Personal Respondent attended a virtual case management conference presided by the Associate Judge on April 8, 2025. The virtual case management conference commenced at 9:59 am and lasted 62 minutes. The minutes of the case management conference reflect that the discussion of the Personal Respondent's motion to be added as a respondent party lasted a total of 6 minutes. This discussion took place after: a) the Applicant and the AGC had communicated to the Court and to the Personal Respondent on March 26, 2025 and March 25, 2025, respectively, that they consented to the Order sought by the Personal Respondent to add her as a respondent party in this proceeding but on a without costs

basis; b) the Associate Judge's April 2 Order that granted the Personal Respondent the relief she had sought but no costs; and, c) and after the Associate Judge had vacated the scheduled hearing of the motion. The minutes reflect in salient part for this motion as follows:

10:04 am	Mr. J. Sanderson Graham for the Respondent is addressing the Court regarding the Confidentiality Order and Public version of documents.
10:07 am	Ms. Melynda Layton for the Respondent is addressing the Court regarding Mr. Graham's position.
10:07 am	Mr. J. Sanderson Graham for the Respondent is addressing the Court regarding the Rule 303 of the Federal Court and the 3rd parties
10:09 am	The Court is referring regarding Rule 303 of the Federal Court and the 3rd parties.
10:09 am	Ms. Melynda Layton for the Respondent is addressing the Court regarding Mr. Graham's position.
10:11 am	The Court is referring regarding Rule 303 of the Federal Court and the 3rd parties.
10:11 am	Ms. Melynda Layton for the Respondent is addressing the Court regarding the Rule 303 of the Federal Court and the 3rd parties.
10:13 am	The Court is referring regarding the next steps and the scheduling Order.
10:15 am	Ms. Melynda Layton for the Respondent is addressing the Court regarding the next steps and the scheduling Order.

[31] The Minutes do not reflect any mention of any request by the Personal Respondent that the Associate Judge recuse herself. The Minutes also do not reflect any request by the Personal Respondent to make costs submissions in connection with the motion that had been substantively granted by the April 2 Order.

[32] The Personal Respondent initially filed her Notice of Motion to appeal from the April 2 Order on April 14, 2025. The Notice of Motion did not indicate any return date for the hearing of the appeal itself, and the covering letter filed along with the Notice of Motion did not suggest any proposed or intended date for the hearing of the appeal.

[33] The Court directed the parties to attend a motion management conference via videoconference on June 27, 2025. The Personal Respondent attended personally along with her solicitor of record. The parties confirmed their availability to have this appeal heard in person in Ottawa on July 15, 2025, and a timetable reflecting material deliverable dates agreed upon by the parties during the motion management conference was issued in the form or an Order on July 27, 2025. This appeal was fixed and ordered to be heard along with another appeal by the Personal Respondent from another Order of the Associate Judge for a maximum duration of 3 hours total for both appeals.

[34] The Personal Respondent and her solicitor were informed during the motion management conference that an Order appointing a different case management judge to manage this proceeding is a matter exclusively reserved for the Chief Justice of this Court pursuant to Rule 383 of the *Rules* and that the issue is not the proper subject of an appeal pursuant to Rule 51 of the *Rules*. Despite having been informed directly by the Court on June 27, 2025, during the motion management conference that an Order appointing a different case management judge could not be made on this motion, the Personal Respondent maintained her request for such an Order in her Notice of Motion and dedicated a meaningful portion of her written representations on this motion and appeal to allegations of bias against the Associate Judge. As noted above, these allegations were never raised or argued before the Associate Judge and are not properly before the Court on this appeal.

II. **The Evidence Before the Court**

A. ***Personal Respondent's Motion Record***

[35] The Personal Respondent's motion record exceeds 450 pages, excluding her written representations. She has also included a copy of a document titled "Lucia Fevrier-President's Submissions on Costs of Motion to be Included as a Respondent" that is neither part of her motion record, nor identified in her Notice of Motion or in the table of contents of her motion record.

[36] The Personal Respondent's Notice of Motion does not set out the list of documents or other material to be used for the purposes of her motion and appeal as is required by Rule 359(d) of the *Rules*. The Personal Respondent's Notice of Motion plainly does not comply with the *Rules* or with Form 359.

[37] The Notice of Motion does not refer to any affidavit evidence being led in support of the motion and appeal despite that Rule 363 provides that "a party to a motion shall set out in an affidavit any facts to be relied upon by that party in the motion that do not appear on the Court file". It also fails to comply with Rule 364(2)(f) that sets out that a moving party's motion record shall contain "any other filed material that is necessary for the purposes of a motion".

[38] Documents in a motion record must also be included in the motion record in accordance with the *Rules*, and more particularly in accordance with Rules 80, 81, 359, 363 and 364 of the *Rules.* All of these Rules apply to appeals pursuant to Rule 51 (*Sorribes v Canadian Broadcasting Corporation*, 2023 FC 978 at para 5 [*Sorribes*]). This means that an appellant must include in their motion record in support of their motion to appeal any documents necessary to determine their appeal, and they cannot presume that their original materials that led to the order

under appeal would be before the Court during the appeal (*Sorribes*; *Ewert v Assistant Commissioner Policy and Programs*, 2022 CanLII 117825 (FC) at para 3; *Lefebvre c. Canada (Agence d'inspection des aliments)*, 2024 CF 1906 at para 25; *Lacoste c. Canada (Procureur général)*, 2024 CF 227 at para 15; *Indigo Group, société par actions simplifiée c. Indigo Charge Inc.*, 2024 CanLII 61079 at para 36; *Bernard c. Conseil des Abénaquis de Wôlinak*, 2025 CF 377 at para 45).

[39] The Personal Respondent has nevertheless included a copy of her motion record for an Order adding her as respondent party dated March 19, 2025, but filed on March 20, 2025, that was read by the Associate Judge as appears from the April 2 Order. The motion record consists of Ms. Fevrier-President's 36 paragraph affidavit sworn on March 19, 2025, 26 documentary exhibits and a 45 paragraph Factum. All the exhibits attached to the affidavit are documents that pre-date the commencement of this proceeding except for Exhibit 26, which is a February 14, 2025, email from a third party providing an update in response to an email from the Personal Respondent dated February 14, 2025. While the March 19, 2025, motion record is not properly led into evidence on this motion due to the Personal Respondent's failure to follow Rules 80, 81, 359, 363 and 364, to make it admissible, the AGC considers that the motion record is admissible evidence before me. The Applicant has taken no position on the issue.

[40] The Personal Respondent has included a Table of Contents in her motion record. The Table of Contents describes 27 documents that are described as bearing "Court ID Numbers" and includes the Order under appeal, the Applicant's Amended Notice of Application, and the Personal Respondent's March 19, 2025, motion record. There is no indication in the Personal

Respondent's motion record of the origins of these documents beyond her use of the "Court ID Numbers" descriptor, or whether they were documents that were part of the motion before the Associate Judge that led to the April 2 Order and the costs order made therein under appeal. These documents could have been made admissible on this motion had they been identified by the Personal Respondent in her Notice of Motion in accordance with Rule 359(d) or otherwise attached as exhibits to a simple affidavit included in her motion record for this motion. They were not.

[41] While none of these documents are properly led into evidence on this motion due to the Personal Respondent's failure to comply with Rules 80, 81, 359, 363 and 364, I consider that it would be wasteful to dismiss this motion and appeal on a without prejudice basis only grant leave to the Personal Respondent to lead additional affidavit evidence attaching the March 19, 2025, motion record and other documents included in her motion record on this appeal in accordance with the *Rules* and then argue the appeal on the basis of a motion record that contains admissible evidence. I therefore exercise my discretion pursuant to Rule 55 of the *Rules* in light of the objective set out in Rule 3 *Rules* to achieve "the just, most expeditious and least expensive determination of every proceeding on its merits" and dispense the Personal Respondent from strict compliance with Rules 80, 81, 359, 363 and 364 in connection with the motion record filed on this motion only (*Canada (National Revenue) v. McNally*, 2015 FCA 195, at paras 8 to 10 [*McNally*]. The content of the Personal Respondent's motion record filed for this motion will therefore be considered as admissible evidence for the purposes of this motion. Nothing herein should be read as dispensing the Personal Respondent from otherwise complying with the *Rules* at any other time.

[42] I note that the exercise of my discretion in this regard is an exceptional matter that is confined to the special circumstances of this motion, that neither the AGC nor the Applicant object to the improperly filed material being admitted for the purposes of this motion, that the March 19, 2025, motion record was clearly considered by the Associate Judge in making the April 2 Order under appeal, and that the remainder of the non-exhibit documents included in motion record appear to be (and are not contested) as being documents that are in the Court file.

[43] The Personal Respondent has not taken care to indicate precisely which materials were before the Associate Judge at the time that she made the Order appealed from. While she argued during the hearing this appeal that the entirety of the Court file was before the Associate Judge as the appointed case management judge at the time of the Order, she has provided no legal authority to support the proposition that the entirety of the Court file may be considered by the Court on an appeal from a specific Order made by an Associate Judge on a specific motion. I disagree with the Personal Respondent that the whole of the Court file was before the Associate Judge at the time of the Order appealed from; the Order appealed from describes what was before the Associate Judge for the purposes of the April 2 Order and no evidence has been led on this appeal to establish that other materials were before her or considered at that time.

B. ***The Applicant's Responding Record***

[44] The Applicant has led one affidavit on this appeal. The affidavit attaches 5 exhibits consisting of:

a) a 7-paragraph letter from the Personal Respondent's solicitor of record to the Court, with enclosure, dated March 11, 2025, which contains a statement from the

Registry to the solicitor of record that, “if you need to communicate with the Court or request Court’s directions, you must do so in a formal letter and duly shared with the parties in this matter”;

b) minutes of the case management conference held on April 8, 2025, that preceded the issue of the Order on appeal, as discussed above;

c) a copy of the Associate Judge’s Order on appeal;

d) a copy of correspondence filed with the Court by the Personal Respondent’s solicitor of record providing their and the Personal Respondent’s availability for the hearing of the application for judicial review in July or August 2025; and,

e) a copy of the Associate Judge’s Order issued on April 16, 2025.

[45] Of the exhibits filed by the Applicant, only the second and third exhibits appear to be relevant or probative. The fourth and fifth exhibits, while notionally admissible, are not relevant to the issues on appeal. The first exhibit, while also admissible, does not appear probative regarding the issues on appeal although it does reflect the Personal Respondent’s apparent persistent disregard for the *Rules*¸ and the directions or Orders issued by this Court.

[46] The second exhibit, being the minutes of the case conference that preceded the Order produced as the third exhibit, and the Order on appeal itself, are admissible and relevant.

C. ***The AGC’s Responding Record***

[47] The AGC’s responding record contains only his written representations on this appeal. The AGC has led no evidence on this appeal.

III. **The Arguments**

A. ***The Personal Respondent's Arguments***

[48] The following summary of the Personal Respondent's arguments intentionally excludes the details of the Personal Respondent's incendiary allegations improperly presented as argument in her written representations and orally at the hearing of this motion. These arguments include that the Applicant has abused her position generally, abused her position within the CAS in connection with this proceeding, strategized to terminate the Personal Respondent's employment, interfered with a workplace investigation, and seeks to quash a workplace investigator's findings while she is engaged in a reappointment process. They are made without admissible or probative evidentiary support in the record. At best, these arguments are based on arguments contained in the Personal Respondent's affidavit followed by the Personal Respondent's statements that the arguments improperly contained in her affidavit (which should be limited to facts per Rule 81(1)) are what she believes and therefore are facts. Such self-serving evidence is of no probative value. Allegations such as these made without objective evidentiary support in the record are unhelpful for determining the matter at issue on this motion and are needlessly provocative. Similar allegations that the Court "owes" the Personal Respondent were made during the hearing, also without evidentiary support or supporting authority.

[49] The Personal Respondent otherwise asserts that she is a "person directly affected by the order sought in the application" and should have been named by the Applicant as a respondent party in the application from the outset of the matter as is required by Rule 303 of the *Rules*. She

argues that she is, in fact, the only real respondent party in this proceeding and that even the AGC who was named as a respondent party by the Applicant is not a "real respondent" but rather a "friend of the Court". She argues that it is scandalous and reprehensible for the Applicant to have commenced this proceeding without naming her as a respondent party and for the Applicant to knowingly and intentionally draft her notice of application in "an incorrect manner" designed to exclude the Personal Respondent. This conduct is the conduct the Personal Respondent relies on for a "substantial indemnity" costs award against the Applicant in connection with her March 19, 2025, motion that led to the April 2 Order.

[50] The Personal Respondent argues that the Applicant circumvented the *Rules* by failing to provide her with notice of her proceeding, by failing to serve her with the NOA despite that she had not been named as a party to the proceeding, and by failing to name her as a respondent party. This conduct, she argues, is particularly egregious and worthy of censure because of the Applicant's status in the CAS and cannot be excused. The failure to name the Personal Respondent as a respondent party is, she argues, not only a breach of legislative requirements but also a breach of procedural fairness. The only support offered for this argument is Rule 303 of the *Rules*.

[51] The Personal Respondent also argues that the Applicant and the AGC had an obligation to agree to the Personal Respondent's participation in the proceeding once they received the Personal Respondent's "Notice of Intention to Participate" on February 27, 2025.

[52] The Personal Respondent's "Notice of Intention to Participate" was an ineffectual notice that is not contemplated by the *Rules*. Rule 323 of the *Rules* contemplates the delivery of a notice of intention to become a party in a reference, but there exists no similar Rule or notice for a person who seeks to become a party to an application for judicial review.

[53] The Personal Respondent argues that this obligation to agree to her participation in this proceeding as a respondent party is provided by Rule 303 of the *Rules*. Implicit in this argument is that it was incorrect for the Applicant, the AGC, or both, to consider whether there was a legal or factual basis for the Personal Respondent's participation in the proceeding. The Personal Respondent's argument flies in the face of the well known and fundamental principle in law, equally applicable in connection with a request for a person to be added as a party to a proceeding, that the party asserting a right to relief has the burden to show that the relief sought should be granted. Rule 303 does not alter this principle and does not contain an obligation to agree as asserted by the Personal Respondent (*Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2013 FCA 236, at paras 18 to 21; *Brunswick House First Nation v. Canada (Attorney General)*, 2023 CanLII 73071, at paras 18 to 24).

[54] The Personal Respondent also argues that she had been considering bringing a preliminary motion to dismiss this proceeding on the basis of timeliness but was not permitted to bring such a motion because the Associate Judge, acting as case management judge, fixed a timetable for the proceeding and directed that she comply with the timetable. Nothing in the record before the Court on this motion suggests that the Personal Respondent had at any time informed the Court of her intention to bring a motion to strike this proceeding. The Personal

Respondent framed her argument on this issue in her written representations as being denied an opportunity by the Court to review and consider the "pleadings" because the Court demanded that she comply with the timetable for the proceeding as fixed by the Court. The record before me suggests that the situation was rather that the Personal Respondent failed to indicate her intention to bring a motion to strike in a timely manner or at all.

[55] The Personal Respondent sets out in her written representations that she is seeking an order on this motion and appeal that had not been identified or disclosed in her Notice of Motion that commenced this appeal or set out in her Notice of Motion for the motion that was before the Associate Judge. The Personal Respondent argues that she had requested that the AGC be removed as a respondent or, in the alternative, that the AGC's role in this proceeding be decided by the Court in accordance with the *Rules.* This issue was not presented for a decision by the Associate Judge and did not form part of the March 19, 2025, motion record that led to the April 2 Order being considered here. It is not properly before the Court on this appeal and does not form part of the appeal before the Court. This Order and these reasons do not determine the issue of whether the AGC ought to be removed as a respondent party.

[56] The Personal Respondent argues that she should be awarded a lump sum costs award of $ 10,000 for her motion to be added as a Respondent to this proceeding. The main thrust of her argument on costs as set out in her motion record on appeal is that she should be awarded costs because of what she qualifies as the Applicant's reprehensible conduct in not naming her as a respondent party in this proceeding from the outset and by not immediately agreeing to her request to participate in this proceeding. There are a number of other alleged bases for the costs

detailed in the lengthy written costs' submissions filed by the Personal Respondent on this appeal, but I need not consider them in any detail because they were not filed with the Associate Judge for her consideration when she made the April 2 Order.

[57] The Personal Respondent relies on the Court's wide discretion to make a costs award and some of the Court's costs orders in complex intellectual property matters that have awarded lump sum costs awards (*Eli Lilly & Co. v Novopharm Ltd*. (1998), 83 C.P.R. (3d) 31; *Catalyst Pharmaceuticals, Inc. v Canada (Attorney General),* 2022 FC 1669 (CanLII); *Philip Morris Products SA v Marlboro Canada Ltd*, 2015 FCA 9, at para 4; *Allergan Inc. v Sandoz Canada Inc.*, 2021 FC 186 at para. 22*; Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25, at paras 10 to 13; *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 1119). These authorities are examples of costs awards made after judgment in an action or an application for judicial review on their merits. None are concerned with the costs of an interlocutory motion resolved on consent except as to costs such as the one that was before the Associate Judge. They are distinguishable from the case at issue here and find no application with respect to the costs of the interlocutory motion that was substantively resolved on consent.

[58] The Personal Respondent further argues that a lump sum costs award appropriately reflects the factors set out in Rule 400(3) of the *Rules* and would:

a) fix an amount for Ms. Fevrier-President's costs of this motion and avoid having to incur further costs litigating the appropriate quantum under the Tariff;

b) appropriately compensate Ms. Fevrier-President, whereas even the highest award under the Tariff would not; and

c) be appropriate in light of the volume of work, the result, the importance of the issues, the conduct of the parties, and other factors set out under Rule 400(3).

[59] The Personal Respondent also argues that the awarding of a lump sum costs award would spare the parties further litigation costs potentially incurred through "further debates with the Applicant" or an assessment. Why further debates would be necessary when the Court determined the costs relevant to the step in the proceeding that was before her was not explained by the Personal Respondent. This argument must be rejected.

[60] The Personal Respondent also argues that the amount of work involved in "litigating this proceeding was greater than would ordinarily have been required in an application for judicial review". She argues that she had to devote significant time and resources to prepare a responding affidavit setting out the evidence reviewed by the case management judge; bring a written motion to be included; and ultimately, argue that she should be included as a respondent to the Application for Judicial Review on the merits. In doing so, the Personal Respondent conflates the steps to be taken in a proceeding pursuant to Rule 307 of the *Rules* and the steps to be taken on a motion. It is an irrelevant argument that has no impact on this appeal or, indeed, any impact on the costs of the motion to be added as a respondent party to the proceeding. The Personal Respondent's motion to be added as a respondent party was consented to and not argued. The Court did not direct that the Personal Respondent prepare and file affidavit evidence or a lengthy motion record in order to be added as a party to this proceeding. These arguments must all be rejected as they are either factually unsupported or plainly arise from the Personal Respondent's voluntary litigation choices.

[61] The Personal Respondent also argues that this proceeding seeks to "act as a defence to the Reprisal Complaints brought by Ms. Fevrier-President under Part II of the *Canada Labour Code* and before the Federal Public Service Labour and Employment Relations Board", and that put her to considerably more preparation for the motion than would otherwise have been the case. The Court notes that, like the incendiary allegations referred to above at paragraph 52, above, there is no admissible or probative evidence in the record before the Court on this motion to support this allegation. Unsupported allegations cannot form the basis of the justification for a costs award.

[62] The Personal Respondent also argues that the AGC's initial refusal to consent to an order joining her as a respondent party required her to analyze the AGC's arguments, discuss the issues with the AGC, and required her to prepare for her motion. I understand this argument to imply that the Personal Respondent seeks costs because the AGC required her to justify the right she claimed to have rather than consent blindly to her request without question. This argument must be rejected for the same reasons as set out in paragraph 53, above.

[63] The Personal Respondent argues that the Applicant raises a number of complex issues in her NOA and that those issues require the Personal Respondent to prepare extensively. She also argues that the issues in the application for judicial review are important. While this may be the case, the time to argue the complexity of the issues involved in the application and the importance of the matter more generally is in the costs submissions relating to the application hearing on its merits and not on a motion to be added as a respondent party, or on an appeal from

an Order relating to the costs of an interlocutory motion that added the Personal Respondent as a respondent party as she had sought in that motion.

[64] The Court notes that the Personal Respondent did not identify any error in the April 2 Order in either her Notice of Motion or in her written representations filed on this appeal. The Personal Respondent only came to identify alleged errors upon answering questions from the Court during the hearing of this appeal.

[65] The Personal Respondent argued orally during the hearing of this appeal that the Associate Judge erred in April 2 Order by:

a) not permitting the Personal Respondent to make submissions orally or in writing as to the costs of her motion to be added as a respondent party;
b) not reviewing the evidence in the motion record before her as to costs;
c) making her Order as to costs after "speaking privately" or "clandestinely" with the Applicant and the AGC on March 20, 2025, and hearing their arguments that they had done nothing wrong.

[66] While the Personal Respondent acknowledges that an Associate Judge has the discretion to make a costs Order and award, she has made no submissions as to the nature of the errors alleged or as to the standard of review to be applied to them.

B. ***The Applicant's Arguments***

[67] The Applicant's argument is that the Personal Respondent has shown no basis to overturn or interfere with the April 2 Order. The Applicant argues that the Associate Judge made no error in law and made no overriding or palpable error in the exercise of her discretion to award no costs in connection with the Personal Respondent's motion. She further argues that the Associate Judge relied on the discretion granted to her pursuant to Rule 400 of the *Rules* to make a no costs award, and that the Associate Judge had the discretion to not ask the parties to make costs submissions.

[68] The Applicant argues that there is no basis for this Court to make an order recusing the Associate Judge as the appointed case management judge for this proceeding, not least because there was no motion or request before the Associate Judge for her to recuse herself. As there is no Order made by the Associate Judge on this issue, there is no appeal to be determined on the issue.

C. ***The AGC's Arguments***

[69] The AGC argues that the Associate Judge did not err in granting the motion brought by Ms. Fevrier-President to be added as a respondent party or in declining to award her the costs of her motion. He argues there were no grounds that would justify an award of costs as against the Applicant or the AGC in connection with the Personal Respondent's motion.

[70] The AGC further argues that it was incumbent upon Ms. Fevrier-President pursuant to Rule 104 of the *Rules* to explain to the Court the status that she was seeking and the reasons therefor (*Brunswick House First Nation v. Canada (Attorney General),* 2023 CanLII 73071 (FC),

and the jurisprudence cited therein including *Canada (Fisheries and Oceans) v. Shubenacadie Indian Band*, 2002 FCA 509; *Laboratoires Servier v. Apotex Inc*., 2007 FC 1210; *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2013 FCA 236). When she did so by way of her March 19, 2025, motion record, the Applicant and the Respondent AGC promptly consented to her addition as a party, thereby avoiding an oral hearing on the issue.

[71] As for an award of costs on the solicitor-client scale, the AGC argues that Ms. Fevrier-President did not seek costs on this scale as against the AGC before the Associate Judge and therefore cannot seek them now. The AGC also adds that the Personal Respondent argued in the Factum to her motion, at paragraph 45, that she was seeking costs against the Applicant exclusively. As a result, no costs should be awarded against the AGC on appeal or below. He argues that in any event counsel for the AGC displayed no reprehensible, scandalous or outrageous conduct that would justify an award of costs on a solicitor-client scale. To the contrary, the AGC consented to the Personal Respondent's motion for an Order adding her as a respondent party in this proceeding.

[72] The AGC argues that the Associate Judge exhibited no bias in making the order under appeal and should not be replaced as the case management judge for this proceeding. Further, the AGC notes that the "private conversation" or "clandestine meeting" alleged between the Applicant, the AGC and the Court on March 20, 2025, was a scheduled case management conference that predated the Personal Respondent being added as a party to the proceeding. The case management conference was neither private nor "clandestine".

IV. **Analysis**

A. ***The Operative Rules as to Costs and Case Management***

[73] The Rules provide the following as the operative Rules with respect to an award of costs before this Court:

COSTS	**DÉPENS**
Awarding of Costs Between Parties	**Adjudication des dépens entre parties**
Discretionary powers of Court	***Pouvoir discrétionnaire de la Cour***
400 (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.	**400 (1)** La Cour a le pouvoir discrétionna déterminer le montant des dépens, de les désigner les personnes qui doivent les pa
Crown	***La Couronne***
(2) Costs may be awarded to or against the Crown.	**(2)** Les dépens peuvent être adjugés à la contre elle.
Factors in awarding costs	***Facteurs à prendre en compte***
(3) In exercising its discretion under subsection (1), the Court may consider	**(3)** Dans l'exercice de son pouvoir discré application du paragraphe (1), la Cour pe compte de l'un ou l'autre des facteurs su
(a) the result of the proceeding;	a) le résultat de l'instance;
(b) the amounts claimed and the amounts recovered;	b) les sommes réclamées et les sommes r
(c) the importance and complexity of the issues;	c) l'importance et la complexité des ques litige;
(d) the apportionment of liability;	d) le partage de la responsabilité;
(e) any written offer to settle;	e) toute offre écrite de règlement;
(f) any offer to contribute made under rule 421;	f) toute offre de contribution faite en vert 421;
(g) the amount of work;	g) la charge de travail;

(h) whether the public interest in having the proceeding litigated justifies a particular award of costs;

h) le fait que l'intérêt public dans la résolution judiciaire de l'instance justifie une adjudication particulière des dépens;

(i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;

i) la conduite d'une partie qui a eu pour effet d'abréger ou de prolonger inutilement la durée de l'instance;

(j) the failure by a party to admit anything that should have been admitted or to serve a request to admit;

j) le défaut de la part d'une partie de signifier une demande visée à la règle 255 ou de reconnaître ce qui aurait dû être admis;

(k) whether any step in the proceeding was

k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :

(i) improper, vexatious or unnecessary, or

(i) était inappropriée, vexatoire ou inutile,

(ii) taken through negligence, mistake or excessive caution;

(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;

(l) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily;

l) la question de savoir si plus d'un mémoire de dépens devrait être accordé lorsque deux ou plusieurs parties sont représentées par différents avocats ou lorsque, étant représentées par le même avocat, elles ont scindé inutilement leur défense;

(m) whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily;

m) la question de savoir si deux ou plusieurs parties représentées par le même avocat ont engagé inutilement des instances distinctes;

(n) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299;

n) la question de savoir si la partie qui a eu gain de cause dans une action a exagéré le montant de sa réclamation, notamment celle indiquée dans la demande reconventionnelle ou la mise en cause, pour éviter l'application des règles 292 à 299;

(n.1) whether the expense required to have an expert witness give evidence was justified given

n.1) la question de savoir si les dépenses engagées pour la déposition d'un témoin expert étaient justifiées compte tenu de l'un ou l'autre des facteurs suivants :

(i) the nature of the litigation, its public significance and any need to clarify the law,

(i) la nature du litige, son importance pour le public et la nécessité de clarifier le droit,

(ii) the number, complexity or technical nature of the issues in dispute, or

(ii) le nombre, la complexité ou la nature technique des questions en litige,

(iii) the amount in dispute in the proceeding; and

(iii) la somme en litige;

(o) any other matter that it considers relevant.

o) toute autre question qu'elle juge pertinente.

Tariff B

Tarif B

(4) The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.

(4) La Cour peut fixer tout ou partie des dépens en se reportant au tarif B et adjuger une somme globale au lieu ou en sus des dépens taxés.

Directions re assessment

Directives de la Cour

(5) Where the Court orders that costs be assessed in accordance with Tariff B, the Court may direct that the assessment be performed under a specific column or combination of columns of the table to that Tariff.

(5) Dans le cas où la Cour ordonne que les dépens soient taxés conformément au tarif B, elle peut donner des directives prescrivant que la taxation soit faite selon une colonne déterminée ou une combinaison de colonnes du tableau de ce tarif.

Further discretion of Court

Autres pouvoirs discrétionnaires de la Cour

(6) Notwithstanding any other provision of these Rules, the Court may

(6) Malgré toute autre disposition des présentes règles, la Cour peut :

(a) award or refuse costs in respect of a particular issue or step in a proceeding;

a) adjuger ou refuser d'adjuger les dépens à l'égard d'une question

litigieuse ou d’une procédure particulière;

(b) award assessed costs or a percentage of assessed costs up to and including a specified step in a proceeding;

b) adjuger l’ensemble ou un pourcentage des dépens taxés, jusqu’à une étape précise de l’instance;

(c) award all or part of costs on a solicitor-and-client basis; or

c) adjuger tout ou partie des dépens sur une base avocat-client;

(d) award costs against a successful party.

d) condamner aux dépens la partie qui obtient gain de cause.

Award and payment of costs

(7) Costs shall be awarded to the party who is entitled to receive the costs and not to the party’s solicitor, but they may be paid to the party’s solicitor in trust.

Adjudication et paiement des dépens

(7) Les dépens sont adjugés à la partie qui y a droit et non à son avocat, mais ils peuvent être payés en fiducie à celui-ci.

Costs of motion

401 (1) The Court may award costs of a motion in an amount fixed by the Court.

Dépens de la requête

401 (1) La Cour peut adjuger les dépens afférents à une requête selon le montant qu’elle fixe.

Costs payable forthwith

(2) Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.

Paiement sans délai

(2) Si la Cour est convaincue qu’une requête n’aurait pas dû être présentée ou contestée, elle ordonne que les dépens afférents à la requête soient payés sans délai.

Assessment according to Tariff B

407 Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.

Tarif B

407 Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.

[74] The *Rules* provide as follows with respect to the appointment, powers and discretion of a case management judge:

Case management judges — Federal Court	**Juge responsable — Cour fédérale**
383 The Chief Justice of the Federal Court may assign	**383** Le juge en chef de la Cour fédérale peut :
(a) one or more judges to act as a case management judge in a proceeding;	**a)** affecter un ou plusieurs juges à titre de juge responsable de la gestion d'une instance;
(b) one or more prothonotaries to act as a case management judge in a proceeding; or	**b)** affecter un ou plusieurs protonotaires à titre de juge responsable de la gestion d'une instance;
(c) a prothonotary to assist in the management of a proceeding.	**c)** affecter un protonotaire pour aider à la gestion d'une instance.
Powers of case management judge or prothonotary	**Pouvoirs du juge ou du protonotaire responsable de la gestion de l'instance**
385 (1) Unless the Court directs otherwise, a case management judge or a prothonotary assigned under paragraph 383(c) shall deal with all matters that arise prior to the trial or hearing of a specially managed proceeding and may	**385 (1)** Sauf directives contraires de la Cour, le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) tranche toutes les questions qui sont soulevées avant l'instruction de l'instance à gestion spéciale et peut :
(a) give any directions or make any orders that are necessary for the just, most expeditious and least expensive outcome of the proceeding;	**a)** donner toute directive ou rendre toute ordonnance nécessaires pour permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;
(b) notwithstanding any period provided for in these Rules, fix the period for completion of subsequent steps in the proceeding;	**b)** sans égard aux délais prévus par les présentes règles, fixer les délais applicables aux mesures à entreprendre subséquemment dans l'instance;
(c) fix and conduct any dispute resolution or pre-trial conferences	**c)** organiser et tenir les conférences de règlement des litiges et les

that he or she considers necessary; and	conférences préparatoires à l'instruction qu'il estime nécessaires;
(d) subject to subsection 50(1), hear and determine all motions arising prior to the assignment of a hearing date.	**d)** sous réserve du paragraphe 50(1), entendre les requêtes présentées avant que la date d'instruction soit fixée et statuer sur celles-ci.
Order for status review	**Ordonnance d'examen de l'état de l'instance**
(2) A case management judge or a prothonotary assigned under paragraph 383(c) may, at any time, order that a status review be held in accordance with this Part.	**(2)** Le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) peut, à tout moment, ordonner que soit tenu un examen de l'état de l'instance en conformité avec la présente partie.
Order to cease special management	**Ordonnance**
(3) A case management judge or a prothonotary assigned under paragraph 383(c) may order that a proceeding, other than a class proceeding, cease to be conducted as a specially managed proceeding, in which case the periods set out in these Rules for taking any subsequent steps apply.	**(3)** Sauf s'il s'agit d'un recours collectif, le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) peut ordonner qu'une instance ne soit plus considérée comme une instance à gestion spéciale, auquel cas les délais prévus aux présentes règles s'appliquent aux mesures prises subséquemment.

[75] As noted by the Federal Court of Appeal in *Waterhen Lake First Nation v. Canada*, 2025 FCA 4, at para 133:

> [133] Rule 400(1) of the *Federal Courts Rules*, SOR/98-106 establishes the basic principle that costs are at the complete discretion of this Court as to issues of entitlement, amount and allocation and are, in that sense, "quintessentially discretionary": *Haynes v. Canada (Attorney General)*, 2023 FCA 244 at para. 13, [2023] F.C.J. No. 2289 (Q.L.), citing *Canada (Attorney General) v. Rapiscan Systems Inc*., 2015 FCA 97 at para. 10, [2015] F.C.J.

> No. 511 (Q.L.), and *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39 at para. 126, [2009] 2 S.C.R. 678.

[76] Numerous other decisions from the Federal Court of Appeal and from this Court echo the basic principle that costs are at the complete discretion of the Court (see for example, *Shull v Canada*, 2025 FCA 25 at para 44; *Red Pheasant First Nation v Whitford*, 2023 FCA 29 at para 11; *Blank v Canada (Justice*), 2016 FCA 189 (CanLII); *Tazehkand v Bank of Canada*, 2023 FCA 208 (CanLII); *Alani v Canada (Prime Minister),* 2017 FCA 120; *Curtis v Canada (Human Rights Commission),* 2020 FCA 149; *Johnson v Canadian Tennis Association*, 2024 FC 110 at para 51; *Moosomin First Nation v Canada*, 2025 FC 518 at para 41; *Dermaspark Products Inc. v Prestige MD Clinic*, 2022 FC 1550; *Canjura v Canada (Attorney General),* 2021 FC 1022; *T-Rex Property AB v Pattison Outdoor Advertising Limited Partnership*, 2019 FC 1004).

[77] It bears noting that this complete discretion as set out in Rule 400(1) remains despite that there are general principles ordinarily applicable in determining costs awards in particular circumstances (*Bell Media Inc. v Macciacchera (Smoothstreams.tv),* 2023 FC 1698 at paras 14 and 15). This is in keeping with the three-fold objective of costs being to be provide compensation, promoting settlement and deterring abusive behaviour (*Air Canada v Thibodeau*, 2007 FCA 115 at para 24; *Garshowitz v Canada (Attorney General),* 2017 FCA 251 at para 29).

[78] I would add that the Court's ability to award costs is limited by the requirement that a costs award may only be made with respect to steps in a given proceeding and with respect to a proceeding itself. Tariff B sets out assessable service items and disbursements that may form part of a costs award pursuant to the *Rules.* The same restriction applies to lump sum awards notwithstanding that lump sum awards may be assessed more holistically and with less

granularity than a Tariff B based costs award. The Court has no jurisdiction to award costs for conduct that is alleged to have occurred prior to a proceeding being commenced or to have occurred outside of a step taken before the Court.

B. ***The Standard of Review***

[79] Appeals from a prothonotary or an associate judge's orders 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; *Papequash v Brass*, 2018 FC 325 at para 10).

[80] 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.

[81] 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).

[82] While a discussion of the "overriding and palpable error" standard of review merits some discussion here, I find that Madam Associate Chief Justice Martine St-Louis' discussion of the subject in *Moosomin First Nation v Canada*, 2025 FC 518 at paras 37 to 41 is apposite:

> [37] As the Federal Court of Appeal indicated, palpable and overriding error is a highly deferential standard and it is a difficult standard to meet (*Lessard-Gauvin v Canada (Attorney General),* 2020 FC 730 at para 45, aff'd in 2021 FCA 94; *Millennium Pharmaceuticals Inc v Teva Canada Limited*, 2019 FCA 273 at para 6 citing *Benhaim v St-Germain*, 2016 SCC 48, at para 38 [*Benhaim*]; *Figueroa v Canada (Public Safety and Emergency Preparedness),* 2019 FCA 12 at para 3; *Montana v Canada (National Revenue),* 2017 FCA 194 at para 3; *1395804 Ontario Ltd (Blacklock's Reporter) v Canada (Attorney General),* 2017 FCA 185 at para 3; *NOV Downhole Eurasia Limited v TLL Oilfield Consulting Ltd*, 2017 FCA 32 at para 7; *Revcon Oilfield Constructors Incorporated v Canada (National Revenue)*, 2017 FCA 22 at para 2).
>
> [38] At paragraphs 38 and 39 of *Benhaim*, the Supreme Court of Canada referred to two appellate decisions to explain what "palpable and overriding error" actually means. One of these decisions was *Canada v South Yukon Forest Corporation*, 2012 FCA 165 [*South Yukon Forest*], in which Justice David Stratas stated, at paragraph 46, that:
>
> > [46] … "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing

> palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.
>
> [39] The Supreme Court of Canada in *Benhaim* also cites Justice Yves-Marie Morissette in *JG v Nadeau*, 2016 QCCA 167 at paragraph 77 explaining that, [TRANSLATION] "a palpable and overriding error is in the nature not of a needle in a haystack, but of a beam in the eye. And it is impossible to confuse these last two notions."
>
> [40] It is important to note as well that "[t]he role of an appellate court, however, is not to consider whether other inferences reasonably may have been drawn from the evidence but rather, whether the decision maker made any palpable and overriding errors in drawing the inferences that were drawn from the evidence" (S*im & McBurney v en Vogue Sculptured Nail Systems Inc*, 2021 FC 172 at para 16 citing *Jeddore v The Queen*, 2003 FCA 323 at para 71).
>
> [41] Lastly, per paragraph 46 of *Viiv Healthcare Company v Gilead Sciences Canada Inc*, 2021 FCA 122, an appellate court should be especially loathed to interfere where, as here, a particular judge of the Federal Court is case-managing. Even more so, given the broad power of the Court over the amount and allocation of costs provided in Rule 400(1) of the Rules, a costs award is "quintessentially discretionary" (*Alani* at para 11, citing *Nolan v Kerry (Canada)* Inc, 2009 SCC 39 at para 126).

[83] In the context of an appeal under Rule 51, "a case management judge is assumed to be very familiar with the particular circumstances and issues in a proceeding" and their "decisions are afforded deference, especially on factually-suffused questions" (*Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181 at para 14; *Hughes v Canada (Human Rights Commission)*, 2020 FC 986 at para 67; *Canada v Easter*, 2024 FCA 176 at para 42).

[84] A case management judge's powers pursuant to Rule 385(1) of the *Rules* are very broad. They allow the Court to make any directions or orders "that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits", and to "fix the period for the completion of any subsequent step in the proceeding". As was held by Justice Stratas of the Federal Court of Appeal in *Mazhero v. Fox*, 2014 FCA 219, leave to appeal denied 2015 CanLII 26232 (SCC):

> [3] Rule 385(1) sits alongside Rules 53 and 55. Under those Rules, I can vary any Rules in the *Federal Courts Rules*, dispense with compliance with them, make additional orders that are just, and attach terms to any orders.
>
> [4] Rule 385(1) sits alongside this Court's plenary jurisdiction to regulate its proceedings and restrain any abuses of its procedures: *Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50 at paragraphs 33-36.
>
> [5] At all times, these powers are to be exercised in accordance with procedural fairness. Procedural fairness is not what the parties think is fair, nor is it in the eye of the beholder. It is a well-defined concept rooted in the case law. In this case, the requirements of procedural fairness will not obstruct my task of bringing order to chaos.
>
> [6] In exercising these powers, I am not restricted to dealing with matters passively, i.e., deciding motions and other matters raised by the parties. Rather, I can take a more active posture, using my broad powers, sometimes on my own initiative, to regulate the parties' conduct fairly with a view to progressing this file to a prompt hearing on the merits. A brief description of these appeals and their current status shows that I must be very active.

[85] In the absence of an error of law or legal principle, an appellate court cannot interfere with a discretionary order unless there is an obvious, serious error that undercuts its integrity and viability. This is a high test, one that the case law shows is rarely met. This is particularly true when the order on appeal is an interlocutory, discretionary order of a case management judge,

based on applying legal standards to factual findings based on the evidence before them (*Turmel v. Canada*, 2016 FCA 9, at paras 9 to 12).

C. *There is no basis to interfere with the Associate Judge's Costs Order*

[86] I have considered the Personal Respondent's written representations as well as her quite different oral arguments made during the hearing of this appeal and find that there is no basis to interfere with April 2 Order as to costs. Considering that the Personal Respondent failed to identify and allege any error by in her Notice of Motion or in her written representations and that I have rejected the arguments contained in her written representations as discussed above, I am left to consider only those errors alleged orally by the Personal Respondent during the hearing of this appeal. None of the alleged errors have any basis in fact or in law. They are all rejected.

(i) **Alleged Error 1: Not permitting the Personal Respondent to make Oral or Written Costs Submissions**

[87] During the hearing of this appeal the Personal Respondent argued that she had "been prevented from leading evidence that would prove costs" and "prevented from at least making submissions as to costs". The Personal Respondent argues that the Associate Judge made an error in law when she prevented the Personal Respondent from leading evidence as to costs and from making submissions as to the costs of her motion. The Personal Respondent's other arguments made at the hearing of this appeal as well as in the record before me reflect that these arguments are unsupported and must be rejected.

[88] As will be seen below, the Personal Respondent argued during the hearing of this appeal that her argument as to the costs sought on her motion to be added as a respondent party "was always clearly stated within the affidavit materials, along with the notice of motion that we should be allowed costs". As will also be discussed below, the evidence before me establishes that the Associate Judge considered all of these arguments and then determined that the Personal Respondent's claim for solicitor-client costs had not been made out. It is inaccurate for the Personal Respondent to argue her claim and arguments for costs were not considered or that she was prevented from making them.

[89] The Personal Respondent has not suggested or provided any authority in support of the proposition that the Court is required to allow a party to repeat or augment in separate costs submissions that which has already been addressed in some manner in their written representations and for which evidence has been led in motion materials.

[90] It is well established that this Court has the plenary power to regulate the procedure of matters before it generally and in connection with giving effect to the principle of proportionality set out in Rule 3 of the *Rules* (*McNally*, at paras 8 to 10). This power along with the powers of a case management judge enables the Court to regulate the timing of submissions on costs as a matter of procedure and sound case management, and to dispense with them entirely by taking a more active posture and using the broad power of a case management judge, sometimes on the Court's own initiative, to regulate the parties' conduct fairly and with a view to progressing a file to a prompt hearing on the merits (*Mazhero,* at para 6). The law seeks finality and efficiency and,

accordingly, it would be clearly disproportionate to allow a party to argue the same point twice in the same proceeding, or at two different times and with additional submissions.

[91] The Personal Respondent's argument must be considered in its proper context. The Associate Judge had issued a direction on March 13, 2025, that directed the Personal Respondent to provide the Court with brief written submissions setting out the legal basis for her participation in the proceeding. The Personal Respondent ignored this direction and served and filed an unsolicited 371-page motion record after having served and filed an ineffective and inapplicable Notice of Intention to Participate. The Personal Respondent was filing ineffective materials and an unsolicited motion in disregard of the Court's March 13, 2025, direction. She was further seeking the rarest of costs awards that is to be awarded only in exceptional circumstances where the moving party demonstrates that the conduct of the paying party was reprehensible, scandalous or outrageous or that such costs are justified by reason of public interest (*Hutton v. Sayat*, 2024 FC 784, at para 6 and the cases cited therein)

[92] The Applicant and the AGC consented to the relief sought except as to costs a few days after receiving the Personal Respondent's unsolicited motion record delivered contrary the Court's direction. No oral argument of the Personal Respondent's unsolicited motion was required given the parties' consents to the order sought except as to costs. The April 2 Order makes clear that the basis for the sought solicitor-client costs award sought by the Personal Respondent was set out in her motion record and was considered by the Associate Judge. The Associate Judge acted within her case management judge powers as set out in Rule 385(1) by proactively regulating the parties' conduct and making an Order determining the Personal

Respondent's claim for exceptional costs in light of the materials filed on an unsolicited motion that was resolved on consent. The Associate Judge acted in accordance with the spirit of Rule 3 of the *Rules*, the principles of proportionality, and the Court's ongoing efforts to streamline proceedings and reduce the time and resources required at any step of a proceeding as described at para 46 of the Court's *Amended General Consolidated General Practice Guideline*.

[93] I find that the Associate Judge exercised her discretion in light of the evidence before her on the Personal Respondent's unsolicited motion and that her exercise of discretion is entitled to significant deference on appeal. The Associate Judge's exercise of her discretion falls well within the usual and ordinary "no costs" outcome of motions that are substantively resolved on consent. Indeed, making a "no costs" award in connection with the substantial resolution of a motion on consent furthers the three-fold objectives of costs (providing compensation, promoting settlement and deterring abusive behaviour), particularly when there is no determination of competing theories presented by the parties and no consequent assessment of any party's success on the motion. While not binding on this Court, the reasoning of the Ontario Superior Court of Justice on this issue is compelling and persuasive (*Metro Ontario Real Estate Limited v. Hillmond Investments Ltd*., 2020 ONSC 4411, at para 8; *Muskala v Sitarski*, 2017 ONSC 2842, at paras 5 to 10). Parties who consent to relief on a motion should not, absent specific and relatively rare circumstances as determined by the Court in its quintessential discretion, be visited with the sanction of a costs award against them when they settle a substantive issue on a motion unless the parties have themselves negotiated a costs outcome that forms part of the settlement of the substantive issue on a motion. The circumstances of the motion that was before

the Associate Judge do not fall within the relatively rare circumstances that would justify a costs award against a party who promoted the settlement of a motion.

[94] Finally, the Personal Respondent is simply wrong in her argument that she was denied procedural fairness by the Associate Judge in determining her claim for costs on the basis of the materials set out in her unsolicited motion record. As written by Justice Stratas in *Mazhero* at para 5, “Procedural fairness is not what the parties think is fair, nor is it in the eye of the beholder. It is a well-defined concept rooted in the case law. In this case, the requirements of procedural fairness will not obstruct my task of bringing order to chaos.” Procedural fairness was not breached by the Associate Judge making her costs decision based on the materials before her without additional or separate submissions from the Personal Respondent.

(ii) **Alleged Error 2: Not reviewing the evidence in the Motion Record as to Costs**

[95] During the hearing of this appeal the Personal Respondent argued that her argument as to the costs sought on her motion to be added as a respondent party “was always clearly stated within the affidavit materials, along with the notice of motion that we should be allowed costs”.

[96] The Personal Respondent further argued that the Associate Judge’s costs decision was unreasonable because it “did not address any of the factual matters within the affidavit”, and “cause she [the Associate Judge]” did not address “any of the procedural fairness issues that predated the April 2, 2025, order”.

[97] The Personal Respondent argued that “there is no evidence that she [the Associate Judge] examined anything having to do with the affidavit”, and that there is nothing in the record

because “we weren’t allowed to speak to any of these incidents”. The Personal Respondent also argued that the Associate Judge erred by not reviewing the evidence in the record before her as to costs prior to making her costs award on April 2, 2025.

[98] These arguments must all be rejected. The Personal Respondent has led no evidence on this appeal to support them. The Order appealed from establishes that the reality is quite contrary to what the Personal Respondent has argued.

[99] The April 2 Order sets out in clear language that the Associate Judge considered her discretion to make a costs award pursuant to Rule 400 after having read the Personal Respondent’s motion record dated March 19, 2025 for an Order adding the Personal Respondent as a Respondent to this proceeding and awarding the Personal Respondent the costs of her motion on a substantial indemnity basis. This is clear from reading the first and fourth preamble paragraphs of the April 2 Order.

[100] The first preamble paragraph of the Associate Judge’s Order sets out that the Associate Judge read the Personal Respondent’s March 19, 2025, motion record prior to making her Order. Aside from the unrebutted legal presumption that a decision maker has read and considered the entire case submitted to her prior to making a decision (*Lessard-Gauvin v. Canada (Attorney General)*, 2020 FC 730, at para 76 (*Lessard-Gauvin*), the Associate Judge clearly set out that she had read the Personal Respondent’s motion record in unambiguous terms when she wrote,

> “**UPON** reading the Motion record – Notice of Intention to Participate Lucia Fevrier-President as a Respondent to this proceeding and awarding Ms. Fevrier-President the costs of the motion on a substantial indemnity basis;”

[101] The Associate Judge then set out in the fourth preamble paragraph of her Order that she considered her discretion to award costs as set out in Rule 400 of the *Rules* in coming to a decision on the motion and on the Personal Respondent's request for costs. The Associate Judge wrote unambiguously in the fourth preamble paragraph of her Order as follows:

> "**AND CONSIDERING** Rule 400 of the *Federal Courts Rules*
> [….]

[102] The Associate Judge then set out in the same fourth preamble paragraph of her Order that she had considered that the Personal Respondent had not satisfied her that a solicitor-clients costs award was justified. It is apparent from the words used in the Order itself that her determination that the Personal Respondent had not satisfied the requirements to be met for a solicitor-client costs award came after she had read the Personal Respondent's March 19, 2025, motion record while being alive to her claim for "substantial indemnity" costs as set out in the first preamble paragraph of the Order. The fourth preamble paragraph, clearly following the first preamble paragraph and read along with it, sets out as follows:

> "**UPON** reading the Motion record – Notice of Intention to Participate Lucia Fevrier-President as a Respondent to this proceeding and awarding Ms. Fevrier-President the costs of the motion on a substantial indemnity basis;
>
> […]
>
> **AND CONSIDERING** Rule 400 of the *Federal Courts Rules*, and not being satisfied that any party displayed reprehensible, scandalous or outrageous conduct such that solicitor-client costs should be awarded: *Louis Vuitton Malletier S.A. v Yang* (2007) 1179".

[103] The Personal Respondent's argument that the Associate Judge did not review the evidence in the motion record before her is clearly unfounded.

[104] The Personal Respondent's argument that there is no evidence in the record to show that the Associate Judge "examined anything having to do with the affidavit" is equally unfounded. The wording used by the Associate Judge in her Order is overwhelming and compelling evidence that she had considered Ms. Fevrier-President's affidavit evidence as well as the arguments contained in her Factum that formed part of her motion record in coming to her decision and Order as to the costs of the motion.

[105] An associate judge's failure to expressly refer to certain elements in an Order does not mean that these unexpressed elements were left out or disregarded (*Lessard-Gauvin*, at para 76). Mr. Justice Denis Gascon's reasoning as set out in *Lessard-Gauvin* at explains the matter succinctly:

> [76] Contrary to Mr. Lessard-Gauvin's assertion, at no time did the Prothonotary say or suggest that she required [translation] "a demonstration of the merits in the respondent's record and nowhere else", as Mr. Lessard-Gauvin proclaims in his submissions. In my view, when looking at the text of the decision, nothing in the Prothonotary's words indicates or implies that she disregarded the existence of Mr. Lessard-Gauvin's motion records or the other elements that were before her, including the AGC's reply. A decision maker is presumed to have read and considered the entire case submitted to him or her, and the failure to expressly refer to certain elements does not mean that they were left out or disregarded. On the contrary, the reference in the conclusion to the Prothonotary's analysis to the [translation] "applicant's failure to make such demonstration" clearly indicates that she is relying not only on Mr. Lessard-Gauvin's respondent's motion record, but on his general failure to persuade the Court of the merits of his application. In sum, the reading proposed by Mr. Lessard-Gauvin simply does not hold water and does not do justice to the Prothonotary's words.

[106] I adopt Justice Gascon's reasoning and find further that the Associate Judge's Order exhibits the legal sufficiency required for this Court to determine whether an error has occurred

as it sets out the legal basis for her decision an Order (*R. v. G.F.*, 2021 SCC 20, at paras 74 and 75).

[107] The same result follows with respect to the Personal Respondent's argument that the Associate Judge did not address any of the "procedural fairness issues that predated the April 2, 2025, motion". The Personal Respondent's issues as to alleged breaches of her rights of procedural fairness that predate her being joined as party to this proceeding were extensively argued at paragraphs 28 through 41 and 45 of the Factum she had filed and included in her March 19, 2025, motion record. Those paragraphs also refer to various paragraphs of and exhibits attached to Ms. Fevrier-President's March 18, 2025, affidavit that were referred to in those paragraphs of her Factum.

[108] Given that the April 2 Order clearly reflects that the Associate Judge read and considered these the Personal Respondent's motion materials prior to making her decision as to costs, I must reject the Personal Respondent's argument that the Associate Judge failed to consider her procedural fairness arguments.

[109] The alleged errors as to the Associate Judge's failure to review the evidence in the motion record before her in considering and making her costs award are not errors at all. The Personal Respondent has not established that the Associate Judge made any error in this regard.

(iii) Alleged Error 3: Private discussions and clandestine meetings between the Applicant, the AGC and the Court on March 20, 2025

[110] The Personal Respondent alleges that the Associate Judge erred by making her Order as to costs after “speaking privately” or “clandestinely” with the Applicant and the AGC on March 20, 2025, and hearing their arguments that “they have done nothing wrong”. The Personal Respondent has not suggested that Associate Judge spoke with the Applicant and the AGC other than during the case management conference held in this proceeding on March 20, 2025, at 2:00 pm Ottawa time.

[111] The error alleged by the Personal Respondent has no factual support whatsoever in the record before the Court on this appeal and must be rejected.

[112] The record is clear that the Associate Judge presided over a virtual case management conference attended by the Applicant and the AGC on March 20, 2025, after having sent a direction on March 12, 2025, fixing the case management conference. As discussed above, the March 20, 2025, case management conference was a hearing of this Court (see Rule 2 of the *Rules*, where “hearing is defined as including a conference”).

[113] The minutes of the case management conference reflect that the case management conference was not closed to the public for confidentiality reasons. The Court notes that the Personal Respondent acknowledged during the hearing of this appeal that case management conferences constitute hearings of this Court and are public. There was no suggestion that the March 20, 2025, was a confidential case management conference.

[114] It is clear that the March 20, 2025, case management conference was both public and open to the public. Considering that the March 20, 2025, case management conference was a public hearing that had been fixed by way of publicly accessible direction that was available to the public and to the Personal Respondent through the Court file that is publicly accessible through the Court's website, the case management conference cannot be said to have been a "private" much less a "clandestine" private meeting between the Associate Judge, Applicant and the AGC.

[115] The minutes of the March 20, 2025, case management conference reflect what the parties discussed with the Associate Judge during the hearing. Those minutes, reproduced in salient part above at para 21 reflect that the Applicant, the AGC and the Associate Judge discussed timetable matters and the Personal Respondent's potential participation and terms of participation in the proceeding. The case management conference was held several days prior to either the Applicant or the AGC communicating their consent to having the Personal Respondent added as a respondent party on a without costs basis, and, quite likely before the parties and their legal counsel had a meaningful opportunity to review the Personal Respondent's 371-page motion record that had been served upon them the day before on March 19, 2025, and provide or receive instructions.

[116] There is no suggestion in the minutes of the case management conference that the Applicant or the AGC made any pre-emptive submissions as to the costs of the Personal Respondent's motion as the motion had yet to be scheduled to be argued, to be argued, or to be

considered by the Court. The Personal Respondent has led no evidence that any such pre-emptive submissions were made at all or in any manner.

[117] The Personal Respondent's third alleged error has no factual support at all and must be rejected.

V. **Appointment of A Different Case Management Judge**

[118] The Personal Respondent has not sought to amend her Notice of Motion to remove her request for an Order for the appointment of a different case management judge.

[119] As noted above at paras 32 to 34, a motion management conference was held with the parties via videoconference on June 27, 2025. The Personal Respondent, attending personally alongside her solicitor of record, was informed by the Court during the management conference that an Order appointing a different case management judge to manage is exclusively reserved to the Chief Justice of this Court pursuant to Rule 383 of the *Rules* that the issued not the proper subject of an appeal pursuant to Rule 51 of the *Rules*.

[120] Despite having been informed directly by the Court on June 27, 2025, that an Order appointing a different case management judge could not be made on this motion, the Personal Respondent maintained her request for such an Order in her Notice of Motion. She also dedicated a meaningful portion of her written representations on this motion to allegations of bias against the Associate Judge. These allegations of bias were not raised or argued before the Associate Judge in the matter on appeal or raised in the Notice of Motion.

[121] At paragraph 24 of her written representations, the Personal Respondent argues:

> "**PART II- POINTS IN ISSUE**
>
> > 24. The respondent has raised concern the applicant prevented her participation in the Application for Judicial Review. **The Application was pre-decided by the Court and without Ms. Fevrier-President's voice being heard**. The legislative requirements were breached. Associate Justice Moore decided the matter of costs without considering the respondent's submissions."
> >
> > (Emphasis added)

[122] As noted above, there is no evidence led and no basis upon which the Personal Respondent could suggest that "the Application was pre-decided by the Court" without her voice being heard. Aside from the absence of any actual basis for this argument, it must be said that the Applicant's application has not yet been decided by anyone, much less by the Associate Judge.

[123] At paragraph 42 of her written representations, the Personal Respondent alleges eight instances of purported "bias" against the Personal Respondent by the Associate Judge. I need not detail any of them here. None of these allegations have any evidentiary support in the material filed on this motion and none have been raised before the Associate Judge. I make no finding in respect of the alleged "bias" as no finding is necessary to dispose of this appeal.

[124] Allegations of bias are serious necessarily fact driven allegations that challenge the very integrity of the entire administration of justice and of the adjudicator whose decision is in issue (*Firsov v Canada (Attorney General),* 2022 FCA 191 at para 57; *Murphy v Canada (Attorney General),* 2023 FC 57, at paras 15 to 25 [*Murphy*]). The grounds for an apprehension of bias must be substantial and not related to a sensitive conscience (*Murphy* at para 23; *Committee for*

Justice and Liberty et al v National Energy Board et al, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 395). A holistic and very generous reading of these alleged instances of "bias" reflect that the Personal Respondent disagrees with and would have preferred that the Court exercise its discretion in managing its docket and this proceeding in a manner that is more deferential or obsequious to her. That a member of the Court does not respond to improperly filed requests with the speed or alacrity that the Personal Respondent may have desired, or that a member of the Court clearly disagrees with and rejects an argument made by the Personal Respondent, is not in and of itself bias nor does it demonstrate bias (*Murphy* at paras 23, 25).

[125] If the Personal Respondent had real or *bona fide* concerns that the Associate Judge might be biased, then it was open to and incumbent upon her to bring a motion before the Associate Judge to recuse herself on the basis of bias as is the appropriate manner of proceeding (*Sanofi-Aventis Canada Inc. v. Novopharm Limited*, 2006 FC 1473, at para 4; *Samson Indian Nation and Band v. Canada (T.D.)*, 1997 CanLII 6390 (FC)).

[126] That part of the Personal Respondent's motion for an order appointing a different case management judge is dismissed as it is not the proper subject of an appeal pursuant to Rule 51 of the *Rules* and is a power exclusively reserved for the Chief Justice of this Court pursuant to Rule 383 of the *Rules*.

VI. **Conclusion**

[127] The Personal Respondent's appeal is therefore dismissed.

[128] The parties were ordered on June 27, 2025, to make their arguments as to the costs of this appeal immediately after the arguments were completed. The AGC is not seeking costs. The Applicant is seeking costs equivalent to 11.5 units of Column V of Tariff B.

[129] 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 three-fold objective of costs, including that of deterring abusive behaviour, I conclude that an elevated costs award against the Personal Respondent is appropriate. 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.

[130] 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, instead of in accordance with column III of Tariff B. As this motion and appeal 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 is no costs award 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

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:

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Melynda Layton	FOR THE RESPONDENT (Lucia Fevrier-President)
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