

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20220210**

**Dockets: A-287-20 (Lead)  
A-82-21**

**Citation: 2022 FCA 28**

**Present: WEBB J.A.**

**BETWEEN:**

**BRIAN SMITH and MICHELLE SMITH**

**Appellants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 10, 2022.

**REASONS FOR ORDER BY:**

**WEBB J.A.**

**Federal Court of Appeal**



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**REASONS FOR ORDER**

**WEBB J.A.**

[1] The appellants brought a motion to determine the content of the appeal book. The appellants have been attempting to reach an agreement with the respondent concerning the content of the appeal book for some time.

[2] In the Order of Justice Mactavish dated November 29, 2021, she noted “the appellants followed up with counsel for the respondent with respect to this proposal on May 7, May 12, May 25, and August 24, 2021, but have yet to receive any indication as to the respondent’s position regarding the appellants’ proposal”. The Order issued by Justice Mactavish stipulated that:

1. Within 10 days of the date hereof, the respondent shall advise the appellants with respect to his position as to the appellants’ proposal as to the contents of the appeal book.

[3] Counsel for the respondent submitted the following response by letter dated December 9, 2021:

In response to the Order dated November 29, 2021, the Respondent does not agree with the Appellant’s [*sic*] proposed contents of the appeal book. It is not reflective of all the documents before the Federal Court when it rendered its decision. To scrutinize the documents upon which the decision of the Federal Court is based on appeal, the complete record of both parties should be before the Federal Court of Appeal.

Despite its disagreement, the Respondent attaches to this response its proposed agreement to the appeal book, which conforms with rule 344(1) of the Federal Courts Rules, for the Appellant’s [*sic*] consideration.

[4] The respondent did not file a motion record in response to this motion of the appellant to determine the content of the appeal book.

[5] The appellants’ proposed appeal book is limited to the documents that the appellants submit will be required to dispose of the issues on appeal. This is in compliance with Rule 343(2) of the *Federal Courts Rules*, SOR/98-106:

(2) The parties shall include in an appeal book only such documents, exhibits and transcripts as are required to dispose of the issues on appeal.

(2) Les parties n'incluent dans le dossier d'appel que les documents, pièces et transcriptions nécessaires au règlement des questions en litige dans l'appel.

[6] Rule 343(2) imposes a limit on the documents to be included in an appeal book – only such documents, exhibits and transcripts as are required to dispose of the issues on appeal. The Rule is not, as purported by counsel for the respondent, that all documents that were before the Federal Court must be included in the appeal book. Simply replicating every document that was before the Federal Court, which may result in multiple copies of the same document and result in including documents that are not relevant to the issues under appeal, does not lead to an efficient and effective appeal process. Rule 3 stipulates:

3 These Rules shall be interpreted and applied

3 Les présentes règles sont interprétées et appliquées :

(a) so as to secure the just, most expeditious and least expensive outcome of every proceeding; and

a) de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;

(b) with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.

b) compte tenu du principe de proportionnalité, notamment de la complexité de l'instance ainsi que de l'importance des questions et de la somme en litige.

[7] The respondent's interpretation of the Rules (which would require that every document that was before the Federal Court be included in the appeal book regardless of whether the document is relevant to the issues on appeal) is contrary to the general principle set out in Rule 3 and contrary to Rule 343(2).

[8] As noted above, the appellants submit that the documents they are proposing to include in the appeal book are the only documents required to dispose the issues in dispute on appeal. The appellants included this list as Tab 4 of their motion record. To this list I would add the items stipulated in Rule 344(1)(a) and (i):

344 (1) An appeal book shall contain, on consecutively numbered pages and in the following order,	344 (1) Le dossier d'appel contient, sur des pages numérotées consécutivement, les documents ci-après dans l'ordre suivant :
(a) a table of contents describing each document;	a) une table des matières désignant chaque document;
...	[...]
(i) a certificate in Form 344, signed by [the appellants], stating that the contents of the appeal book are complete and legible.	i) le certificat établi selon la formule 344, signé par [l'appelant] et attestant que le contenu du dossier d'appel est complet et lisible.

[9] As a result, the appellants' motion will be granted and the content of the appeal book will be as proposed by the appellants in their motion record, with the addition of the documents as required by Rules 344(1)(a) and (i). The respondent shall have until February 25, 2022 to serve and file submissions on whether costs should be awarded to the appellants. The appellants shall have until March 11, 2022 to serve and file submissions in response to the submissions of the respondent. The respondent shall have until March 18, 2022 to serve and file any reply submissions.

“Wyman W. Webb”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-287-20 (LEAD) AND A-82-21

**STYLE OF CAUSE:** BRIAN SMITH and MICHELLE  
SMITH v. ATTORNEY  
GENERAL OF CANADA

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** WEBB J.A.

**DATED:** FEBRUARY 10, 2022

**WRITTEN REPRESENTATIONS BY:**

Brian Smith  
Michelle Smith ON THEIR OWN BEHALF

**SOLICITORS OF RECORD:**

A. François Daigle  
Deputy Attorney General of Canada FOR THE RESPONDENT