

FEDERAL COURT OF APPEAL		DEPOSE
COUR D'APPEL FÉDÉRALE		
FILED	February 26, 2025	
	26 Février 2025	
Irena Stojanovska		
EDMONTON, AB	9	

Court File No: A-33-25

FEDERAL COURT OF APPEAL**BETWEEN:**

Francesco Gabriele Qualizza, Joel Thomas William Ellis, Patrick Mercier, Jill Lyne Duchesneau, Joseph Benjamin Stewart, Eric David Faucher, Scott Peter Bacon, Stephen Troy Chledowski, Amanda Leigh Benham, Joshua Martin McCulloch, Kyle Corriveau, Joseph Daniel Eric Louis Montgrain, Dustin Shane Wiebe, Stephen Wj Morris, David Garcia Vargas, Michael Joseph Lis, Natasha Katrina Lis, Solange Sine Djoueche, Peter Vlassov, Frederic Villeneuve-Normand, Estate Of Jonathan Emmerson Jenkinson, Valentin Lavrov, Marie-Eve Labonte, Jesse Dale Friesen, Tania Catherine Nordli, Andrzej Skulski, Dennis John Paul Tondreau, Emmy-Lou Laurie Forget, Dallas Alexander Flamand, Chelsea Elaine Rogal, Baron Hordo, Taylor Michael Harvie, Vanessa Rae Laroche, Jacqueline Marie France Boehme, James Paul Daniel Formosa, Kaitlyn E Campbell, Lucas Timothy Vancuren, Jermaine Sheridan Burrell, Anthony David Hiatt, Michael St-Laurent, Armand Edward A. Garner, Amit Sodhi, Camille Felix J Turgeon, Samantha Gwendolyn Styles, Carol- Ann Mary T Ouellette, Robert James Teremchuk, Nathaniel J P Tondreau, Nikola J Guy Tondreau, Lisa Pauline Leopold, Hailey Noelle Schroder, Dominique Lauzier, Valerie Ouellet, John M Gillis, Morgan Christopher Warren, Mark Andrew Good, Sean Michael Marcotte, Mark Andrew Lolacher, Gabriel Villeneuve, Kira Anne Yakimovich, Mathieu W Petit-Marceau, Kimberly Nedra Ettl, Christopher William Rambharose, Michael Ryan Frank, Evan Jeffery Mcfatridge, Pierre-Elie Lasnier, Alessandru Ward Forster Brown, Danis Doiron, Carl Joseph D Rivest-Marier, Jaroslaw T Ciesinski, Stephen William Holt, Randolph Raymond Jenkins, Andrew John Macphee, Valerie Palin-Robert, Roger Cory Stoesz, Shane Thomas Whitson, Christian Kurt Carter, Matthew James Rowe, Dave Bouchard, Laurie C. Baker, Frederic Lauzier, Lucas Shane O'connor, Laura Dianne Allan, George Vrinotitis, Sienna Germaine Quirk, Charles Bruno Alexandre Turmel, Jaroslaw Grzegorz Marczewski, Christopher Nightingale Anderson, Francis Joseph Michel Archambault, Christopher Raymond Austin, John Anthony Baklinski, David Glen Barkhouse, Michael Barrette, Darrin Thomas Beaton, Bobak Beheshti, Andres Felipe Bocanegra Beltran, Nathan Kyle Johnson, Conrad Joseph

Benoit, Mathieu Bernard, Brian James Bews, Michael Christopher Bill, Robert Stewart Bishop, Jefferson Malcome Bissengue, Steven Bolduc, Thomas Gill Bonnett, Charles Anthony Valmhor Borg, Patrick James Boschalk, Karla Rae Bowler, Kenneth Scott Bradley, Dwayne Armand Bratzke, Ryan Douglas Breau, Chara Loren Browne, William Frederick Bull, Mark A Calow, James Gregory Cameron, Brett Grant Gordon Campbell, Damian Ronald Cayer, Jesse Shayne Chambers, Vladimir Charnine, Shaun Kyle Charpentier, Daniel Robert Cheshire, Dave Cimon, Charles Benoit-Jean Cote, Remi Cote, Matthieu Coulombe, Rebekah Kathleen Courtney, Maverick Jeremy Joseph Cowx, Jonathan Wayne Crouch, Nicole Johnna Crowder, Bartłomiej David Cychner, Beata Margaret Czapla, Sara Darby, Brady Damien Dedam, Virgil Severin Dessouroux, Sean Robert Dixon, Robert Adam Doliwa, Daniel Pierre Drolet, Samuel Drouin, Benjamin Graham Dunbar, Matthew Alexander J. Durda, Stephen Andrew Terence Ells, Austin Karn Faulkner, Eric Michel C S Fontaine, William Joseph R Forget, Sean Michael Francis, Kory Michael Fraser, Jason Joseph Kevin Frechette, Christopher Benjamin Fuellert, Steven James Gallant, Steven Roy Gamble, Tanya Lee Gaudet, Emilie Gauthier-Wong, Tommy Gauvreau, Nicolas Alexander Gleis, Marcel Joseph G E Gobeil, Tammy Danielle Greening, Eugene Pieter Greyling, Kevin Clarence J Griffin, Dominic Joseph S Guenette, Darcy Wayne Hansen, Brett Nevin Wellicome, Rory Alexander Hawman, James Adam Heald, Kyle Keith Hepner, Jason Stanley Gilbert Ignatescu, Thanarajan Jesuthasan, Kevin Thomas Johnson, Gary Adam Johnston, Ryan Gregory Jones, Jamie Alexander Curtis Jorstad, Attila Stephen Kadlecik, Dusty Lewis Kennedy, Hunter Elmer Kersey, Liam Owen Kiropoulos, Christopher Robert Knorr, Evan Victor Koziel, Martin Philippe Labrosse, Gerald Jn- Fritz Lafortune, Andre Lahaye, Kelly-Lee Marie Lake, Nicholas Edward Lange, Sarah-Emilie Lasnier, Dominic Joseph M. Lavoie, Tara Lavoie, Drake Michael Le Couteur, Marc Leclair, Pierre Lemay, Jonathan Joseph A. Lemire, Daniel Paul Loader, Garrett Curtis Logan, Jordan Terrence Logan, Alexandre Guy Richard Loiselle, Adam Fernand C. Lupien, Walter George Lyon, Joseph Brefni W. Macdonald, Christien Tavis Roger Macdonnell, Jean Joseph Madore, Charles Joseph J. Magnan, Andrew Robert Paul Mallory, Marylene Ginette S. Martin, Marco Mastantuono, Jamie Richard Mcewen, Johannes Wouter Mulder, Tyler Edwin Neufeld, Laura Lee Nicholson, Keri Merriam Nixon, Jonathan Noel, Joshua Bruce Olson, Caroline Mary Audrey Ouellet, Joseph Anthony Papalia, Melanie Marie I. Pare, Alexandru Patularu, Joshua Alexander Pickford, Agnes Pinter-Kadlecik, Jean-Simon Plamondon, Krister Alexander Pohjolainen, Aura A. Pon, Brody Allen Poznikoff, Stefan Prisacari, Monika Anna Quillan,

Romain Racine, Dominic Laurens William Ragetli, Stephane Ratte, Bryan Thomas Richter, William Rios, Jenna Leigh Roberts, Joshua Calvin Roberts, Laurie Rose, Rory Alexander David Rosen, Sebastien Salvas, Cameron Ray S. Sanders, Carl Jean G. Savard, Torsten Schulz, Paul Russell Shapka, Blake Alexander Sheedy, Quinton James Stender, Caleb Ethan M. Stener, Gabriel-Alexandre St-Gelais, Nicolas Joseph St-Germain, Robert Christopher Stull, James Roark Suter, Dalen Drew Tanner, Justin Myles Tenhage, Jacob Cyril Theriault, Simon Bobby H Tilly, Jean-Philippe Trudel, Albert Jason Tschetter, Shelley Diane Tully, Magali Turpin, Julian Philip Tutino, Gregory Vincent-Walker, Cade Austin Walker, Brennen Bo Anthony Watson, Benjamin Kyle Weston, Matthew Max Whicher, Joshua James White, Andrew Ernest Wilkowski, Donald James Williams, Curtis Malcom Wilson, Wade George Wilson, Andrew Dean Wychnenka, Marc Zorayan, Brandon Tyler Peter Zwicker, William H L Levi Wall, Karen Paige Nightingale, Marc- Antoine Poulin, Keegan Marsh, Ryan Michael, Thomas Patrick Hayes, James Mark Charlebois, Halston Randal Nicholson, Melissa-Jane Sarah Krieger, Gianluca Luchetta, Benjamin James Wilcox, Mark Ronkin, Serge Joseph Leo Faucher, Jacob Thomas Fidor, Lucas Gerard Ziegelbauer, Spencer Daniel Lord, Ian Oceguela, John Nesrallah, Daniel Ninian Rodrigues, Cory Jason Kruger, Stephen Young Smith, Fourat Yacoub Yousif Jajou, Anthony Bilodeau, Jonathan Michael Recoskie, Thomas L. Edwards, Lindsay Anne Mackenzie, Sarah Evelyn Laprade, Dany Pilon, James Andrew Cook, Derek John Gauthier, David Adam Dobbie, Gabrielle Charpentier, Daniel Johannes Reckman, Zachary Cleeland, Mateusz Cameron Kowalski, Tara J. Macdonald, Paul David Wilson, Brendan V. T. Lebert, Jocelyn Lamotte, Anthony J. Duke, Riley Malcolm Macpherson, Kim Noel Lauzon, Kurtis Rockefeller Rutherford, Sergiu George Candea, Jesse Henry Field, William Edward Brendon, Cameron Samuel Nobert, David Houde, Alyssa Joy Blatkewicz, Colin Perry Kaiser, Fabrice Dourlent, Cory Lance Gargin, Anita Grace Hessling, Jennifer Bethany Frizzley, David Andrew Benson, Brandon John Armstrong, Rejean Berube, Jean-Philippe Joseph Bouchard, Dhillon David Cole, Pierre-Olivier Cote-Guay, Ian M Menzies, Eric Monnin, Elliot Gamache, Nicholas Neil Lloyd Crocker, Robert Allan Henderson, Gabriel Gilles Rj Ramsay, Devin James Mckenna

**APPLICANTS
("Qualizza et al")**

-and-

His Majesty the King in Right of Canada, Chief of the Defence Staff General Wayne Eyre, Vice Chief of Defence Staff Lieutenant-General Frances J Allen, Lieutenant General Jocelyn J M J Paul, Vice Admiral Angus I Topshee, and Lieutenant General Eric J Kenny, Minister of National Defence, The Honourable Anita Anand, Former Deputy Minister of National Defence Jody Thomas, Surgeon General Major-General JGM Bilodeau, Chaplain General Brigadier-General JLG Belisle, Judge Advocate General Rear-Admiral Genevieve Bernatchez, and Brigadier General Liam Wade Rutland

**RESPONDENTS
("HMTK et al")**

MOTION RECORD

APPELLANT'S MOTION FOR DIRECTIONS REGARDING THE APPEAL BOOK

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FEDERAL COURT

BETWEEN:

Qualizza et al

APPLICANTS

-and-

HMTK et al

RESPONDENTS

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants will make a motion to the Court in writing under Rule 369 of the Federal Courts Rules.

THE MOTION IS FOR The Applicants to make application for:

- a) leave for the Motion to be heard with written representations under *Federal Courts Act* Section 369.2(1);
- b) an Order directing the contents of the Appeal Book in this matter;
- c) Costs, including GST and other taxes applicable; and
- d) such further and other relief as this Honourable Court may deem just.

THE MOTION IS MADE ON THE FOLLOWING GROUNDS:

1. **Notice of Appeal**

The Appellant filed the Notice of Appeal on January 23, 2025 pursuant to the *Federal Courts Act*, RSC 1970, c. 10, and now seeks an order for the contents and filing of the Appeal Book to enable the timely and efficient disposition of the appeal.

2. **Disagreement with the Respondent**

The Respondent has expressed disagreement with the Appellant regarding the contents of the Appeal Book and/or the method and timeline for filing the Appeal Book. Despite attempts to resolve this matter through correspondence or informal negotiation, the parties have not been able to reach an agreement. As such, the Appellant is seeking the Court's intervention in this matter.

3. **Required Contents of the Appeal Book**

The Appeal Book must contain the documents and materials that are required under Rule 369 of the Federal Court Rules, including, but not limited to:

- a) A copy of the Notice of Appeal;
- b) A copy of the order, judgment, or decision being appealed from;
- c) The reasons for judgment or decision (if any);
- d) Any other document that was before the Court or tribunal from which the appeal arises, which may be relevant to the issues raised on appeal;
- e) Any exhibits referred to in the record of proceedings that are relevant to the appeal; and
- f) Any other document as the Court directs.

4. **Reasons for Disagreement**

The Respondent's disagreement with the Appellant's proposed Appeal Book contents or the timeline may include, but not be limited to, the following points:

- a) **Contentious Documents:** The Respondent disagrees with the inclusion of certain documents in the Appeal Book, believing them to be irrelevant or unnecessary for the appeal.
- b) **Issues on appeal:** The Respondent disagrees on the issues for the appeal; specifically, that the decision of Madam Justice Coughlan is not included in the appeal. The Notice of Appeal clearly states that this decision is included in the appeal.

5. **Request for Court's Intervention**

The Appellant requests that the Court intervene to resolve the dispute regarding the contents and timeline for the filing of the Appeal Book. The Appellant submits that the Court is best positioned to determine the appropriate documents to include and set a reasonable timeline for filing the Appeal Book.

6. **Importance of Timely Filing**

The Appellant submits that timely filing of the Appeal Book is essential for the efficient progression of the appeal. The Appellant intends to file the Appeal Book as soon as the Court's order is received, with full compliance with the directions provided by the Court.

7. Efforts to Resolve Dispute

The Appellant has made reasonable efforts to resolve the disagreement with the Respondent informally, including correspondence, but those efforts have not resulted in agreement.

8. ORDER SOUGHT

The Appellant respectfully requests an order from the Court:

- a. Resolving the disagreement between the parties regarding the contents of the Appeal Book and/or the timeline for filing the Appeal Book, including:
 - a) Directing which documents should be included in the Appeal Book;
 - b) Setting the appropriate timeline for the filing and service of the Appeal Book;
 - c) Any other directions the Court deems appropriate to resolve this dispute and facilitate the appeal process.

- b. Granting any further relief that the Court deems appropriate in the circumstances.

February 26, 2025



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FEDERAL COURT OF APPEAL

BETWEEN:

Qualizza et al

APPLICANTS

-and-

HMTK et al

RESPONDENTS

WRITTEN REPRESENTATIONS

APPELLANT'S MOTION FOR DIRECTIONS REGARDING THE APPEAL BOOK

INTRODUCTION

1. The Appellants filed a Notice of Appeal on January 23, 2025 pursuant to section 27 of the *Federal Courts Act*, RSC 1985, c F-7, appealing the order of Justice Michael D Manson dated January 14, 2025 dismissing the Appellants' Motion for an Extension to Appeal related to the decision of Associate Judge Catherine A. Coughlan of the Federal Court dated November 13, 2024, striking the Appellants' Statement of Claim without leave to amend pursuant to Rule 221 of the Federal Courts Rules. The Appellants now seek an order from this Honourable Court pursuant to Rule 343(3) of the *Federal Courts Rules*, SOR/98-106, directing the contents and timeline for filing the Appeal Book due to an ongoing disagreement with the Respondent.
2. The parties have been unable to resolve their differences regarding the contents and preparation of the Appeal Book despite reasonable efforts by the Appellant. This motion is brought to ensure the timely and efficient disposition of the appeal, consistent with the objectives of the *Federal Courts Rules* and this Court's supervisory jurisdiction over the appeal process.

FACTS

3. On [Insert Date], the Appellant filed a Notice of Appeal challenging the Federal Court's dismissal of the Appellant's application for an extension of time to file for appeal and the Appellants' Statement of Claim. The appeal raises errors of law and fact in interpreting the Appellants' claims of the tort of public misfeasance and Charter of Rights violations by the Canadian Armed Forces.
4. Following the filing of the Notice of Appeal, the Appellant sought to collaborate with the Respondent to prepare and file the Appeal Book in accordance with Rule 343 of the *Federal Courts Rules*. However, the Respondent has disagreed with the Appellant's proposed contents and/or timeline for filing.

5. The Appellant proposed an Appeal Book containing all documents required under Rule 343(1), including the Notice of Appeal, the impugned judgment, the reasons for the judgment, and relevant materials from the record below. The Respondent contests the inclusion of certain documents and has not agreed to a mutually acceptable timeline.
 6. Efforts to resolve this dispute informally, including correspondence dated [Insert Dates], have been unsuccessful. The Appellant now seeks this Court's intervention to ensure the appeal proceeds without undue delay.
 7. This motion raises the following issues for determination:
 - a) What documents should be included in the Appeal Book pursuant to Rule 343 of the *Federal Courts Rules*?
 - b) What timeline should govern the filing of the Appeal Book to ensure the efficient progression of the appeal?
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LAW AND ARGUMENT

A. Jurisdiction of the Court

8. This Court has inherent jurisdiction to manage its own processes and provide directions regarding the preparation of the Appeal Book. Rule 343(3) of the *Federal Courts Rules* explicitly provides that where the parties cannot agree on the contents of the Appeal Book, "either party may apply to the Court for directions".
 9. The Supreme Court of Canada has emphasized the importance of procedural fairness and efficiency in appellate proceedings. In *Hryniak v Mauldin*, 2014 SCC 7, the Court underscored that courts must ensure access to justice through timely and cost-effective resolution of disputes. This principle applies equally to the preparation of appeal materials.
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B. Required Contents of the Appeal Book

10. Rule 343(1) of the *Federal Courts Rules* mandates that the Appeal Book contain:

- a) The Notice of Appeal;
- b) The order, judgment, or decision under appeal;
- c) The reasons for judgment, if any;
- d) Relevant pleadings, affidavits, or other documents from the record below; and
- e) Any exhibits or other materials necessary for the determination of the appeal.

11. The Appellant submits that the Appeal Book must include all documents listed in Rule 343(1), as well as the decision of Madam Justice Coughlan dated November 13, 2024 and the filed affidavits of both parties, which form part of the grounds of appeal. The Respondent's objection to the inclusion of Madam Justice Coughlan's decision and the affidavits is without merit, as the Notice of Appeal explicitly identifies this decision as a subject of the appeal.
12. In *Canada (Attorney General) v Larkman*, 2015 FCA 150, this Court held that the Appeal Book must contain all materials necessary to enable a full and fair hearing of the issues raised on appeal. Excluding relevant documents risks undermining the Court's ability to adjudicate the matter effectively.

C. Reasons for Disagreement

13. The Respondent's objections appear to centre on the inclusion of the documents deemed irrelevant and the scope of the issues on appeal. However, the Appellant asserts that the disputed materials, including Madam Justice Coughlan's decision and the affidavits, are directly relevant to the grounds of appeal articulated in the Notice of Appeal.
14. This Court has consistently rejected attempts to narrow the scope of appeal materials where such restrictions would prejudice a party's ability to argue their case. In *Pfizer Canada Inc v Teva Canada Ltd*, 2016 FCA 161, the Court directed the inclusion of contested documents in the Appeal Book, noting that relevance is a matter for argument on the merits, not a precondition for inclusion.

D. Importance of Timely Filing

15. The timely filing of the Appeal Book is critical to the efficient administration of justice. Rule 3 of the *Federal Courts Rules* mandates that the Rules be interpreted to secure “the just, most expeditious and least expensive determination” of proceedings. Delays in resolving this dispute risk frustrating the appeal process.
16. In *Apotex Inc v Merck & Co Inc*, 2002 FCA 210, this Court emphasized that procedural disputes should not impede the substantive resolution of appeals. The Appellant intends to file the Appeal Book promptly upon receiving this Court’s directions, ensuring compliance with any timeline set.
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E. Efforts to Resolve the Dispute

17. The Appellant has made good faith efforts to resolve this matter without judicial intervention, including a letter to the Respondent dated February 12, 2025, proposing a draft table of contents for the Appeal Book. The Respondent’s refusal to agree necessitates this motion.
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RELIEF SOUGHT

18. The Appellant respectfully requests:
- a) An order directing that the Appeal Book contain:
 - i. The Notice of Appeal filed January 23, 2025;
 - ii. The Order of the Federal Court dated January 14, 2025;
 - iii. The reasons for judgment by Madam Justice Coughlan dated November 13, 2024;
 - iv. All relevant pleadings, affidavits, and exhibits from the record below; and
 - vi. Any further documents as this Court deems necessary.
 - b) An order setting a timeline for the filing of the Appeal Book, with the Appellant to file within 10 days of the Court’s order.
 - c) Costs of this motion.
 - d) Such further and other relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 26, 2025



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