

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220413

Docket: A-16-22

Citation: 2022 FCA 65

[ENGLISH TRANSLATION]

PRESENT: LOCKE J.A.

BETWEEN:

CLAIRE BOREL CHRISTEN

Appellant

and

CANADA REVENUE AGENCY

Respondent

Motion dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 13, 2022.

REASONS FOR ORDER BY:

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR ORDER

LOCKE J.A.

[1] The appellant, Claire Borel Christen, submitted to the Court on March 18, 2022, a motion record regarding the contents of the appeal book. The Registry did not file said motion record because it did not contain an affidavit. The Registry instead sent it to the Court for direction.

[2] I order that the motion record be filed. Paragraph 364(2)(c) of the *Federal Courts Rules*, S.O.R./98-106 (the Rules) requires that a motion record contain “all affidavits and other material

served by the moving party for use on the motion”, but nothing prohibits the moving party from filing a motion record that does not rely on an affidavit. Since the respondent submitted to the Court on April 4, 2022, their record in response to the motion, which must also be filed, and since the period for the appellant’s reply has expired, this motion can now be processed.

[3] The parties agree on several documents to be included in the appeal book, but they differ on four documents.

[4] Subsection 343(2) of the Rules requires that “[t]he parties shall include in an appeal book only such documents, exhibits and transcripts as are required to dispose of the issues on appeal.” The parties agree that the general rule is that an appeal book only contains documents that were in the record before the Federal Court: *Sawridge Band v. Canada*, 2006 FCA 52 at paragraph 13; *Namgis First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 149 at paragraph 13. Exceptions to the general rule are rare.

[5] While the four documents on which the parties disagree were among the documents filed with the Federal Court in the matter under appeal (docket no. T-3-17), none of these documents was in the record that was before Justice Elizabeth Walker, who rendered the decision under appeal.

[6] The four documents in question are:

A. Two motion records concerning:

- i. A motion by the respondent dated March 20, 2017, with respect to a judgment—this motion was dismissed on April 27, 2017, by Prothonotary

Richard Morneau, and again on November 8, 2017, by Justice Yvan Roy;
and

ii. A motion by the appellant dated September 28, 2018, concerning objections to questions asked during a cross-examination—this motion was dismissed on October 25, 2019, by Prothonotary Alexandra Steele;

B. An affidavit from the appellant dated January 19, 2021—the appellant filed a motion with the Federal Court to add this affidavit to the record, but then withdrew it; and

C. A response from the respondent dated June 15, 2021, to a motion letter by the appellant dated June 14, 2021.

[7] In terms of the two motion records, the appellant argues that they were among the documents filed before the Federal Court, but the respondent notes that they were not brought to the attention of Justice Walker.

[8] I am not convinced that the motion records in question are necessary to the resolution of the issues in dispute in this appeal. I note that the decisions that dismissed those two motions will be part of the appeal book.

[9] As regards the appellant's affidavit, the appellant states that this document will help the Court assess her arguments with respect to the issues (i) of the reasonable apprehension of bias with respect to the respondent's Voluntary Disclosures Program, and (ii) of the costs before the Federal Court. However, the appellant did not sufficiently expand on those statements.

[10] Conversely, the respondent relies on the fact that the appellant's affidavit was not part of the record before Justice Walker and that the appellant withdrew her motion to add it to that

record. The respondent also notes that Justice Walker's refusal to consider the affidavit in question is not challenged in the notice of appeal.

[11] I accept the arguments of the respondent, and I conclude that the appellant's affidavit is not necessary to the resolution of the issues in dispute in this appeal.

[12] With respect to the response to the motion letter, the appellant states that, as in the case of her affidavit, this document will help the Court assess her arguments concerning the reasonable apprehension of bias in relation to the respondent's Voluntary Disclosures Program. However, she did not expand on this statement.

[13] I am not convinced that this document is necessary to the resolution of the issues in dispute in this appeal.

[14] In conclusion, for the reasons given above, I would exclude the four documents in question from the appeal book, and I would grant the respondent the costs related to this motion.

“George R. Locke”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-16-22

STYLE OF CAUSE:

CLAIRE BOREL CHRISTEN v.
CANADA REVENUE AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

LOCKE J.A.

DATED:

APRIL 13, 2022

WRITTEN SUBMISSIONS:

Yacine Agnaou
Jeffrey Jabbor

FOR THE APPELLANT

Marie-Aimée Cantin
Louis Sébastien
Karman Kong

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dupuis Paquin, Attorneys at Law & Business
Counselors Inc.
Laval, Quebec

FOR THE APPELLANT

A. François Daigle
Deputy Attorney General of Canada

FOR THE RESPONDENT