

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250314

Docket: A-314-24

Citation: 2025 FCA 62

Present: MONAGHAN J.A.

BETWEEN:

THERESE LENNERT

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 14, 2025.

REASONS FOR ORDER BY:

MONAGHAN J.A.

Federal Court of Appeal



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REASONS FOR ORDER

MONAGHAN J.A.

[1] The appellant, Therese Lennert, has brought a motion to settle the contents of the appeal book. She has appealed a decision of the Federal Court dismissing her application for judicial review of a Canada Revenue Agency (CRA) determination that she did not qualify for the Canada Recovery Benefit (CRB) (2024 FC 1088, *per* Fothergill J.). The appellant applied for the CRB based on two sources of income: self-employment income and income she received as a

post-doctoral fellow (PDF income). In her view, each of these sources exceeded \$5,000, entitling her to the CRB.

[2] The second reviewer at the CRA concluded the appellant had not established that she earned at least \$5,000 of net self-employment income and that the PDF income was not qualifying income. Accordingly, the second reviewer found the appellant ineligible for the CRB.

[3] The Federal Court concluded that the CRA “reasonably concluded that the evidence...submitted by [the appellant]...fell short of establishing that she had received income from self-employment during the relevant qualifying periods”: Federal Court reasons at para. 18. The Federal Court also concluded that the CRA’s determination that the appellant’s PDF income was not within the categories of eligible income was reasonable: Federal Court reasons at paras. 19-22.

[4] On appeal, the appellant limits her challenge to the reasonableness of the CRA’s determination that her PDF income was not income from employment. In other words, she no longer disputes the reasonableness of the decision that she did not establish sufficient self-employment income. This led to the dispute regarding the contents of the appeal book.

[5] Rule 344(1) of the *Federal Courts Rules*, S.O.R./98-106, specifies what an appeal book should include, identifying certain items with specificity and others in more general terms. Rule 344(1)(g) requires “any other document *relevant to the appeal*” be included; Rule 343(2) limits the documents in an appeal book to “such documents, exhibits and transcripts *as are required* to

dispose of the issues on appeal” (emphasis added). The tension between these two rules lies at the heart of the dispute on this motion.

[6] The appellant asserts that the only documents that are relevant are those that relate to her PDF income and, relying on Rule 343(2), seeks to exclude exhibits from affidavits that she alleges are relevant only to her self-employment income. She also seeks to limit the appeal book to a single copy of any document that would otherwise appear in more than one place, for example in both the applicant’s and the respondent’s application records before the Federal Court.

[7] The respondent asserts that the appeal book should include all documents in dispute because they are relevant to disposition of the issues on the appeal and, with one exception, appears to disagree with the appellant concerning duplication of documents in the applicant’s and respondent’s application records.

[8] It is difficult for a motions judge to assess what might be relevant to the issues on appeal: *West Vancouver v. British Columbia*, 2005 FCA 281 at para. 4; *Loba Limited v. Canada (National Revenue)*, 2007 FCA 317 at para. 5 [*Loba*]. However, the nature of the appeal may affect what is relevant.

[9] This is an appeal of a decision in a judicial review application. Therefore, this Court must determine whether the Federal Court correctly identified and applied the standard of review; we do so by “stepping into the shoes” of the Federal Court and reviewing the administrative decision

afresh: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10, 12. For this reason, appeals from judicial reviews in the Federal Court are essentially “do-overs”: *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4.

[10] Accordingly, the appeal book in an appeal of this nature typically contains both the applicant’s and respondent’s application records in their entirety. Particularly in the context of filing appeal books electronically, this is viewed as simple and practical approach.

[11] Moreover, on a motion to settle the contents of the appeal book, the threshold for relevance is generally low: *Sourani v. Canada*, 2002 FCA 334 at para. 24. When there is any doubt about a document’s relevance, the document should be included: *Bojangles' International, LLC v. Bojangles Café Ltd.*, 2006 FCA 291 at para. 6 [*Bojangles*]; *Canadian National Railway Company v. Canada (Transportation Agency)*, 2019 FCA 257 at para. 14; *Chad v. Canada (National Revenue)*, 2024 FCA 56 at para. 8. Inclusion in the appeal book is not determinative of relevance and it is better that a document is included and never referred to, than is omitted only to later realize it is needed.

[12] That said, the parties must minimize the contents of the appeal book and exclude irrelevant documents: *Office of the Superintendent of Bankruptcy v. MacLeod*, 2010 FCA 97 at para. 5 [*MacLeod*]. See also *Smith v. Canada (Attorney General)*, 2022 FCA 28 [*Smith*]. Rule 343(2) should not be interpreted to mean “all documents that were before the Federal Court must be included in the appeal book”: *Smith* at para. 6. Rather, its purpose is to discourage parties

from including in the appeal book material that is not useful: *Shire Canada Inc. v. Apotex Inc.*, 2011 FCA 10 at para. 14.

[13] Therefore, parties should make a reasonable effort to determine whether the test in Rule 343(2) is satisfied: *Bojangles* at paras. 5-6. Consequences may follow from a failure to do so: *Syncrude Canada Ltd. v. Canada (Attorney General)*, 2015 FCA 38 at para. 5, citing *MacLeod* at para. 8.

[14] With these principles in mind, I come to the documents in dispute here. While there are several, they fall into two broad categories.

[15] The first is exhibits to affidavits in the applicant's and respondent's application records before the Federal Court. While the parties agree the affidavits should be included, the appellant asserts that certain exhibits should be excluded because they are not relevant to the PDF income issue.

[16] The respondent asserts that "[a]n affidavit should be read as a whole" and "there is no reason to carve out exhibits in the manner suggested by the [a]ppellant". The respondent further explains why it views the exhibits the appellant seeks to exclude as relevant and so must be included in the appeal book.

[17] The disputed documents are not before me on this motion. Rather, they are described in general terms in the appellant's affidavit and the submissions of the parties. As I will explain, in these circumstances, I cannot conclude they should be excluded.

[18] The appellant describes an exhibit—a university transcript that lists her position at the university as a post-doctoral fellow—as irrelevant to the judicial review and thus presumably to the appeal. She similarly describes screenshots of CRA document requests and a list of telephone logs of calls with CRA agents as irrelevant.

[19] However, given their description—which is all the Court has on this motion—a mere assertion that these documents are irrelevant is insufficient, when the respondent claims they are relevant. It is her PDF income that is at issue. Moreover, the notice of appeal alleges the Federal Court erred in concluding the process CRA followed was procedurally fair. The Federal Court said the appellant “had multiple opportunities to present her case to the Second Reviewer, both orally and in writing”: Federal Court reasons at para. 23. Although the appellant has limited the scope of the appeal, it is impossible to accept that any of these exhibits are irrelevant based on the materials before me.

[20] The appellant also asserts that the Federal Court separately considered the two aspects of the CRA decision to deny her eligibility for the CRB and thus the material relating to the self-employment income is unnecessary and irrelevant. However, as explained above, this Court is required to review the administrative decision which, it appears, addressed both sources of income together: Federal Court reasons at para. 6. In these circumstances, I cannot rule out the

possibility that all the material in the affidavits, including all the exhibits, was considered by the second reviewer and thus relevant to their decision concerning the PDF income: *Loba* at para. 5.

[21] Moreover, the appeal book should include a document “if it is reasonable to suppose the appellate court may require it to gain a full appreciation of the facts”: *Bojangles* at para. 6. Based on what is before me, I cannot conclude that the disputed affidavit exhibits will not be required so this Court can fully appreciate the facts.

[22] While I do not want to suggest that an affidavit exhibit can never be excluded, once the parties agree that an affidavit should be included, the exhibits that were admissible in the Federal Court will almost invariably be relevant. Thus, they should be included in the appeal book unless the parties agree they should be excluded. There is no such agreement here and, I reiterate, the disputed documents are not before me on this motion. Therefore, I must agree with the respondent that all affidavit exhibits should be included in the appeal book.

[23] That said, there may be ways to shorten the appeal book without excluding documents. As this Court has observed, “[s]imply replicating every document that was before the Federal Court, which may result in multiple copies of the same document...does not lead to an efficient and effective appeal process”: *Smith* at para. 6.

[24] Therefore, to the extent that an exhibit to one affidavit replicates *exactly* an exhibit to another affidavit, the exhibit need not be reproduced multiple times in the appeal book. In the second, or third place, for example, the exhibit may be replaced with a page stating the exhibit

has not been reproduced because it is an exact replica of another specified exhibit (*e.g.*, Exhibit D) to another specified affidavit (identified by date and the name of affiant) found in the applicant's or respondent's application record, as the case may be, at pages "x" to "y" of the appeal book. This is an acceptable (but not mandated) approach to addressing duplication, particularly where the appeal book would otherwise be voluminous. To be clear, avoiding duplication in the application records from the outset is preferable: *Canada (Attorney General) v. Canadian North Inc.*, 2007 FCA 42 at para. 5.

[25] The second category of disputed documents between the parties concerns the certified tribunal record. While the parties' motion materials are far from clear, as I understand it certified material was transmitted to the Federal Court pursuant to Rule 318 (the CTR) and that material appeared in the applicant's and respondent's application records before the Federal Court. However, an amended certificate was transmitted pursuant to a request made under Rule 317 (the amended CTR), which differs from the CTR only in that the amended CTR contains one additional page (page 147). The amended CTR was also in the record before the Federal Court and is, the respondent suggests, the source of material the Federal Court referenced as support for its decision: Federal Court reasons at paras. 17, 19-21, 23. The notice of appeal also refers to the amended CTR.

[26] Notwithstanding that the CTR was included in the applicant's and respondent's application records, I understand the parties now agree that the appeal book need only include the amended CTR—although it must be said the respondent's motion materials are not clear on this point. If my understanding that the parties agree is correct, the CTR need not be reproduced

in the appeal book. Rather, it may be replaced by a page identifying it as removed from the relevant affidavit(s) because the parties agree it is irrelevant. If I have misunderstood the respondent's position, only one copy of the CTR need be included, with the second copy addressed in the manner described in connection with multiple copies of material in affidavit exhibits.

[27] The appellant shall prepare the appeal book in accordance with the principles described in these reasons. The contents of the appeal book shall be as follows:

1. Table of contents;
2. Amended Notice of Appeal filed November 29, 2024;
3. Notice of appeal filed October 1, 2024;
4. Judgment and reasons of the Honourable Justice Fothergill of the Federal Court in Federal Court file T-1403-22 dated July 10, 2024;
5. Order of the Federal Court, dated June 24, 2024, regarding the reassignment of Court file T-1403-22 to another Federal Court Judge;
6. Notice of Application for judicial review filed on July 7, 2022;
7. The applicant's record dated January 8, 2024 (excluding legislation, authorities, applicant's response to objections and the applicant's memorandum of fact and law);

8. The respondent's record dated February 7, 2024 (excluding legislation, authorities and the respondent's memorandum of fact and law);
9. Transcript of the cross-examination of Greg Vachon dated August 14, 2023, if not otherwise included in the materials described in paragraphs 7 or 8;
10. Transcript of the hearing before the Honourable Justice Elliott dated April 29, 2024;
11. A copy of this Order; and
12. A certificate of completeness of the appeal book in Form 344 of the *Federal Courts Rules*.

[28] The table of contents shall separately identify each document in the applicant's and respondent's application records before the Federal Court, including the name of each exhibit to an affidavit, as was done in the appellant's proposal for the contents of the appeal book. The appellant shall serve and file the appeal book within 30 days of today's date.

[29] Costs of this motion shall be in the cause.

"K.A. Siobhan Monaghan"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-314-24

STYLE OF CAUSE:

THERESE LENNERT v.
ATTORNEY GENERAL OF
CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

MONAGHAN J.A.

DATED:

MARCH 14, 2025

WRITTEN REPRESENTATIONS BY:

Therese Lennert

FOR THE APPELLANT
(ON HER OWN BEHALF)

Noémie Vespignani

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE RESPONDENT