

December 13, 2001

Anne Roland
Registrar
Supreme Court of Canada
180 Wellington Street
Ottawa ON K1A 0A6

Dear Me. Roland,

**Re: Draft Supreme Court of Canada Rules
Rule 44, Books of Authorities**

I am writing to you as chair of the Supreme Court of Canada Liaison Committee of the Canadian Bar Association to express our concern about Rule 44 of the draft Supreme Court of Canada Rules. While our Committee has previously commented on the draft Rules, the issue that we address here did not gain our attention until we reviewed the most recent revision. We apologize for not raising this matter sooner. However, we feel that it is important enough to draw to the Court's attention at this time.

Under current Rule 36, a party must file a book of authorities "containing only the relevant portions of those authorities on which the party intends to rely." The requirements of the current rule often engender large volumes of material at great expense to the parties. Frequently, little, if any, of this material is referred to at the appeal hearing, and most of it is readily available on-line or in law report series that are easily accessible.

However, rather than decrease the volume of material that is currently required to be filed, the draft new Rules would expand that requirement. Draft Rule 44(1)(d) & (e) provides that, with the exception of Supreme Court decisions, books of authorities "shall . . . contain all reasons for judgment in full". We wonder why this change to current practice was felt necessary.

We agree that litigants should reproduce all unreported reasons for judgment in their books of authorities. However there are expense and environmental concerns with printing materials that would be easily accessible to the Court and other parties. Where a case is available on-line or in a report series, we suggest that the decision as to whether to reproduce the case (or an excerpt from it) in a book of authorities should be left to counsel. At the very least, counsel should be encouraged to use only excerpts of relevant cases. A move away from requiring numerous hard copies of authorities would be consistent with a move towards e-filing in the future.

We do not take issue with the requirement in current Rule 36.1 (new Rule 45) that any material to be referred to in oral argument should be reproduced in a book of authorities, or a condensed book, to facilitate consideration of the material at the hearing.

Thank you in advance for considering our comments on this matter.

Yours truly,

Shawn Greenberg
Chair, Supreme Court of Canada
Liaison Committee