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Arbuckle v. Tanner, 2026 NSCA 62

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NOVA SCOTIA COURT OF APPEAL
Citation: *Arbuckle v. Tanner*, 2026 NSCA 62

Date: 20260812
Docket: CA 549893
Registry: Halifax

2026 NSCA 62 (CanLII)

Between:

Kevin Joel Arbuckle

Appellant

v.

Kaitlyn Dawn Tanner

Respondent

Judge:	Gogan, J.A.
Motion Heard:	August 6, 2026, in Halifax, Nova Scotia in Chambers
Written Decision:	August 12, 2026
Held:	Motion to dismiss the appeal granted.
Counsel:	Kevin Joel Arbuckle, self-represented appellant Lynn Connors, K.C. and Daniel White, for the respondent

Decision:

Overview

[1] This decision deals with a motion to dismiss an appeal and a responding motion to strike portions of the evidence offered in support.

[2] The parties to the motion, Ms. Tanner and Mr. Arbuckle, are the unmarried parents of a young child. They separated in February 2024 when the child was only 5 months old. On April 2, 2024, Ms. Tanner applied for relief under the *Parenting and Support Act* initiating a challenging and costly legal process. After a trial on September 15, 2025, Justice Jean DeWolfe granted primary care and final decision-making authority to Ms. Tanner, providing Mr. Arbuckle with parenting time and requiring him to pay child support. Mr. Arbuckle appeals that order, alleging the judge made legal errors, misapprehended the evidence and made findings unsupported by the evidence.

[3] The real issue on this motion is Mr. Arbuckle's failure to perfect his appeal and his non-compliance with the governing *Rules*. At the heart of his non-compliance is his claimed use of an AI platform to prepare his appeal book, including the transcriptions of the lower court proceedings. He did not use a certified court reporter as mandated by *Rule* 90.29(5). Although he now admits this fact, the transcripts he filed in his appeal book include a certification and, on their face, appear compliant. His admission only came after Ms. Tanner's counsel noticed discrepancies in the record and questioned the purported transcriber. Only after being confronted with the transcriber's denial did Mr. Arbuckle admit not using a certified court reporter to prepare the transcription. He claims the false certifications are the result of AI hallucinations and not the product of an attempt to mislead Ms. Tanner and this Court.

[4] As these reasons explain, I have concluded that it is in the interests of justice to grant the motion and dismiss Mr. Arbuckle's appeal.

The Applicable Rules and the Evidence

[5] This is a motion resulting from Mr. Arbuckle's failure to perfect his appeal and is brought pursuant to *Rule* 90.43(2).

[6] A "perfected appeal" is one in which the appellant has complied with the rules governing: (a) the form and service of the appeal; (b) applying for a date and

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directions (*Rule* 90.25); (c) the filing of a certificate of readiness (*Rule* 90.26); (d) ordering copies of the transcript of evidence (*Rule* 90.29); and (e) filing and delivery of the appeal book and appellant's factum. If an appeal is not perfected as required, the respondent may make a motion to dismiss the appeal and a judge may: (a) direct perfection of the appeal; (b) set the appeal down for hearing; or (c) dismiss the appeal. In the present case, the respondent seeks dismissal, arguing that Mr. Arbuckle's conduct has impaired the integrity of the appeal beyond remedy.

[7] Central to this motion is the requirement for an appellant to obtain a transcript of the proceeding under appeal. *Rule* 90.29(5) provides:

> (5) The appellant must cause a transcript of the proceeding to be prepared by a certified court reporter, unless legislation provides otherwise or a judge permits.

[8] An appellant will not be able to proceed with an appeal without making a motion for date and directions (*Rule* 90.25). This motion must include a certificate of readiness (*Rule* 90.26(1)). The certificate of readiness must be in the prescribed form and, amongst other things, certify that the appellant has ordered a transcription of the audio recordings from a certified court reporter and been informed by the certified court reporter of the date when the transcription will be available (*Rule* 90.26(2)(d) and (e)).

[9] Mr. Arbuckle is a self-represented litigant. As with any person acting without counsel, he signed a personal representation form (*Rule* 34.06(3)) at the outset of his appeal acknowledging: (1) responsibility for any document he signs, prepares, or files; (2) awareness of the *Rules* that apply to him and the proceeding; and (3) the requirement to make best efforts to understand and comply with the *Rules*.

[10] In the present case, Mr. Arbuckle filed a certificate of readiness in support of his motion for date and directions. In doing so, he certified to the presiding judge of this Court in chambers that he had ordered the transcription from Videoplus Transcription Services and was informed by them the transcript would be completed no later than March 31, 2026. On the basis of this representation, Mr. Arbuckle's appeal book was due on June 1, 2026, and the hearing set for November 10, 2026. Mr. Arbuckle received written confirmation of all dates and directions on May 15, 2026. This letter referred him to the Appeal Book

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Preparation Guide containing a checklist which yet again reminded him that any transcript in the appeal book must be signed by a certified court transcriptionist.[1]

[11] We now know that Mr. Arbuckle did not file a certified transcription from Videoplus or any other certified transcriptionist. We know this because he admitted as much in his July 24, 2026 affidavit. Other evidence confirms Mr. Arbuckle made two requests to Videoplus (January 29, 2026 and April 14, 2026) for cost estimates but did not order any transcription. His evidence offers that he used several AI tools to compile his appeal book and he believes the AI platform "pulled Ms. Loney's certificate of court transcriber page and appended her name, NS registration number and signature". He admits giving the AI tool various instructions and prompts but denies instructing it to add the certification. He does not offer any explanation for the fact that he did not use a certified transcription service to prepare his transcriptions. An email he sent to Ms. Tanner's counsel on April 24, 2026 confirms he was aware of the need for a certified transcript.

[12] Mr. Arbuckle's admission of non-compliance comes only after it was discovered by Ms. Tanner's counsel. The chronology of the discovery is important to understand. Mr. Arbuckle was supposed to file his appeal book by June 1, 2026. He did not meet that deadline but was granted an extension and filed it on June 3. Upon review, Ms. Tanner's counsel noted the appeal book did not contain a full transcript of the proceeding under appeal. The transcript from the September 15, 2025 hearing date was not included. Ms. Tanner asked the Registrar to move to dismiss the appeal. Mr. Arbuckle sought an opportunity to cure the defect in his appeal book. Justice Farrar granted Mr. Arbuckle an extension to June 22 and a supplementary appeal book was filed by the new deadline.

[13] Upon review of the appeal book Ms. Tanner's counsel again identified issues with the transcript. On June 29, 2026 she wrote to the Registrar:

> The Respondent has independently obtained their own written transcript of Hearing Date from a different transcription service (the "Respondent's Transcript") and compared it to the Appellant's Transcript. The Respondent's Transcript is attached as Schedule "A".
>
> Upon review, there are material differences between the Appellant's Transcript versus the Respondent's Transcript. These material differences include testimonial evidence in the Appellant's Transcript that is either inaccurately transcribed or that is not stated by the witness at all, and entire exchanges between

[1] Nova Scotia Court of Appeal, *Appeal Book Preparation Guide* at p. 8.

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> counsel for the parties and the Learned Trial Justice that are reflected in the Respondent's Transcript but missing entirely from the Appellant's Transcript.
>
> The Respondent respectfully submits that because the Appellant has raised several issues with the Learned Trial Judges application of the evidence in his Amended Notice of Appeal, filed May 14, 2026, it is especially important to ensure that a wholly accurate transcript is before this Honorable Court.

[14] Ms. Tanner's counsel went on to specifically identify 39 discrepancies between her transcript and the one filed by Mr. Arbuckle. For the second time, she asked the Registrar to move for dismissal of the appeal. In view of the discrepancies, she also contacted Sue Loney, the transcriber whose certification was attached to Mr. Arbuckle's transcript. Ms. Loney replied she did not transcribe or certify either the September 15, 2025, or October 21, 2025, transcriptions.[2]

[15] Mr. Arbuckle filed his factum on June 30, 2026. In it, he argues the trial judge misapprehended the evidence by attributing "phantom testimony" to him, relying on unsworn submissions to make findings of fact and ignoring evidence.[3] He makes 24 references to the impugned transcript in his factum.

[16] On July 8, 2026, Ms. Tanner brought the present motion to dismiss the appeal. She argues: (1) Mr. Arbuckle failed to perfect his appeal as required by *Rule* 90.43(1)(d); (2) he has not shown a willingness or ability to follow deadlines or the *Rules* generally; and (3) she has incurred prejudice in terms of the time, cost and integrity of the appeal process. She goes on to emphasize Mr. Arbuckle's conduct has required, and will continue to require, meticulous review of his filings and submissions to this Court. Any remedial action will result in significant delay and unrecoverable costs. Although a certified transcript of the September 15, 2025 hearing exists and could be used for the appeal book, the October 21, 2025 appearance still requires a compliant transcription – a task which she argues cannot be entrusted to Mr. Arbuckle. She further notes the appeal process would effectively have to start over, requiring: (1) information on when a certified transcription will be available for the remaining record; (2) a filing date for a corrected appeal book; (3) a deadline for the refiling of the appellant's factum; (4) a deadline for the filing of the respondent's factum;[4] and (5) a new appeal hearing date.

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[2] Ms. Loney confirmed this information in an affidavit dated July 8, 2026.
[3] Appellant's factum at p. 3.
[4] The respondent's factum was due on July 31, 2026 but that deadline was vacated by order of Justice Derrick dated July 10, 2026 when she also adjourned the hearing of the motion to dismiss at Mr. Arbuckle's request.

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[17] Ms. Tanner contends the central issue on her motion is the likelihood that Mr. Arbuckle intentionally filed uncertified transcriptions of the record in his appeal book using a false court reporter's certification and signature. Although Mr. Arbuckle was first alerted to the discovery of this issue on June 29, 2026, he did not reply substantively until he filed his affidavit on July 24, 2026 in which he says:

> [6] My primary motivation for the appeal, in part, stems from factual errors in the Learned Trial Justice's decision, which included, but was not limited to, phantom testimony that I knew I had not given. I raised this in my factum, filed June 30, 2026. To locate these specific phrases and investigate the trial record, I used an AI tool to transcribe the raw audio of the September 15, 2025 and October 21, 2025 proceedings. This was done solely for my own research and ease of searchability.
>
> [7] I subsequently used several AI tools to assist in assembling the final, multi volume PDF Appeal Book. I provided the AI with access to my Google Drive and local files, which contained a myriad of case files, including a legitimate, certified transcript from a March 25, 2025 proceeding that was accurately prepared and certified by court reported Sue Loney. I do not know Sue Loney, or recall contracting her services directly.
>
> [8] Unbeknownst to me during the assembly process, the AI hallucinated the formatting of the September and October transcripts. Because the AI had access to the March 25, 2025 transcript, it automatically pulled Ms. Loney's "certificate of court transcriber" page and appended her name, NS Registration Number, and signature verbatim to the end of the AI-generated September and October transcripts.
>
> [9] At times I made various instructions and prompts to AI, shared resources and working documents with these tools, and instructed it at various times to fix and add some document formatting, such as page numbers, create tables of contents and tab number, among [*sic*] things. I did not instruct the AI to attach any certification, nor did I have the intention of inappropriately using Ms. Loney's signature or fabricating a certified court record …

[18] Mr. Arbuckle goes on to admit the transcripts in his appeal book are not certified. He also admits there are discrepancies between the transcript in his appeal book and the certified transcription but maintains the "substantive testimony" he relies on "remains materially consistent with the audio record". Although he denies intentionally attaching Ms. Loney's certification in an attempt to deceive or bypass the *Rules*, he does not explain how, on two occasions, he filed transcriptions in his appeal book that were not certified as required by *Rule* 90.29(5). Nor does he reference this Court's policy entitled "*Use of Artificial*

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Intelligence (AI) in Proceedings before the Nova Scotia Court of Appeal",[5] which provides, in part:

> Counsel and litigants appearing before the Nova Scotia Court of Appeal are encouraged to review that document [National Action Committee (NAC) on Modernizing Court Operations] and exercise caution when relying on authorities or analysis obtained from artificial intelligence applications. Court participants are ultimately responsible for the content, completeness and accuracy of all material submitted to the Court. This is known as "human in the loop" to ensure human oversight and quality control. The Court of Appeal expects all written and oral submissions referencing case law, statutes or commentary will be based on accredited and established legal databases.
>
> [Emphasis Added]

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[19] Mr. Arbuckle was not cross-examined on his affidavit. His written and oral submissions acknowledge a "serious mistake" and a "negligent oversight" but maintain it would be a miscarriage of justice to dismiss his appeal. He argues that the prejudice to Ms. Tanner of having to "double check" his filings does not outweigh the severe prejudice to him if his appeal is dismissed. He proposes the matter can be cured by allowing an extension to file yet another supplemental appeal book. He says nothing about the costs incurred from his non-compliance.

[20] Ms. Tanner offered reply evidence from herself and Mr. White. Mr. Arbuckle moved to strike portions of both affidavits. Mr. White's affidavit is problematic as it is used solely to introduce hearsay and third-party opinion evidence. I do not agree with Ms. Tanner that there is any principled basis to admit the contested statements. Without the inadmissible material, there is nothing relevant in Mr. White's reply affidavit and I would strike the entirety of it.

[21] Mr. Arbuckle did not challenge the reply evidence of Kim Fess. Ms. Fess is the founder and CEO of Videoplus Transcription and Reporting Services. She said her company records indicate it prepared two transcripts for Mr. Arbuckle for proceedings on October 16, 2024 and March 26, 2025 both of which were prepared and certified by Sue Loney. They received further inquiries from Mr. Arbuckle on January 29, 2026 and April 14, 2026 requesting estimates for additional transcripts which were provided. They heard nothing more from him. This evidence explicitly conflicts with the statements Mr. Arbuckle made in his Certificate of Readiness on January 29, 2026.

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[5] Policy of the Nova Scotia Court of Appeal dated March 14, 2025.

The Procedural History

[22] Before considering the motion to dismiss, I pause to recognize the broader context of this proceeding which began with Ms. Tanner's application on April 2, 2024. Soon after filing his response on May 22, 2024, Mr. Arbuckle sought a change of venue from Kentville to Halifax. His motion was denied with costs payable to Ms. Tanner in the amount of $500.

[23] The lower court proceeding continued with a series of case conferences and 6 interim orders between June 5, 2024 and March 26, 2025. The final interim order involved the use of an app used by the daycare provider. The lower court restricted use of the app to the parties. Mr. Arbuckle appealed on March 31, 2025. This Court dismissed the appeal. Observing that Mr. Arbuckle had "inflated and hyperbolized a simple case management item into an unnecessarily complex and costly endeavour", this Court applied a "hefty percentage" and ordered lump sum costs of $20,000 payable to Ms. Tanner.[6]

[24] Mr. Arbuckle then sought to stay this Court's decision while seeking leave to appeal to the Supreme Court of Canada. The stay was denied with costs in the amount of $1,000.

[25] The matter returned to the lower court and was heard on September 15, 2025 and October 21, 2025. Justice DeWolfe's decision was released on December 30, 2025. Mr. Arbuckle appealed on January 7, 2026 and sought a stay on January 29, 2026. The stay motion was adjourned pending the determination of costs in the lower court. On April 14, 2026, Justice DeWolfe ordered Mr. Arbuckle to pay costs to Ms. Tanner in the amount of $55,540.[7] The amount reflected the failure to accept a reasonable offer to settle as well as Mr. Arbuckle's conduct.[8] He then amended his notice of appeal to include the costs issue and revived his motion to stay the costs award. Ms. Tanner sought security for costs. The competing motions came before Justice Bryson in chambers on May 14, 2026.

[26] Justice Bryson dismissed the stay motion and granted security for costs in the amount of $5,000 citing Ms. Tanner's submission that she was incurring substantial legal fees defending Mr. Arbuckle's repeated and unreasonable resort to the courts. In doing so, he referred to the systemic concerns described in *Izyuk v.*

[6] *Arbuckle v. Tanner*, 2025 NSCA 54.
[7] *Tanner v. Arbuckle*, 2025 NSSC 420.
[8] *Tanner v. Arbuckle*, 2026 NSSC 114 at para. 29.

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Bilousov[9] and noted Mr. Arbuckle, while unemployed, was intelligent, articulate and persuasive. The order for security would not prevent him from pursuing his appeal.

[27] With all of this as background, and as Ms. Tanner was preparing her factum, she discovered the issues with Mr. Arbuckle's appeal book resulting in the present motion. The motion was originally set for hearing on July 16, 2026 but was adjourned given Mr. Arbuckle was "out of the province and unavailable" between July 13 and July 22, 2026.

The Motion to Dismiss the Appeal

[28] Ms. Tanner argues Mr. Arbuckle has failed to perfect his appeal under *Rule* 90.43.

[29] Mr. Arbuckle has failed to perfect his appeal. His failure impacts both his appeal book and his factum which either incorporate or refer to the uncertified transcripts. There is no comfort in Mr. Arbuckle's representations about the transcript he filed. On the one hand, when faced with dismissal of his appeal, he says his transcripts are "materially consistent with the audio record". On the other hand, when defending the allegation he added a false certification, he blames AI hallucinations. Without question, the transcripts and appeal books are non-compliant.

[30] *Rule* 90.43(4) provides discretion to dismiss an unperfected appeal. The principles that guide the exercise of this discretion are well established. The parties both cite the decisions of this Court in *Islam v. Sevgur*[10] and *B.A. v. J.F.*[11] More recently, the principles were considered in *Morris v. Comeau*[12] where Justice Bryson offered the following:

> [8] Where an appellant fails to comply with the Rules of Court respecting setting down or perfecting an appeal, the onus falls on the appellant to satisfy the Court on a balance of probabilities that the motion to dismiss ought to be denied. Typically, the Court will consider such factors as:
>
> - Whether there is a good reason for the appellant's default that would excuse the failure to comply with the *Rules*;

[9] 2015 ONSC 3684 at para. 61.
[10] *Islam v. Sevgur*, 2011 NSCA 114 [*Islam*].
[11] *B.A. v. J.F.*, 2025 NSCA 53 [*B.A.*].
[12] *Morris v. Comeau*, 2026 NSCA 46.

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- Whether the grounds of appeal raise legitimate, arguable issues;
- Whether the appeal is taken in good faith and not to delay the fruits of the respondent's success at trial;
- Whether the appellant has the willingness and ability to comply with the Rules and in particular, the required deadlines;
- Any prejudice to the appellant if the motion to dismiss were granted;
- Any prejudice to the respondent if the motion were denied;
- Impact on the Court's time and resources arising from the delay of the appellant;
- Any procedural or substantive impediments that prevent the appellant from resuscitating his appeal.

[9] The criteria described in *Islam v. Sevgur* have been routinely applied by the Chambers judges of this Court. The criteria are not exhaustive, but illustrative of principles that guide the Court's discretion in deciding whether to dismiss an appeal for failure to abide by the *Rules*.

[31] Each case is unique making certain factors more or less relevant or worthy of more or less weight. Ultimately, the question is whether, given all the circumstances, it is in the interests of justice to dismiss an appeal.[13]

[32] Applying the factors to this case, I would exercise some care in identifying Mr. Arbuckle's default. He has been non-compliant with the *Rules* by: (1) providing a certificate of readiness he knew was inaccurate; (2) filing an uncertified transcript on June 3, 2026; (3) filing an uncertified transcript on June 22, 2026; and (4) failing to file a compliant appeal book on the date set by the Court.

[33] Is there a good reason for Mr. Arbuckle's failure to follow the *Rules*? He blames an unspecified AI tool for what happened. In my view of the evidence however, this motion is not about a rogue AI tool. Mr. Arbuckle offered the Court a misleading certificate of readiness indicating he had ordered certified transcripts when he did not and offering a readiness date he had not obtained. He then filed two transcripts he knew were not certified. If he used an AI tool in some way, he remained responsible for the documents he filed with the Court and he admits not reviewing them before filing. There is no good reason for non-compliance found in Mr. Arbuckle's evidence or arguments. Neither does he offer an explanation. Although he now apologizes for what he has done, this comes only after he was

[13] *Islam* at para. 36 and *B.A.* at para. 43 citing *LeBlanc v. LeBlanc*, 2023 NSCA 48 at para. 17.

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caught. His arguments on the motion minimize his role and responsibility, which I find does not bode well for his prospect of future compliance.

[34] Mr. Arbuckle's notice of appeal raises arguable issues in the sense that term is used in motions of this kind.[14] He advances recognized grounds. Although a chambers judge must not speculate on the outcome of the appeal or delve into the merits, I am required to assess whether the grounds raised "appear" to be of sufficient substance. [15] Mr. Arbuckle alleges the judge misapprehended the evidence and made findings based on "phantom testimony." I find these allegations challenging to assess given the nature of his misconduct. Although I do have a certified transcription of the hearing attached to the Sue Loney affidavit, Mr. Arbuckle's factum references the non-certified version. There is no certified transcription of the October 21, 2026 appearance during which the parties made oral submissions.

[35] Mr. Arbuckle argues his appeal is made in good faith but I also consider he has a record of unsuccessful appeal litigation attracting significant cost awards and a security for costs order. He has taken much of this Court's time and resources on unmeritorious matters even before his present misconduct was discovered. Any path forward for his appeal would require enhanced procedural supervision.

[36] In terms of weighing the respective prejudice to the parties, I accept there would be prejudice to Mr. Arbuckle if his appeal is dismissed at this stage. He argues dismissal is an "extreme" and unnecessary remedy given he can simply provide certified transcriptions and proceed with the appeal. I find his perspective minimizes the impact of his conduct in terms of cost and delay, both of which are significant considerations in family law litigation. Ms. Tanner made her application in the lower court in April 2024 and it was not completed until April 2026, due in part to the unsuccessful interlocutory appeal made by Mr. Arbuckle. The appeal he launched in January 2026 is now delayed by his misconduct. As noted by Justice Bryson in *Morris*, "Delay and uncertainty … is especially prejudicial in family cases".[16] In the event his appeal is not dismissed, Mr. Arbuckle must obtain a certified transcription and file a new appeal book and factum and he offers no evidence as to when those steps can be completed. He asks for costs in the cause and makes no offer to compensate Ms. Tanner for the considerable cost consequences of his conduct.

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[14] *R. v. Willis*, 2026 NSCA 57 at paras. 63-65 [*Willis*].
[15] *Willis* at para. 67.
[16] *Morris* at para. 25.

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[37] To these considerations, I would add that Mr. Arbuckle's conduct and his arguments on this motion imply what happened here was somehow beyond his control. This is concerning to the conduct of this appeal and to the administration of justice. Mr. Arbuckle offered inaccurate and misleading information to the Court and failed to comply with the requirement for certified transcriptions. Each of these on their own could result in the dismissal of an appeal. Although the present motion is brought for failing to perfect the appeal, I would also note that *Rule* 90.40(2) provides discretion to dismiss an appeal for failure to comply with *Rule* 90 for any reason.

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Conclusion

[38] The mischief that occurred in this case implicates the integrity of the appeal process. It is in the interests of justice to protect the process for individual litigants and for the benefit of the administration of justice generally. Although I considered Mr. Arbuckle's plea to allow him to perfect his appeal and continue to a substantive resolution, I find it a disposition that I cannot endorse.

[39] All appellants, those represented by counsel and those who are self-represented, must follow the *Rules* governing their appeals. The *Rules* exist to support and protect the appeal process. There are instances where non-compliance can be corrected and remedial orders an effective outcome. But Mr. Arbuckle's non-compliance was not apparent like a lone missed deadline or a missing document. It was not a missed step or an insufficiency. It was non-compliance well disguised as compliance.

[40] Mr. Arbuckle was aware he had not complied with the *Rules* but carried on. I find his rationale for doing so immaterial. But for diligent counsel, it could have resulted in an appeal proceeding on an inaccurate record. I conclude the only disposition consistent with the interests of justice is to end an appeal fundamentally tainted by the appellant's conduct. I find the nature of Mr. Arbuckle's misconduct attracts substantially more weight in the balancing exercise than any other factor in the circumstances of this case.

Disposition

[41] I would allow the motion and dismiss the appeal.

[42] In the circumstances, I find costs should be payable on an indemnification basis pursuant to *Rule* 90. 40(4) in the amount of $20,000.

Gogan, J.A.

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