



## SENIOR COURTS CIVIL ELECTRONIC DOCUMENT PROTOCOL 2019

16 September 2021<sup>1</sup>

### 1. Introduction

- 1.1 This Protocol came into effect on 1 March 2019. It revoked and replaced the Senior Courts Civil Electronic Document Protocol issued on 22 May 2017. This version contains amendments made on 16 September 2021.
- 1.2 This protocol is a guideline to be used by counsel and the courts. It is intended to encourage and facilitate the use of electronic casebooks for civil cases in the High Court, Court of Appeal and Supreme Court.
- 1.3 This protocol is not intended to effect any change to the requirements of the High Court Rules, the Court of Appeal (Civil) Rules 2005 or the Supreme Court Rules 2004. However, each court may, by practice note, modify the requirements relating to the number of hard copies of documents that must be filed in the event that a document is filed in compliant electronic format.<sup>2</sup>
- 1.4 This protocol is subject to modification in particular cases, and as technology evolves and experience is gained in the use of electronic document management.
- 1.5 A party must advise the Registrar if directions are sought to modify, or add to, the default directions set out below.
- 1.6 This protocol does not apply to applications for leave to appeal or interlocutory applications (unless a court directs otherwise in a particular case). If a court does so direct, the Electronic Casebook should use the same format as described in this protocol, to the extent that it is applicable.
- 1.7 In this protocol, "Electronic Casebook" means, in the:
  - (a) High Court, the pleadings, evidence (including briefs of evidence), the common bundle referred to in r 9.4 of the High Court Rules 2016, submissions and authorities;
  - (b) Court of Appeal, the case on appeal referred to in r 40 of the Court of Appeal (Civil) Rules 2005, synopses of argument on appeal, and authorities; and
  - (c) Supreme Court, the case on appeal referred to in r 35 of the Supreme Court Rules 2004, submissions and authorities.
- 1.8 It is envisioned that, where possible, an Electronic Casebook will first be created for a High Court trial (with the exhibits being exported from electronic discovery). Where necessary,

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<sup>1</sup> Amended 16 September 2021. References to synopses of argument have been deleted for clarity. Examples given in the schedules have been amended to make clear that documents in the table of contents, including exhibits, must have a description. The table of contents should also have tab numbers, which allows counsel to use those during oral argument.

<sup>2</sup> See Court of Appeal (Civil) Rules 2005, rr 40(1)(a), 40E(2)(a), 42(1)(b), 42(2)(b) and 42A(3A)(a); and Supreme Court Rules 2004, rr 23(1), 23(2), 35(1) and 37(1).

the same Electronic Casebook will then be modified for use in the appeal courts. This protocol has been drafted with that in mind.

## 2. **Creation of an Electronic Casebook**

- 2.1 As is standard practice, parties must collaborate on the collation of the Electronic Casebook.
- 2.2 It is intended that the parties will use the following process to create an Electronic Casebook (which will result in all parties having an identical complete Electronic Casebook):
- (a) the parties will exchange and agree an index of the documents to be included in the common bundle or case on appeal;
  - (b) the party responsible for creating the Electronic Casebook will create the initial Electronic Casebook, together with a hyperlinked table of contents (in searchable PDF format), provide that to the other parties and, in the case of an appeal, to the Court;<sup>3</sup>
  - (c) as each party files (and serves) documents in accordance with the relevant court rules, that party will:
    - (i) add those documents to the Electronic Casebook (hyperlinked where necessary);
    - (ii) add the new documents to the hyperlinked table of contents (if that is necessary); and
    - (iii) provide a copy of the new documents and the updated table of contents (in searchable PDF format within the folder structure) on a USB drive to the other parties and to the Court<sup>4</sup>; and
  - (d) a party that receives documents (and an updated table of contents) to be added to the initial Electronic Casebook is expected to add the documents that it has received into its own copy of the initial Electronic Casebook.
- 2.3 The topics covered in this protocol are discussed in the order relevant to creating an Electronic Casebook using the process set out above.

## 3. **Structure of an Electronic Casebook**

- 3.1 An Electronic Casebook should be contained within one folder named with the title of the case (or an agreed abbreviation thereof).
- 3.2 Aside from the authorities to be provided to the Court, all other documents in an Electronic Casebook are to be contained within the Electronic Casebook folder.<sup>5</sup> ([See Figures 1 and 2.](#))

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<sup>3</sup> If an Electronic Casebook for a High Court trial is being modified for use in an appeal, then any documents which are not relevant to the appeal should be purged from the Electronic Casebook.

<sup>4</sup> Counsel must not change any file names once the Electronic Casebook is filed and served. Doing so will cause hyperlinks to break.

<sup>5</sup> This is a change from the previous protocol which provided for various levels of sub-folders and for documents to be divided into Volumes each containing at most 250 pages. The Electronic Casebook will still be divided into “volumes” of at most 250 pages. However, each new volume will be denoted by a new number series, that is, the first document in Volume 1 of the Pleadings will be document 101.0001 and the first document in Volume 2 of the Pleadings will be document 102.0251 etc. ([see Schedule 3](#)).

#### 4. **Table of contents**

- 4.1 An Electronic Casebook should include a table of contents (in searchable PDF format). This, along with each counsel's submissions (or synopsis of argument on appeal), will be the key document from which counsel and the Court will navigate the Electronic Casebook.
- 4.2 The table of contents for a High Court trial should be in a format consistent with the common bundle index referred to in r 9.4(5)(c) of the High Court Rules. It will also include three initial sections headed "For Judicial Use Only"<sup>6</sup>, "Pleadings" and "Evidence". ([See Schedule 1.](#))
- 4.3 The table of contents for an appeal should be in a format consistent with the table of contents referred to in r 40(4)(d) of the Court of Appeal (Civil) Rules and r 35(3)(d) of the Supreme Court Rules except that it will include an initial section headed "Appeal documents". Any Notice of Appeal and other documents filed in the Appeal should be included in this section. ([See Schedule 2.](#))
- 4.4 The table of contents should include headings that correspond to the hard copy volumes, even though those volumes are not found in the Electronic Casebook itself.
- 4.5 The table of contents should list the documents in the order that they appear in the common bundle or case on appeal.
- 4.6 The description of the documents should be written out in full in the table of contents. ([See Schedules 1 and 2.](#))
- 4.7 The table of contents should number the items in it consecutively (in the first column). This will assist those who wish to print the casebook and insert numbered tabs. The table of contents should include a hyperlink from the document number (rather than the item number) to the first page of each document. This facilitates reference to the document.

#### 5. **Format of documents**

- 5.1 Where practicable, all documents<sup>7</sup> in an Electronic Casebook should:
  - (a) be a separate PDF;<sup>8</sup>
  - (b) be the direct equivalent of the hard copy version;
  - (c) be in searchable PDF format (where a document is a scanned copy of the hardcopy document, it must have been run through an "OCR" (Optical Character Recognition) process<sup>9</sup>); and
  - (d) use portrait orientation, with each page of an original document or case authority occupying a full A4 page in the PDF format (the hard copy version may be printed double-sided).

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<sup>6</sup> This section will be managed by the High Court. Counsel are not expected to add documents to it and will not be provided with a copy of any document which goes into it.

<sup>7</sup> The previous version of the Protocol included a requirement that the table of contents be in both searchable PDF and Word format. The version in Word format is no longer required.

<sup>8</sup> Some practitioners have suggested that each volume should be a single PDF. This is not normally permitted. The reason for this is that a document by document approach should normally be more efficient in the long run. The protocol envisages that Electronic Casebooks will be compiled by selecting individual documents from electronic discovery and the trial selection will be further refined on appeal to comply with r 39 of the Court of Appeal (Civil) Rules and r 34 of the Supreme Court Rules, which provide that documents that are not relevant to any ground of appeal may not be included in the case on appeal.

<sup>9</sup> When running the OCR process, it is better to use the Adobe PDF output style "Searchable Image (Exact)", which requires higher resolution of 600 dpi, as this will result in more accurate search results.

- 5.2 An exception to this is large Excel spreadsheets.<sup>10</sup> Where the electronic version is not the direct equivalent of the hard copy version, this must be noted in any relevant index or table of contents.
- 5.3 The above format is intended to be technology neutral so that an Electronic Casebook is usable in that electronic format, able to be printed to produce a hard copy set, and also suitable for importing into software or applications that the parties may separately choose to use.
- 5.4 To avoid compatibility issues, folder or file names must not use the following characters: ‘ ! @ # \$ % ^ & \* ( ) + = [ ] { } < > : ; , ? | ” \ / - \_ (and a full stop may only be used before the file extension – i.e., “.pdf”).

## 6. Document names and Standard Numbering

- 6.1 Aside from the table of contents, authorities index, submissions (or synopses of argument on appeal), chronology and statement of issues, documents in an Electronic Casebook should be named using only a number.<sup>11</sup> The number should have 2 parts which will show where the document is located in the casebook, e.g., 301.0158:

301	0158
Volume 1 of the common bundle	Page 158

- 6.2 A new number series will start with the first document of each type (e.g., 101, 201 and 301) according to the standard numbering set out in [Schedule 3](#). This numbering system means that counsel and the Court can identify what type of document they are looking at. For example, assuming all documents have 5 pages: the first three documents in Volume 1 of a common bundle will be named 301.0001.pdf, 301.0006.pdf; and 301.0011.pdf; and the first three documents in Volume 2 of a common bundle will be named 302.0251.pdf, 302.0256.pdf and 302.0261.pdf (as set out in [Figure 2](#)).<sup>12</sup>

## 7. Page numbering

- 7.1 Each section of an Electronic Casebook for trial or appeal should be numbered consecutively, with page 1 being the first page of Volume 1 of that section. For example, the first page of the evidence section will be page 201.0001 and the first page of the common bundle will be page 301.0001).<sup>13</sup>
- 7.2 If the Electronic Casebook was created for a High Court trial, then any page numbering added for trial to the pleadings and evidence section will need to be removed before the page numbering for the appeal is added. This is so that, for example, the transcript of evidence can be added in the correct order. The page numbering of the exhibits section does not need to be changed for any appeal.

## 8. Hyperlinking of table of contents

- 8.1 The table of contents should contain hyperlinks to each of the documents listed in it. The hyperlinks should be from the standard document number, rather than from the description of the document.

<sup>10</sup> Converting large Excel spreadsheets to PDFs can make them unwieldy and incomprehensible.

<sup>11</sup> Using a standard numbering system means that an Electronic Casebook can be contained within one folder and that creating and hyperlinking the Electronic Casebook is more straightforward.

<sup>12</sup> The file extension (.pdf) should always be in lower case.

<sup>13</sup> Page numbers should ideally be added to the Electronic Casebook using Bates numbering in Adobe.

- 8.2 Each hyperlink must be relative (rather than absolute). Relative hyperlinks use a path starting from the Electronic Casebook rather than starting from a specified hard drive (e.g., “Smith v Jones/201.0214.pdf”).<sup>14</sup>

## 9. **Filing and service**

- 9.1 Once the Electronic Casebook contains either the common bundle or the case on appeal, and the hyperlinked table of contents, then the party responsible for creating it must:
- (a) file a copy of the Electronic Casebook on a USB drive (the courts do not presently use cloud storage or accept filing of the Electronic Casebook by email); and
  - (b) serve a copy of the Electronic Casebook on each other party either on a suitable portable media device, or in such other manner as may be agreed in advance between the parties.
- 9.2 Any party may request a direction that they be served with a paper copy of the Electronic Casebook.
- 9.3 A hard copy of the Electronic Casebook must be filed at the same time as the Electronic Casebook unless the Court has provided otherwise by practice note, or by direction in a particular case.

## 10. **Submissions (or synopsis of argument on appeal) and chronology**

- 10.1 The legal submissions (or synopsis of argument on appeal) and chronology should be added to the Electronic Casebook at the time that those documents are filed and served.<sup>15</sup>
- 10.2 The legal submissions (or synopsis of argument on appeal) and chronology should contain hyperlinks from the cross-references in the submissions (or synopsis) and chronology to the relevant documents (and to the relevant pages, that is, pinpoint hyperlinking, where applicable). Any cross-reference should be contained within double square brackets, for example [[301.0158]].<sup>16</sup>

## 11. **Authorities**

- 11.1 Authorities should be added to the Electronic Casebook at the same time as the legal submissions (or synopsis of argument on appeal) and chronology. The authorities (and the authorities index) should be included in a separate sub-folder named “Authorities”.
- 11.2 Documents within the Authorities folder should be named with an abbreviated version of the name of the authority. For example, “Brown v Wilson”; “Property Law Act”. The filename of each authority includes its associated folder path. Care must be taken to ensure that the entire document name, including its folder path and any spaces, does not exceed 150 characters. Refer to [Schedule 4](#) for examples of filenames for authorities.
- 11.3 The authorities index will correspond with the order of the authorities, which is usually alphabetical. The courts prefer that only one copy of each authority be included. The hyperlinks from the authorities index should be from the name of the authority.

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<sup>14</sup> Hyperlinks created in PDFs using Adobe Pro should normally be relative. Those created in Word may be relative or absolute, depending on the user’s selected settings.

<sup>15</sup> The previous version of the Protocol included a requirement that submissions (or synopsis of argument on appeal) be included in an updated Table of Contents. That is no longer required as most users have the submissions open most of the time and do not navigate to them from the Table of Contents.

<sup>16</sup> This makes automatic hyperlinking more straightforward.

## 12. Pleadings, evidence and affidavits in the High Court

- 12.1 Pleadings, briefs of evidence and affidavits can be added to an Electronic Casebook for the High Court when that is appropriate. Those documents should be hyperlinked to the documents in the common bundle when it is practical to do so. As with legal submissions, any cross-reference should be contained within double square brackets.
- 12.2 Pleadings should be named using only a number, with the first being named 101.0001.pdf.
- 12.3 At the same time as the pleadings are added to the Electronic Casebook, those documents should be included in an updated table of contents (and hyperlinked to the pleadings). Pleadings should be listed in the table of contents in an appropriate order (usually chronological). The hyperlinks should be from the document number in the table of contents (rather than from the document description).
- 12.4 Briefs of evidence and/or affidavits should be named using only a number, with the first being named 201.0001.pdf.
- 12.5 At the same time as the briefs of evidence and/or affidavits are added to the Electronic Casebook, those documents should be included in an updated table of contents (and hyperlinked to the briefs or evidence and/or affidavits). Briefs of evidence and/or affidavits should be listed in the table of contents in an appropriate order (usually by party and in the order in which the witnesses are likely to be called). The hyperlinks should be from the document number in the table of contents (rather than from the document description).

## 13. Example of the process

- 13.1 Plaintiff's (or appellant's) counsel files and serves a USB drive containing the Electronic Casebook with the common bundle (or the case on appeal) and the table of contents (in searchable PDF format) hyperlinked to the documents.
- 13.2 Plaintiff's (or appellant's) counsel then prepares submissions (or synopsis of argument on appeal) (hyperlinked to the relevant documents), authorities and the authorities index.
- 13.3 When the plaintiff's (or appellant's) submissions (or synopsis of argument on appeal), authorities and authorities index are filed and served, the Registrar and defendant's (or respondent's) counsel place them in their copy of the Electronic Casebook. The hyperlinks will work as long as the hyperlinks are relative hyperlinks, and the submissions (or synopsis of argument on appeal), authorities and authorities index are placed in the appropriate locations as specified in [Figures 1 and 2](#).
- 13.4 Defendant's (or respondent's) counsel then prepares submissions (or synopsis of argument on appeal) and additional authorities (if any) in the same fashion, which are added to the Electronic Casebook accordingly.
- 13.5 Counsel will need to agree whether, and if so when, it is appropriate for briefs of evidence to be added to an Electronic Casebook for trial.
- 13.6 Where supplementary documents or exhibits, if any, are to be added after the Electronic Casebook has been filed, they must be placed in a designated sub folder titled "Supp". ([See Figures 1 and 2](#).) Counsel will need to agree how documents in the Supp folder will be numbered.

**Figure 1: Electronic Casebook for a case on appeal**

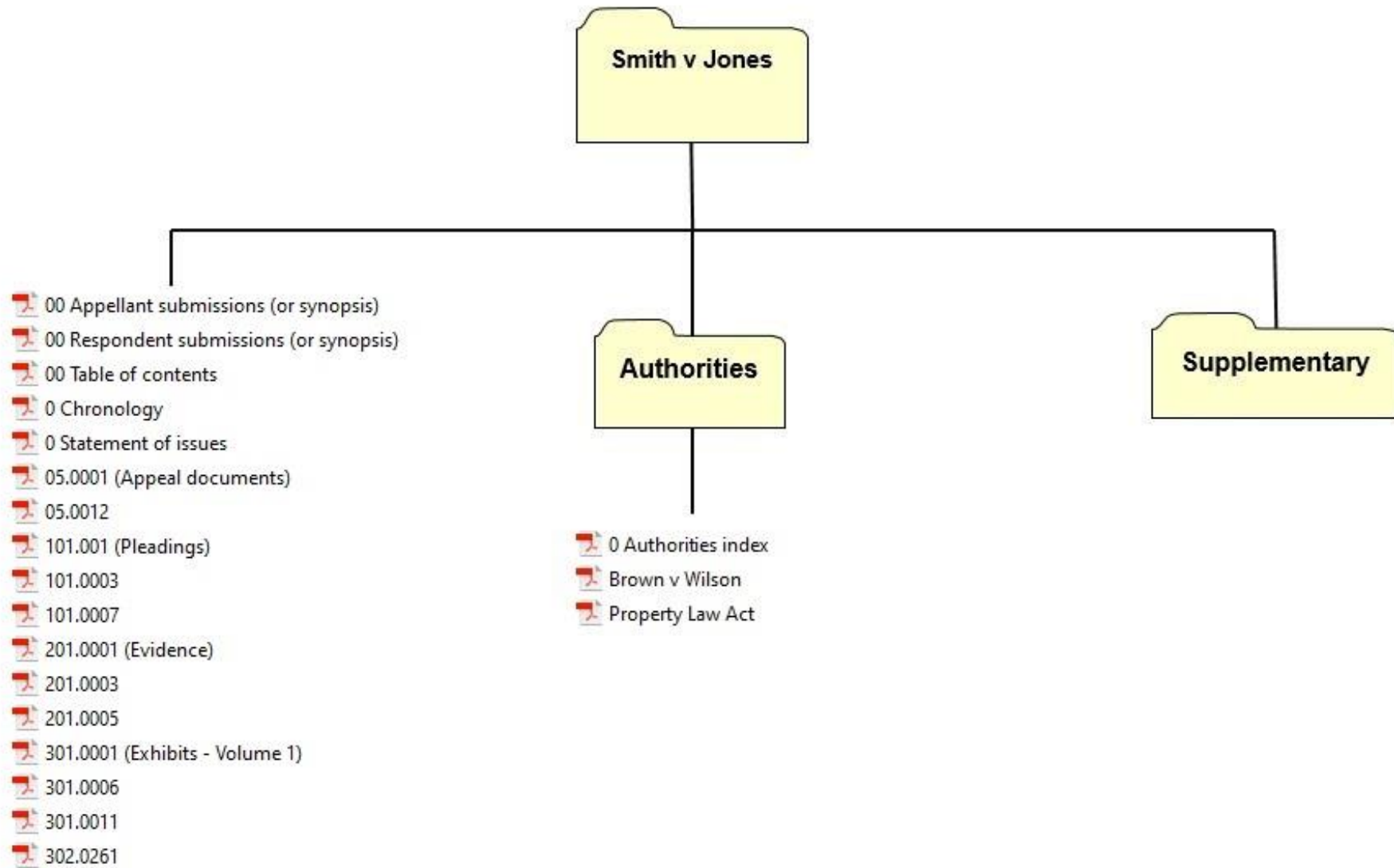
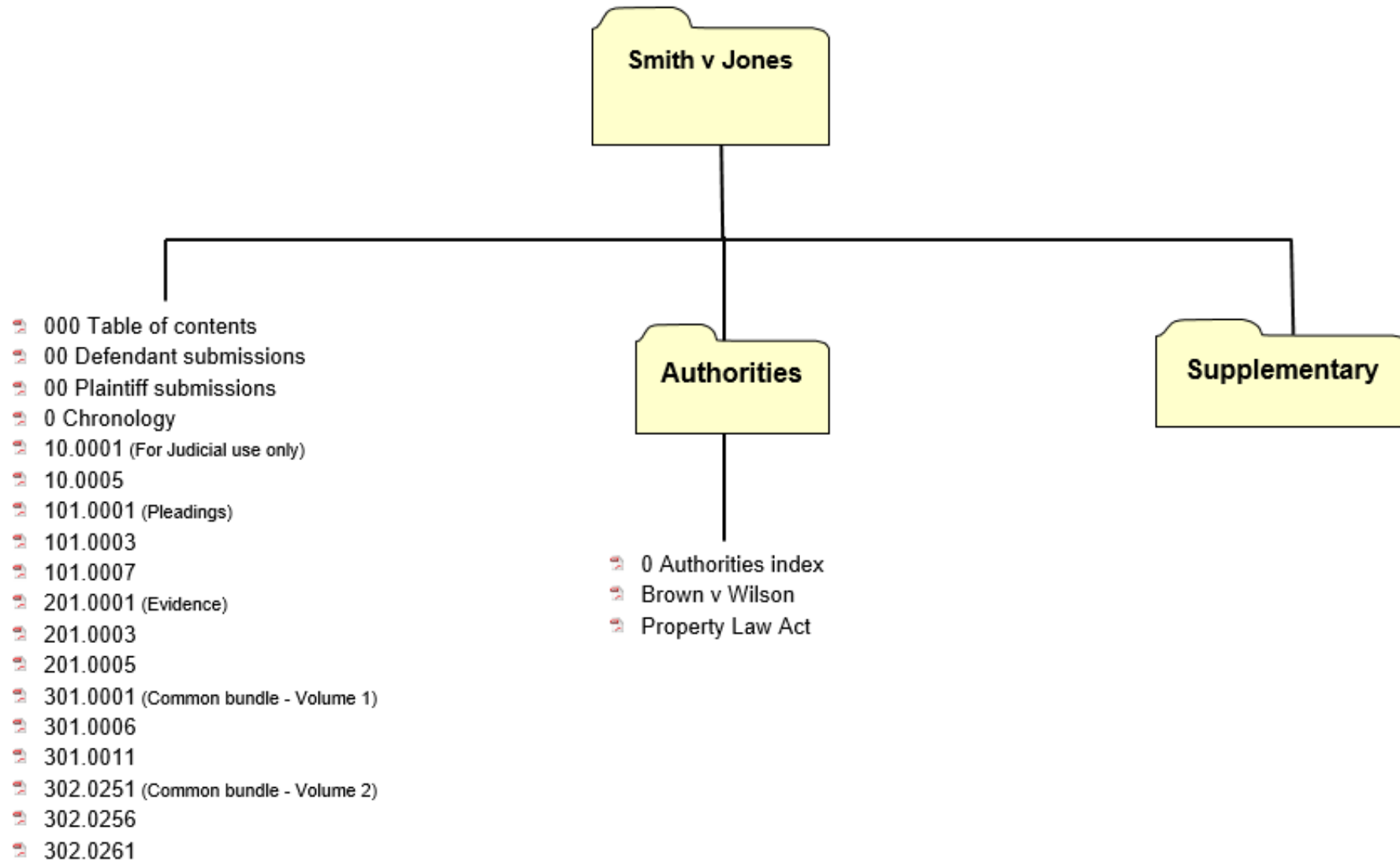


Figure 2: Electronic Casebook for trial bundle





## Schedule 1: Example table of contents for trial Electronic Casebook

### FOR JUDICIAL USE ONLY

Tab	Date	Description	Document number
1			10.0001
2			10.0006

### PLEADINGS

Tab	Date	Description	Document number
1	01/02/2013	Statement of claim	101.0001
2	10/02/2013	Minute of Associate Judge Millson	101.0003
3	12/02/2013	Statement of defence	101.0005
4	14/02/2013	Amended statement of claim	101.0007
5	17/02/2013	Amended statement of defence	101.0009

### EVIDENCE – Volume 1

Tab	Date	Description	Document number
1	01/05/2013	Brief of evidence of Robert Gillingham	201.0001
2	15/05/2013	Reply brief of evidence of Robert Gillingham	201.0003
3	14/06/2013	Brief of evidence of James Angus McGregor	201.0005
4	15/06/2013	Affidavit of David Andrews	201.0008

**EVIDENCE – Volume 2**

<b>Tab</b>	<b>Date</b>	<b>Description</b>	<b>Document number</b>
5	20/06/2013	Brief of evidence of John Mason	202.0251
6	30/06/2013	Brief of evidence of Matthew Hughes	202.0253

**COMMON BUNDLE – Volume 1**

<b>Tab</b>	<b>Date</b>	<b>Description</b>	<b>Party from whose custody document produced</b>	<b>Document number</b>
1	17/01/2011	Contract between Smith and Jones	Plaintiff	301.0001
2	014/02/2011	Email from Smith to Jones	Plaintiff	301.0002
3	18/07/2012	Smith handwritten note	Plaintiff	301.0004
4	09/08/2012	Email from Smith to Jones	Plaintiff	301.0005
5	24/09/2012	Email from Jones to Smith	Plaintiff	301.0006

**COMMON BUNDLE – Volume 2**

<b>Tab</b>	<b>Date</b>	<b>Description</b>	<b>Party from whose custody document produced</b>	<b>Document number</b>
6	01/10/2012	Email from Smith to Inland Revenue	Plaintiff	302.0251
7	12/10/2012	Deed of variation	Defendant	302.0252
8	27/11/2012	Valuation of shares	Plaintiff	302.0253

## Schedule 2: Example table of contents for appeal Electronic Casebook

### APPEAL DOCUMENTS

Tab	Date	Description	Document number
1	01/06/2014	Notice of appeal	05.0001

### PLEADINGS

Tab	Date	Description	Document number
1	01/02/2013	Statement of claim	101.0001
2	10/02/2013	Minute of Associate Judge Millson	101.0003
3	12/02/2013	Statement of defence	101.0005
4	14/02/2013	Amended statement of claim	101.0007
5	17/02/2013	Amended statement of defence	101.0009
6	05/07/2013	Defendant's High Court submissions	101.0011
7	03/09/2013	<i>Smith v Jones</i> [2013] NZHC XXX	101.0015

### EVIDENCE - Volume 1

Tab	Date	Description	Document number
		Robert Gillingham	
1	01/05/2013	Brief of evidence of Robert Gillingham	201.0001
2	15/05/2013	Reply brief of evidence of Robert Gillingham	201.0005
3	01/07/2013	Transcript of oral evidence in chief	201.0009
4	01/07/2013	Transcript of cross-examination	201.0012
		James Angus McGregor	
5	14/06/2013	Brief of evidence of James Angus McGregor	201.0013

6	01/07/2013	Transcript of cross-examination	201.0015
7	01/07/2013	Transcript of re-examination	201.0018
David Andrews			
8	15/06/2013	Affidavit of David Andrews	201.0021
9	01/07/2013	Transcript of cross-examination	201.0024

## EVIDENCE – Volume 2

Tab	Date	Description	Document number
John Mason			
10	20/06/2013	Brief of evidence of John Mason	202.0251
11	02/07/2013	Transcript of cross-examination	202.0253
Matthew Hughes			
12	30/06/2013	Brief of evidence of Matthew Hughes	202.0255
13	02/07/2013	Transcript of cross-examination	202.0257
14	26/07/2013	Transcript of re-examination	202.0258

## EXHIBITS – Volume 1

Tab	Date	Description	Document number
1	17/01/2011	Contract between Smith and Jones	301.0001
2	014/02/2011	Email from Smith to Jones	301.0002
3	18/07/2012	Smith handwritten note	301.0004
4	09/08/2012	Email from Smith to Jones	301.0005
5	24/09/2012	Email from Jones to Smith	301.0006

**EXHIBITS – Volume 2**

<b>Tab</b>	<b>Date</b>	<b>Description</b>	<b>Document number</b>
6	01/10/2012	Email from Smith to Inland Revenue	302.0251
7	12/10/2012	Deed of variation	302.0252
8	27/11/2012	Valuation of shares	302.0253

### Schedule 3: Standard numbering of documents

#### High Court

Number	Document
10.001	For Judicial use only
101.0000 - 101.0001 - 102.0251 - 103.0501 - etc.	Pleadings - Volume 1 - Volume 2 - Volume 3 - etc.
201.000 - 201.0001 - 202.0251 - 203.0501 - etc.	Briefs of evidence - Volume 1 - Volume 2 - Volume 3 - etc.
301.000 - 301.0001 - 302.0251 - 303.0501 - etc.	Common bundle - Volume 1 - Volume 2 - Volume 3 - etc.

**Appeal courts**

<b>Number</b>	<b>Document</b>
05.0001	Appeal documents
101.000 - 101.0001 - 102.0251 - etc.	Case on appeal – Pleadings - Volume 1 - Volume 2 - etc.
201.000 - 201.0001 - 202.0251 - 203.0501 - etc.	Case on appeal - Briefs of evidence - Volume 1 - Volume 2 - Volume 3 - etc.
301.000 - 301.0001 - 302.0251 - 303.0501 - etc.	Case on appeal - Exhibits - Volume 1 - Volume 2 - Volume 3 - etc.

#### **Schedule 4: Examples of filenames for authorities**

- Brown v Wilson 2003
- Brown v Wilson 2005
- Property Law Act
- Scott v Green