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December 12, 2013

VIA FAX

Judicial Administrator
Federal Court of Appeal
Ottawa, ON K1A 0H9

Dear Madam or Sir:

**Re: Gábor Lukács v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-279-13
Request for directions**

I am the appellant in the above-noted file, which is set down for hearing on January 29, 2014 at 9:30 am in Halifax. I am seeking the guidance of the Honourable Court with respect to what appears to be a somewhat unusual situation that is not provided for by the *Federal Court Rules*.

On November 15, 2013, two months after the Appeal Book was filed, and a month after the appellant's factum was filed, the Agency indicated for the first time that it intends to rely on a document purporting to be the clause-by-clause analysis of Bill C-14 (the "New Document") that was allegedly "prepared for the parliamentary committee considering Bill C-14" (para. 47 of the Agency's factum).

A copy of the New Document was served on me by the Agency on or around November 22, 2013.

The New Document raises serious concerns, both of substantive (authenticity) and procedural (timelines) nature that are highly prejudicial to my case.

I. Substantive issue: the New Document is not authentic

I was unable to find the New Document in *Hansard* or the records of the House of Commons Standing Committee on Transport available at <http://www.parl.gc.ca/>. The New Document is not found in the *Canada Gazette*, and I could not find it through the library either.

The New Document shows neither the name of its author(s) nor the date or purpose of its preparation, and its contents suggests that it was prepared after Bill C-14 was passed, and not for the "parliamentary committee considering Bill C-14," as the Agency claims.

Since November 22, 2013, I have made five (5) requests to the Agency for information to ascertain the authenticity of the New Document and that it was indeed before any parliamentary committee, to no avail: although counsel for the Agency kept assuring me that the information was forthcoming, he advised me today that he is unable to commit to a timeline to produce the requested information.

It is trite law that a party who wishes to rely on a document must first prove that the document is authentic (*R. v. Schwartz*, [1988] 2 SCR 443, para. 58). Thus, it would be highly prejudicial to my case to allow the Agency to rely on the New Document without the Agency discharging its onus to demonstrate that the New Document was placed before any parliamentary committee.

II. Procedural issue: sidestepping the issue of authenticity and timelines

Rule 343 of the *Federal Court Rules*, requiring an agreement or an order fixing the contents of the Appeal Book, serves an important purpose with respect to the fairness of the appeal hearing: it allows parties a fair opportunity to raise any concerns related to documents that would be placed before the Panel hearing the appeal, including the authenticity of documents.

In the present case, the Agency never sought to include the New Document in the Appeal Book, even though it purports to be evidence about legislative history. Thus, the Agency's actions amount to sidestepping the issue of authenticity of the New Document, which would normally be determined by way of a motion pursuant to Rule 343(3).

The problem is further exacerbated by the little time left until the hearing of the appeal, the upcoming Christmas recess, and my absence from Canada between January 13-20, 2014 for a conference.

Since the Agency wishes to adduce the New Document after the Appeal Book was filed and the burden of proof to establish authenticity is on the Agency, it would be natural to require the Agency to bring a motion to that effect.

Therefore, I respectfully ask that the Honourable Court set December 20, 2013 as a peremptory deadline for the Agency to file a motion to amend the Appeal Book to include the New Document.

In the alternative, I am asking that a brief case management conference be held over video link or telephone with a Justice of the Court, for setting a timeline to resolve these concerns. In the next two weeks, I am available at any time, on any day with the exception of December 17, 2013.

Sincerely yours,

Dr. Gábor Lukács

Cc: Mr. Simon-Pierre Lessard, counsel for the Canadian Transportation Agency