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December 16, 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
Reply to the Agency's letter**

I am writing to reply to the Agency's letter of today concerning the 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."

The serious concerns raised with respect to the authenticity of the New Document are that:

- the New Document did not exist when the *Canada Transportation Act* (Bill C-101) was considered by the Standing Committee on Transport, and thus could not have possibly been before that Committee;
- Bill C-14 was never before the Standing Committee on Transport under that name.

It would be preferable and more fair from a procedural point of view if these issues were determined with by way of a proper motion to present fresh evidence brought by the Agency, as the Agency proposes to do. That way, both parties can file a substantial amount of evidence and authorities in support of their positions, and may present oral arguments if the Court deems it necessary.

Nevertheless, in order to ensure that the Honourable Court is aware of the essence of the facts supporting my position, I provide a brief outline below.

Preliminary matter: affidavit by counsel

The Agency chose to file an affidavit on a highly contentious issue by Ms. Cuber, who is a legal counsel for the Agency, contrary to Rule 82 of the *Federal Court Rules*, as interpreted by this Honourable Court (*Cross-Canada Auto Body Supply (Windsor) Ltd. v. Hyundai Auto Canada*, 2006 FCA 133, para. 4).

I. The New Document could not have been before the Committee

The issue is not whether the Agency acted in good faith in photocopying the New Document, but rather whether the document in question was submitted to the Standing Committee on Transport at the time it considered the *Canada Transportation Act*.

The answer is evidently negative.

It is apparent on the face of the “Introduction” page of the New Document (Exhibit “F” to the affidavit of Ms. Cuber) that the New Document was created after the conclusion of the consideration by the Standing Committee on Transport.

The “Legend for Clause-by-Clause” shown on Exhibit “F” to the affidavit of Ms. Cuber states:

[SCOT CHANGE] - indicates further
amendments introduced by House of Commons
Standing Committee on Transport

Indeed, the New Document lists all amendments to the *Canada Transportation Act* that were made by the Standing Committee on Transport.

Consequently, the New Document was prepared sometime after the Standing Committee on Transport completed its consideration of the *Canada Transportation Act* (November 23, 1995).

Therefore, the New Document did not exist at the time the *Canada Transportation Act* was being considered by the Standing Committee on Transport.

II. Bill C-14 was never before the Standing Committee on Transport under that name

The *Canada Transportation Act* was introduced on June 20, 1995 as Bill C-101.¹ The second reading of Bill C-101 was on October 2, 1995, at which point Bill C-101 was referred to the Standing Committee on Transport.² The Standing Committee on Transport considered Bill C-101 on Meetings No. 61-84, between October 4, 1995 and November 23, 1995.³

¹*Hansard*, Volume 133, Number 222, 1st Session, 35th Parliament, p. 14188.

²*Hansard*, Volume 133, Number 235, 1st Session, 35th Parliament, p. 15078.

³<http://www.parl.gc.ca/content/hoc/archives/committee/351/port/committee-e.html>

The Fifth Report of the Standing Committee on Transport to the House, on Bill C-101, was presented on November 27, 1995.⁴

On February 2, 1996, the 1st Session of the 35th Parliament ended, and Bill C-101 died on the order paper.

On February 27, 1996, the 2nd Session of the 35th Parliament started.

On March 8, 1996, the *Canada Transportation Act* was reintroduced, this time as Bill C-14. Bill C-14 was never referred to any committee, but rather was “deemed to have been studied by the Standing Committee on Transport and reported with amendments” by the Acting Speaker.⁵

Thus, the New Document could not have possibly been provided to the Standing Committee on Transport in the context of Bill C-14 in 1996 (as Exhibits “A” and “B” to the affidavit of Ms. Cuber suggest), because consideration of the *Canada Transportation Act* by that Committee was completed several months earlier, in November 1995.

This demonstrates that the library records pertaining to the New Document are inaccurate.

III. Evidence or authority?

There is no doubt that courts may take judicial notice of facts that are “capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy” such as debates recorded in *Hansard*, reports prepared by committees of the House of Commons, or evidence recorded during committee hearings.

Common traits of documents in this category are that: (a) they were created by Parliament in its normal course of business; and (b) multiple copies are publicly available across Canada. For example, the “Third Report of the Special Committee on Statutory Instruments” meets these criteria, and thus it is an authority.

On the other hand, the New Document is not an authority, and falls outside this category for a number of reasons:

- (a) The New Document contains no information as to the identity of its author(s) or the date of its creation. The Agency advised me that the New Document was created by Transport Canada, but as the Agency conceded, the Agency has been unable to confirm authorship.
- (b) Assuming that the New Document was created by Transport Canada, it is merely one of the many submissions to the House of Commons Standing Committee on Transport, and not a document created by the Committee.
- (c) As Exhibit “B” to the affidavit of Ms. Cuber demonstrates, there is only a single copy of the New Document across all Canadian libraries.

⁴*Hansard*, Volume 133, Number 265, 1st Session, 35th Parliament, p. 16838.

⁵*Hansard*, Volume 133, Number 009, 2st Session, 35th Parliament, p. 490.

Conclusion

There is a genuine question as to whether the New Document has been before the House of Commons Standing Committee on Transport, and the burden of proving that fact is upon the Agency, regardless of whether the New Document is considered an “authority” or “evidence.”

The most efficient and fair method for determining this question would be by way of the Agency, which is the party intending to rely on the New Document, bringing a motion to adduce fresh evidence, as it proposed to do. The motion could be heard by the Panel hearing the appeal, together with the appeal.

The Agency ought to file the New Document in its entirety, not only excerpts.

The Agency ought to be directed to bring said motion by December 20, 2013 to allow the undersigned, who is unrepresented, sufficient time to cross-examine the Agency’s affiant(s) if necessary, and to prepare an adequate response.

Alternatively, I remain available for a case conference presided by a Justice of the Court by video-conference or telephone 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