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December 18, 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 of December 18, 2013**

I am writing to reply to the Agency's second letter, of December 18, 2013, concerning the New Document that was allegedly "prepared for the parliamentary committee considering Bill C-14."

I would like to clarify at the outset that my intention has not been to engage in a letter-writing competition, but rather to ask this Honourable Court to set timelines for the determination of the serious factual issues with the New Document in a manner that allows me a fair opportunity to be heard and to lead evidence with respect to the New Document.

Procedural fairness in relation to these issues is of particular concern due to the recent drastic change in the Agency's position as to the contents, purpose, and nature of the New Document:

1. Up until now, the Agency claimed that the New Document was "prepared for the parliamentary committee considering Bill C-14."
2. The Agency's new position is, however, that it "does not allege that the clause-by-clause was before the Committee in its current form; rather, it is clear that it reflects the Committee's work."

While the Agency's admission that the New Document was not before the Committee is most welcome, the claim that the New Document authentically reflects the Committee's proceedings is flawed. The authentic records of the Committee's work are its evidence, its minutes, and its report submitted to the House on November 27, 1995.

The Committee could not have seen the New Document for the obvious reason that the New Document was created in 1996, several months after the Committee concluded its consideration of the *Canada Transportation Act*, and submitted its report in November 1995.

There is not a scintilla of evidence to suggest that the New Document is similar to the clause-by-clause analysis of Bill C-101, and the Agency's submissions on this point are mere speculations.

It is, however, undisputed that the New Document is not the clause-by-clause analysis that was provided to the Committee when it was considering the *Canada Transportation Act* in 1995.

Given that the Committee did not consider the *Canada Transportation Act* in 1996, the New Document is at the very most an internal document of Transport Canada, which was not before any committee of Parliament, and which was created after the *Canada Transportation Act* was passed.

### **What is more authentic: *Hansard* or the library catalogue?**

There is a conflict as to the history of the *Canada Transportation Act* between the information contained in *Hansard* and the information recorded in the electronic catalogue of the Library of Parliament.

For example, while it is known that Bill C-14 has never been before the House of Commons Standing Committee on Transport and that the document catalogued as "Bill C-14: clause by clause" has never been before any committee of Parliament, the library catalogue nevertheless creates incorrect impressions to the contrary.

This begs the question of what is more authentic: *Hansard* or the library catalogue? It is my submission that *Hansard* is the official record of Parliament, and the library catalogue in and on its own is not a reliable source.

In particular, in the absence of identification of the author(s) of the New Document within the body of the New Document, it is impossible to draw any conclusions as to its authorship based on the "Publisher" field shown in the library catalogue.

### **Procedural fairness: the need for an evidentiary record related to factual issues in dispute**

The issues raised by me are not simply whether the New Document is properly included in the book of authorities (which is primarily a question of law), but rather questions of fact related to the New Document, such as its authorship, the time of its creation, its purpose, and its use in the legislative process. These cannot be addressed without an appropriate evidentiary record.

In order to address these issues, I would need to tender a substantial amount of evidence, including, for example, transcripts of out-of-court examination of witnesses who were or are involved in the work of the Standing Committee on Transport, and who can adequately address these issues.

It is my understanding that an appeal hearing is not the forum to tender evidence. Thus, if the factual issues relating to the New Document are not dealt with by way of a proper motion brought by the Agency, I will not be able to place before the Honourable Court the evidence necessary to address the aforementioned factual issues related to the New Document.

This, in turn, would seriously undermine my ability to challenge the New Document, and to argue my case.

## **Conclusion**

The Agency is attempting to blur the general use of clause-by-clause analysis with the unique legislative history of the *Canada Transportation Act* and the serious factual issues related to the New Document that put into question its reliability.

Determining the factual issues related to the New Document (authorship, date of creation, purpose, and use in the legislative process of the *Canada Transportation Act*) require a substantial amount of evidence that is not currently before the Honourable Court.

While questions of law related to the propriety of inclusion of a document in the book of authorities can be argued at an appeal hearing, it is not possible to do the same with respect to factual issues related to a document, if the arguments require filing substantial evidentiary records.

Therefore, it is respectfully submitted that the factual nature of the dispute with respect to the New Document makes it impossible to address it without an evidentiary record at the hearing of the appeal.

I am asking that the Agency be directed to:

- (a) bring a motion to adduce the New Document as fresh evidence by December 20, 2013;
- (b) file the New Document in its entirety, not only excerpts.

Alternatively, I remain available for a case conference presided by a Justice of the Court by video-conference or telephone on any day until December 31, 2013.

Sincerely yours,

Dr. Gábor Lukács

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