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October 6, 2014

VIA FAX

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

Dear Madam or Sir:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-357-14
Affidavit filed by the Agency contrary to Rule 369(3)
Reply to the Agency's letter of October 6, 2014**

I am writing in reply to the Agency's letter of October 6, 2014 to the Court concerning the improprieties of its reply dated October 3, 2014.

The Agency has failed to address the main issues raised in my latter, namely, substantial prejudice and lack of an adequate explanation for the failure to include all affidavits in the motion record.

The issue of significant prejudice is explained in *Aird v. Country Park Village Properties (Mainland) Ltd.*, 2002 FCT 862, para. 10, as follows:

As Mr. Justice Pratte noted in *Vlahou, supra*, as a general rule, it is when a motion to be dealt with in writing is filed that the applicant's representations and affidavit evidence supporting the application must be submitted. If such were not the case, the advantages flowing from dealing with motions in writing would potentially be lost and respondents on such motions would be potentially subjected to litigation by ambush where applicants withhold sworn testimony in support of a motion only to file it after the respondent's opportunity to reply has gone by.

[Emphasis added.]

This is precisely the case here. The affidavit of Ms. Murphy substantially alters the Agency's motion, and my opportunity to respond has gone by. Because of the failure of the Agency to include the affidavit of Ms. Murphy in its motion record, I had no way of testing and contesting her evidence, and I was deprived of my right, pursuant to Rule 83, to cross-examine Ms. Murphy on her affidavit. Furthermore, due to the absence of any affiant on behalf of the Agency with knowledge about the disputed document, there was no one whom I could have cross-examined, prior to filing my responding motion record, about the disputed document in a meaningful way.

Finally, the conduct of the Agency in File No. A-279-13 is relevant to the present matter, because it demonstrates that the Agency's failure to provide supporting affidavits is a recurrent problem, which has already been addressed by this Court, albeit orally. Thus, the Agency cannot credibly deny that it had knowledge of the requirement to provide affidavit evidence in support of documents that it intends to rely upon.

Fortunately, due to the conduct of the Agency in File No. A-279-13, I requested that the hearing of that appeal be recorded by the Court, and my request was granted by the Judicial Administrator on January 23, 2014.

Therefore, I respectfully ask that the Honourable Court take judicial notice of its own records, and of what was communicated by the Court to counsel for the Agency at the beginning of the hearing before the Court on January 29, 2014.

Sincerely yours,

Dr. Gábor Lukács

Cc: Ms. Barbara Cuber, counsel for the Canadian Transportation Agency