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January 28, 2014

**URGENT**

**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 an adjournment due to the Agency's last minute attempt to introduce  
new evidence**

The hearing of the above-noted appeal is set for January 29, 2014 at 9:30 am, that is **tomorrow**, which creates a certain urgency with respect to the present request.

I am writing to ask for the Honourable Court's directions and intervention with respect to the Canadian Transportation Agency's intention to introduce evidence at the hearing of the appeal that will not be provided to me until the hearing itself.

I received an email from Ms. Liston of the Agency, dated January 27, 2014 at 5:52 pm (Atlantic Time), which appears to suggest that:

- the Agency intends to rely on the affidavit of Ms. Natalie Ann Dolan of Transport Canada at the hearing of the appeal;
- the Agency intends to use a different version of the document purporting to be the "clause-by-clause analysis" than what the Agency provided to me in November 2013 and what was included in the Agency's book of authorities;
- the Agency would provide me with these two documents at the hearing of the appeal, on January 29, 2014.

I received a second email from Ms. Liston of the Agency, dated January 27, 2014 at 6:17 pm (Atlantic Time), advising me that

- the “version of the clause-by-clause which was attached to” Ms. Liston’s email “is not the version which was attached to the Affidavit of Natalie Ann Dolan”;
- the Agency would be providing me with the complete affidavit of Ms. Dolan only at the hearing of the appeal, on Wednesday, January 29, 2014.

I received a third email from Ms. Liston of the Agency, dated January 28, 2014 at 10:42 am (Atlantic Time), less than 24 hours before the hearing of the appeal, with a 337-page PDF file attached, purporting to be yet another version of the alleged “clause-by-clause analysis” of Bill C-14. It is unclear at this point how many different versions exist.

### **I. Prejudice caused by the Agency’s conduct**

It appears that the Agency was already fully aware of the “earlier version” of the alleged “clause-by-clause analysis” last week. Nevertheless, inexplicably, the Agency did not advise me about it until now.

As of the time of writing this letter, I have not been served with a complete copy of the affidavit of Ms. Dolan, nor with a hard copy of the “earlier version” of the alleged “clause-by-clause analysis” that the Agency intends to rely on.

I am seriously prejudiced by the Agency’s conduct, because:

- (a) according to the Agency, the “earlier version” of the alleged “clause-by-clause analysis” differs from the document that the Agency provided to me in November 2013, and from what was filed by the Agency at Tab 21 of its book of authorities;
- (b) due to the volume of this new, “earlier version” and the proximity of the appeal hearing, I am unable to print and review it before the hearing of the appeal and to adequately prepare for the hearing of the appeal;
- (c) I am unable to lead evidence in response to the evidence the Agency is attempting to put forward at the last minute;
- (d) I am unable to cross-examine Ms. Dolan on her affidavit.

The purpose of Rule 343 of the *Federal Court Rules*, requiring the preparation of an Appeal Book ahead of preparation of the facts and the hearing of the appeal, is to ensure that parties are fully aware of the documentary record that will be before the court hearing the appeal.

The Agency’s conduct defeats this objective, and is an attempt to convert the hearing of the present appeal into a trial by ambush.

## **II. There is no motion to adduce evidence before the Honourable Court**

As a general rule, parties are not allowed to present evidence on appeal. The Agency appears to be attempting to introduce the affidavit of Ms. Dolan contrary to Rule 351 of the *Federal Court Rules*, and without filing and serving a motion to adduce evidence.

There is a high threshold for adducing evidence on appeal, and meeting that threshold requires both evidence and arguments about a wealth of issues, including that of due diligence. As of the time of writing this letter, I have not been served with any evidence or arguments in support of adducing evidence on the present appeal.

As a result of the Agency's conduct, I am unable to lead evidence or prepare arguments to meaningfully oppose the Agency's attempt to adduce evidence.

## **III. Remedy sought**

In the case at bar, the Agency has been ignoring the rules governing appeals, as set out in the *Federal Court Rules*, in a wilful and calculated manner, has wasted tremendous valuable judicial resources by its conduct, and has also created very substantial prejudice to my ability to argue my case. I am therefore asking that the Honourable Court protect the fairness of the hearing of the appeal by directing that:

- (a) the hearing of the appeal be adjourned;
- (b) the Agency serve me with the complete affidavit of Ms. Dolan;
- (c) the Agency serve me with the "earlier version" of the "clause-by-clause analysis" that the Agency intends to rely on at the hearing of the appeal;
- (d) the Agency shall properly file and serve a motion pursuant to Rule 351 to adduce the affidavit of Ms. Dolan, and set timelines for the motion, including for cross-examinations, allowing sufficient time to obtain transcripts;
- (e) if the motion of the Agency is granted, allow me 60 days to gather and adduce evidence in response to the affidavit of Ms. Dolan.

These remedies are sought only due to the last minute attempt of the Agency to adduce evidence. Should the Agency abandon its attempt to do so, or the Honourable Court direct that the Agency may not proceed in this way, an adjournment would not be necessary.

Sincerely yours,

Dr. Gábor Lukács

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