



By fax: 613-952-7226

December 16, 2013

The Registrar
Federal Court of Appeal
1st Floor
90 Sparks Street
Ottawa, Ontario
K1A 0H9

**Re : Gabor Lukacs v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-279-13**

I am writing in response to the Appellant's letter dated December 12, 2013, regarding the clause-by-clause analysis for Bill C-14 (the clause-by-clause)¹.

The Clause-by-clause

At paragraph 47 of its factum, the Respondent refers to an extract of the clause-by-clause as follows:

In addition to its legislative evolution, information relating to legislative history, such as a clause-by-clause analysis, has been recognized by the courts as a component of the contextual analysis of legislation so long as it is relevant, reliable, and not assigned undue weight when interpreting legislation. In this respect, the Clause-by-clause analysis prepared for the parliamentary committee considering Bill C-14 indicates the legislator contemplated the abolition of GIC approval from section 17:

Description

- ◆ The Agency may, without having to seek approval from the Governor in Council, make its own rules governing its procedures such as Agency sittings, "closed door" hearings and other internal matters.

Rationale

- ◆ This provision makes it clear that the Agency's only rule-making authority is in respect of internal matters.

¹ *Bill C-14 : clause by clause*, Ottawa : Transport Canada, 1996.

Clause-by-clause analysis pertaining to Bill C-14, An Act to continue the National Transportation Agency as the Canadian Transportation Agency, to consolidate and revise the National Transportation Act, 1987 and the Railway Act and to amend or repeal other Acts as a consequence, Bill C-14, s.17

Canada 3000 Inc., Re; Inter-Canada (1991) Inc. (Trustee of),
[2006] 1 S.C.R. 865, at para. 57.
Castillo v. Castillo, [2005] 2 S.C.R. 870, at para.23.

It is not the first time that the Respondent makes reference to this clause-by-clause before this honourable Court. The clause-by-clause has been previously referred to by the Respondent before this Court in another case, as part of Docket A-355-07².

The Appellant's Concerns

Following receipt of the factum, the Appellant requested that the Respondent provide him with a copy of the clause-by-clause. As a result, the Respondent provided the Appellant with a courtesy copy of a duplicate of the clause-by-clause it had in its possession.

The Appellant challenges the authenticity and the admissibility of the clause-by-clause, as outlined in his letter dated December 12, 2013.

The Respondent took seriously the Appellant's concerns and has taken certain steps to address them. The Respondent enquired to Transport Canada and, to date, Transport Canada has been unable to locate the file for this clause-by-clause.

However, the Respondent was able to locate an archived copy of the clause-by-clause. This copy, which is accessible to the public, is referred on Library and Archives Canada's Website³ (print out attached to the affidavit of Barbara Cuber referred to below) as follows:

NAME(S):*Canada. Transport Canada
Canada. Parliament. House of Commons. Standing
Committee on Transport
TITLE(S): Bill C-14 : clause by clause [analysis briefing book] =
Projet de loi C-14 : analyse article par article :
[cahier de breffage]
PUBLISHER: [Ottawa : Transport Canada = Transports Canada], 1996.
DESCRIPTION: 1 v. (various pagings) ; 30 cm.

NOTES: Parallel title: Projet de loi C-14 : analyse article
par article : [cahier de breffage]
Spine title: Bill C-14, Canada Transportation Act
(35-2, 1996)
Prepared for the Standing Committee on Transport of the House of
Commons.

² *Canadian National Railway Co. v. Canada (Transportation Agency)*, 2008 FCA 199, [2009] 1 FCR 287

³ <http://amicus.collectionscanada.gc.ca/aaweb->

[bin/aamain/itemdisp?sessionKey=999999999_142&l=0&d=2&v=0&lvl=1&itm=41224628](http://amicus.collectionscanada.gc.ca/aaweb-bin/aamain/itemdisp?sessionKey=999999999_142&l=0&d=2&v=0&lvl=1&itm=41224628)

"This clause by clause analysis introduces each Part of the Bill with a general summary and background for that part. It then comments on each section of the Bill"

An affidavit from Barbara Cuber, explaining the steps she undertook to obtain a copy of the clause by clause directly from the Library of Parliament, is also attached.

In light of the above, the Respondent has exercised due diligence in confirming the existence and the public nature of the clause-by-clause.

Rule 343 of the Federal Courts Rules – Appeal Book

Sub-rules 343(1) and (2) of the *Federal Court Rules* (the Rules) provide as follows:

343. (1) Within 30 days after the filing of a notice of appeal, the parties shall agree in writing as to the documents, exhibits and transcripts to be included in the appeal book and shall file that agreement.

(2) The parties shall include in an appeal book only such documents, exhibits and transcripts as are required to dispose of the issues on appeal.

The Appellant is appealing, pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10, (the CTA), the *Rules Amending the Canadian Transportation Agency General Rules*, SOR/2013-133 (the Quorum Rule), registered on June 13, 2013.

The Respondent is not alleging that it considered the clause-by-clause when making the Quorum Rule. Rather, the Respondent is referring to the clause-by-clause in its factum as an interpretative aide to the legislation, akin to the "*Third Report of the Special Committee on Statutory Instruments*"⁴ to which the Appellant refers at paragraphs 27 to 29 of his factum without including it in the Appeal Book.

The Respondent is of the view that because the clause-by-clause was not before the Agency when the Quorum Rule was made, the clause-by-clause does not belong in the Appeal Book. In this context, the clause-by-clause was not included there.

Rule 348 of the Federal Courts Rules – Book of Authorities

Sub-rule 348(1) of the Rules provide as follows:

348. (1) Subject to subsection (2), at least 30 days before the hearing date, the parties shall file

(a) where the appeal is brought in the Federal Court, three copies of a joint book of statutes, regulations and authorities; or

(b) where the appeal is brought in the Federal Court of Appeal, five copies of a joint book of statutes, regulations and authorities.

⁴ *Third Report of the Special Committee on Statutory Instruments*, Queen's Printer for Canada, Ottawa, 1969

The Respondent is of the view that the clause-by-clause constitutes legislative facts which may be received by judicial notice, as these legislative facts “are so notorious or generally accepted as not to be the subject of debate among reasonable persons; or capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy⁵”. As such, it intends to include in its Book of Authorities an extract of the clause-by-clause referred to at paragraph 47 of its factum, according to sub-rule 348(1) of the Rules.

Conclusion

The Agency is of the view that the extract of the clause-by-clause to which it refers at paragraph 47 of its factum should be included in its Book of Authorities as an authority.

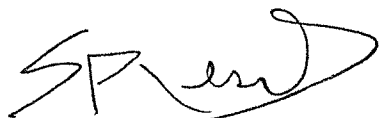
In the alternative, should this honourable Court believe it to be appropriate the undersigned remains available for a case management conference to be scheduled at the Court’s convenience in order to address the matter.

In such a case, the respondent believes that the conference should also address the issue of the “*Third Report of the Special Committee on Statutory Instruments*” to which the Appellant refers at paragraphs 27 to 29 of his factum, which is also not included in the Appeal Book.

The Respondent reserves its right to make arguments at the hearing with respect to whether the clause- by-clause is properly included in the book of authorities or to make a motion to present the clause-by-clause as fresh evidence, if necessary.

I trust you will find this satisfactory.

Yours truly,



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⁵ *Newfoundland (Treasury Board) v. N.A.P.E.*, [2004] 3 SCR 381, paras 56 and 57