



By fax: 613-952-7226

December 18, 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 new arguments raised in the Appellant's letter dated December 16, 2013, regarding the clause-by-clause analysis for Bill C-14 (the clause-by-clause) ¹.

The Clause-by-clause

As indicated on Library and Archives Canada's Website, the clause-by-clause was authored by Transport Canada in 1996².

As per usual practise, a clause-by-clause is prepared by bureaucrats in the department proposing the legislation, in this case Transport Canada, to advise parliamentary committees of the legislation's purpose and the rationale behind the legislation or amendment being proposed.

The Respondent is of the view that, as reflected on Library and Archives Canada's Website³, the clause-by-clause was prepared for the Standing Committee on Transport in relation to Bill C-14.

Considering that the prorogation of Parliament resulted in Bill C-101 dying on the Order Paper and being reintroduced in the new session of Parliament as Bill C-14, it is logical to infer that, as a result of the parliamentary process where the clause-by-clause drafted in the context of Bill C-101 went before the Committee, a Committee report was produced, which resulted in changes being made to the Bill.

In these circumstances, those changes likely resulted in the clause-by-clause analysis for Bill C-101 being updated to reflect those changes and renamed when the proposed legislation was reintroduced

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

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

³ Idem

as Bill C-14. As such, the substance of the clause-by-clause for Bill C-101 forms part of the clause-by-clause, along with changes made by the Committee. This would explain why, as the Appellant points out, the clause-by-clause indicates certain amendments that were made by the Committee, after carrying out an exhaustive review. The Respondent notes that no such change is mentioned in the extract of the clause-by-clause to which it refers at paragraph 47 of its factum indicating that the same provision was unchanged from Bill C-101 to Bill C-14.

The Respondent 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. However, the fact that the clause-by-clause is archived at the Library of Parliament is indicative that the clause-by-clause was filed before Parliament. The clause-by-clause is also reflective of the fact that in drafting Bill C-14 and preparing the clause-by-clause, the government took into consideration previous work of the Committee.

The Affidavit

An affidavit from Ms. Barbara Cuber was attached to the Respondent's letter dated December 16, 2014.

In his December 16, 2013, letter, the Appellant makes mention of that affidavit and refers to Rule 82 of the *Federal Courts Rules* (the Rules).

While Ms. Cuber is employed as Counsel for the Respondent, she is not appearing before this honourable Court in the context of this appeal. Ms. Cuber's affidavit was not prepared in support of arguments presented on a motion but rather to explain the steps Ms. Cuber undertook, as an employee of the Respondent, to answer the Appellant's request for information. The Respondent notes that the Appellant recognizes in his letter that "[t]he issue is not whether the Agency acted in good faith in photocopying" the clause-by-clause. Ms. Cuber's affidavit describes the process she followed in order to obtain a photocopy of a document, which is non-contentious by nature, and refers to information in most part readily available in the public domain. An affidavit was filed with the Respondent's letter of December 16, 2013 because the Appellant chose to proceed by way of a letter to the Registrar with respect to the clause-by-clause.

As such, Rule 82 of the Rules has not been triggered.

Conclusion

The extract of the clause-by-clause to which the Respondent refers at paragraph 47 of its factum should be included in its Book of Authorities as an authority, and the point raised by the Appellant is a point which can be raised by argument at the hearing⁴.

As stated by the Respondent in its factum, 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 legislation⁵. As such, this Honourable Court will give the clause-by-clause the weight it

⁴ *Eli Lilly Canada Inc. v. Novopharm Inc.*, 2010 FCA 130, para. 10.

⁵ *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.

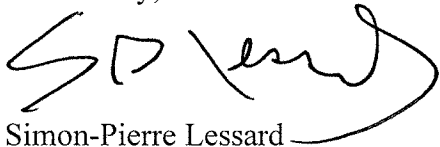
deserves, in light of the content of the Appeal Record, when rendering its decision on the merits of the case.

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. The undersigned is not available on December 23rd and 24th, 2013.

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,

A handwritten signature in black ink, appearing to read 'SP Lessard', written over a horizontal line.

Simon-Pierre Lessard

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