Federal Court of Appeal | Cour d'appel fédérale

**Date: 20140319**

**Docket: A-279-13**

**Citation: 2014 FCA 76**

**CORAM:** **DAWSON J.A.**
**WEBB J.A.**
**BLANCHARD J.A. (*ex officio*)**

**BETWEEN:**

**DR. GÁBOR LUKÁCS**

**Appellant**

**and**

**CANADIAN TRANSPORTATION AGENCY**

**Respondent**

Heard at Halifax, Nova Scotia, on January 29, 2014.

Judgment delivered at Ottawa, Ontario, on March 19, 2014.

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: WEBB J.A.
BLANCHARD J.A. (*ex officio*)

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## REASONS FOR JUDGMENT

**DAWSON J.A.**

Introduction

[1] This is an appeal on a question of law, brought with leave of this Court pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 (Act). The question concerns the validity of a rule amending the *Canadian Transportation Agency General Rules*, SOR/2005-35 (Rules). The amendment added a single section to the Rules: Rule 2.1 (Quorum Rule). The Quorum Rule is brief, and states 'In all proceedings before the Agency, one member constitutes a quorum".

The Quorum Rule was published in the Canada Gazette Part II as SOR/2013-133. Prior to the enactment of the Quorum Rule, two members of the Agency constituted a quorum.

[2] The evidentiary basis for the appeal is simple and undisputed: the Quorum Rule was not made with the approval of the Governor in Council.

[3] The appellant argues that the rules governing the conduct of proceedings before the Agency, including the Quorum Rule, are regulations within the meaning of subsection 36(1) of the Act. As such, the Quorum Rule could only be made with the approval of the Governor in Council. Additionally, the appellant argues that the Rules were originally approved by the Governor in Council. It follows, the appellant argues, that the Rules could not be amended without the approval of the Governor in Council.

[4] The Agency responds that the Quorum Rule is a rule respecting the number of members that are required to hear any matter or perform any of the functions of the Agency. Accordingly, the Agency could enact the Quorum Rule pursuant to its rule-making power found in section 17 of the Act.

[5] Notwithstanding the appellant's able submissions, for the reasons that follow I have concluded that the Agency's decision to enact the Quorum Rule pursuant to its rule-making power (so that the approval of the Governor in Council was not required) was reasonable.

The Applicable Legislation

[6] The Act contains a quorum provision that is expressly subjected to the Agency's rules:

| | |
|---|---|
| 16. (1) Subject to the Agency's rules, two members constitute a quorum. | 16. (1) Sous réserve des règles de l'Office, le quorum est constitué de deux membres. |

[7] The Agency's rule-making power is as follows:

| | |
|---|---|
| 17. The Agency may make rules respecting | 17. L'Office peut établir des règles concernant : |
| (*a*) the sittings of the Agency and the carrying on of its work; | *a*) ses séances et l'exécution de ses travaux; |
| (*b*) the manner of and procedures for dealing with matters and business before the Agency, including the circumstances in which hearings may be held in private; and | *b*) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos; |
| (*c*) the number of members that are required to hear any matter or perform any of the functions of the Agency under this Act or any other Act of Parliament. [Emphasis added.] | *c*) le nombre de membres qui doivent entendre les questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale. [Le souligné est de moi.] |

[8] The relevant provision of the Act dealing with regulations states:

| | |
|---|---|
| 36. (1) Every regulation made by the Agency under this Act must be made with the approval of the Governor in Council. | 36. (1) Tout règlement pris par l'Office en vertu de la présente loi est subordonné à l'agrément du gouverneur en conseil. |
| (2) The Agency shall give the Minister notice of every regulation proposed to be made by the Agency under this Act. | (2) L'Office fait parvenir au ministre un avis relativement à tout règlement qu'il entend prendre en vertu de la présente loi. |

The Standard of Review

[9] The parties disagree about the standard of review to be applied.

[10] The appellant argues that the issue of whether the Agency was authorized to enact the Quorum Rule without the approval of the Governor in Council is a true question of jurisdiction, or *vires*. As a result, he submits the applicable standard of review is correctness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 59). In oral argument, the appellant also argued that a quorum requirement is a question of law that is both of central importance to the legal system as a whole and outside the Agency's specialized area of expertise so that the validity of the Quorum Rule should be reviewed on the standard of correctness.

[11] The respondent counters that in more recent jurisprudence the Supreme Court of Canada has held that true questions of jurisdiction are narrow and exceptional, and that an administrative tribunal's interpretation of its own statute should be presumed to be reviewable on the standard of reasonableness (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at paragraphs 33 and 39).

[12] I agree that what is at issue is whether the Agency properly interpreted its rule-making power contained in its home statute. Pursuant to *Alberta Teachers'*, the presumption of reasonableness review applies. In my view, the presumption of reasonableness review has not been rebutted.

[13] As recently discussed by the Supreme Court in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, 452 N.R. 340, at paragraphs 32 and 33, legislatures do not always speak with clarity. As a result, applying the principles of statutory interpretation may not always provide a single, clear interpretation of a provision. The resolution of unclear language in an

administrative agency's home statute is usually best left to the agency, because the choice between competing reasonable interpretations will often involve policy considerations the legislature presumably wanted the agency to decide.

[14] For two reasons I reject the assertion that a quorum rule raises a general question of law of central importance to the legal system outside the expertise of the Agency.

[15] First, while conceptually quorum requirements are of importance to the fair administration of justice, it does not follow that the Agency's choice between a quorum of one or two members is a question of central importance to the legal system as a whole. In my view, it is not. The Quorum Rule does not seek to define quorum requirements for any other body than the Agency itself.

[16] Second, the Supreme Court has rejected such a narrow view of the expertise of an administrative agency or tribunal. It is now recognized that courts may not be as well-qualified as a given agency to provide an interpretation of the agency's home statute that makes sense in the broad policy context in which the agency operates (*McLean*, at paragraphs 30 and 31, citing, among other authorities, *Council of Canadians with Disabilities v. Via Rail, Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at paragraph 92 and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at paragraph 25.

[17] It follows that the Agency's interpretation of its rule-making authority is a question reviewable on the standard of reasonableness.

[18] Before leaving the issue of the standard of review I will deal with two authorities raised by the appellant in reply, which were, as a result, the subject of supplementary written submissions.

[19] The two authorities are *Council of Independent Community Pharmacy Owners v. Newfoundland and Labrador*, 2013 NLCA 32, 360 D.L.R. (4th) 286, and *Yates v. Newfoundland and Labrador (Regional Appeal Board)*, 2013 NLTD(G) 173, 344 Nfld. & P.E.I.R. 317.

[20] In my view both decisions are distinguishable. At issue in the first case was whether regulations enacted by the Lieutenant-Governor in Council were *ultra vires*. In the second case, the Court's attention was not drawn to the decisions of the Supreme Court in *Alberta Teachers'* and *McLean*. I am not persuaded either case supports the appellant's position.

The Applicable Principles of Statutory Interpretation

[21] Whether rules made under section 17 of the Act must be approved by the Governor in Council depends upon the interpretation to be given to the word "regulation" as used in subsection 36(1) of the Act.

[22] The preferred approach to statutory interpretation has been expressed in the following terms by the Supreme Court:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

See: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at paragraph 21. See also: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 at paragraph 29.

[23] The Supreme Court restated this principle in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 10:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[24] This formulation of the proper approach to statutory interpretation was repeated in *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3 at paragraph 21, and *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306 at paragraph 27.

[25] Inherent in the contextual approach to statutory interpretation is the understanding that the grammatical and ordinary sense of a provision is not determinative of its meaning. A court must consider the total context of the provision to be interpreted "no matter how plain the disposition may seem upon initial reading" (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 at paragraph 48). From the text and this wider context the

interpreting court aims to ascertain legislative intent, "[t]he most significant element of this analysis" (*R. v. Monney*, [1999] 1 S.C.R. 652 at paragraph 26).

Application of the Principles of Statutory Interpretation

[26] I therefore turn to the required textual, contextual and purposive analysis required to answer this question.

(i) Textual Analysis

[27] The appellant argues that the definitions of "regulation" found in the *Interpretation Act*, R.S.C. 1985, c. I-21 and the *Statutory Instruments Act*, R.S.C. 1985, c. S-22 decide the meaning of "rules" under the Act. The appellant's argument relies on paragraph 15(2)(*b*) of the *Interpretation Act,* which states:

| | |
|---|---|
| 15. (2) Where an enactment contains an interpretation section or provision, it shall be read and construed | 15. (2) Les dispositions définitoires ou interprétatives d'un texte : |
| […] | . . . |
| (*b*) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears. | *b*) s'appliquent, sauf indication contraire, aux autres textes portant sur un domaine identique. |

[28] Subsection 2(1) of the *Interpretation Act* provides that:

| | |
|---|---|
| 2. (1) In this Act, | 2. (1) Les définitions qui suivent s'appliquent à la présente loi. |
| "regulation" includes an order, regulation, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument | « règlement » Règlement proprement dit, décret, ordonnance, proclamation, arrêté, règle judiciaire ou autre, règlement administratif, formulaire, tarif de droits, de frais ou d'honoraires, |

| | |
|---|---|
| issued, made or established | lettres patentes, commission, mandat, résolution ou autre acte pris : |
| (*a*) in the execution of a power conferred by or under the authority of an Act, or | *a*) soit dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale; |
| (*b*) by or under the authority of the Governor in Council. [Emphasis added.] | *b*) soit par le gouverneur en conseil ou sous son autorité. [Le souligné est de moi.] |

[29] Similarly, subsection 2(1) of the *Statutory Instruments Act* provides:

| | |
|---|---|
| 2. (1) In this Act, | 2. (1) Les définitions qui suivent s'appliquent à la présente loi. |
| "regulation" means a statutory instrument | « règlement » Texte réglementaire : |
| (*a*) made in the exercise of a legislative power conferred by or under an Act of Parliament, or | *a*) soit pris dans l'exercice d'un pouvoir législatif conféré sous le régime d'une loi fédérale; |
| (*b*) for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament, | *b*) soit dont la violation est passible d'une pénalité, d'une amende ou d'une peine d'emprisonnement sous le régime d'une loi fédérale. |
| and <u>includes a rule</u>, order or regulation governing the practice or procedure in any proceedings before a judicial or quasi-judicial body established by or under an Act of Parliament, and any instrument described as a regulation in any other Act of Parliament. [Emphasis added.] | <u>Sont en outre visés par la présente définition les règlements</u>, décrets, ordonnances, arrêtés ou règles régissant la pratique ou la procédure dans les instances engagées devant un organisme judiciaire ou quasi judiciaire constitué sous le régime d'une loi fédérale, de même que tout autre texte désigné comme règlement par une autre loi fédérale. [Le souligné est de moi.] |

[30] In the alternative, even if the definitions of "regulation" do not formally apply to the Act, the appellant submits that they are declaratory of the usual and ordinary meaning of the word "regulation". It follows, the appellant argues, that the word "regulation" found in subsection 36(1)

of the Act includes “rules” made under section 17, so that the Agency was required to obtain the Governor in Council’s approval of the Quorum Rule.

[31] There are, in my view, a number of difficulties with these submissions.

[32] First, the definition of “regulation” in subsection 2(1) of the *Interpretation Act* is preceded by the phrase “In this Act”. This is to be contrasted with subsection 35(1) of the *Interpretation Act* which contains definitions that are to be applied “[i]n every enactment”. As the word “regulation” is not found in subsection 35(1), the logical inference is that the definition found in subsection 2(1) is not to be applied to other enactments.

[33] Similarly, the word “regulation” is defined in the *Statutory Instruments Act* only for the purpose of that Act.

[34] Second, paragraph 15(2)(*b*) of the *Interpretation Act* is subject to the caveat “unless a contrary intention” is evidenced in the enactment under consideration. For reasons developed in the contextual analysis, I am of the view that the Act does demonstrate such a contrary intention.

[35] Third, subsection 3(3) of the *Interpretation Act* states that “[n]othing in this Act excludes the application to an enactment of a rule of construction applicable to that enactment and not inconsistent with this Act.” This further limits the application of paragraph 15(2)(*b*) of the *Interpretation Act*.

[36] Notwithstanding these difficulties, I agree that there is some potential ambiguity in the plain meaning of the word “regulation” in that in some contexts it can include a “rule”. Where the word “regulation” can support more than one ordinary meaning, the meaning of the word plays a lesser role in the interpretive process. I therefore turn to the contextual analysis to read the provisions of the Act as a harmonious whole.

(ii) Contextual Analysis

[37] An electronic search of the Act discloses that the word “rule” is used in the order of 11 different provisions, while “regulation” is found in over 30 provisions. In no case are the words used interchangeably. For example, at subsection 4(1) of the Act, “orders and regulations” made under the Act relating to transportation matters take precedence over any “rule, order or regulation” made under any other Act of Parliament. Similarly, under section 25 of the Act, the Agency is granted all powers vested in superior courts to, among other things, enforce “orders and regulations” made under the Act. The absence of reference to “rules” in both provisions suggests rules hold a subsidiary position to orders or regulations. This interpretation is consistent with the view that rules are created by the Agency on its own initiative, while orders come at the end of an adjudicative process and regulations must be approved by the Governor in Council.

[38] Other provisions relevant to the contextual analysis are sections 34 and 36 of the Act. Subsection 34(2) requires the Agency to give to the Minister notice of every rule proposed under subsection 34(1) (which deals with the fixing of license and permit fees). Subsection 36(2) similarly requires the Agency to give the Minister notice of every regulation proposed to be made under the Act. If rules are a subset of regulations, subsection 34(2) would be redundant, because the Minister

must be notified of all proposed regulations. The interpretation of "rules" as a subset of "regulation" would violate the presumption against tautology, where Parliament is presumed to avoid speaking in vain *(Quebec (Attorney General) v. Carrières Ste. Thérèse Ltée*, [1985] 1 S.C.R. 831, at page 838.

[39] Moreover, whenever "rule" appears in the Act it is in the context of internal procedural or non-adjudicative administrative matters. See:

- subsection 16(1): dealing with the quorum requirement;
- subsection 17(*a*): dealing with sittings of the Agency and the carrying on of its work;
- subsection 17(*b*): concerning procedures and business before the Agency, including the circumstances in which hearings may be held in private;
- subsection 17(*c*) dealing with a number of members required to hear any matter or perform any of the functions of the Agency;
- subsection 25.1(4): dealing with the Agency's right to make rules specifying a scale under which costs are taxed;
- subsection 34(1): dealing with fixing fees for, among other things, applications, licenses and permits;
- section 109: dealing with the right of judges of the Federal Court to, with the approval of the Governor in Council, make general rules regarding the practice and procedure of the Court in relation to insolvent railways;
- subsection 163(1): providing that in the absence of agreement to the contrary, the Agency's rules of procedure apply to arbitrations; and
- subsection 169.36(1): dealing with the right of the Agency to make rules of procedure for an arbitration.

[40] In contrast, the Act's use of the word "regulations" generally refers to more than merely internal, procedural matters. For example:

- subsection 86(1): the Agency can make regulations relating to air services;
- section 86.1: the Agency shall make regulations respecting advertising of prices for air services within or originating in Canada;
- subsection 92(3): the Agency can make regulations concerning the adequacy of liability insurance for a railway;
- subsection 117(2): the Agency may make regulations with respect to information to be contained in a railway tariff;
- subsection 128(1): the Agency can make regulations relating to the interswitching of rail traffic; and
- section 170: the Agency can make regulations for the purpose of eliminating undue obstacles in the transportation network to the mobility of persons with disabilities.

[41] The dichotomy between internal/procedural matters on one hand and external/substantive on the other is reflected in section 54 of the Act, which provides that the appointment of receivers or managers does not relieve them from complying with the Act and with the "orders, regulations, and directions made or issued under this Act". The absence of "rules" from this listing is consistent with the interpretation that, in the context of the Act, rules only apply to procedural matters and not the substantive operations that a receiver or manager would be charged with. This interpretation also accords with the presumption of consistent expression, since it is generally inferred that "[w]hen an Act uses different words in relation to the same subject such a choice by Parliament must be

considered intentional and indicative of a change in meaning or a different meaning" (*Peach Hill Management Ltd. v. Canada*, [2000] F.C.J. No. 894, 257 N.R. 193, at paragraph 12 (F.C.A.).

[42] Another relevant provision is section 109, which requires Federal Court judges to seek approval from the Governor in Council when establishing rules of procedure for matters relating to insolvent railways. Two possible conclusions may be taken from this provision. First, it could imply that the Agency's rules are also subject to Governor in Council approval. Second, it could imply that since Federal Court judges are explicitly required to seek such approval, the absence of that same requirement under section 17 is indicative of Parliament's intent that the Agency is not required to seek such approval.

[43] The latter interpretation is, in my view, the better view. It is in accordance with the maxim of statutory interpretation *expressio unius exclusio alterius*, which in essence states that consistent drafting requires that some legislative silences should be seen as deliberate. While this maxim should be approached with caution, the Supreme Court has relied on similar reasoning to find Parliament's inclusion of express limitations in some sections of an act as evidence Parliament did not intend those limitations to be included in other provisions where the exceptions are not explicitly stated (*Ulybel Enterprises* at paragraph 42).

[44] In the present case, since the Act specifically requires Federal Court judges to receive approval from the Governor in Council when establishing rules of procedure, the application of the *exclusio unius* maxim is consistent with the interpretation that the Agency's rules are not subject to this requirement.

[45] There is a further, final contextual aid, found in the legislative evolution of the Act. In *Ulybel Enterprises* at paragraph 33, the Supreme Court noted that prior enactments may throw light on Parliament's intent when amending or adding to a statute.

[46] The predecessor to the Agency, the National Transportation Agency (NTA), was governed by the *National Transportation Act*, *1987*, c. 28 (3rd Supp.) (former Act).

[47] Pursuant to subsection 22(1) of the former Act, the NTA had the power to make rules with the approval of the Governor in Council:

| | |
|---|---|
| 22. (1) The Agency may, with the approval of the Governor in Council, make rules respecting | 22. (1) L'Office peut, avec l'approbation du gouverneur en conseil, établir des règles concernant: |
| (*a*) the sittings of the Agency and the carrying on of its work; | *a*) ses séances et l'exécution de ses travaux; |
| (*b*) the manner of and procedures for dealing with matters and business before the Agency, including the circumstances in which in camera hearings may be held; and | *b*) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos; |
| (*c*) the number of members of the Agency that are required to hear any matter or exercise any of the functions of the Agency under this Act or any other Act of Parliament. | *c*) le nombre de membres qui doivent connaître des questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale. |
| (2) Subject to the rules referred to in subsection (1), two members of the Agency constitute a quorum. [Emphasis added.] | (2) Sous réserve des règles visées au paragraphe (1), le quorum est constitué de deux membres. [Le souligné est de moi.] |

[48] In 1996, the former Act was replaced with the current regime. Section 22 of the former Act was replaced by nearly identical provisions contained in subsection 16(1) and section 17 of the current Act. There was one significant difference: the requirement to obtain Governor in Council approval for the rules was removed. In my view, this demonstrates that Parliament intended that the Agency not be required to obtain Governor in Council approval when making rules pursuant to section 17 of the Act.

[49] Before leaving the contextual analysis, for completeness, I note that at the hearing of this appeal counsel for the Agency indicated that he no longer relied on the clause-by-cause analysis of section 17 of the Act as an aid to interpretation. As such, it has formed no part of my analysis.

(iii) Purposive Analysis

[50] The Agency has a broad mandate in respect of all transportation matters under the legislative authority of Parliament. The Agency performs two key functions.

[51] First, in its role as a quasi-judicial tribunal, it resolves commercial and consumer transportation-related disputes. Its mandate was increased to include resolving accessibility issues for persons with disabilities.

[52] Second, the Agency functions as an economic regulator, making determinations and issuing licenses and permits to carriers which function within the ambit of Parliament's authority. In both roles the Agency may be called to deal with matters of significant complexity.

[53] Subsection 29(1) of the Act requires the Agency to make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received (unless the parties agree otherwise or the Governor in Council shortens the time frame by regulation).

[54] The mandate of the Agency when viewed through the lens that it must act with celerity requires an efficient decision-making process. Efficient processes are the result of a number of factors, not the least of which are rules of procedure that establish efficient procedures and that are flexible and able to react to changing circumstances.

[55] In my view, interpreting subsection 36(1) of the Act to not include rules as a subset of regulations (so as to allow the Agency to enact rules without Governor in Council approval) is consistent with the purpose of the Agency as envisioned in the Act.

(iv) Conclusion of Statutory Interpretation Analysis

[56] Having conducted the required textual, contextual and purposive analysis, I am satisfied the Agency's interpretation of the Act was reasonable. While there may be a measure of ambiguity in the text of the Act, the Act's context and purpose demonstrate that the Agency's interpretation fell within a range of acceptable outcomes.

[57] There remains to consider the appellant's final argument.

What, if anything, is the Effect of Governor in Council Approval of the Rules in 2005?

[58] As noted above, the appellant argues that because the Rules were approved by the Governor in Council, they could not be amended without Governor in Council approval.

[59] In my view, there are two answers to this argument.

[60] First, while the Regulatory Impact Analysis Statement which accompanied the Rules in 2005 stated that Governor in Council approval was required for the enactment of the Rules, such a statement does not bind this Court. Regulatory Impact Analysis Statements do not form part of the substantive enactment (*Astral Media Radio Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 16, [2011] 1 F.C.R. 347, at paragraph 23). As the Agency later reasonably concluded that Governor in Council approval was not required to enact the Quorum Rule, it follows that Governor in Council approval in 2005 was an unnecessary step that does not limit or bind the Agency now or in the future.

[61] Second, the Quorum Rule is new. It does not vary or rescind any provision in the Rules that could be said to be previously approved by the Governor in Council.

Conclusion

[62] For these reasons, I would dismiss the appeal. In the circumstances where the appeal was in the nature of public interest litigation and the issue raised by the appellant was not frivolous, I would award the appellant his disbursements in this Court.

[63] In the event the parties are unable to reach agreement on the disbursements, they shall be assessed.

"Eleanor R. Dawson"
J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
Edmond P. Blanchard J.A. (*ex officio*)"

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | A-279-13 |
| **STYLE OF CAUSE:** | DR. GÁBOR LUKÁCS v. CANADIAN TRANSPORTATION AGENCY |
| **PLACE OF HEARING:** | HALIFAX, NOVA SCOTIA |
| **DATE OF HEARING:** | JANUARY 29, 2014 |
| **REASONS FOR JUDGMENT BY:** | DAWSON J.A. |
| **CONCURRED IN BY**: | WEBB J.A.<br>BLANCHARD J.A. (*ex officio*) |
| **DATED:** | MARCH 19, 2014 |

**APPEARANCES:**

| | |
|---|---|
| Dr. Gábor Lukács | FOR THE APPELLANT<br>(on his own behalf) |
| Simon-Pierre Lessard | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|---|---|
| Counsel<br>Legal Services Branch<br>Canadian Transportation Agency | FOR THE RESPONDENT |