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February 20, 2016

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-39-16
Request for directions pursuant to Rule 318(3)**

I am writing to seek the directions of the Honourable Court, pursuant to Rule 318(3), as to the procedure for making submissions with respect to the Agency's objection under Rule 318(2).

The present application challenges the legality of the manner in which the Agency seeks to alter the statutory requirement, set out in ss. 57(1) and 61 of the *Canada Transportation Act*, to hold a license in order to operate a domestic air service in Canada.

It is common ground that for the past 20 years, the Agency has been consistently applying this statutory requirement according to the so-called *1996 Greyhound Decision*. Alas, the publicly available summary, reported as Decision No. 232-A-1996, does not contain the Agency's analysis of the statutory scheme nor how the law was applied to the facts; instead, it laconically states that:

Based primarily on the financial, operational and business relationships between Greyhound and Kelowna described in the confidential documents, the Agency determines that, if air services commence as proposed therein, Greyhound will be operating a publicly available domestic air service.

In the Notice of Application, I requested pursuant to Rule 317 that the Agency provide the Registry and me with a certified copy of the complete and unredacted version of the "detailed reasons for the Agency decision" in the *1996 Greyhound Decision*.

On February 11, 2016, the Agency objected to the request primarily on the basis of confidentiality and secondarily on the basis of lack of relevance. The Agency also stated as an alternative position that it would be pleased to provide the *1996 Greyhound Decision* to the Court under seal.

Objections under Rule 318(2) on the basis of confidentiality have been addressed by this Court in *Telus Communications Company v. CRTC*, 2009 FCA 255 (paras. 24-29) and more recently in *Slansky v. Canada (Attorney General)*, 2013 FCA 199 (paras. 276-283). Based on these precedents, it is submitted that:

- (i) the Agency's objection and request to file materials under seal should be dealt with pursuant to Rules 151 and 152;
- (ii) the legal test for confidentiality in this context is the one established in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41; and
- (iii) the Agency has the burden of proof to establish that, even after 20 years, confidentiality interests still outweigh the substantial public interest in openness with respect to the *1996 Greyhound Decision*.

Since the Agency has the burden of proof, it is submitted that the Agency should put forward its evidence in support of confidentiality first, and only then should the undersigned be required to address the merits of the objection.

Thus, in the interest of efficiency, bearing in mind that the Agency has consented to expediting the hearing of the present application, and following the model from Federal Court File No. T-582-12, I respectfully ask that the Court make the following directions pursuant to Rule 318(3):

- (a) The Agency shall, within 5 days of the direction, serve and file, in the form of a record, written submissions setting out the grounds and arguments for its objection to production pursuant to Rule 318, including any affidavit evidence that may be necessary for the Court to determine the objection.
- (b) The Applicant shall, within 5 days of service of the Agency's record, file and serve a responding record, including any affidavit evidence that may be necessary for the Court to determine the objection.
- (c) Written representations in reply may be served and filed by the Agency no later than 2 days following service of the Applicant's record.

Sincerely yours,

Dr. Gábor Lukács
Applicant

Cc: Mr. John Dodsworth, counsel for the Canadian Transportation Agency