

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

**BRIEF OF THE APPELLANT, DR. GÁBOR LUKÁCS,
ON 2 CASES INTRODUCED IN THE REPLY
(as per the directions of the Panel at the hearing)**

Dated: January 31, 2014

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BRIEF OF THE APPELLANT ON 2 CASES INTRODUCED IN THE REPLY

1. The Supreme Court of Newfoundland and Labrador (Court of Appeal) held that questions of jurisdiction related to regulations are subject to the correctness standard of review. In reaching this conclusion, the court relied on *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary*, 2004 SCC 19, and *Shoppers Drug Mart Inc. v. Ontario*, 2011 ONSC 615 (which cites *Sunshine Village Corp. v. Canada (Parks)*, 2004 FCA 166 from this Honourable Court).

***CICPO v. Newfoundland and Labrador*, 2013 NLCA 32, paras. 13 and 23**

2. The standard of review analysis of *Shoppers Drug Mart Inc. v. Ontario* was not disturbed by the Ontario Court of Appeal nor by the Supreme Court of Canada in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, cited by the Agency. Thus, it is submitted that *Dunsmuir* did not alter the standard of review for questions of jurisdiction related to the making and amending of regulations: these are precisely "true questions of jurisdiction."

3. A statutory right of appeal on questions of jurisdiction, such as s. 41 of the *Canada Transportation Act*, is a strong indication of Parliament's intent that such questions be reviewed by the courts on the standard of correctness.

***Yates v. Newfoundland and Labrador*, 2013 CanLII 82187, paras. 8-10**

4. Reviewing questions of delegated legislative powers on a standard of reasonableness would mean accepting inconsistent outcomes, thus leading to legal uncertainty, such as the Agency's actions in 2005 and 2013 demonstrate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

January 31, 2014

DR. GÁBOR LUKÁCS
Appellant