



By Fax (613) 952-7226

January 31, 2014

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

Dear Madam/Sir:

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

As directed by this Honourable Court at the hearing of the above-referenced matter, attached please find the Respondent's submissions on the following two decisions referred to by the Appellant at the hearing:

- (1) *Council of Independant Community Pharmacy Owners v. Newfoundland and Labrador*, 2013 NLCA 32; and
- (2) *Yates v. Central Newfoundland Regional Appeal Board*, 2013 CanLII 82187 (NL SCTD).

Also attached is a copy of the decision of the Supreme Court of Canada in *City of Calgary v. United Taxi Drivers' Fellowship of Southern Alberta, et al.* which is referred to in both *Council of Independant Community Pharmacy Owners v. Newfoundland and Labrador* and the Respondent's submissions.

Yours very truly,

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## Appendix – Additional Submissions from the Respondent on the Standard of Review

1. It is the respondent's view that *Pharmacy Owners* can be distinguished; while the Court in that case refers to *United Taxi* in finding that “whether a regulation is ultra vires [...] is a question of law for which the standard of review is correctness<sup>1</sup>”, the respondent submits that the decision in *United Taxi* is nuanced in that the actions of the City were subject to a correctness standard because it does not possess greater competence or expertise than the courts in delineating its jurisdiction<sup>2</sup>. The Supreme Court has already recognized the respondent's expertise in interpreting its home statute which supports the application of a reasonableness standard<sup>3</sup>. In addition, *Pharmacy Owners* and *United Taxi* can be distinguished as both concern the substantive scope of regulation-making power and the validity of provisions in a regulation vis-a-vis the regulation-making power granted to the body whereas this appeal does not call into question the substantive validity of the impugned rule or the respondent's power to make it.

2. While the Court in *Yates*<sup>4</sup> used the correctness standard, the analysis was specific to a provincial statute related to municipal council decisions; the appealed decision was made by a statutory appeal board with limited discretion. The Court in *Yates* was not seized of a question concerning the rule-making power of an administrative tribunal. *Yates* cannot be taken to establish a correctness standard for appeals of all administrative tribunal decisions on questions of law or jurisdiction. Indeed, the Supreme Court has applied a reasonableness standard to the respondent's decision on questions of law and jurisdiction in *CCD*<sup>5</sup>. The respondent respectfully submits that, in the context of an appeal pursuant to section 41 of the CTA, *Yates* can be further distinguished, in light of the presumption of reasonableness referred to in *Teachers*<sup>6</sup>.

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<sup>1</sup> *Council of Independant Community Pharmacy Owners v. Newfoundland and Labrador*, 2013 NLCA 32, para. 13

<sup>2</sup> *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, para. 5.

<sup>3</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, at paras. 99, 100, 106, 230.

<sup>4</sup> *Yates v. Central Newfoundland Regional Appeal Board*, 2013 CanLII 82187 (NL SCTD), paras. 9,10

<sup>5</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, 2007 SCC 15, paras. 99, 100

<sup>6</sup> *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, at paras. 33, 39