

May 26, 2016

VIA FAX: 1-613-952-7226

REFERENCE NO:

123736-0032

PLEASE REPLY TO:

Brian J. Meronek Q.C.

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Federal Court of Appeal
Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, ON K1A 0H9

Attention: Judicial Administrator

Dear Sir/Madam:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency and
NewLeaf Travel Company Inc. (Proposed Appeal No. 16-A-17)**

I am writing on behalf of NewLeaf Travel Company Inc. ('NewLeaf') in response to a request for direction by Dr. Gábor Lukács ('Lukács') via email sent to the Court on May 18, 2016.

NewLeaf filed a reply to Lukács' Leave Application with the Court on May 16, 2016. In that reply, NewLeaf offered 2 reasons why the requested material should not be produced by the Canadian Transportation Agency ('CTA' or 'Tribunal'); relevancy and confidentiality. The reasons stated in its reply will not be restated.

However, Lukács has prepared a proposed procedure set out in the Reasons for Decision and Order of Stratas J.A. in *Dr. Gábor Lukács v. Canadian Transportation Agency*, 2016 FCA 103.

NewLeaf submits that such an approach is not appropriate in this case for the following reasons:

- (1) The request for directions may be premature given that Leave has not been granted as of yet. The determination as to whether the requested documents are germane or not can only be determined in reference to an appeal, if granted.
- (2) The decision of Mr. Justice Stratas was rendered in connection with a judicial review application on s. 28 of the *Federal Court Act*, wherein the record of the Tribunal had to be provided, subject to any objection advanced by the Tribunal. It was our understanding that the objection of the Tribunal was on the basis only of confidentiality.
- (3) In our case, the application is not for judicial review, but a leave application brought pursuant to section 41 of the *Canada Transportation Act*. The grounds are limited to an error in law and jurisdiction. The required materials are more circumscribed.

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BRANCH OFFICE - CALGARY

- (4) It is incumbent upon the Moving Party to demonstrate the need for the documents, in assessing whether there was an error in law or jurisdiction, without NewLeaf, and/or the Tribunal for that matter, having to guess as to the reasons. It may well be deemed necessary, once NewLeaf reads the submissions of Lukács, that responding evidence will have to be adduced, especially in connection with confidentiality.

Consequently, NewLeaf submits that Lukács should bring a Motion for Production only if, and when, Leave is granted.

I would request that this response be included in the material sent to the Judge having conduct of the matter.

Yours truly,

D'ARCY & DEACON LLP

Per:

A handwritten signature in blue ink, appearing to read "B. Meronek", with a horizontal line underneath.

BRIAN J. MERONEK Q.C.

BJM/mp

cc. Dr. Gábor Lukács
Allan Matte
Ian McIvor