

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and
NEWLEAF TRAVEL COMPANY INC.**

Respondents

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: June 28, 2016

Issued by: _____

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local office: Federal Court of Appeal
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**Solicitors for the Respondent,
Newleaf Travel Company Inc.**

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from a decision made by the Canadian Transportation Agency [the Agency] dated March 29, 2016 and bearing Decision No. 100-A-2016 [Decision Under Appeal], in which the Agency determined that:

1. Indirect Air Service Providers [IASPs or resellers] of domestic air service are no longer required to hold licences under the *Canada Transportation Act*, S.C. 1996, c. 10 [the CTA], so long as they do not hold themselves out as an air carrier operating an air service; and
2. NewLeaf Travel Company Inc. [NewLeaf], being an IASP, is therefore not required to hold a licence.

THE APPELLANT ASKS that:

1. the Decision Under Appeal be set aside;
2. this Honourable Court make the order that should have been made by the Agency, declaring that:
 - (a) Indirect Air Service Providers (also known as “resellers”) of domestic air service are required to hold licences; and
 - (b) NewLeaf Travel Company Inc. is required to hold a licence;
3. the Appellant be awarded a moderate allowance for the time and effort he devoted to preparing and presenting his case, and reasonable out-of-pocket expenses incurred in relation to the appeal; and

4. this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. Paragraph 57(a) of the *Canada Transportation Act*, S.C. 1996, c. 10 [the *CTA*] prohibits operating an air service without a licence issued by the Agency under Part II of the *CTA*. Subsection 55(1) of the *CTA* defines “air service” as a service provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.
2. Through the licensing process and conditions set out in the *CTA*, Parliament imposed numerous economic and consumer protectionist conditions on operators of air service within Canada:
 - (a) Canadian ownership, prescribed liability insurance coverage, and prescribed financial fitness (s. 61);
 - (b) notice period for discontinuance or reduction of certain services (ss. 64-65);
 - (c) prohibition against unreasonable fares or rates on routes served by only one provider (s. 66); and
 - (d) regulatory oversight of the contractual relationship between the travelling public and the service provider (ss. 67, 67.1, and 67.2).
3. Section 58 of the *CTA* provides that a licence to operate an air service is not transferable.

4. An Indirect Air Service Provider [IASP or reseller] is a person who has commercial control over an air service and makes decisions on matters such as routes, scheduling, and pricing, but performs the transportation of passengers with aircraft and flight crew rented from another person.

Decision Under Appeal, para. 11

5. IASPs (resellers) differ from travel agents: IASPs enter into agreements to transport passengers by air in their own name, while travel agents act merely as agents for third parties.

Decision Under Appeal, para. 5

6. Since 1996 and up until recently, the Agency had consistently and reasonably held that a person with commercial control over a domestic air service “operates” it within the meaning of the *CTA*, and thus required them to hold a domestic licence. In doing so, the Agency had been following the so-called *1996 Greyhound Decision*.

7. NewLeaf is a federally incorporated company whose purpose is to offer scheduled domestic air service to the Canadian public as an IASP.

8. In August 2015, the Agency launched an inquiry into whether NewLeaf required a licence.

9. On December 23, 2015, the Agency announced that it would conduct a public consultation on the requirement for IASPs to hold a licence, and that the Agency was considering implementing the following “Approach under consideration”:

Indirect Air Service Providers would not normally be required to hold a licence to sell air services directly to the public, as long as they charter licenced air carriers to operate the flights. This would apply to the operation of domestic and international air services. As these providers would not be subject to the licensing requirements, contracts they enter into with the public would not be subject to tariff protection, nor would they be subject to the financial and Canadian ownership requirements.

[Emphasis added.]

10. On March 29, 2016, the Agency issued the Decision Under Appeal, in which it adopted the “Approach under consideration” and determined that:
 - (a) IASPs (resellers) are not required to hold a licence as long as they do not hold themselves out to the public as an air carrier operating an air service; and
 - (b) NewLeaf, being an IASP, is not required to hold a licence.

11. In practical terms, the Decision Under Appeal circumvents the will of the legislature, and exposes the public to significant risks from which Parliament intended to protect the public, including:
 - (a) underfunded service providers, who are unable to deliver the air services that consumers have paid for in advance, leaving passengers stranded;
 - (b) service providers with insufficient insurance, who are thus unable to meet their liabilities in the case of a disaster (as happened in the case of the Lac-Mégantic rail disaster); and

- (c) uncompensated losses in the case of overbooked, delayed, or cancelled flights.
12. The Agency erred in law and rendered an unreasonable decision by:
- (a) departing from its considered and consistent view on the requirement to hold a licence, without explaining why;
 - (b) basing the decision on the following false premises, which are inconsistent with ss. 64-66 of the *CTA* and s. 2 of the *Air Transportation Regulations*:
 - i. “air carrier” is synonymous with the operator of the aircraft;
 - ii. “in the non-scheduled international context, the air carrier, and not the charterer, is required to hold the licence”;
 - iii. “deregulation of the aviation industry” has taken place with respect to domestic air services; and
 - iv. the distinction between scheduled and non-scheduled domestic air services has been eliminated.
 - (c) interpreting the requirement to hold a licence in a manner that:
 - i. renders ss. 64, 65, and 66 of the *CTA* futile;
 - ii. ignores s. 60(1) of the *CTA*; and
 - iii. defeats the economic and consumer protectionist purposes for which the *CTA* was enacted.

13. The Agency exceeded its jurisdiction by making the Decision Under Appeal, which has the effect of relieving IASPs from the requirement of being Canadian and from holding prescribed liability insurance coverage, contrary to the explicit language of s. 80(2) of the *CTA*.

Statutes and regulations relied on

14. Sections 2, 7, 8.1, 8.2, 8.5, and 107 of the *Air Transportation Regulations*, S.O.R./88-58.
15. Sections 41, 53, 55, 57-67.2, 80, 86, and 174 of the *Canada Transportation Act*, S.C. 1996, c. 10.
16. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

June 28, 2016

DR. GÁBOR LUKÁCS

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Appellant