

July 22, 2016

**VIA EMAIL**

REFERENCE NO:

123736-0032

PLEASE REPLY TO:

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

**Attention: Judicial Administrator**

Dear Sir/Madam:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency et al  
Federal Court of Appeal File No.: A-242-16  
Urgent motion for an interlocutory injunction/stay pending appeal  
Abridgment of the delays under Rule 369**

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o also of the Alberta Bar

### **Direction of the Court**

In specific response to the direction of the Court dated July 22, 2016, we understand that three provinces have enacted travel industry legislation - BC, Ontario and Quebec. All three have travel compensation funds to provide refunds to passengers (from any jurisdiction) who book their travel through a registered retail travel agent in that jurisdiction. Those compensation funds are funded in various manners with the BC and Ontario model being on the basis of the travel agent making semi-annual contributions at a rate of \$0.25 on each thousand dollars of sales. We believe the Quebec fund is a bonding filing, again based on revenue on an annual basis. It should be noted that NewLeaf does not fly to Quebec. It is our understanding that only transactions conducted through registered agents are covered - and these funds have traditionally had little exposure, due to the fact that the risk is now carried by the credit card issuers - as they are liable to the consumer for processed transactions, where goods and services are not received.

### **Response to Court request for reply July 21, 2016 @ 1:00 p.m.**

The protection for the consumer lies within the merchant credit card company utilized by NewLeaf. The merchant credit card company retains 100% of the transaction fee until the passenger has completed the full travel which includes repatriation or any return flight booked by the passenger. The consumer is therefore protected until the flight has been completed. Merchant credit card companies are required to return to consumers any charges to their credit card where the services have not been

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performed. That is why 100% of the cost is held by the merchant credit card company until after the flights have been completed.

In addition, once the passengers are on the aircraft, they are protected by the standard airline tariff of Flair Airlines Inc. which tariff was approved by the Canadian Transportation Agency ("CTA"). These take care of all other concerns that a passenger might have with respect to inconvenience as to travel and baggage.

In our view, the credit card protection and tariff are greater than offered in the case of travel agents.

### **Response to Request for Expedited Hearing**

We are also responding to the Appellant's motion record along with his correspondence to this Honourable Court, dated July 21, 2016, and are writing to express our opposition to having this matter expedited for the reasons set out below.

It is our position that if this Court were to grant the relief sought by the Appellant in his motion that our client, NewLeaf Travel Company Inc. ("NewLeaf"), would suffer extreme prejudice and harm to its business interests and the customers who have purchased tickets. Furthermore, we have serious concerns regarding the sufficiency of the Appellant's undertaking for damages.

The Appellant has made serious allegations in his notice of motion and supporting affidavit which, in our view, are wrong and simply misguided.

Allowing such allegations to stand without an opportunity to cross-examine the Appellant further would unfairly prejudice our client's position in the Motion that is presently before the Court.

Given the serious nature of the relief sought by the Appellant we feel that it would be fundamentally unjust to allow this motion to be expedited without first allowing our client the opportunity to cross-examine the Appellant. As the Federal Court Rules preclude affidavits from being filed after cross-examination has occurred we will also require time to file a rebuttal affidavit(s) from our client.

The Appellant has known about NewLeaf's plans to begin its service for a considerable length of time (the public notice was sent on June 23, 2016) but he is just now bringing an application. As well, the Appellant is on vacation in Hungary, returning August 23, 2016 and unable to deal with the matter of the Notice of Motion to strike out the Judicial Review application brought by the CTA until the end of August, and yet is able from Europe to request the Court to expedite the motion.

While we are alive to the issue of NewLeaf's pending launch on July 25, 2016, it should be emphasized that NewLeaf's operation has been vetted by the federal regulatory body, the CTA. The CTA had the opportunity to review NewLeaf's

business plan and granted them express approval to operate under said business plan. Respectfully, if the CTA does not view NewLeaf as a risk to the Canadian public, then it is unlikely that the risk to the Canadian public is sufficient to justify this matter being expedited.

More importantly, we believe the customer is fully protected as stated above. That protection will be more fully articulated in our responding affidavit material.

We would respectfully ask the Court set a timeline for filing our responding affidavit(s) and conducting cross-examinations on affidavits. The Appellant should make himself available in Canada for the cross-examination, at his own expense, if it is to be conducted before his scheduled return to Canada; otherwise it should wait until August 23 when he plans to return. Once the evidence has been finalized we would consent to filing our memorandum of fact and law in a timely fashion to be determined by the Court.

Yours truly,

**D'ARCY & DEACON LLP**

Per:



**BRIAN J. MERONEK Q.C.**

BJM/mp

cc. Dr. Gábor Lukács  
Allan Matte  
Ian McIvor  
Orvel Currie  
Clients