

Court File No. A-242-16

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

Dr. GÁBOR LUKÁCS

Appellant

and

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

Respondents

AFFIDAVIT OF WILLIAM F. CLARK

I, WILLIAM F. CLARK, Lawyer, of the City of Toronto, in the Province of Ontario, affirm that:

1. I am the principal of Clark and Company, a law firm whose practice is restricted to providing advice to the aviation and travel industries, and as such have knowledge of the fact to which I hereinafter depose, except where they are stated to be based on information and belief, in which case I believe them to be true.
2. I have acted as regulatory counsel for both NewLeaf Travel Company Inc. ("NewLeaf") and Flair Airlines Ltd. ("Flair") since the start of 2016 on matters relating to the regulatory and contractual matters for NewLeaf and Flair to provide the ultra low cost service to the public.
3. Attached and marked as Exhibit "A" is a copy of my Curriculum Vitae.
4. Three provinces have enacted travel industry legislation being British Columbia, Ontario & Quebec. All three provinces have compensation funds to protect transactions for the purchase of travel through registered travel agents in their respective province.

5. The funds in BC and Ontario are financed by travel agents paying into the fund based on sales volume. For example, in Ontario, the assessment is \$0.25 per \$1000 of sales.
6. NewLeaf is selling its product directly to consumers and is processing all transaction by way of credit cards. NewLeaf has not made its product available for sales through travel agents. Airline sales through travel agents have decreased drastically with the advent of the internet, and is now below 50% of airline bookings, and decreasing rapidly.
7. There are very few claims against the respective travel industry funds due to the protection afforded to consumers through their credit cards. Provincial consumer protection legislation has passed the risk off to the credit card issuer industry, by imposing liability on the issuing financial entity for any transactions processed, where the consumer does not receive the purchased goods or services.
8. It is the practice of the administrator of these travel industry funds to require any claimants against their fund to first make a claim against their personal credit card issuer, before the respective funds will process a claim, which has resulted in very few claims now being made against the respective compensation funds. The majority of claims are in regard to cash transactions (which NewLeaf will not process) and for fraudulent activities of the travel agent.
9. It has been the policy of the Canadian Transportation Agency ("CTA") to force air carriers to repatriate passengers at destination should the tour wholesaler, or purchaser of the aircraft capacity not complete its commercial arrangements with the air carrier. By repatriation is meant the return of a passenger from his/her destination to the point of origin. The CTA has in the past threatened to issue a show cause against the licenses of air carriers in order to force them to repatriate consumers at destination, on the principle that the air carrier has been paid for the return flight of that passenger, and the air carrier has a contractual obligation to complete the rotation. This enforcement has always resulted in surviving air carriers to complete the repatriation obligation.

10. The contractual arrangement between NewLeaf and Flair for the repatriation of passengers at destination upon a financial failure by New Leaf, places the obligation on Flair.

11. I make this affidavit in good faith and in response to the notice of motion for an injunction/stay of the CTA decision.

Sworn before me at the Township of Muskoka in the Province of Ontario on 23 July 2016
Waterloo

Deirdre Anne MacLeod

Commissioner for Taking Affidavits
(or as the case may be)

Deirdre Anne MacLeod
LSUC 51309D

[Handwritten Signature]

(Signature of Deponent)

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One of the few Canadian lawyers devoting their total time to the commercial and regulatory legal requirements of aviation and travel companies. Bill's practice is primarily a corporate and regulatory law practice with an emphasis on those business entities operating in those industries in Canada

Bill is consulted by many foreign air carriers and their countries regarding bilateral negotiations with Canada. Numerous airlines have utilized his legal services from commencement of operations to Canada by either charter services or offline services, through the bilateral negotiations with the Government of Canada to allow

scheduled services

Bill also provides regulatory advice to domestic airlines as well as companies in associated aviation industries such as ground handlers, parts suppliers, engine overhaulers, flight training schools, helicopter operators and fixed-based operators. Commercial and transactional advice is also provided to aircraft lessors and lessees, as well as third party financial institutions in regard to leasing, financing and the interchange of aircraft

A significant portion of Bill's practice is dedicated to the executive aircraft segment of the aviation industry. He has served as a Director of the Canadian Business Aviation Association (CBAA) for over a decade and is presently a member of several National Business Aviation Association (NBAA) committees. Bill has been the designated legal counsel to the Canadian Association of Tour Operators (CATO) since its inception in 1984

Renowned for his expertise in the field, Bill is often asked to participate at and deliver specialized papers at aviation conferences in Canada and the United States. Past topics have focused on the Canadian aviation industry regulatory framework, aircraft and components security in Canada and travel industry regulatory matters

Bill was called to the Ontario Bar in 1971 after graduating from the University of Western Ontario (Honors Business Administration, 1964) which he attended on a full scholarship and the University of Toronto's Faculty of Law (1969)

Previous to creating Clark & Company in 1999, Bill conducted his practice at Nobbs, Woods & Clark which was a successor firm to Hamilton Torrance, which originated in 1949, and which commenced the dedicated aviation practice in the mid 1950s

PARTICIPATION IN AVIATION INDUSTRY RELATED GROUPS & ASSOCIATIONS

- Canadian Business Aviation Association (CBAA): Director, 1999-2010
Canadian Association of Tour Operators (CATO): Legal Counsel, 1984-Present
National Business Aviation Association (NBAA): Regulatory Issues Advisory Group, Member 2007 - Present
American Bar Association, Forum on Air & Space Law Member of Governing Council Canadian Liaison 2008 - Present
National Business Aviation Association (NBAA): Tax & Risk Management Committee Member, 2002-2007

NEWS ARCHIVE

- June 2015 (1)
April 2015 (1)
October 2014 (1)
October 2013 (1)
August 2012 (2)
June 2012 (2)

This is Exhibit "A" referred to in the

affidavit of William F. Clark

sworn before me this

23rd day of July 2016

Deirdre Anne MacLeod
LSUC 51309D

A Notary Public in and for the Province of Ontario

Aircraft Owners & Pilots Association (AOPA): Legal Counsel (Canada), 1996-2012

Air Transport Association of Canada (ATAC): Member, Legal Affairs Committee, 1973-Present

Seneca College of Applied Arts & Technology: Aviation & Flight Technology Program, Chair, Industry Advisory Committee, 1982-2005

Canadian Owners & Pilots Association (COPA): Director, 1976-1983

Canadian Flight Magazine: Columnist, "The Law and You", 1975-1989

Canadian Bar Association: Chair, Air Law Section, 1976/1977 and 1981/1982

American Bar Association: Sections on Business Law/Aircraft Financing, Forum on Air & Space Law, Aircraft Finance and Contracts Division

Lawyer Pilots Bar Association

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