

Halifax, NS

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July 26, 2016

VIA FAX/EMAIL

Judicial Administrator
Federal Court of Appeal
Ottawa, ON K1A 0H9

Dear Madam or Sir:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-242-16
Urgent motion for an interlocutory injunction/stay pending appeal
NewLeaf's TICO registration / cross-examinations**

I am writing to address three matters relating to the present motion, including cross-examination, pursuant to the Direction of the Court (Scott, J.A.) dated July 24, 2016.

I. TICO's compensation fund does not cover NewLeaf tickets purchased online

The July 22, 2016 letter of NewLeaf and the July 23, 2016 affidavit of Mr. Young (paragraph 6) have created the impression that once NewLeaf registers with TICO, passengers "from any jurisdiction" who bought NewLeaf tickets would be covered by TICO's compensation fund. Based on this, I expressed hope that the motion for an injunction may become moot.

Unfortunately, the July 25, 2016 email from TICO (enclosed) clarifies that this is not the case:

[...] TICO's position is that any transactions (travel sales) conducted by NewLeaf Travel at the Hamilton Airport location ONLY would be captured under the Ontario Travel Industry Act, 2002. This would not include transactions made on the NewLeaf website as the company/website is domiciled outside of Ontario.

[Emphasis added.]

II. Cross-examination of Lukács by NewLeaf

Unfortunately, the parties have been unable to reach an agreement about whether my examination by NewLeaf will take place in person or by way of video-conference; however, it appears that a consensus has been reached that if the examination is to take place in Canada, then it should take place on August 24-26, in Halifax, Nova Scotia.

For the reasons below, I respectfully ask that the Honourable Court direct that cross-examination take place by way of video-conference, pursuant to Rule 88(2).

(a) Availability of professional court reporters with necessary technology

I would like to advise the court that in order to accommodate the concerns of Mr. Meronek, I found two professional court reporting services that specialize in and/or offer reporting of examinations over video-conference:

<http://indreporters.com/>

https://www.kusar.com/court_reporting

My understanding is that both reporting services rely on industry-grade teleconferencing software (instead of Skype), and are capable of addressing all grounds for Mr. Meronek's objection.

(b) Exceptional circumstances

The reason for my prolonged absence from Canada is my 86-year-old grandmother in Budapest, Hungary. In January 2014, she had a _____, and subsequently she was diagnosed with _____

I am concerned that this summer may be the last time that she and I are still able to spend time together outdoors, in a place other than a hospital.

While I cannot stay in Hungary permanently despite these concerns, I have arranged all my professional activities as a mathematician this summer to be in Europe, so that I will be a relatively short distance from her at any given time.

Based on my past experience in File Nos. A-218-14 and A-167-14, where cross-examinations were conducted over Skype, I did not expect my absence from Canada to be an issue, bearing in mind the availability of modern technology.

(c) NewLeaf is not available to examine this week

Yesterday, I spoke to Mr. Meronek, and raised with him the possibility of cancelling part of my conference participation this week for the purpose of returning to Canada for a few days this week (July 28-29). This would have taken away from my academic conference, but not from the time that I am able to spend with my grandmother. I was surprised to hear that Mr. Meronek was not available to cross-examine me this week at all.

This leaves one wondering about the reasons for Mr. Meronek's objection to cross-examining me by way of video-conference, a method that is acceptable even under the *Criminal Code*.

(d) Least expensive and fastest method

Rule 3 calls for the "just, most expeditious and least expensive determination" of every proceeding. Conducting my cross-examination by way of a video-conference would save NewLeaf the expense of flying Mr. Meronek out to Halifax, and for me the expense of returning to Halifax only for a few days.

III. Cross-examination of NewLeaf's affiants in writing

Since the contents of the affidavits of Mr. Young and Mr. Clark, filed on July 23, 2016, are unsupported by documents and is contested, I would like to cross-examine these affiants.

In order to expedite matters and avoid logistical problems such as those about my examination, I will be conducting the cross-examination in writing, pursuant to Rules 88(1), 99, and 100.

I am proposing to serve my questions by the date that NewLeaf will be cross-examining me, and I am asking that the Honourable Court abridge the delay set out in Rule 99(4) for the answers.

Sincerely yours,

Dr. Gábor Lukács
Appellant

Enclosed: Email from the Travel Industry Council of Ontario (TICO), dated July 25, 2016

Cc: Mr. Allan Matte, counsel for the Canadian Transportation Agency
(Allan.Matte@otc-cta.gc.ca)
Mr. Brian J. Meronek, counsel for NewLeaf (bmeronek@DarcyDeacon.com)
Mr. Ian McIvor, counsel for NewLeaf (imcivor@darcydeacon.com)

From TICO@tico.ca Mon Jul 25 18:04:00 2016
Date: Mon, 25 Jul 2016 16:03:51 +0000
From: TICO Information <TICO@tico.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: RE: Request for a teleconference re: NewLeaf

Hello Mr. Lukacs

Further to our telephone conversation of today, I confirm that TICO has met with a representative of NewLeaf Travel last week. As I explained, TICO's position is that any transactions (travel sales) conducted by NewLeaf Travel at the Hamilton Airport location ONLY would be captured under the Ontario Travel Industry Act, 2002. This would not include transactions made on the NewLeaf website as the company/website is domiciled outside of Ontario.

Accordingly, NewLeaf Travel does require TICO registration and has been advised of same. TICO is currently working with NewLeaf Travel to get their TICO registration in place.

Should you require any further assistance, please feel free to contact me.

Best regards,
Dorian

Dorian Werda
Vice President, Operations

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-----Original Message-----

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]
Sent: July 25, 2016 8:02 AM
To: TICO Information
Subject: Request for a teleconference re: NewLeaf

Dear Ms. Werda and Mr. Smith,

We have spoken before. I am a Canadian air passenger rights advocate. I am involved in a public interest litigation before the Federal Court of Appeal relating NewLeaf:

http://docs.airpassengerrights.ca/Federal_Court_of_Appeal/A-242-16/

Mr. Jim Young, CEO of NewLeaf, stated in his affidavit that TICO would require NewLeaf to contribute to the indemnity fund of TICO (see paragraph 6):

July 26, 2016

http://docs.airpassengerrights.ca/Federal_Court_of_Appeal/A-242-16/2016-07-24--NewLeaf--affidavit--Donald_James_Young--PAGES_WITHOUT_CONFIDENTIAL_INFO.pdf

Subsequently, NewLeaf stated to the Court that it has met with you or one of your colleagues, and that it is in the process of being registered with TICO:

http://docs.airpassengerrights.ca/Federal_Court_of_Appeal/A-242-16/2016-07-24--NewLeaf-to-DutyOfficer--re_cross_examination--TICO_registration.pdf

I would like to speak to you about the following:

- (a) whether the statements made by NewLeaf to the Court are accurate;
- (b) given the unique situation and the interest of the travelling public in being protected by a reputable scheme, such as TICO's, how long do you expect it will take for NewLeaf to become registered; and
- (c) TICO's position with respect to the sales made by NewLeaf so far, and NewLeaf continuing to sell travel services in Ontario pending its legislation.

I look forward to hearing from you.

Best wishes,
Dr. Gabor Lukacs

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Dr. Gabor Lukacs
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Facebook: <https://www.facebook.com/AirPassengerRights/>