

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160609

Docket: 16-A-17

Citation: 2016 FCA 174

**CORAM: GAUTHIER J.A.
WEBB J.A.
GLEASON J.A.**

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

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

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 9, 2016.

REASONS FOR ORDER BY:

GLEASON J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
WEBB J.A.**

Federal Court of Appeal



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REASONS FOR ORDER

GLEASON J.A.

[1] The appellant, Dr. Gábor Lukács, is seeking leave to appeal Decision 100-A-2016 of the Canadian Transportation Agency, issued on March 29, 2016 [the Decision]. In the Decision, the Agency made two determinations. First, it decided that 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.

Second, in application of the foregoing, the Agency held that the respondent, Newleaf Travel Company Inc., was such a reseller and therefore not required to hold a licence. In so deciding, the Agency modified its previous interpretation of subsection 55(1) and paragraph 57(a) of the CTA that it had applied to several other domestic resellers of air services.

[2] Dr. Lukács submits the Agency made an error of law as its changed interpretation of subsection 55(1) and paragraph 57(a) of the CTA is unreasonable. He also alleges that the Agency lacked jurisdiction to undertake the inquiry which led to the new interpretation of the licencing requirements applicable to resellers of domestic air services. The issues in the proposed appeal therefore raise questions that fall within the scope of section 41 of the CTA.

[3] Newleaf does not contest this but rather says that Dr. Lukács lacks standing to commence this appeal as he was not a party to the proceeding before the Agency. It also asserts that Dr. Lukács has failed to raise an arguable case in respect of the issues that he has raised.

[4] Contrary to what Newleaf asserts, the materials filed do raise an arguable case and Dr. Lukács does have standing to commence this appeal, either as a private or public interest applicant.

[5] Dr. Lukács participated in the consultation before the Agency undertaken with respect to the change in the interpretation of the licencing requirements applicable to domestic resellers of air service, which is sufficient to afford him standing to launch this appeal.

[6] Even if this were not the case, he would possess standing as a public interest litigant. The test for public interest standing involves consideration of three inter-related factors: first, whether there is a justiciable issue, second, whether the individual seeking standing has a genuine interest in the issue, and, third, whether the proposed proceeding is a reasonable and effective way to bring the matter before the courts: *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524 at paras. 36-37. As leave is being granted, this appeal raises a justiciable issue. It is undisputed that Dr. Lukács is an air passenger rights advocate, who has frequently brought applications to this Court in respect of Agency decisions, and therefore does have a genuine interest in the issues raised in this appeal. Finally, an appeal by someone like Dr. Lukács is an effective way for the issues raised in this appeal to be brought before the Court as Newleaf would not challenge the Decision rendered in its favour.

[7] Thus, leave should be granted to Dr. Lukács to commence this appeal.

[8] Dr. Lukács requests that this appeal be expedited and joined for hearing with an earlier judicial review application he commenced, challenging the jurisdiction of the Agency to embark upon the inquiry that led to the Decision (Federal Court of Appeal File A-39-16). The judicial review application in File A-39-16 is being conducted on an expedited basis. If the judicial review application is not rendered moot by this appeal, it makes sense that this appeal and the judicial review application be heard one immediately after the other by the same panel of this Court as there is considerable overlap between the files. It also is appropriate to expedite this

appeal due both to the fact that the judicial review application is being expedited and to the nature of the issues raised in the appeal.

[9] I would therefore order that the appeal be conducted on an expedited basis if Dr. Lukács files his Notice of Appeal within thirty days of the date of this Order. I would also order that if this matter is expedited, this appeal be heard immediately following the judicial review application in File A-39-16 if that application proceeds to hearing. The other issues raised by the parties regarding production of materials should be dealt with in a separate procedural Order issued concurrently with this Order.

[10] While Dr. Lukács seeks his costs in respect of this motion for leave, it is more appropriate that they be in the cause.

"Mary J.L. Gleason"

J.A.

"I agree
Johanne Gauthier J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

16-A-17

STYLE OF CAUSE:

GÁBOR LUKÁCS v. CANADIAN
TRANSPORTATION AGENCY
AND NEWLEAF TRAVEL
COMPANY INC.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

GLEASON J.A.

CONCURRED IN BY:

GAUTHIER J.A.
WEBB J.A.

WRITTEN REPRESENTATIONS BY:

Dr. Gábor Lukács

FOR THE APPELLANT
(ON HIS OWN BEHALF)

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