

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

– and –

CANADIAN TRANSPORTATION AGENCY

Respondent

**AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: January 25, 2016)**

I, Dr. Gábor Lukács, of the City of Halifax in the Regional Municipality of Halifax, in the Province of Nova Scotia, AFFIRM THAT:

1. I am a Canadian air passenger rights advocate. My work and public interest litigation has been recognized by the Federal Court of Appeal in a number of judgments:
 - (a) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140, at para. 1;
 - (b) *Lukács v. Canada (Transportation Agency)*, 2014 FCA 76, at para. 62; and
 - (c) *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 269, at para. 43.

2. My activities as an air passenger rights advocate also include:
 - (a) filing approximately two dozen successful regulatory complaints with the Canadian Transportation Agency (“**Agency**”), resulting in

airlines being ordered to implement policies that reflect the legal principles of the *Montreal Convention* or otherwise offer better protection to passengers;

- (b) promoting air passenger rights through the press and social media;
- (c) referring passengers mistreated by airlines to legal information and resources.

3. On September 4, 2013, the Consumers' Association of Canada recognized my achievements in the area of air passenger rights by awarding me its Order of Merit for "singlehandedly initiating Legal Action resulting in revision of Air Canada unfair practices regarding Over Booking."

4. On December 23, 2015, just one day before Christmas Eve, the Agency announced that it would conduct a public consultation on the requirement for Indirect Air Service Providers to hold a license ("**Consultation**"). The Agency's announcement stated 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.]

A copy of of the announcement and the "Details of the consultation" referenced in it are attached and marked as **Exhibit "A"**.

5. I first learned about the the Consultation on January 8, 2016 from the email of Mr. Ghislain Blanchard, Director General, Industry Regulations and Determinations at the Agency, a copy of which is attached and marked as **Exhibit “B”**.
6. On January 8, 2016, I wrote to Mr. John Toulipoulos, the contact person for the Consultation at the Agency, and requested that he provide me with information about the legal basis for the consultation and the Agency’s jurisdiction to make generic, legislative-like determinations with respect to domestic service. A copy of my email to Mr. Toulipoulos is attached and marked as **Exhibit “C”**.
7. On January 15, 2016 the Secretary of the Agency wrote to me, among other things, that:

[...] while this review is underway, the Agency will not require persons to apply for a licence as long as the service offered to the public meets all of the following conditions:

- i. The person does not operate any aircraft;
- ii. The person charters the aircraft’s entire capacity, for the purpose of resale to the public; and
- iii. The air carrier holds the appropriate Agency licence to operate the air service.

A copy of the Secretary’s email is attached and mark as **Exhibit “D”**.

8. On January 15, 2016, I wrote to the Secretary of the Agency, and requested that my questions to Mr. Toulipoulos relating to the legality of the consultation and its outcome (Exhibit “C”) be addressed. A copy of my email to the Secretary is attached and marked as **Exhibit “E”**.

9. The Agency acknowledged the receipt of my email of January 15, 2016 (Exhibit “E”), but my questions about the legality of the consultation and its outcome have not been addressed to this date.

10. On January 19, 2016, the Secretary of the Agency wrote to me, among other things, that:

[...] the Agency Chair, acting in his capacity as CEO, also instructed staff to not seek a licence application from NewLeaf and other companies like it pending the completion of this consultation and the issuance of an Agency decision on the issue, provided they met three criteria. These criteria were detailed in my email to you of Friday, January 15, 2016.

A copy of the Secretary’s email is attached and marked as **Exhibit “F”**.

11. On January 20, 2016, the Secretary of the Agency wrote to me in reference to the Agency Chair’s aforementioned instructions that:

We are unable to provide you with a copy of these instructions as they were provided verbally to Agency staff.

A copy of the Secretary’s email is attached and mark as **Exhibit “G”**.

12. On January 21, 2016, the Secretary of the Agency wrote to me in reference to the Agency Chair’s aforementioned instructions that:

I can advise that the meeting at which these instructions were given took place on October 29, 2015, but that no minutes were produced for this meeting.

A copy of the Secretary’s email is attached and mark as **Exhibit “H”**.

13. On or around January 21, 2016, the Agency released an announcement entitled “Key facts on the Agency’s review of licensing requirements for certain air travel companies,” which reads as follows:

Business models in the airline industry are rapidly evolving. To ensure that users of transportation services are protected, while still allowing innovative approaches that can increase consumer choice in the market, the Agency is currently reviewing whether companies that bulk purchase all seats on planes and then resell those seats to the public, but do not operate any aircraft, should be required to hold a licence.

In December, the Agency advised these companies that while this review was ongoing, they would not be required to seek a license, so long as they met certain conditions. This approach has been consistent since the beginning.

Once consultations are complete, the Agency will review and carefully consider the submissions received and issue a determination on which companies are required to hold licences. This will be done as quickly as possible while ensuring that all relevant information is taken into account.

[Emphasis added.]

A copy of the announcement is attached and marked as **Exhibit “I”**.

AFFIRMED before me at the City of Halifax
in the Regional Municipality of Halifax
on January 25, 2016.

Dr. Gábor Lukács

Halifax, NS

Tel:

lukacs@AirPassengerRights.ca

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature



Government
of Canada

Gouvernement
du Canada

Canada

[Canadian Transportation Agency \(/eng\)](#)

[Home](#) / [News Room](#) / Consultation on the requirement to hold a licence

Consultation on the requirement to hold a licence

The Agency is asking the aviation industry and other interested stakeholders whether persons who have commercial control over an air service, but do not operate aircraft (indirect air service providers), should be required to hold a licence.

[Details of the consultation \(/eng/consultation/consultation-requirement-hold-a-licence\)](#)

Date modified:

2015-12-23



[Canadian Transportation Agency \(/eng\)](#)

[Home](#) / [Consultations](#) / Consultation on the requirement to hold a licence

Consultation on the requirement to hold a licence

The Canadian Transportation Agency (Agency) is requesting comments from the aviation industry and other interested stakeholders on whether persons who have commercial control over an air service, but do not operate aircraft (Indirect Air Service Providers), should be required to hold a licence.

Background

The Canadian Transportation Agency (Agency) regulates the licensing of air transportation pursuant to Part II of the [Canada Transportation Act](http://laws-lois.justice.gc.ca/eng/acts/C-10.4/index.html) (<http://laws-lois.justice.gc.ca/eng/acts/C-10.4/index.html>) (Act) and the [Air Transportation Regulations](http://laws-lois.justice.gc.ca/eng/regulations/SOR-88-58/index.html) (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-88-58/index.html>).

The Act requires that persons hold the appropriate licence before they can operate a publicly available air transportation service (air service), which subjects these persons to a number of economic, consumer and industry protection safeguards, including with respect to [tariffs](https://www.otc-cta.gc.ca/eng/tariffs) (<https://www.otc-cta.gc.ca/eng/tariffs>), [financial requirements](https://www.otc-cta.gc.ca/eng/publication/financial-requirements-guide-air-licence-applicants) (<https://www.otc-cta.gc.ca/eng/publication/financial-requirements-guide-air-licence-applicants>), and [Canadian ownership](https://www.otc-cta.gc.ca/eng/canadian-ownership) (<https://www.otc-cta.gc.ca/eng/canadian-ownership>). When more than one person is involved in the delivery of the air service, it is important to determine who is operating the air service and is required, as such, to comply with the licensing requirements.

When the *National Transportation Act, 1987* (subsequently consolidated and revised by the Act) was introduced in 1987, it ushered in the deregulation of the aviation industry. At this time, the distinction between chartered and scheduled air carriers was eliminated for domestic air services. Industry subsequently developed new and innovative approaches to the delivery of air services that did not always fit into the Act's licensing parameters. One such approach is the Indirect Air Service Provider model, where persons have commercial control over an air service and make decisions on matters such as on routes, scheduling, pricing, and aircraft to be used, while charter air carriers operate flights on their behalf.

The Agency's current approach to determining which person is operating a domestic air service originated from its [1996 Greyhound Decision](https://www.otc-cta.gc.ca/eng/ruling/232-a-1996) (<https://www.otc-cta.gc.ca/eng/ruling/232-a-1996>) and requires the person with commercial control to hold the licence, irrespective of whether the

person operates any aircraft. As of December 1, 2015, 16 persons that did not operate any aircraft held licences providing them the authority to operate domestic air services.

For international air services, the Regulations require the air carrier, not the charterer, to hold a licence. Consequently, under the current approach, a person who is in commercial control of an air service and does not operate aircraft must hold the licence for domestic, but not for international air services.

All licensed air carriers are required to hold a Canadian Aviation Document (CAD) (<http://www.tc.gc.ca/eng/civilaviation/publications/tp8880-chapter1-section3-5193.htm>) issued by the Minister of Transport. When a person does not operate any aircraft, they are neither required nor entitled to obtain a CAD. The Agency has issued domestic licences to Indirect Air Service Providers on the basis that the CAD requirement is met by the charter air carrier.

The Agency, after careful review and study, is considering a change in its approach to determining who is operating an air service in situations where a person has commercial control over an air service, but does not operate aircraft. It is important to note that a review of the Act (<http://www.tc.gc.ca/eng/ctareview2014/canada-transportation-act-review.html>) is underway and may recommend changes to the legislative framework. Regulatory reforms may also be contemplated.

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.

However, the Agency would preserve its discretion to apply legislative and regulatory requirements in a purposive manner to ensure that the objectives underpinning the air licensing regime continue to be met. Accordingly, should a person who does not operate aircraft hold themselves out to the public as an air carrier and not a charterer or structure their business model to circumvent the licensing requirements, the Agency could determine that they are operating the air service. Considerations in any such determination could include the manner in which they hold themselves out to the public, whether their involvement goes beyond a typical contractual charter arrangement, and the extent to which their operations are integrated into those of the air carrier.

When an air service is marketed and sold by an air carrier that has commercial control and the flights are operated by another air carrier, pursuant to a wet lease, code share, blocked space, capacity purchase agreement or other similar agreement, the Agency will continue to require the air carrier in commercial control to hold the licence for that air service, consistent with existing regulatory requirements.

Call for comments

The Agency invites interested stakeholders to submit their comments on the Agency's proposed approach, including with respect to the following questions:

- Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position;
- What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence; and
- What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

Participants may submit **written** comments no later than the end of the business day on January 22, 2016.

All submissions made as part of this consultation process will be considered public documents and, as such, may be posted on the Agency's website.

How to Participate

Submit your comments to consultations@otc-cta.gc.ca (<mailto:consultations@otc-cta.gc.ca>).

Contact:

John Touliopoulos - Manager, Financial Evaluation Division (<http://geds20-sage20.ssc-spc.gc.ca/en/GEDS20/?pgid=015&dn=cn%3DTouliopoulos%5C%2C%20John%2C%20ou%3DRACD-DARC%2C%20ou%3DIRDB-DGRDI%2C%20ou%3DCTA-OTC%2C%20o%3DGC%2C%20c%3DCA>)

Telephone:

819-953-8960

Email:

john.touliopoulos@otc-cta.gc.ca

Latest Milestones

Title	Date
Deadline for submissions	January 22, 2016

Date modified:

2015-12-21

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

RE: URGENT: Possible unlicensed operation / violation of s. 67(1) of the CTA

Ghislain Blanchard <Ghislain.Blanchard@otc-cta.gc.ca>

Fri, Jan 8, 2016 at 5:15 PM

To: Gabor Lukacs <lukacs@airpassengerrights.ca>, secretariat <Secretariat.Secretariat@otc-cta.gc.ca>

Dear Dr. Luckas,

As promised yesterday, I am following up on your request for information regarding the NewLeaf Travel Company, and specifically in regards to your questions below and subsequent ones raised during our discussion.

We confirm that NewLeaf Travel Company Inc. (NewLeaf) does not hold any Agency licences nor does it have an application for a licence before the Agency. We also confirm that the Agency is aware of NewLeaf's recently advertised business venture, wherein Newleaf promotes itself as an air travel company that will partner with Flair Airlines, a licenced air carrier, who will operate the aircraft on the air service.

The Agency is reviewing whether persons who have commercial control over an air service, but do not operate any aircraft (Indirect Air Service Providers), such as NewLeaf, should be required to hold a licence. The Agency is now consulting with Canadians on this matter. Information on the Agency's consultation and how to participate can be found at: <https://www.otc-cta.gc.ca/eng/consultation/consultation-requirement-hold-a-licence>. Interested persons may submit written comments no later than the end of the business day on January 22, 2016.

As NewLeaf does not have a licence, they do not have a tariff pursuant to the Air Transportation Regulations. Flair Airlines is a licenced air carrier and, as such, they are required pursuant to section 67(4) of the Canada Transportation Act, to make a copy of their tariff available upon request and on payment of a fee not exceeding the cost of making a copy.

Flair Airlines holds Licence No. 050100 and No. 050114 granting the authority to operate domestic and non-scheduled international air services using small, medium, large, and all cargo aircraft.

I trust the above will address the questions that you have raised.

Sincerely,

Ghislain Blanchard
Director General
Industry Regulation and Determinations

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

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]

Sent: January-06-16 11:57 AM

To: secretariat

Subject: URGENT: Possible unlicensed operation / violation of s. 67(1) of the CTA

Dear Madam Secretary,

I am writing to you concerning NewLeaf Travel Company Inc., which announced today that it is offering domestic service between various cities in Canada.

1. I conducted a search among the Agency's decisions, but I was unable to locate any one relating to granting the company a license.

2. I visited the company's website used for selling tickets, and found that it does not display the tariff, contrary s. 67(1)(a.1) of the Canada Transportation Act.

3. I spoke to a reservation agent of New Leaf, and she not aware of the company having a tariff. Thus, the company may be in breach of s. 67(1)(a) of the Canada Transportation Act.

I am requesting that the Agency confirm whether this company has been licensed (and if so, provide me with a copy of the decision granting license), and whether the Agency is aware of the issues identified above.

Kindly please confirm the receipt of this message.

I look forward to hearing from you.

Best wishes,
Dr. Gabor Lukacs

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

From lukacs@AirPassengerRights.ca Fri Jan 8 19:03:12 2016
Date: Fri, 8 Jan 2016 19:03:06 -0400 (AST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: john.touliopoulos@otc-cta.gc.ca
Subject: Question concerning "Consultation on the requirement to hold a licence"

Dear Mr. Touliopoulos,

I am writing to seek further information about the nature of the above-noted consultation.

1. Based on what provision of the Canada Transportation Act or the Air Transportation Regulations does the Agency engage in this consultation exercise?

2/a. At the end of the consultation, will the Agency issue a decision or order?

2/b. If so, what provision(s) of the Canada Transportation Act or the Air Transportation Regulations permits the Agency to make a generic (legislative-like) determination with respect to domestic service, without a complaint or application about a specific business?

I look forward to hearing from you.

Best wishes,
Dr. Gabor Lukacs

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

From Secretariat.Secretariat@otc-cta.gc.ca Fri Jan 15 16:17:14 2016
Date: Fri, 15 Jan 2016 20:17:05 +0000
From: secretariat <Secretariat.Secretariat@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: Question concerning "Consultation on the requirement to hold a licence"

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Dr. Lukacs,

This is in response to your e-mail to Mr. Blanchard and separate e-mail to Mr. Touloupoulos, both dated January 8, 2016. Your two e-mails have been reproduced at the end of this response.

A panel has been assigned to review whether NewLeaf Travel Company Inc. (NewLeaf) is required, pursuant to section 57 of the Canada Transportation Act (CTA), to hold a licence to operate the proposed air transportation business venture between NewLeaf and Flair Airlines Inc. (Flair). The Agency is, pursuant to section 81 of the CTA, conducting an inquiry into this matter. Next steps, including whether to issue a formal decision, order, or any other action is to be taken is entirely at the discretion of the panel.

The Agency is also currently consulting with Canadians on whether persons who bulk purchase all seats on planes and then resell those seats to the public, such as NewLeaf, should be required to hold a licence. Consultations serve as a means to collect information from key and interested stakeholders. If you have views on whether persons who bulk purchase all seats on planes and then resell those seats to the public should be required to hold a licence, I encourage you to submit your comments, as part of the consultation process, by end of day January 22nd, which is the deadline.

NewLeaf, like other persons who bulk purchase all seats on planes and then resell those seats to the public, that hold an Agency licence or have a pending application, has been informed that while this review is underway, the Agency will not require persons to apply for a licence as long as the service offered to the public meets all of the following conditions:

- i. The person does not operate any aircraft;
- ii. The person charters the aircraft's entire capacity, for the purpose of resale to the public; and
- iii. The air carrier holds the appropriate Agency licence to operate the air service.

There is no enforcement action in place with NewLeaf with respect to sections 57 and 59 of the CTA. Should the Agency's review conclude that persons that market

and sell an air service to the public, but do not operate any aircraft, are required to hold a licence, they will be informed of such a decision and will be required to apply for a licence from the Agency.

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

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]

Sent: January-08-16 6:03 PM

To: John Touliopoulos

Subject: Question concerning "Consultation on the requirement to hold a licence"

Dear Mr. Touliopoulos,

I am writing to seek further information about the nature of the above-noted consultation.

1. Based on what provision of the Canada Transportation Act or the Air Transportation Regulations does the Agency engage in this consultation exercise?

2/a. At the end of the consultation, will the Agency issue a decision or order?

2/b. If so, what provision(s) of the Canada Transportation Act or the Air Transportation Regulations permits the Agency to make a generic

(legislative-like) determination with respect to domestic service, without a complaint or application about a specific business?

I look forward to hearing from you.

Best wishes,

Dr. Gabor Lukacs

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

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]

Sent: January-08-16 4:44 PM

To: Ghislain Blanchard

Cc: secretariat

Subject: RE: URGENT: Possible unlicensed operation / violation of s. 67(1) of the CTA

Dear Mr. Blanchard,

Thank you for your answer. According to the consultation website that you sent me:

The Agency's current approach [...] requires the person with commercial control to hold the licence, irrespective of whether the person operates any aircraft.

Thus, on its face, it appears that NewLeaf is required to hold a license, and its operation is contrary to ss. 57 and/or 59 of the Canada Transportation Act (the "CTA").

1. Is there any proceeding currently before the Agency to bring NewLeaf into compliance with ss. 57 and/or 59 of the CTA?

2/a. Has the Agency taken or contemplates to take any steps in terms of enforcement with respect to NewLeaf's non-compliance with ss. 57 and/or 59 of the CTA?

2/b. If not, why not?

As per our telephone call today, I would appreciate if you could confirm when you will be able to answer these questions.

I look forward to hearing from you.

Best wishes,

Dr. Gabor Lukacs

This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

From lukacs@AirPassengerRights.ca Fri Jan 15 16:34:28 2016
Date: Fri, 15 Jan 2016 16:34:22 -0400 (AST)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: secretariat <Secretariat.Secretariat@otc-cta.gc.ca>
Subject: Re: Question concerning "Consultation on the requirement to hold a licence"

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Dear Madam Secretary:

Unfortunately, your letter did not address my questions relating to the ongoing "Consultation," and focused only on the specific case of NewLeaf.

My questions with respect to the ongoing "Consultation" were and are:

1. Based on what provision of the Canada Transportation Act or the Air Transportation Regulations does the Agency engage in this consultation exercise?

2/a. At the end of the consultation, will the Agency issue a decision or order about its conclusions?

2/b. If so, what provision(s) of the Canada Transportation Act or the Air Transportation Regulations permits the Agency to make a generic (legislative-like) determination with respect to domestic service, without a complaint or application about a specific business?

I would be most grateful if you were so kind to answer these questions.

I look forward to hearing from you.

Best wishes,
Dr. Gabor Lukacs

On Fri, 15 Jan 2016, secretariat wrote:

>
> Dr. Lukacs,
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> This is in response to your e-mail to Mr. Blanchard and separate e-mail to
> Mr. Touliopoulos, both dated January 8, 2016. Your two e-mails have been
> reproduced at the end of this response.
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> A panel has been assigned to review whether NewLeaf Travel Company Inc.
> (NewLeaf) is required, pursuant to section 57 of the Canada Transportation
> Act (CTA), to hold a licence to operate the proposed air transportation
> business venture between NewLeaf and Flair Airlines Inc. (Flair). The
> Agency is, pursuant to section 81 of the CTA, conducting an inquiry into
> this matter. Next steps, including whether to issue a formal decision,

> order, or any other action is to be taken is entirely at the discretion of
> the panel.
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> public, such as NewLeaf, should be required to hold a licence. Consultations
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> stakeholders. If you have views on whether persons who bulk purchase all
> seats on planes and then resell those seats to the public should be required
> to hold a licence, I encourage you to submit your comments, as part of the
> consultation process, by end of day January 22nd, which is the deadline.
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> service offered to the public meets all of the following conditions:
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> air service.
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> There is no enforcement action in place with NewLeaf with respect to
> sections 57 and 59 of the CTA. Should the Agency's review conclude that
> persons that market and sell an air service to the public, but do not
> operate any aircraft, are required to hold a licence, they will be informed
> of such a decision and will be required to apply for a licence from the
> Agency.
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> -----Original Message-----
>
> From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]
>
> Sent: January-08-16 6:03 PM
>
> To: John Touliopoulos
>
> Subject: Question concerning "Consultation on the requirement to hold a
> licence"
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>
> Dear Mr. Touliopoulos,
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> I am writing to seek further information about the nature of the above-noted
> consultation.
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> 1. Based on what provision of the Canada Transportation Act or the Air
> Transportation Regulations does the Agency engage in this consultation
> exercise?
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> Transportation Regulations permits the Agency to make a generic
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> (legislative-like) determination with respect to domestic service, without a
> complaint or application about a specific business?
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> I look forward to hearing from you.
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> Best wishes,
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> Dr. Gabor Lukacs
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> -----Original Message-----
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> From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]
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> Sent: January-08-16 4:44 PM
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> To: Ghislain Blanchard
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> Cc: secretariat
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> Subject: RE: URGENT: Possible unlicensed operation / violation of s. 67(1)
> of the CTA
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> Dear Mr. Blanchard,
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> Thank you for your answer. According to the consultation website that you
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> commercial control to hold the licence, irrespective of whether
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> Transportation Act (the "CTA").
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> compliance with ss. 57 and/or 59 of the CTA?
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> 2/a. Has the Agency taken or contemplates to take any steps in terms of
> enforcement with respect to NewLeaf's non-compliance with ss. 57 and/or 59
> of the CTA?
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> 2/b. If not, why not?
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> As per our telephone call today, I would appreciate if you could confirm
> when you will be able to answer these questions.
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> I look forward to hearing from you.
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> Best wishes,
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> Dr. Gabor Lukacs
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This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

From Secretariat.Secretariat@otc-cta.gc.ca Tue Jan 19 17:52:08 2016
Date: Tue, 19 Jan 2016 21:51:58 +0000
From: secretariat <Secretariat.Secretariat@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: Response to your telephone inquiry of January 18, 2016

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[Some special characters may be displayed incorrectly.]

Dr. Lukacs,

Further to our telephone conversation yesterday morning and your request for a copy of the Agency's decision granting an exemption to NewLeaf Travel Company Inc. (NewLeaf) from the licensing requirements of the Canada Transportation Act, I can confirm that the Agency has not, in fact, issued an exemption or any other decision with respect to NewLeaf at this time. Rather, in the context of the emergence of this new business model and a discussion between the Panel assigned to the NewLeaf matter and Agency staff, the Panel instructed staff to conduct broad consultations with industry as expeditiously as possible to inform the Agency's consideration of this new model. At this same meeting, the Agency Chair, acting in his capacity as CEO, also instructed staff to not seek a licence application from NewLeaf and other companies like it pending the completion of this consultation and the issuance of an Agency decision on the issue, provided they met three criteria. These criteria were detailed in my email to you of Friday, January 15, 2016.

Elizabeth C. Barker

Secretary of the Canadian Transportation Agency

Office des transports du Canada | Canadian Transportation Agency

Gouvernement du Canada | Government of Canada

Ottawa, Canada K1A 0N9

Courriel | Email : secretariat@otc-cta.gc.ca

Site Web | Website : www.otc-cta.gc.ca

Téléphone | Telephone 819-997-0099

Télécopieur | Facsimile 819-953-5253

Téléimprimeur | Teletypewriter 1-800-669-5575

This is **Exhibit “G”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

From Secretariat.Secretariat@otc-cta.gc.ca Wed Jan 20 18:11:32 2016
Date: Wed, 20 Jan 2016 22:11:23 +0000
From: secretariat <Secretariat.Secretariat@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: RE: The "instructions" of the Agency Chair

[The following text is in the "iso-8859-1" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Dr. Lukacs,

We are unable to provide you with a copy of these instructions as they were provided verbally to Agency staff.

Elizabeth C. Barker

Secrétaire de l'Office des transports du Canada
Office des transports du Canada / Gouvernement du Canada
secretariat@otc-cta.gc.ca / Site Web www.otc-cta.gc.ca
Tél. : 819-997-0099 / Télécopieur 819-953-5253 / ATS : 1-800-669-5575

Secretary of the Canadian Transportation Agency
Canadian Transportation Agency / Government of Canada
secretariat@otc-cta.gc.ca / Web site www.otc-cta.gc.ca
Tel: 819-997-0099 / Facsimile 819-953-5253 / TTY: 1-800-669-5575

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

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]
Sent: January-19-16 6:28 PM
To: secretariat
Subject: The "instructions" of the Agency Chair

Dear Madam Secretary,

Thank you for your message.

Due to the absence of a formal order or decision, I am requesting that you provide me with a copy of the "instructions" of the Agency Chair, acting in his capacity as CEO, referenced in your email below.

Best wishes,
Dr. Gabor Lukacs

On Tue, 19 Jan 2016, secretariat wrote:

>
> Dr. Lukacs,
>
>
>
> Further to our telephone conversation yesterday morning and your
> request for a copy of the Agency's decision granting an exemption to
> NewLeaf Travel Company Inc. (NewLeaf) from the licensing requirements
> of the Canada Transportation Act, I can confirm that the Agency has
> not, in fact, issued an exemption or any other decision with respect to NewLeaf at
> this time.
> Rather, in the context of the emergence of this new business model

> and a discussion between the Panel assigned to the NewLeaf matter and
> Agency staff, the Panel instructed staff to conduct broad
> consultations with industry as expeditiously as possible to inform the
> Agency's consideration of this new model. At this same meeting, the
> Agency Chair, acting in his capacity as CEO, also instructed staff to
> not seek a licence application from NewLeaf and other companies like
> it pending the completion of this consultation and the issuance of an
> Agency decision on the issue, provided they met three criteria. These
> criteria were detailed in my email to you of Friday, January 15, 2016.

>
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>
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>

> Elizabeth C. Barker

>

> Secretary of the Canadian Transportation Agency

>

>

>

> Office des transports du Canada | Canadian Transportation Agency

>

> Gouvernement du Canada | Government of Canada

>

> Ottawa, Canada K1A 0N9

>

> Courriel | Email : secretariat@otc-cta.gc.ca

>

> Site Web | Website : www.otc-cta.gc.ca

>

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> Télécopieur | Teletypewriter 1-800-669-5575

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This is **Exhibit “H”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature

From Secretariat.Secretariat@otc-cta.gc.ca Thu Jan 21 17:30:45 2016
Date: Thu, 21 Jan 2016 21:30:36 +0000
From: secretariat <Secretariat.Secretariat@otc-cta.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: RE: The "verbal instructions" of the Agency Chair

[The following text is in the "iso-8859-1" character set.]
[Your display is set for the "ISO-8859-2" character set.]
[Some special characters may be displayed incorrectly.]

Dr. Lukacs,

I can advise that the meeting at which these instructions were given took place on October 29, 2015, but that no minutes were produced for this meeting.

Elizabeth C. Barker

Secrétaire de l'Office des transports du Canada
Office des transports du Canada / Gouvernement du Canada
secretariat@otc-cta.gc.ca / Site Web www.otc-cta.gc.ca
Tél. : 819-997-0099 / Télécopieur 819-953-5253 / ATS : 1-800-669-5575

Secretary of the Canadian Transportation Agency
Canadian Transportation Agency / Government of Canada
secretariat@otc-cta.gc.ca / Web site www.otc-cta.gc.ca
Tel: 819-997-0099 / Facsimile 819-953-5253 / TTY: 1-800-669-5575

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

From: Gabor Lukacs [mailto:lukacs@AirPassengerRights.ca]
Sent: January-20-16 5:30 PM
To: secretariat
Subject: The "verbal instructions" of the Agency Chair

Dear Madam Secretary,

Thank you for your message below.

Kindly please clarify on what date these verbal instructions were made, whether they were recorded in the minutes of the meeting, and if so, kindly please provide me with a copy of the relevant portion of the minutes.

Best wishes,
Dr. Gabor Lukacs

On Wed, 20 Jan 2016, secretariat wrote:

> Dr. Lukacs,
>
> We are unable to provide you with a copy of these instructions as they
> were provided verbally to Agency staff.
>
>
> Elizabeth C. Barker
>
> Secrétaire de l'Office des transports du Canada Office des transports
> du Canada / Gouvernement du Canada secretariat@otc-cta.gc.ca / Site

> Web www.otc-cta.gc.ca Tél. : 819-997-0099 / Télécopieur 819-953-5253 /
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> Secretary of the Canadian Transportation Agency Canadian
> Transportation Agency / Government of Canada secretariat@otc-cta.gc.ca
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> Tel: 819-997-0099 / Facsimile 819-953-5253 / TTY: 1-800-669-5575
>
>

> -----Original Message-----

> From: Gabor Lukacs [<mailto:lukacs@AirPassengerRights.ca>]
> Sent: January-19-16 6:28 PM
> To: secretariat
> Subject: The "instructions" of the Agency Chair
>

> Dear Madam Secretary,

> Thank you for your message.

> Due to the absence of a formal order or decision, I am requesting that
> you provide me with a copy of the "instructions" of the Agency Chair,
> acting in his capacity as CEO, referenced in your email below.

> Best wishes,
> Dr. Gabor Lukacs
>
>
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> On Tue, 19 Jan 2016, secretariat wrote:

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>> Dr. Lukacs,

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>> Further to our telephone conversation yesterday morning and your
>> request for a copy of the Agency's decision granting an exemption to
>> NewLeaf Travel Company Inc. (NewLeaf) from the licensing requirements
>> of the Canada Transportation Act, I can confirm that the Agency has
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>> companies like it pending the completion of this consultation and the
>> issuance of an Agency decision on the issue, provided they met three
>> criteria. These criteria were detailed in my email to you of Friday, January 15,
>> 2016.

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>>
>>
>> Elizabeth C. Barker
>>
>> Secretary of the Canadian Transportation Agency
>>
>>

This is **Exhibit “I”** to the Affidavit of Dr. Gábor Lukacs
affirmed before me on January 25, 2016

Signature



[Canadian Transportation Agency \(/eng\)](#)

[Home](#) / [News Room](#)

/ Key facts on the Agency's review of licensing requirements for certain air travel companies

Key facts on the Agency's review of licensing requirements for certain air travel companies

Business models in the airline industry are rapidly evolving. To ensure that users of transportation services are protected, while still allowing innovative approaches that can increase consumer choice in the market, the Agency is currently reviewing whether companies that bulk purchase all seats on planes and then resell those seats to the public, but do not operate any aircraft, should be required to hold a licence (/eng/consultation/consultation-requirement-hold-a-licence).

In December, the Agency advised these companies that while this review was ongoing, they would not be required to seek a license, so long as they met certain conditions (/eng/consultation/consultation-requirement-hold-a-licence). This approach has been consistent since the beginning.

Once consultations are complete, the Agency will review and carefully consider the submissions received and issue a determination on which companies are required to hold licences. This will be done as quickly as possible while ensuring that all relevant information is taken into account.

Date modified:

2016-01-21