

REFERENCE NO:

July 26, 2016

123736-0039

VIA FAX: 1-613-952-7226

PLEASE REPLY TO:

Federal Court of Appeal
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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
Direction of the Court dated July 24, 2016**

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Time and place for cross-examination of Gabor Lukacs

I wish to advise the Court that the parties have not been able to agree as to the time and place for the cross-examination of Gabor Lukacs. Consequently, we seek the direction of the Court.

In that regard, I wish to reassert our position as set out in our letter to the Court dated July 24, 2016 at 9:12 a.m.

Services provided by:
Brian Meronek Law Corporation

o also of the Alberta Bar

In addition, I advise as follows:

- (1) Mr. Lukacs advised me that he has another reason for preferring cross-examination be conducted by remote means; in that he has an ailing grandmother. While I do not doubt the veracity of what he is stating, the fact remains that he is not making himself available for personal reasons, including the fact that he has two conferences which he is attending in Europe. It should be emphasized that Mr. Lukacs is the one who brought both the underlying appeal and injunction forward and should bear responsibility for being available for cross-examination in the normal course. Mr. Lukacs would have known of both his family and other personal commitments prior to bringing these proceedings and as such they do not present as emergencies such that the Court should allow an inferior method of cross-examination to be permitted.

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- (2) When Mr. Lukacs wrote to the Court on July 23, 2016 at 8:56 p.m., he advised that he was available as follows via video conference (Skype)

“I am available for cross-examination in this manner on July 25-29 during normal business hours in Winnipeg (where Mr. Meronek is located), and on **August 8-19**, any time during normal business hours in Winnipeg.” [Emphasis Added]

If he is available for a video conference cross-examination on August 19 for example, clearly waiting another week to be examined in Halifax at NewLeaf's expense is more than reasonable.

- (3) More importantly, Mr. Lukacs has not identified any exceptional circumstances why the general rules for personal cross-examination should be circumvented. His personal schedule cannot be the deciding factor. Moreover, he has not demonstrated any emergency which would require cross-examination by this inferior means within the next two weeks. On the contrary,
- (a) NewLeaf is up and running and has had a very successful launch;
 - (b) NewLeaf has booked and is scheduled to carry several thousand passengers within the next few weeks;
 - (c) The affidavit evidence of Jim Young clearly demonstrates that there is no imminent cause for concern.

For example, if the concern was that an aircraft was considered unsafe, that would be an emergency situation. However, purely a “what if” or “Armageddon” hypothetical falls real short of justifying a clearly inferior and more cumbersome way of cross-examining in a slightly shorter time frame.

- (4) Lastly, as indicated in our letter to the Court on July 24, 2016 at 9:12 a.m., NewLeaf has been in discussions with TICO and NewLeaf is awaiting TICO's list of requirements and timeframe for compliance. Whether those discussions bear sufficient fruit or not, TICO, which is another regulator of the travel industry, is not expressing any immediate concerns over passenger protection.

Conclusion

For the foregoing reasons and as stated in our correspondence of July 24, 2016, we remain ready, willing and able to conduct the cross-examination in Halifax at any point

in time from August 9 - 31 inclusive. That time frame gives the parties enough time logistically to make the necessary arrangements for the examination for discovery. Prior to that time, we have committed to providing our Memorandum of Fact and Law on the appeal (on an expedited basis) by August 8, 2016 rather than the August 17, 2016 deadline allowed under the Rules. We have done so to demonstrate our cooperation in advancing the appeal itself.

I look forward to the Court's direction on this matter.

Yours truly,

D'ARCY & DEACON LLP

Per:

A handwritten signature in blue ink, appearing to read "B. Meronek", is written over a light blue horizontal line.

BRIAN J. MERONEK Q.C.

BJM/mp

cc. Dr. Gábor Lukács
Allan Matte