

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

Dr. GÁBOR LUKÁCS

Appellant

and

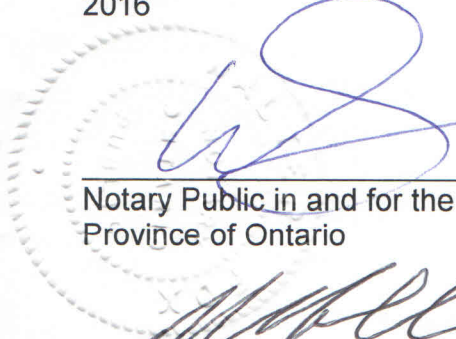
CANADIAN TRANSPORTATION AGENCY and
NEWLEAF TRAVEL COMPANY INC.

Respondents

ANSWERS TO WRITTEN EXAMINATION
AFFIDAVIT OF WILLIAM F. CLARK

I, WILLIAM F. CLARK, Lawyer, of the City of Toronto, in the Province of Ontario, AFFIRM THAT the answers set out in Exhibit A to this affidavit to the questions dated August 25, 2016 submitted by the Appellant Dr. Gábor Lukács are true, to the best of my information, knowledge and belief.

Sworn before me at the City of Toronto in the Province of Ontario on September 9th, 2016


Notary Public in and for the
Province of Ontario

WALTER FOX
L.S.U.C. 10784

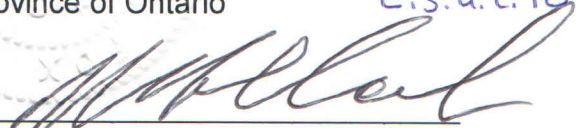

(Signature of Deponent)

EXHIBIT A

<u>Questions</u>	<u>Answers</u>
<p>1. In paragraph 6 of your affidavit, you have made certain statements about the decrease of sales through travel agents. What is the source of your information or belief?</p>	<p>The Affiant reviews numerous travel industry media publications which on a daily basis would include Open Jaw, Canadian Travel Courier, Travel Industry Today, PAX News and Travel Market Report. On a weekly basis, they would include Travel Week (CDN) and the major industry publication being Travel Weekly (US). From those sources, which constantly publish comparisons between internet bookings and bookings made with travel agents, the Affiant has made the statement regarding the significant decrease of bookings by consumers through travel agents.</p> <p>This week, many of those publications have reported a May survey by ASTA (American Society of Travel Agents) indicating that only 22% of the travel industry consumers participating in that survey had booked their travel through a retail travel agent.</p>
<p>2. In paragraph 7 of your affidavit, you are referring to “very few claims.”</p> <p>(a) What do you mean by “very few”?</p> <p>(b) Few relative to what?</p> <p>(c) What is the source of your information or belief?</p>	<p>The Affiant reviews the reports of the Compensation Committee of the Travel Industry Council of Ontario (“TICO”) after each quarterly meeting, and as well the annual report of TICO.</p> <p>The 2016 report, which is available online, underscores the substantial decline in the number of and the value of claims processed by TICO which was down to 31 claims for the fiscal year ending March 31, 2016, with a total value of \$101,139 compared to \$179,821 in the previous year, and nearly \$500,000 in the 2012 fiscal year end.</p>

	<p>A review of the current TICO report would also indicate that during the last fiscal year only one repatriation claim was paid.</p>
<p>3. In paragraph 7 of your affidavit, you are referring to provincial consumer protection legislation that imposes liability on credit card issuers for goods or services not received by the customer.</p> <p>With respect to each of the following provinces, please state the legislation and the section(s) and/or subsection(s) that you were referring to.</p> <ul style="list-style-type: none"> (a) New Brunswick; (b) Nova Scotia; (c) Ontario; (d) Manitoba; (e) Saskatchewan; (f) Alberta; and (g) British Columbia. 	<p>The Appellant is able to access the various Consumer Protection Legislation which is readily available. For example Section 99 of the <i>Consumer Protection Act</i>, SO 2002, c. 30, Sched. A or Section 52 of the <i>Business Practices and Consumer Protection Act</i>, SBC 2004, c. 2 govern the obligations of credit card issuers in respect of transactions where the promised services or goods are not delivered by the vendor. And as well, the <i>Financial Consumer Agency of Canada Act</i>, SC 2001, c. 9, which establishes the Financial Consumer Agency of Canada imposes additional obligations upon federally regulated credit card issuers.</p>
<p>4. In reference to paragraph 7 of your affidavit, are you aware of any provincial consumer protection legislation that imposes liability on credit card issuers above and beyond the amount of the transaction involved?</p> <p>If so, please identify the legislation and the section(s) and/or subsection(s).</p>	<p>See the answer to question #3 above. In addition, the Ontario travel refund is restricted to the value paid by the consumer.</p> <p>However, similarly, any other legislated or contractual warranties only typically cover parts and labour for the repair of the product, and do not cover consequential damages or incidental costs suffered by the consumer in awaiting the repair of the warranted product. For example, a family travelling on vacation in their brand new car, that is the subject of such a warranty, would not be</p>

	reimbursed should their car malfunction, and this results in the family either having to extend their vacation or return by other modes.
<p>5. In reference to paragraph 7 of your affidavit, are you aware of any provincial consumer protection legislation that requires credit card issuers to compensate customers for all of their out-of-pocket expenses arising from the non-delivery of goods or the non-performance of services?</p> <p>If so, please identify the legislation and the section(s) and/or subsection(s).</p>	See the answer to question #4 above.
<p>6. In the event that NewLeaf Travel Company Inc. fails to provide the services paid for, are you aware of any provincial consumer protection legislation that would require credit card issuers to pay for the full repatriation expenses of passengers, including accommodation, meals, and transportation on another airline?</p> <p>If so, please identify the legislation and the section(s) and/or subsection(s).</p>	See the answer to question #4 above.
<p>7. In practical terms, if a passenger purchased a Hamilton-Saskatoon flight from NewLeaf Travel Company Inc. for \$99.00 and then NewLeaf Travel Company Inc. fails to provide the services paid for, are you aware of any provincial consumer protection legislation that would require the credit card issuer to pay the passenger more than \$99.00?</p> <p>If so, please identify the legislation and the section(s) and/or subsection(s).</p>	The Affiant is not aware of any legislation which imposes an obligation on credit card issuers to offer additional compensation in such circumstances, whether related to travel or other products.
<p>8. Pursuant to Rules 94(1) and 100, you are requested to produce a copy of the policy of the Canadian Transportation Agency referenced in paragraph 9 of your affidavit.</p>	In over four decades of involvement with the travel industry legislation in Ontario, the Affiant's involvement as counsel to the Canadian Association of Tour Operators ("CATO") since 1983; his involvement in the creation

	<p>of the self-management entity known as TICO; and, his involvement on behalf of numerous forgone Canadian air carriers, the Affiant has been at the site along with the CATO emergency team at every financial failure of a Canadian travel wholesaler or air carrier for the last four decades.</p> <p>Despite the Affiant's reference to a "policy" of the CTA, which the Appellant appears to have taken to be a written document, perhaps the more apt description of this standard is the legal position held by the CTA. In all financial failure situations, the CTA and its predecessors have maintained the legal position that, if an air carrier survives one of these failures and had issued a contract for travel to a consumer who was at a destination at the time of failure, it was a compliance term of the air carrier's licence issued by the CTA that the carrier complete the contract of carriage and return the passenger to point of origin, whether or not the air carrier had received compensation. Numerous air carriers have abided by that policy including Flair Airlines Ltd. who in 2009, on the failure of the Ottawa-based travel wholesaler Go Travel, flew 6 trips to Mexico and the Dominican Republic and repatriated over 900 Canadian consumers.</p>
<p>9. With respect to the cases referenced in paragraph 9 of your affidavit, where you stated that the Canadian Transportation Agency "threatened to issue a show cause against the licenses of air carriers in order to force to repatriate consumers at destination":</p> <p>(a) please identify the cases (including file numbers);</p>	<p>See the answer to question #8 above. In addition, several of the failures involved repatriation of individuals on domestic operations including, but not limited to, Nationair, Worldways, Ontario World Air, JetsGo and Odyssey.</p>

<p>(b) please state the source of your information or belief;</p> <p>(c) did any of these cases involve domestic licences?</p> <p>(d) pursuant to Rules 94(1) and 100, you are requested to produce copies of correspondence in which the Canadian Transportation Agency “threatened to issue a show cause against the licenses of air carriers.”</p>	
<p>10. Are you aware of any case where the Canadian Transportation Agency “threatened to issue a show cause against the licenses of air carriers” to compel the operating carrier to repatriate passengers at its own expense, even if the operating carrier has not been fully paid?</p> <p>If so, please elaborate and identify the cases (including file numbers).</p>	<p>See the answers to question #'s 8 & 9 above.</p>
<p>11. Pursuant to Rules 94(1) and 100, you are requested to produce copies of the contract(s) and/or agreements(s) referenced in paragraph 10 of your affidavit.</p>	<p>The Affiant’s statement incorrectly utilized the verbiage referring to a “contractual arrangement” in reference to the understanding of both NewLeaf and Flair Airlines Ltd. in respect of their obligations. Each party has been advised by the Affiant of the CTA “legal position” further detailed in the answer to question #8 above. Based on that advice, Flair again accepted the repatriation obligation for NewLeaf passengers that it had accepted previously in 2009.</p>