

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

DR. GABOR LUKACS

Applicant

-and-

CANADIAN TRANSPORTATION AGENCY

Respondent

AFFIDAVIT OF CAROLE GIRARD,
SWORN FEBRUARY 24, 2016

I, Carole Girard, resident of the City of Gatineau, in the Province of Quebec, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Senior Director of the Regulatory Approvals and Compliance Directorate of the Industry Regulation and Determinations Branch of the Canadian Transportation Agency and, as such, have personal knowledge of the matters hereinafter deposed to.
2. The *Canada Transportation Act*, S.C. 1996, c. 10, (CTA) requires that persons hold the appropriate licence before they can operate an air service. A licensee is subject to certain economic, consumer and industry protection safeguards (e.g. tariffs, financial requirements,

and Canadian ownership). The Agency has issued thousands of domestic and international licences.

3. An Indirect Air Service Provider (ISP) is a person who has commercial control over an air service but does not operate aircraft. An ISP makes decisions on matters such as routes, scheduling, pricing, and aircraft to be used, while it charters aircraft from licenced air carriers.
4. In Agency Decision No. 232-A-1996 in relation to a complaint filed by WestJet Airlines Ltd. against Greyhound Lines of Canada Ltd. (Greyhound) and Kelowna Flightcraft Air Charter Ltd. (Kelowna) (the Greyhound Decision), the Agency determined that Greyhound would be operating a domestic air service and therefore required Greyhound to hold a domestic licence, despite the fact that it did not operate any aircraft. Attached hereto and marked as Exhibit "A" to my affidavit is a copy of public Agency Decision No. 232-A-1996.
5. Greyhound and Kelowna requested that the Agency review its decision based on new facts and circumstances. The Agency did not vary or rescind its decision. Attached hereto and marked as Exhibit "B" to my affidavit is a copy of public Agency Decision No. 292-A-1996.

6. However, on Petition by Greyhound and Kelowna, the Governor-in-Council varied Decision 232-A-1996, finding that Greyhound will not be the operator of a domestic air service requiring a domestic licence if specified conditions were satisfied. The Governor in Council (in P.C. 1996-849 dated June 7, 1996) rescinded Decision 292-A-1996. Attached hereto and marked as Exhibit "C" to my affidavit is a copy of Governor in Council P.C. 1996-849 dated June 7, 1996.

7. Since then, the Agency has applied its interpretation of the expression "operate an air service" from its Greyhound decision and has issued domestic air licences to ISPs. At the moment there are approximately 14 ISPs that hold a domestic licence, all of which involve small aircraft only.

8. In the spring of 2015, Agency staff became aware of a company named NewLeaf Travel Company Inc. (NewLeaf) that plans to partner with Flair Airlines Inc. (Flair) of Kelowna, BC. NewLeaf's proposed business plan involves the purchase and re-selling of tickets on large aircraft operated by Flair. Flair holds a domestic and non-scheduled international licence issued by the Agency.

9. In August 2015, the Chair of the Agency appointed a Panel pursuant to section 81 of the CTA to launch an inquiry into whether NewLeaf is operating an air service. The Panel was also tasked to review the Agency's longstanding interpretation of the expression "operate an air service". The NewLeaf inquiry constitutes the first time since its Greyhound decision

that the Agency will consider whether an ISP involving large aircraft requires an Agency licence.

10. The Agency Panel decided to hold consultations on the issue of who is operating an air service and is required, as such, to hold a licence; more particularly, 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. On December 21, 2015, a consultation document was published on the Agency's Web site. Stakeholders were given until January 22, 2016 to submit their comments. The stakeholders were informed that while the 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:

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

Attached hereto and marked as Exhibit "D" to my affidavit is a copy of December 21, 2015 email to stakeholders and the consultation document.

11. On December 21, 2015, NewLeaf was also informed of the Agency's consultation. NewLeaf was also informed that, while the review is underway, the Agency will not require persons to apply for a licence as long as the service offered to the public meets the three conditions

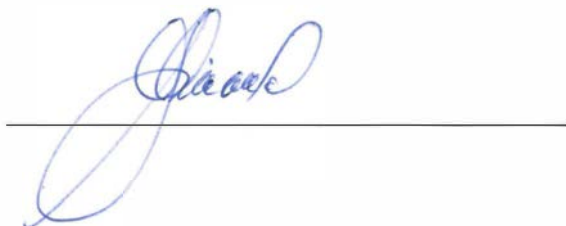
identified in paragraph 10. Attached hereto and marked as Exhibit "E" to my Affidavit is a copy of the December 21, 2015 email to NewLeaf.

12. In the consultation document, the Agency stated that it is re-considering the approach taken in Greyhound. The consultation document identified the approach under consideration to be that ISPs 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.
13. The stakeholders, including NewLeaf, were advised that 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 would be informed of such decision and be given reasonable time to apply for the required Agency licence(s).
14. In early January 2016, media articles announced the impending launch of NewLeaf's travel offerings and commencement of online bookings on their Web site. Attached hereto and marked as Exhibit "F" to my affidavit is a copy of a media article referred to above.
15. On January 18, 2016, NewLeaf advised the Agency that it was temporarily postponing sales of airline tickets pending the Agency review. Attached hereto and marked as Exhibit "G" to my affidavit is a copy of the email from NewLeaf to the Agency dated January 18, 2016 as well as a copy of the News Release by NewLeaf.

16. On January 22, 2016, the consultation period closed. Twenty-six submissions were received during the consultation process.

17. This Affidavit is made at the request of counsel to the Canadian Transportation Agency in support of the Respondent's Record to the application for judicial review in this matter and for no other or improper purpose.

DATED at the City of Gatineau, in the Province of Quebec, this 24th day of February, 2016.



SWORN BEFORE ME at the City of Gatineau
in the Province of Quebec, this 24th day of
February, 2016.



EXHIBIT "A"

Ceci est la pièce A de affidavit
This is Exhibit referred to in the Affidavit

de Carole Girard
of

assermenté devant moi ce 24th jour de February ~~199~~ 2016
sworn to before me this day of

SP/Sm
Commissionaire d'assermentation
Commissioner for Oaths





Government
of Canada Gouvernement
du Canada

Canada

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

[Home](#) / [Decisions](#) / [Air](#) / [1996](#) / Decision No. 232-A-1996

Decision No. 232-A-1996

Decision varied by P.C. 1996-849 dated June 7, 1996.

April 19, 1996

**[Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) dated April 18, 1996 -
Complaint filed by WestJet Airlines Ltd. against Greyhound Lines of
Canada Ltd. and Kelowna Flightcraft Air Charter Ltd.**

File No. M4205/K14/6052

Docket No. 960315

An erratum to this Decision was issued - In the second paragraph below "March 16, 1996" should read "March 18, 1996".

April 18, 1996

**IN THE MATTER OF a complaint filed by WestJet Airlines Ltd. against
Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd.**

File No. M4205/K14/6052

Docket No. 960315

WestJet Airlines Ltd. (hereinafter WestJet) filed a complaint with the National Transportation Agency on February 22, 1996. Copies of the complaint were provided to Greyhound Lines of Canada Ltd. (hereinafter Greyhound) and Kelowna Flightcraft Air Charter Ltd. (hereinafter Kelowna) for comments.

On March 11, 1996, Greyhound and Kelowna filed their answers to the complaint of WestJet. On March 15, 1996, WestJet filed its reply to the answers of Greyhound and Kelowna. Upon review of WestJet's March 15th reply, the Agency determined that it contained additional evidence. Accordingly, by letter dated March 16, 1996, Greyhound and Kelowna were provided an opportunity to comment on the new evidence; WestJet would then have the opportunity to respond to any comments received. Greyhound and Kelowna did not provide comments on this new evidence.

By letter dated February 26, 1996, WestJet provided additional comments in support of its complaint. This letter was received by the Agency on March 13, 1996 and copies were provided to Greyhound and Kelowna for comments. On March 18, 1996, Greyhound and Kelowna provided their answers to the letter dated February 26, 1996. On March 19, 1996, WestJet filed its reply.

In reviewing WestJet's reply dated March 19, 1996, the Agency determined that it contained additional evidence and accordingly, by letters dated March 21, 1996, the Agency advised the parties that Greyhound and Kelowna had a right to respond to the new evidence and that WestJet would then have an opportunity to respond to any new comments provided by Greyhound and Kelowna. The Agency also advised the parties that following receipt of all submissions related to the new evidence contained in WestJet's March 19, 1996 reply, the pleadings in respect of the complaint would be closed. On March 25, 1996, Greyhound and Kelowna provided their answers to the new evidence. On March 26, 1996, WestJet filed its reply to these answers.

By letter dated March 29, 1996, the Agency advised the parties that pleadings in respect of the complaint were closed. The Agency further advised the parties that it had concluded that insufficient information and documentation had been filed in order for the Agency to dispose of WestJet's complaint and that Kelowna and

Greyhound were required to file copies with the Agency of "... all agreements, arrangements and contracts that have been or are to be entered into between Kelowna and Greyhound and their affiliates concerning proposed operations, for the Agency's review in confidence.". These documents were filed and attested to by affidavit on April 3, 1996.

POSITION OF WESTJET

WestJet submits that Greyhound is intending to circumvent the *National Transportation Act, 1987*, R.S.C., 1985, c. 28 (3rd Supp.) (hereinafter the NTA (National Transportation Agency), 1987). WestJet states that the effective control of Greyhound Air lies in the hands of Greyhound who, WestJet submits, in turn is controlled by The Dial Corp. WestJet states that it is of the view that the commercial relationship between Kelowna and Greyhound is intended to circumvent the Canadian ownership requirements of the NTA (National Transportation Agency), 1987.

WestJet states that because Greyhound would not be permitted by the Agency to operate the airline equipment itself, Greyhound has contracted all flight operations to Kelowna. WestJet submits that Greyhound would be responsible for all routes, scheduling, planning, pricing, payload control, marketing activities, service standards and meeting the competitive challenges in the marketplace. WestJet further states that Kelowna would simply operate Greyhound Air's aircraft at a contract rate per available seat mile, without incurring any market risk.

WestJet adds that it was required to meet the strict criteria stipulated by the Agency to ensure that the ownership and control of the airline industry remains in the hands of Canadians, and finds that the arrangement between Greyhound and Kelowna is a "backdoor approach" which is highly offensive.

In its reply dated March 15, 1996, WestJet alleges that certain of Greyhound's actions prior to entering into an agreement with Kelowna indicate Greyhound's awareness that it would not be able to obtain a licence from the Agency as it would not meet Canadian ownership requirements and yet Greyhound pressed ahead and entered into an arrangement with Kelowna. WestJet states that Greyhound's current

plan, as reported in the press, is to market and sell tickets for an airline service, then contract the flying to Kelowna. This, according to WestJet, is an attempt to circumvent the Canadian ownership and control requirements of the domestic licensing process. WestJet submits that an airline is considerably more than the sum of its inanimate aircraft; it is rather the sum total of the human and financial capital required to promote, market and ultimately sell seat inventory and cargo capacity on the aircraft. WestJet argues that, although Kelowna intends to physically operate the aircraft, what transforms those aircraft into an airline are the activities of Greyhound. WestJet asserts that without Greyhound, there is no Greyhound Air and maintains that the mind and control of Greyhound Air lies with Greyhound. It is submitted by WestJet that all marketing efforts, advertising, uniform selection, reservations systems, inventory management, payload control, route selection and scheduling and other key elements are clearly controlled by Greyhound.

POSITION OF GREYHOUND

Greyhound submits that the arrangement with Kelowna is a tour operator-charter carrier arrangement. Greyhound states that the allegations by WestJet concerning the control of the air service are without foundation and that the air service remains completely under the operation and control of Kelowna.

Greyhound expresses the view that there is nothing in either aviation law or policy which prevents a foreign-controlled company entering into charter contracts with Canadian air carriers.

In response to WestJet's allegations that Greyhound controls Kelowna, Greyhound asserts that both it and Kelowna have demonstrably shown that Greyhound does not control Kelowna. Greyhound further submits that it has no equity investment in Kelowna and has no representation on the board of directors nor does it have any control over the selection, retention and compensation of Kelowna's officers and executives. Additionally, Greyhound states that it is the officers, executives and employees of Kelowna that run and manage Kelowna and that will run and manage

the air operations of Greyhound Air on a day-to-day basis. Greyhound maintains that the financial arrangements in connection with Greyhound Air are highly conventional and standard.

In conclusion, Greyhound states that WestJet's allegations are without foundation and cannot be substantiated.

POSITION OF KELOWNA

Kelowna submits that the charter arrangement with Greyhound does not give control of Kelowna, directly or indirectly, to Greyhound. Kelowna further submits that Greyhound will obtain no ownership interest in Kelowna, nor will it have any representatives on its board of directors or amongst its executives. In addition, Kelowna states that it will, at all times, maintain full control of and decision-making over the operation of the aircraft, and only its employees will operate the aircraft.

Kelowna also submits that the terms of the charter arrangement represent common industry practice and, while confidential, are not unlike those of the charter arrangement already in place between Kelowna and Purolator Courier Ltd.

Kelowna asserts that its sole director, Mr. Barry Lapointe, has no intention of relinquishing any control over the corporation or its operations, nor does he have any intention of circumventing Canadian transportation law or assisting anyone in doing so.

FINDINGS

The Agency has carefully examined all of the submissions and evidence filed. Further, the Agency has carefully examined the documents which Kelowna and Greyhound were required to file with the Agency pursuant to the Agency's letter of March 29, 1996. By letter decision dated April 12, 1996, the Agency determined that these documents are confidential.

The Agency has also determined that the issue to be addressed in this matter is whether Greyhound will be operating a domestic air service which would require it to hold a domestic licence.

Based primarily on the financial, operational and business relationships between Greyhound and Kelowna described in the confidential documents, the Agency determines that, if the air services commence as proposed therein, Greyhound will be operating a publicly available domestic air service. Accordingly, pursuant to subsection 71(1) of the NTA (National Transportation Agency), 1987 in order for the proposed air services to commence, Greyhound will be required to hold a domestic licence. In order to obtain a domestic licence, Greyhound would have to establish to the satisfaction of the Agency that it is Canadian as defined in section 67 of the NTA (National Transportation Agency), 1987, holds a Canadian aviation document, and has prescribed liability insurance coverage or evidence of such insurability in respect of the air services to be provided under the licence.

The Agency notes that Greyhound does not presently hold a domestic licence. Accordingly, if operation of the proposed air services commences, the Agency will take all actions within its jurisdiction to prevent such operation, including the issuance, if necessary, of a cease and desist order against Greyhound. The Agency, therefore, cautions against the commencement of the operation of the proposed air services.

In view of the foregoing and, in order to protect the travelling public, it is advisable that Greyhound immediately cease the marketing of its proposed air services, including advertising in the various media and selling tickets to the public.

Due to the confidentiality of the documents filed by Kelowna and Greyhound, as determined by the Agency in its letter decision dated April 12, 1996, detailed reasons for the Agency decision were to be provided, in confidence, to Greyhound and Kelowna which was done on April 16, 1996.

This Decision takes effect as of April 12, 1996, the date on which it was communicated by letter.

Rulings

[Go back to Rulings \(/decisions\)](#)

Date modified:

2012-04-25

EXHIBIT "B"

Ceci est la piece B de affidavit
This is Exhibit referred to in the Affidavit

de Carole Girard
of

assermenté devant moi ce 24th jour de February ~~19~~ 2016
sworn to before me this day of

SP/lessard
Notary Public



Government
of CanadaGouvernement
du Canada

Canada

[Canadian Transportation Agency \(/eng\)](#)[Home](#) / [Decisions](#) / [Air](#) / [1996](#) / Decision No. 292-A-1996

Decision No. 292-A-1996

Decision rescinded by P.C. 1996-849 dated June 7, 1996.

May 10, 1996

APPLICATIONS by Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd. pursuant to section 41 of the *National Transportation Act, 1987, R.S.C., 1985, c. 28 (3rd Supp.)* for a review of [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) dated April 18, 1996.

File Nos. M4205/K14/6115

M4205/K14/6116

Docket Nos. 960702R

960723R

Greyhound Lines of Canada Ltd. (hereinafter Greyhound) and Kelowna Flightcraft Air Charter Ltd. (hereinafter Kelowna) have applied for the review set out in the title. The applications were received on April 24 and 25, 1996, respectively.

In response to a complaint by WestJet Airlines Ltd. (hereinafter WestJet), the National Transportation Agency (hereinafter the Agency) determined in its [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) that, pursuant to subsection 71(1) of the *National Transportation Act, 1987* (hereinafter the NTA (National Transportation Agency), 1987), in order for air services to commence as proposed by Greyhound and Kelowna, Greyhound would be required to hold a domestic licence.

By letters dated April 25 and 26, 1996, the Agency requested WestJet to provide its comments on or before April 30, 1996 in respect of the applications for review. Following receipt of these comments, Greyhound and Kelowna were given two days to respond.

By letters dated April 30, 1996, WestJet filed its comments. By letters dated May 2, 1996, Greyhound and Kelowna filed their responses to WestJet's comments of April 30, 1996.

In addition, in its letters dated April 30, 1996, WestJet filed notices of motion requesting that it be provided with copies of the Agency's confidential reasons for its Decision No. 232-A-1996 (/eng/ruling/232-a-1996), which were communicated by letter dated April 16, 1996 to Greyhound and Kelowna (hereinafter the Confidential Reasons), the "Amended Arrangement documents" and the "Confidential Submissions" Greyhound and Kelowna filed in support of their respective applications for review. Alternatively, WestJet requested that it be provided with versions of the Confidential Reasons and the Amendment Arrangement documents with the "... sensitive commercial particulars blacked out and to the extent the context requires, a precis of any material portions which have been blacked out". The Agency ruled on these motions in its decision communicated by letter dated May 10, 1996 and determined that the documents in question should remain confidential and an abridged version would not be provided to WestJet.

GREYHOUND APPLICATION

In its application, Greyhound states that following a review of the Confidential Reasons, Kelowna and it entered into negotiations to amend and restate their air charter arrangements in order to address the concerns expressed by the Agency in the Confidential Reasons. Effective April 22, 1996, Greyhound

and Kelowna entered into an amended and restated Air Charter Agreement (hereinafter the amended and restated Agreement) which, it submits, constitutes a change in the facts or circumstances pertaining to Decision No. 232-A-1996

</eng/ruling/232-a-1996>) since it was issued. Specifically, these amendments directly affect the "financial, operational and business relationships" between Greyhound and Kelowna upon which the Agency primarily based its Decision.

Greyhound therefore requests that the Agency, pursuant to section 41 of the NTA (National Transportation Agency), 1987, review, rescind or vary the Decision in light of the amended and restated Agreement between Greyhound and Kelowna, which constitutes a change in the facts or circumstances pertaining to the previous Decision of the Agency, and find that Greyhound will not be operating a publicly available domestic air service for which it will be required to hold a domestic licence.

In addition, Greyhound advised that it would be filing with the Agency, pursuant to a claim for confidentiality, a "black-lined" [showing changes] and an execution copy of the amended and restated Agreement under cover of a separate letter explaining the amendments to the Agreement.

KELOWNA APPLICATION

In its application dated April 25, 1996, Kelowna requests that the Agency review, rescind or vary its Decision No. 232-A-1996 (</eng/ruling/232-a-1996>) dated April 18, 1996 on the basis that new facts or circumstances have arisen pertaining to the Decision.

Kelowna therefore advised that it would provide to the Agency under separate cover and on a confidential basis, a more detailed version of its application, which includes the new confidential evidence which it wishes the Agency to consider. In Kelowna's view, this evidence would also address the concerns raised by the Agency in its Confidential Reasons.

POSITION OF WESTJET

WestJet submits that the Agency may only review, rescind or vary a previous decision made by it if there has been a change in the facts or circumstances leading to the decision and that the "change" referred to in the NTA (National Transportation Agency), 1987 is one of substance and not form and must be material in nature.

WestJet questions whether any possible amendments to Greyhound's leasing of Kelowna's air service licence, in the context of the overall arrangements between them, can constitute the required substantive, material "change" which would give the Agency jurisdiction to review, rescind or vary the Decision.

WestJet also submits that documentary amendments without substantive changes to many fundamental indicia to the operation of an airline service, such as the financing, schedule control, personnel and the like, will not be sufficient to change the fact, determined by the Agency, that Greyhound is operating an airline service in Canada. In the Greyhound/Kelowna arrangement, such indicia include, without limitation, the direct and indirect financing by Greyhound of Kelowna's aircraft acquisitions, and the necessary control of the flight schedule by Greyhound to create its "intermodal" system of transportation. In WestJet's view, the "charter" arrangement between Greyhound and Kelowna is an arrangement or enterprise reliant on Greyhound for its existence, its operation, and its namesake.

WestJet expresses concern with respect to circumvention of the ownership requirements of the NTA (National Transportation Agency), 1987 by Greyhound and Kelowna which could result in foreign-controlled entities, including foreign air carriers, doing the same.

WestJet concludes that, while chartering aircraft in certain circumstances is permitted, chartering aircraft

for the purpose of operating a scheduled airline service is tantamount to leasing a licence - a matter which is not permitted by Canadian aviation law and policy.

REPLY OF GREYHOUND

Greyhound submits that the Agency has the jurisdiction to review, rescind or vary its own decision, if since that decision, and in the opinion of the Agency, there has been a change in the facts or circumstances pertaining to that decision. In order to meet this test, a section 41 applicant need only demonstrate to the Agency that there has been a "change" in the facts or circumstances. In Greyhound's view, Parliament did not intend to establish a "material change" test.

Greyhound asserts that the Agency's determination of the WestJet complaint in favour of WestJet was based on the "financial, operational and business relationships" between Greyhound and Kelowna. In order to address the concerns expressed by the Agency in the Confidential Reasons, Greyhound and Kelowna engaged in arm's length negotiations which resulted in changes to the financial, operational and business relationships between Greyhound and Kelowna. The Amended Arrangement documents demonstrate a change in the facts or circumstances pertaining to the Decision since it was made by the Agency. Greyhound submits that by addressing the "financial, operational and business relationships" between Greyhound and Kelowna, the Amended Arrangement documents constitute material change.

With respect to WestJet's statement that the charter arrangement between Greyhound and Kelowna is "reliant on Greyhound for its existence, its operation, and its namesake", Greyhound submits that a charter arrangement could never exist without a charterer. In addition, the particular air service being operated by Kelowna pursuant to its air charter arrangements with Greyhound could not exist without Greyhound as a participant. This, in Greyhound's view, is no different than many other charter arrangements entered into between air operators and charterers.

Greyhound states that the financing and scheduling of flights have been addressed in the Amended Arrangement documents. In fact, Kelowna has assumed significant financial risk in connection with the financing it has arranged, independently with its banker of long-standing, in order to operate its new passenger charter air service. Furthermore, it is normal and to be expected that a charterer and the operator of an air service would have to agree to a schedule, which would be made known well in advance to passengers.

Greyhound concludes that it has no interest in operating a domestic air service. Greyhound's interest is in chartering the air service operations of Kelowna in order to market to the public an intermodal bus/air transportation service linking Greyhound's bus services with Kelowna's charter air services and that is why it has entered into the Amended Arrangement documents with Kelowna.

REPLY OF KELOWNA

Kelowna states that the Amended Arrangement documents are before the Agency and it is up to the Agency to reconsider whether this new evidence will have an effect on the Decision.

In Kelowna's view, the arrangements between Kelowna and Greyhound require that only Kelowna hold a domestic licence and Kelowna meets all Canadian ownership and control in fact requirements to maintain its licence.

Kelowna states that it has already invested significant sums in the start-up of the passenger charter air service and that this investment was done in good faith with the belief that the arrangements between

Kelowna and Greyhound would not offend the Agency or violate the NTA (National Transportation Agency), 1987.

Kelowna submits that WestJet's contention that Kelowna is leasing its licence to Greyhound is inflammatory and without a factual basis.

Kelowna concludes that the amended charter arrangements between Kelowna and Greyhound put them on the solid footing of a tour operator and a chartered air service, an arrangement that is completely within the bounds of the NTA (National Transportation Agency), 1987.

FINDINGS

The Agency has carefully examined the pleadings, along with the Confidential Submissions, the Amended Arrangement documents, which include the amended and restated Agreement, and all other confidential information filed with the Agency (hereinafter the confidential material) and is of the opinion that there has been a change in the facts or circumstances pertaining to Decision No. 232-A-1996 (/eng/ruling/232-a-1996) since the Decision was issued. The Agency's opinion in this regard is based, primarily, on the numerous changes which have been effected to the Air Charter Agreement dated February 6, 1996 between Greyhound, Kelowna

and Kelowna Flightcraft Ltd. as reflected in the amended and restated Agreement. The Agency has, therefore, determined that it will review [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#).

In the interest of efficiency and expediency, the Agency has considered the Greyhound and Kelowna applications together in this review of [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#).

In [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#), the Agency determined that the issue to be addressed was whether Greyhound would be operating a domestic air service, for which it would be required to hold a domestic licence, if it proceeded with its proposed arrangements with Kelowna as disclosed to the Agency. Based primarily on the financial, operational and business relationships between Greyhound and Kelowna, the Agency determined that, if the air services were to commence as proposed, Greyhound would be operating a publicly available domestic air service. Accordingly, the Agency determined in [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) that, pursuant to subsection 71(1) of the [NTA \(National Transportation Agency\), 1987](#), in order for the proposed air services to commence, Greyhound would be required to hold a domestic licence. By confidential letter dated April 16, 1996, the Agency advised Greyhound and Kelowna of the specific, detailed reasons for this determination.

The Agency has closely examined the change in facts or circumstances pertaining to [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) in relation to the financial, operational and business relationships between Greyhound and Kelowna. The Agency notes that Greyhound and Kelowna have made numerous changes to their proposed relationship since [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) was issued. However, after reviewing and carefully considering all of these changes, the Agency remains of the opinion that the fundamental relationships between Kelowna and Greyhound, and the essence of their proposed arrangement, have not changed. Therefore, the Agency will not rescind or vary [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#).

The Agency remains of the opinion that, if operations commence, Greyhound will be operating a publicly available domestic air service for which it requires a licence. In order to obtain a licence, Greyhound would have to establish to the satisfaction of the Agency that it is Canadian as defined in section 67 of the NTA (National Transportation Agency), 1987, holds a Canadian aviation document, and has prescribed liability insurance coverage or evidence of such insurability in respect of the air service to be provided under the licence.

Due to the confidentiality of the documents filed by Kelowna and Greyhound, as determined by the Agency in its letter decision dated May 10, 1996, a separate letter will be sent to Greyhound and

Kelowna in confidence setting out the detailed reasons for the Agency's Decision.

Rulings

Go back to Rulings (/decisions)

Date modified:

2012-04-19

EXHIBIT "C"

Ceci est la pièce C de l'affidavit
This is Exhibit referred to in the Affidavit

de Carole Girard
of

assermenté devant moi ce 24th jour de February ~~199~~ 2016
sworn to before me this day of

[Signature]
Commissaire à l'assermentation
~~Commissioner for Oaths~~



Original with 292-A-1996



P.C. 1996-849
June 7, 1996

PRIVY COUNCIL • CONSEIL PRIVÉ

Whereas, pursuant to section 64 of the *National Transportation Act, 1987*, Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd. have petitioned the Governor in Council to rescind Decision No. 232-A-1996 dated April 18, 1996, and Decision No. 292-A-1996 dated May 10, 1996, of the National Transportation Agency;

Whereas Greyhound Canada Transportation Corp. is a successor corporation to Greyhound Lines of Canada Ltd.;

Whereas, pursuant to section 64 of the *National Transportation Act, 1987*, the Governor in Council may, at any time, in the discretion of the Governor in Council, either on petition of any party or person interested or of the Governor in Council's own motion, vary or rescind any decision of the National Transportation Agency;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, pursuant to section 64 of the *National Transportation Act, 1987*, hereby

- (a) varies Decision No. 232-A-1996, in accordance with the schedule hereto; and
- (b) rescinds Decision No. 292-A-1996.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CON

A handwritten signature in black ink, appearing to be "A. G. G.", written over a horizontal line.

P.C. 1996-849

SCHEDULE

1. The second to fifth paragraphs of the Findings in Decision No. 232-A-1996 are replaced by the following:

Greyhound Canada Transportation Corp. will not be the operator of a domestic air service that requires a domestic licence only if

(a) Greyhound Canada Transportation Corp. continues to be Canadian within the meaning of subsection 67(1) of the *National Transportation Act, 1987*;

(b) Greyhound Canada Transportation Corp. complies with the provisions of the Air Charter Agreement, restated and amended as of April 22, 1996, between Greyhound Lines of Canada Ltd., Kelowna Flightcraft Air Charter Ltd. and Kelowna Flightcraft Ltd. that are applicable to Greyhound Lines of Canada Ltd.; and

(c) Greyhound Canada Transportation Corp. informs all prospective purchasers of air services that Kelowna Flightcraft Air Charter Ltd. will be providing the air service.

EXHIBIT "D"

Jeci est la piece D de affidavit
This is Exhibit referred to in the Affidavit

de Carole Girard
of

assermenté devant moi ce 24th jour de February ~~19~~ 2016
sworn to before me this day of

SP
Commissaire à l'assermentation
~~Commissioner for Oaths~~



From: Michael Enns
Sent: December-21-15 3:25 PM
Subject: La Consultation sur l'Obligation de Détenir une Licence / Consultation on the Requirement to Hold a Licence

Madame, Monsieur,

L'Office des transports du Canada (Office) entreprend un examen sur la question visant à déterminer si les personnes qui n'exploitent pas d'aéronef, mais qui commercialisent et vendent un service aérien au public, devraient être tenues de détenir une licence délivrée par l'Office.

L'Office entreprend une consultation publique à ce sujet et vous avez été désigné comme l'un des intervenants qui pourraient être intéressés à y participer. L'Office vous invite à visiter sa [page de consultation](#) où vous trouverez de l'information sur le sujet et sur la façon de présenter vos commentaires. La date limite pour présenter vos commentaires est le **22 janvier 2016**. Veuillez noter que tous les commentaires présentés dans le cadre du processus de consultation seront des documents publics et qu'ils pourraient être affichés sur le site Internet de l'Office.

Pendant le déroulement de l'examen, l'Office n'exigera pas la présentation d'une demande de licence à condition que le service offert au public satisfasse à **toutes** les exigences suivantes :

- i. la personne n'exploite aucun aéronef;
- ii. la personne affrète l'entière capacité de l'aéronef, aux fins de revente au public;
- iii. le transporteur aérien est titulaire de la licence requise par l'Office pour exploiter le service aérien.

Si l'Office conclut, à l'issue de son examen, que les personnes qui commercialisent et vendent un service aérien au public, mais n'exploitent aucun aéronef, sont tenues de détenir une licence, vous serez informé de cette décision et disposerez d'un délai raisonnable pour présenter la ou les demandes de licences requises par l'Office.

Si l'Office a délivré des licences à des personnes qui n'exploitent aucun aéronef, ces personnes continueront de les détenir, mais elles ne seront pas tenues de présenter des demandes de licence additionnelles, pendant que l'Office examine la question.

Si vous avez des questions sur ce qui précède, n'hésitez pas à communiquer avec John Touliopoulos, gestionnaire, Division de l'évaluation financière, par téléphone au 819-953-8960 ou par courriel à john.touliopoulos@otc-cta.gc.ca.

Veillez agréer, Madame, Monsieur, l'expression de nos sentiments distingués.

Carole Girard

Directrice principale des approbations réglementaires et de la conformité, Direction générale de la réglementation et des déterminations de l'industrie

Dear Sir / Madam,

The Canadian Transportation Agency (Agency) is undertaking a review on whether persons that do not operate any aircraft, but market and sell an air service to the public, should be required to hold an Agency licence.

The Agency is initiating a public consultation on this matter and you have been identified as a potential stakeholder who may be interested in participating. The Agency invites you to visit its [consultation page](#) where you can obtain information on this subject and learn how to make a submission. The deadline to submit your comments is **January 22, 2016**. Please note that all submissions as part of the consultation process will be public documents and may be posted on the Agency's website.

While this review is under way, 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

In the event that the Agency, following its review, concludes that persons that market and sell an air service to the public, but do not operate any aircraft, are required to hold a licence, you will be informed of such decision and be given reasonable time to apply for the required Agency licence(s).

In situations where the Agency has issued licences to persons that do not operate any aircraft, these persons will continue to hold the issued licences, but will not be required to apply for any additional licences, while the Agency reviews the matter.

If you have any questions on this matter, please do not hesitate to contact John Touliopoulos, Manager of Financial Evaluation Division at 819-953-8960 or by e-mail at john.touliopoulos@otc-cta.gc.ca.

Sincerely,

Carole Girard

Senior Director Regulatory Approvals and Compliance, Industry Regulation and Determinations Branch
Canadian Transportation Agency / Government of Canada
carole.girard@otc-cta.gc.ca / Tel. 819-997-8761 / TTY: 1-800-669-5575



[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) (<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 \(http://www.tc.gc.ca/eng/ctareview2014/canada-transportation-act-review.html\)](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%20>).

Contact:

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

Submitted Comments

-  [Air Canada \(https://www.otc-cta.gc.ca/sites/default/files/submission_10_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_10_0.pdf)
-  [Avmax \(https://www.otc-cta.gc.ca/sites/default/files/submission_11_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_11_0.pdf)
-  [CAC \(https://www.otc-cta.gc.ca/sites/default/files/submission_13_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_13_0.pdf)
-  [Charles Green \(https://www.otc-cta.gc.ca/sites/default/files/submission_14_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_14_0.pdf)
-  [Clark and Company \(https://www.otc-cta.gc.ca/sites/default/files/clark_company_submission_-_consultation_on_the_requirement_to_hold_a_licence_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/clark_company_submission_-_consultation_on_the_requirement_to_hold_a_licence_0.pdf)
-  [Enerjet \(https://www.otc-cta.gc.ca/sites/default/files/submission_18_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_18_0.pdf)
-  [Flair Airlines Ltd. \(https://www.otc-cta.gc.ca/sites/default/files/submission_23.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_23.pdf)
-  [Frances Hudson \(https://www.otc-cta.gc.ca/sites/default/files/submission_5_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_5_0.pdf)
-  [Dr. Gabor Lukacs \(https://www.otc-cta.gc.ca/sites/default/files/submission_19_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_19_0.pdf)

-  [Garry Lewis \(https://www.otc-cta.gc.ca/sites/default/files/submission_4_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_4_0.pdf)
-  [Glen Beckett \(https://www.otc-cta.gc.ca/sites/default/files/submission_2.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_2.pdf)
-  [InteliSys Aviation Systems \(https://www.otc-cta.gc.ca/sites/default/files/newleaftravellicenserequirement_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/newleaftravellicenserequirement_0.pdf)
-  [James Wilson \(https://www.otc-cta.gc.ca/sites/default/files/submission_7_1.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_7_1.pdf)
-  [Jetlines \(https://www.otc-cta.gc.ca/sites/default/files/submission_12_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_12_0.pdf)
-  [Kelowna International Airport \(https://www.otc-cta.gc.ca/sites/default/files/submission_15_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_15_0.pdf)
-  [Kenn Borek Air Ltd. \(https://www.otc-cta.gc.ca/sites/default/files/submission_16_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_16_0.pdf)
-  [Liz Throp \(https://www.otc-cta.gc.ca/sites/default/files/submission_9_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_9_0.pdf)
-  [Lorna Harlow \(https://www.otc-cta.gc.ca/sites/default/files/submission_8_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_8_0.pdf)
-  [NewLeaf Travel Company \(https://www.otc-cta.gc.ca/sites/default/files/submission_20.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_20.pdf)
-  [Nolinor \(https://www.otc-cta.gc.ca/sites/default/files/submission_24.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_24.pdf)
-  [Prince Rupert Airport \(https://www.otc-cta.gc.ca/sites/default/files/submission_25.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_25.pdf)
-  [Provincial Airlines \(https://www.otc-cta.gc.ca/sites/default/files/submission_1_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_1_0.pdf)
-  [Sunwing Airlines \(https://www.otc-cta.gc.ca/sites/default/files/submission_17_0.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_17_0.pdf)
-  [Travel Industry Council of Ontario \(https://www.otc-cta.gc.ca/sites/default/files/submission_21.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_21.pdf)
-  [VINCI \(https://www.otc-cta.gc.ca/sites/default/files/submission_26.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_26.pdf)
-  [WestJet \(https://www.otc-cta.gc.ca/sites/default/files/submission_22.pdf\)](https://www.otc-cta.gc.ca/sites/default/files/submission_22.pdf)

Date modified:

2016-01-28

EXHIBIT "E"

Jeci est la piece E de affidavit
This is Exhibit referred to in the Affidavit

de Carde Girard
of

assermenté devant moi ce 24th jour de February ~~199~~ 2016
sworn to before me this day of

SP
~~Commissionaire à l'assermentation
Commissioner of Oaths~~



From: Michael Enns
Sent: December-21-15 3:33 PM
To: 'jim.young@newleafcorp.ca'; 'ocurrie@DarcyDeacon.com'
Cc: Ghislain Blanchard; Carole Girard; John Touliopoulos
Subject: Consultation on the Requirement to Hold a Licence

(Sent on behalf of Ghislain Blanchard)

Dear Mr. Young,

On August 21, 2015, the Canadian Transportation Agency (Agency) advised NewLeaf Travel Company Inc. (NewLeaf) that I had been appointed to conduct an inquiry into whether NewLeaf, as part of its proposed business venture with Flair Airlines Inc. (Flair), would be operating an air service and, therefore, require a licence pursuant to section 57 of the *Canada Transportation Act* (CTA).

The Agency is continuing its review of whether persons who do not operate any aircraft, but market and sell air services to the public, should be required to hold Agency licences. The review applies to all persons operating in this manner and is not limited to NewLeaf's proposed business venture with Flair. As part of its review, the Agency is consulting with, and seeking comments from, stakeholders (including Newleaf) before finalizing its approach.

I am providing you with a direct link to the Agency's [consultation document](#). The deadline to submit your comments, if you choose to do so, is **January 22, 2016**. Please note that all submissions as part of the consultation process will be public documents and may be posted on the Agency's website.

I have been instructed by the Panel to inform you 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.

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, you will be informed of such decision and be given reasonable time to apply for the required Agency licence(s).

If you have any questions on this matter, please contact John Touliopoulos, Manager of Financial Evaluation Division at 819-953-8960 or by e-mail at john.touliopoulos@ctc-cta.gc.ca.

Sincerely,

Ghislain Blanchard
Director General
Industry Regulations and Determinations Branch

EXHIBIT "F"

Jeci est la piece F de affidavit
This is Exhibit referred to in the Affidavit

de Carole Girard
of

assermenté devant moi ce 24th jour de February ~~199~~ 2016
sworn to before me this day of

SP [Signature]
Commissaire à l'assermentation
Commissioner for Oaths



Winnipeg Free Press

Local

Ultra low-cost airline taking off from Winnipeg airport



By: Geoff Kirbyson

Posted: **01/5/2016 2:05 AM** | Last Modified: 01/6/2016 5:16 PM



WAYNE GLOWACKI / WINNIPEG FREE PRESS

Jim Young, CEO NewLeaf airlines announces fares and dates for scheduled flights at a news conference Wednesday morning at James A Richardson Airport.

The arrival of NewLeaf Travel Company to Canadian skies won't threaten the domestic oligopoly of Air Canada and WestJet but it will certainly make it cheaper to fly.

The Winnipeg-based ultra-low-cost carrier unveiled its routes, schedule and other plans Wednesday morning at the Richardson International Airport.

Those in attendance didn't quite have visions of children breaking open their piggybanks to buy a ticket to Hamilton but, you know, it was close.

NewLeaf will take to the air on Feb. 12 with a network of seven cities, including Winnipeg, Halifax, Regina, Saskatoon, Kelowna, Abbotsford and Hamilton.

"We're in this thing for the long run," said CEO Jim Young.

But you've got to be flexible. NewLeaf isn't offering daily service. For example, it has an afternoon flight to Hamilton on Wednesdays and an evening flight on Saturdays and afternoon flights to Kelowna on Thursdays and Saturdays.

NewLeaf plans to achieve its model by focusing on smaller airports, a simple point-to-point network and avoiding larger, more expensive airports, such as Pearson in Toronto.

That model includes providing passengers with a seat and a seat belt and then enabling them to customize their trip by paying for extras such as priority boarding, in-flight drinks and snacks as well as carry-on and checked baggage.

NewLeaf will start out with two aircraft, a pair of 156-seat 737-400s, which are owned by its partner, Kelowna-based Flair Airlines. The plan is to grow to three planes within the first month and then to four by the summer. Within three years, Young's goal is to have a fleet of 15 planes.

NewLeaf's business plans includes charges for carry-on baggage. Not your purse or computer case or anything that will fit underneath the seat in front of you, but bags that are essentially substitutes for suitcases.

"A lot of our cost model is about turning the airplane (around) faster. You can board a plane our size in over an hour when everybody is hauling their bag on and trying to shove it (in the overhead compartment). We can offer lower fares by flying the airplane longer every day. In order to do that, we need to turn the airplane (around) at our stations inside of 30 to 40 minutes. The only way to do that when you're loading 156 people is to make sure you're getting them on and off as efficiently as possible," he said.

Another cost savings is avoiding travel agents and other third-party bookers. You will only be able to book a ticket on NewLeaf by visiting its website, flynewleaf.ca, which will bypass the global distribution system that travel agents use and which charges about \$5 per leg of a trip. That could mean adding up to \$30 for a return trip, Young said.

The arrival of NewLeaf makes Canada the last of the G-20 countries to have an ultra-low-cost carrier, said Barry Rempel, president and CEO of the Winnipeg Airports Authority, and he said there will undoubtedly be a ripple effect.

"What we've seen in these other environments is a stimulation of the market by up to 40 per cent. They're attracting people that wouldn't otherwise fly. Spirit Airlines in the U.S. and Ryanair in Ireland thrive when they stay close to their model, which is 'get me there cheap,'" he said.

Even though NewLeaf isn't competing with Westjet or Air Canada on direct flights, Rempel believes it will force them to lower their prices on at least some routes.

"Unquestionably. The established carriers are going to be watching very closely to see how much their visiting family market is impacted by NewLeaf. They'll have a number of potential reactions, everything from matching prices to using incentives through their frequent flyer programs," he said.

NewLeaf has hired a small handful of people for its Winnipeg head office and as the number of planes flying out of the city grows, that will increase as well. Eventually, Young said there will be 750 people based here, including administrative staff, pilots, flight attendants and mechanics.

Once NewLeaf has firmly established itself in the domestic market, it plans to branch out into sun destinations, Young said.

geoff.kirbyson@freepress.mb.ca

EXHIBIT "G"

Jeci est la piece G de affidavit
This is Exhibit referred to in the Affidavit

de Carole Girard
of

assermenté devant moi ce 24th jour de February ~~199~~ 2016
sworn to before me this day of

SPJ

~~Commissionaire à l'assermentation
Commissioner for Oaths~~



From: Lisa Saunders <lisa@soundstrategy.ca>
Sent: January-18-16 4:02 PM
To: Michael Enns; John Touliopoulos; Daniel Cardozo
Subject: NewLeaf temporarily postpones service while the Canadian Transportation Agency completes its review of aviation licensing regulations

Hi Michael, just so you're aware of our current situation (below).
Thank you for all your help today.
Have a lovely day. Lisa...



NewLeaf temporarily postpones service while the Canadian Transportation Agency completes its review of aviation licensing regulations

(Winnipeg, MB – January 18, 2016) **NewLeaf Travel Company** announces that it is temporarily postponing sales of airline tickets pending a Canadian Transportation Agency (CTA) review of licensing regulations for Indirect Air Service Providers. NewLeaf will also refund all credit card transactions for reservations that were scheduled to begin on Feb. 12, 2016.

“During this uncertain time, we didn’t want to put anyone with existing bookings at risk, and we wanted to give customers time to make other travel arrangements” explains NewLeaf Chief Executive Officer **Jim Young**.

NewLeaf aims to resume taking reservations in the Spring. “Canadians have clearly spoken that they want this type of low-cost service. The overwhelming demand for tickets shows the need for affordable travel in Canada. Hundreds of thousands of people visited the NewLeaf website when ticket sales began. Thousands made bookings,” said Young.

“The reason why we launched on January 6 is because it was confirmed that we were in full compliance of CTA licensing regulations,” says Young. “The CTA gave us an exemption from holding a licence directly while it reviews its legislation.” Under a charter arrangement with Kelowna-based Flair Airlines Ltd., Flair held the CTA operating licence, while NewLeaf offered seat sales.

“Now, there is ambiguity in the air as to whether we need to amend the relationship with our air service provider, or whether we need to have a licence ourselves. While Canada has many other Indirect Air Service Providers, NewLeaf is in a unique position as we are the first large-scale IASP,” said Young. “We welcome a regulatory system in which businesses like ours can thrive in Canada as they do in other countries.”

“As with any success that threatens to change the status quo, there are those that will resist that change and take any measures necessary to maintain the existing playing field, even if it is to the detriment of the vast majority and the benefit of the very few,” said Young.

The CTA is reviewing whether persons who do not operate any aircraft, but market and sell air services to the public, should be required to hold Agency licences. The review applies to all persons operating in this manner and is not limited to NewLeaf’s proposed business venture with Flair Airlines Ltd. As part of its review, the Agency is consulting with, and seeking comments from, stakeholders before finalizing its approach. The consultations end this Friday, Jan. 22.

Anyone wishing to express their opinion is encouraged to do so through the CTA’s consultation:

<https://www.otc-cta.gc.ca/eng/consultation/consultation-requirement-hold-a-licence>

NewLeaf Travel initially launched its website and started selling tickets to seven Canadian destinations on Jan. 6, 2016. The Canadian public’s response to NewLeaf’s launch of low cost airfares for those routes has been overwhelming, and reinforces the fact that Canada needs, and can support, an ultra low cost carrier that creates competition in air travel.

“We’re taking the high road in the way that is the most respecting of the consumer,” says Young. “As soon as the review is complete, we will make any required amendments if necessary, and resume sales as soon as possible.”

Those who made reservations are guaranteed the opportunity to re-buy their seat for the price they paid for it when NewLeaf resumes sales.

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NOTE: NewLeaf CEO Jim Young will be available for a media scrum outside the NewLeaf office at 128-2000 Wellington Avenue, Winnipeg, Manitoba TODAY, Monday Jan. 18 at 4 p.m. CST.

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ADDITIONAL INFORMATION:

- NewLeaf has always been fully compliant with CTA regulations.
- Travelers will be totally secure flying with NewLeaf. NewLeaf's business model is not new, and is legislated by the Canadian government.
- The Canadian Transportation Agency is currently reviewing its regulations, including licensing regulations. The CTA's review of the Canada Transportation Act began in June 2014 - <http://www.tc.gc.ca/eng/ctareview2014/canada-transportation-act-review.html>
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- Once the CTA reviews its licensing regulations, NewLeaf will re-evaluate its charter agreement with Flair Airlines Ltd., resume sales and announce the new launch date.

NewLeaf temporarily postpones service while the Canadian Transportation Agency completes its review of aviation licensing regulations

(Winnipeg, MB – January 18, 2016) **NewLeaf Travel Company** announces that it is temporarily postponing sales of airline tickets pending a Canadian Transportation Agency (CTA) review of licensing regulations for Indirect Air Service Providers. NewLeaf will also refund all credit card transactions for reservations that were scheduled to begin on Feb. 12, 2016.

“During this uncertain time, we didn’t want to put anyone with existing bookings at risk, and we wanted to give customers time to make other travel arrangements” explains NewLeaf Chief Executive Officer **Jim Young**.

NewLeaf aims to resume taking reservations in the Spring. “Canadians have clearly spoken that they want this type of low-cost service. The overwhelming demand for tickets shows the need for affordable travel in Canada. Hundreds of thousands of people visited the NewLeaf website when ticket sales began. Thousands made bookings,” said Young.

“The reason why we launched on January 6 is because it was confirmed that we were in full compliance of CTA licensing regulations,” says Young. “The CTA gave us an exemption from holding a licence directly while it reviews its legislation.” Under a charter arrangement with Kelowna-based Flair Airlines Ltd., Flair held the CTA operating licence, while NewLeaf offered seat sales.

“Now, there is ambiguity in the air as to whether we need to amend the relationship with our air service provider, or whether we need to have a licence ourselves. While Canada has many other Indirect Air Service Providers, NewLeaf is in a unique position as we are the first large-scale IASP,” said Young. “We welcome a regulatory system in which businesses like ours can thrive in Canada as they do in other countries.”

“As with any success that threatens to change the status quo, there are those that will resist that change and take any measures necessary to maintain the existing playing field, even if it is to the detriment of the vast majority and the benefit of the very few,” said Young.

The CTA is reviewing whether persons who do not operate any aircraft, but market and sell air services to the public, should be required to hold Agency licences. The review applies to all persons operating in this manner and is not limited to NewLeaf’s proposed business venture with Flair Airlines Ltd. As part of its review, the Agency is consulting with, and seeking comments from, stakeholders before finalizing its approach. The consultations end this Friday, Jan. 22.

Anyone wishing to express their opinion is encouraged to do so through the CTA’s consultation:

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NewLeaf Travel initially launched its website and started selling tickets to seven Canadian destinations on Jan. 6, 2016. The Canadian public’s response to NewLeaf’s launch of low cost airfares for those routes has been overwhelming, and reinforces the fact that Canada needs, and can support, an ultra low cost carrier that creates competition in air travel.

“We’re taking the high road in the way that is the most respecting of the consumer,” says Young. “As soon as the review is complete, we will make any required amendments if necessary, and resume sales as soon as possible.”

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FEDERAL COURT OF APPEAL

BETWEEN:

DR. GABOR LUKACS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

**AFFIDAVIT OF CAROLE GIRARD
SWORN FEBRUARY 24, 2016**

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