

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

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

Respondents

MOTION RECORD OF THE MOVING PARTY
(Urgent Motion for an Interlocutory Injunction/Stay Pending Appeal)

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TABLE OF CONTENTS

1	Notice of Motion	1
2	Undertaking for Damages	11
3	Affidavit of Dr. Gábor Lukács, affirmed on July 21, 2016	12
A	Order of the Federal Court of Appeal granting Leave to Appeal, dated June 9, 2016	23
B	Reasons for Order of the Federal Court of Appeal, dated June 9, 2016	26
C	Federal corporation information of NewLeaf Travel Company Inc. [NewLeaf], retrieved on July 18, 2016	33
D	Corporate profile report of 1919183 Ontario Ltd. [NewLeaf Airways]	38
E	Legacy Partners Wealth Strategies Inc., “Newleaf Airways - Initiating Coverage,” January 14, 2015	43
F	Federal corporation information of NewLeaf, retrieved on January 13, 2016	74
G	Domain registration for <i>newleafcorp.ca</i> , retrieved on July 9, 2016	77
H	Affidavit of Ms. Carole Girard, sworn on February 24, 2016, Federal Court of Appeal File No. A-39-16	79
I	Decision No. 100-A-2016 of the Canadian Transportation Agency, dated March 29, 2016 [Decision Under Appeal]	129
J	Notice of Appeal, filed on June 28, 2016	143

K	Letter of Mr. Brian J. Meronek, Q.C., counsel for NewLeaf, dated July 13, 2016	152
L	Email of Mr. Allan Matte, counsel for the Agency, dated July 13, 2016	154
M	NewLeaf's press release, dated June 23, 2016	157
N	NewLeaf's "Routes and Schedules" page, retrieved on July 18, 2016	160
O	Flair's "Fleet" page, retrieved on July 18, 2016	165
P	Decision No. CONF-6-2016 of the Canadian Transportation Agency, dated May 12, 2016	167
Q	Email of Mr. Jim Young, CEO of NewLeaf, dated December 19, 2015	170
R	Email of Mr. Jim Young, CEO of NewLeaf, dated January 24, 2016	173
S	Letter of demand of Mr. Norman LeCavalier to Mr. Young, dated June 23, 2016 (with attachments)	176
T	Email of Mr. Robert Jones, Chief Operating Officer of NewLeaf, to Ms. HESSIE JONES, CEO of ArCompany, dated April 6, 2016, acknowledging unpaid invoice (with attachments)	184
U	Statement of Claim in <i>ArCompany v. NewLeaf et al.</i> , issued on July 19, 2016	194
V	Kelowna International Airport, Air Carrier Airport Use Agreement	205
W	Email of Mr. Sam Samaddar, Director of the Kelowna Airport, dated July 20, 2016	223

X	Email of Mr. Jim Rogers, president of Flair Airlines Ltd., dated July 6, 2016	226
Y	Letter of Dr. Lukács to Mr. Rogers, dated July 8, 2016	229
Z	Email of Mr. Rogers to Dr. Lukács, dated July 17, 2016 (with attachment)	232
AA	Letter of Dr. Lukács to Mr. Rogers, dated July 17, 2016	235
AB	“NewLeaf Travel Sets New Launch Date For Low-Fare Service In Canada,” published on June 23, 2016, Travelmarket	238
4	Memorandum of Fact and Law of the Moving Party	241
PART I	STATEMENT OF FACTS	241
A.	Overview	241
	(i) The present appeal	241
	(ii) The present motion	243
B.	The financial fitness requirement (s. 61(1)(iv))	245
C.	NewLeaf’s finances and strategy	247
	(i) First Launch (January 2016)	247
	(ii) Second Launch (June 2016)	248
	(iii) Unpaid bills of NewLeaf and/or affiliate company	248
	(iv) Kelowna airport: no deposit nor insurance	249
D.	Flair will not protect stranded NewLeaf passengers	249
PART II	STATEMENT OF THE POINTS IN ISSUE	251

PART III	STATEMENT OF SUBMISSIONS	252
	A. Abridging timelines for the motion	252
	B. Interlocutory injunction and stay pending appeal	253
	(i) Serious issue	254
	(ii) Irreparable harm	254
	(iii) Balance of convenience	256
	(a) Status quo	256
	(b) Public interest	256
	(c) Leaving the door open for NewLeaf	257
	C. Costs	258
PART IV	ORDER SOUGHT	259
PART V	LIST OF AUTHORITIES	260
A	Appendix A – Statutes and Regulations	261
	<i>Air Transportation Regulations, SOR/88-58</i>	262
	— section 2 (interpretation)	263
	— section 7 (liability insurance)	269
	— section 8.1 (financial requirements)	271
	— section 8.2 (provision of aircraft with flight crew)	273
	— section 8.5 (public disclosure)	276
	— section 107 (contents of domestic tariff)	278
	<i>Canada Transportation Act, S.C. 1996, c. 10</i>	281
	— section 41 (leave to appeal)	282
	— section 53 (review of Act)	283
	— section 55 (definitions)	284
	— sections 57-60 (prohibitions)	288
	— section 61 (license for domestic service)	289
	— section 64 (discontinuance or redaction of certain services)	290

	— section 66 (unreasonable fares or rates)	291
	— section 67 (domestic tariff requirements)	294
	— section 67.2 (unreasonable conditions)	295
	— section 80 (exemption)	302
	— section 81 (inquiry)	303
	— subsection 86(1) (regulations)	304
	— subsection 86(2) (exclusion not to provide certain relief)	306
	— section 174 (offence)	307
	<i>Federal Courts Act</i> , R.S.C. 1985, c. F-7	308
	— section 44	309
	— section 50	310
	<i>Federal Courts Rules</i> , S.O.R./98-106	311
	— Rule 8	312
	— Rule 369	313
	— Rule 373	315
	<i>National Transportation Act, 1987</i> [Repealed], R.S.C. 1985, Chap. 28 (3rd Supp.)	316
	— section 67 (definitions)	317
	— section 71 (prohibition)	320
	— section 72 (licensing conditions)	321
	— section 76 (discontinuance or reduction)	322
	— section 80 (fare regulation)	324
	— sections 83-84 (tariffs)	325
B	Appendix B – Case Law	326
5	<i>Association des Compagnies de Téléphone du Québec Inc. v. Canada (Attorney General)</i> , 2012 FCA 203	327
	— paragraph 19	332
	— paragraph 30	335
6	Confidential Decision of the National Transportation Agency, dated April 16, 1996 [Greyhound Decision] (redacted version, on public record in File No. A-39-16)	338

7	<i>Determination of whether Duke Jets Ltd. requires a licence pursuant to Part II of the Canada Transportation Act</i> , Canadian Transportation Agency, Decision No. 222-A-2010	346
	— page 2	347
8	<i>Determination of application by Air Transat on behalf of itself and Flair</i> , Canadian Transportation Agency, Decision No. 112-A-2016	348
9	<i>Fednav Ltd. v. Fortunair Canada Inc.</i> , [1994] F.C.J. No. 1969	350
	— paragraph 16	355
10	<i>Lukács v. Canada (Transportation Agency)</i> , 2014 FCA 76	357
	— paragraph 62	372
11	<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1994] 1 S.C.R. 311	373
	— paragraph 50	391
	— paragraph 59	394

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Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and
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Respondents

NOTICE OF MOTION

TAKE NOTICE THAT THE APPELLANT will make a motion in writing to the Court under Rule 369 of the *Federal Courts Rules*, S.O.R./98-106.

THE MOTION IS FOR:

1. An Order pursuant to Rule 8, abridging the timelines for the filing of the responding motion record and the reply in the present motion;
2. An Order pursuant to ss. 44 and 50 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and Rule 373:
 - (a) staying the decision of the Canadian Transportation Agency dated March 29, 2016 and bearing Decision No. 100-A-2016 pending disposition of the appeal; and
 - (b) enjoining NewLeaf Travel Company Inc. from operating as an Indirect Air Service Provider [IASP or reseller], unless it posts a performance bond and/or security and/or guarantee in the amount of \$3,744,000 for the claims of stranded passengers;

3. Costs and/or reasonable out-of-pocket expenses of this motion in any event of the cause; and
4. Such further and other relief or directions as the Appellant may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On June 23, 2016, NewLeaf Travel Company Inc. [NewLeaf] began (again) selling tickets to the public for flights within Canada.
2. On July 25, 2016, NewLeaf will begin to transport passengers on 60 non-stop flight segments per week, for a total of up to 9,360 passengers per week.
3. NewLeaf has no license to operate any air service under the *Canada Transportation Act* [the CTA].
4. NewLeaf is a shell company, without significant assets. It rents aircraft and crew from Flair Airlines Ltd. [Flair], a licensed airline, to transport passengers by air, but NewLeaf bears the full financial risk and liability to passengers, because Flair has no contractual relationship with NewLeaf's passengers. Thus, Flair assumes no risk.
5. NewLeaf is a fledgling, financially unstable company that is unlikely to be able to deliver the services that it has sold or pay compensation to passengers whom it may strand as a result of non-performance.

6. The present motion, brought in the public interest, seeks to offer passengers who purchased tickets from NewLeaf a somewhat similar protection that was contemplated by Parliament in enacting s. 61(1)(iv) of the *CTA*.
7. The purpose of the motion is not to shut down NewLeaf, but to ensure that it is NewLeaf and its investors that bear the financial risk rather than the travelling public. In other words, the purpose of the motion is to ensure that NewLeaf puts its money where its mouth is.
8. The amount of financial guarantee of \$3,744,000 sought from NewLeaf will allow compensating one week's load of stranded passengers carried by NewLeaf from their homes to another destination, and is based on the following conservative calculation:
 - (a) NewLeaf carrying 7,488 passengers per week (80% load factor);
 - (b) one half (3,744) of these passengers are travelling from their homes to another destination; and
 - (c) an average repatriation cost of \$1,000 per stranded passenger in excess of the amounts paid to NewLeaf.

This figure is less than 14% of the amount of capital a start-up airline is required to have before being granted a licence and allowed to sell tickets.

THE DECISION UNDER APPEAL

9. Paragraph 57(a) of the *Canada Transportation Act*, S.C. 1996, c. 10 [the *CTA*] prohibits operating an air service without a licence issued by the Agency under Part II of the *CTA*. Subsection 55(1) of the *CTA* defines “air service” as a service provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.
10. An Indirect Air Service Provider [IASP or reseller] is a person who has commercial control over an air service and makes decisions on matters such as routes, scheduling, and pricing, but performs the transportation of passengers with aircraft and flight crew rented from another person.
11. For twenty years, the Agency had consistently held that a person with commercial control over a domestic air service “operates” it within the meaning of the *CTA*, and thus required them to hold a domestic licence.
12. On March 29, 2016, the Agency issued Decision No. 100-A-2016 [Decision Under Appeal], in which it determined that:
 - (a) IASPs (resellers) are not required to hold a licence as long as they do not hold themselves out to the public as an air carrier operating an air service; and
 - (b) NewLeaf, being an IASP, is not required to hold a licence.
13. On June 9, 2016, this Honourable Court granted Dr. Gábor Lukács, the Appellant, leave to appeal the Decision Under Appeal, and recognized Lukács as having private and public interest standing.

NEWLEAF'S FINANCES AND STRATEGY

14. Under s. 61(1)(iv) of the *CTA* and s. 8.1 of the *Air Transportation Regulations*, an applicant for a domestic licence must demonstrate that it has sufficient funding in place, without taking into account any revenue from operations, to meet the costs associated with starting up and operating the air service for a 90-day period. The entire capital must be available, and one half of it must be non-redeemable for a period of one year in order to meet the requirement.
15. For reference, on May 12, 2016, in Decision No. CONF-6-2016, the Agency found that Canada Jetlines Ltd. would need to have over \$27 million in order to meet this financial requirement.
16. NewLeaf never met these financial requirements, and has had only a small fraction of the capital that would meet the requirement.
17. In January 2016, when NewLeaf began selling tickets to the public for the first time, it was planning to have a capital of \$500,000 (less than 2% of what is reasonably required), and it was hoping to raise a total of \$2,000,000 (less than 7.5% of what is reasonably required) by the date of its first flight on February 12, 2016.
18. In practice, NewLeaf began selling tickets to the public on January 6, 2016 with only \$250,000 available (less than 1% of what is reasonably required). It was hoping to raise the rest on the go. After a mere twelve (12) days, on January 18, 2016, NewLeaf suspended sales, and cancelled all tickets sold.

19. As of July 19, 2016, NewLeaf and/or its affiliate owe approximately \$135,000 in unpaid bills to vendors. NewLeaf, its affiliate, and Mr. Jim Young, NewLeaf's CEO, have been named by an unpaid vendor as defendants in a legal action in the Ontario Superior Court of Justice, seeking damages of approximately \$96,000.
20. As of July 20, 2016, NewLeaf has not met its legal and financial obligations to the Kelowna Airport, did not sign the airport user agreement, nor did it provide the required deposit or insurance certificate.

THE LEGAL TEST FOR A STAY OR INTERLOCUTORY INJUNCTION

21. The legal test on a motion for stay pending appeal and interlocutory injunction are the same, and call for considering:
 - (a) whether there is a serious issue to be tried;
 - (b) irreparable harm; and
 - (c) the balance of convenience.

Serious Issue

22. Since this Honourable Court granted Lukács leave to appeal, the appeal is neither vexatious nor frivolous.

Irreparable Harm

23. Due to its inadequate capitalization, NewLeaf is unlikely to be able to deliver and sustain the services that it sold to the public, nor does it have the financial ability to compensate passengers who are stranded as a result of its non-performance.

24. Flair, the actual airline that is behind NewLeaf, is licensed, has met the financial fitness requirements, and has assets, but is shielded from liability for the performance of the services sold by NewLeaf, as explained by Mr. Jim Rogers, the president of Flair (Exhibit “X” on p. 226):

Flair is supplying aircraft and operating under a ACMI agreement with New Leaf. The contract with the passenger is with New Leaf and they have a passenger protection plan in place [...]

[Emphasis added.]

Thus, Flair will not compensate or otherwise protect passengers stranded by NewLeaf.

25. Therefore, if the Order sought is not granted, the travelling public will suffer irreparable harm, because their out-of-pocket expenses will go uncompensated: NewLeaf is unable to compensate them, and Flair is not required to do so.

Balance of Convenience

26. The balance of convenience favours granting the Order sought, because:
- (a) staying of the Decision Under Appeal would maintain and/or restore the *status quo*, namely, that IASPs are required to hold a domestic licence;
 - (b) it shifts the financial risk from the travelling public to NewLeaf in a manner that is consistent with the intent of Parliament; and
 - (c) it leaves the door open for NewLeaf to maintain its business pending disposition of the appeal.

URGENCY OF THE MOTION

27. Due to the unavailabilities of counsels for the Respondents, the within appeal is not likely to be heard before late September 2016.
28. The present motion is urgent, because NewLeaf intends to begin transporting passengers on July 25, 2016.
29. Lukács is seeking abridgment of the delays set out in Rule 369 to ensure that some protection is in place for passengers as early as July 25, 2016.

Statutes and regulations relied on

30. Sections 2, 7, 8.1, 8.2, 8.5, and 107 of the *Air Transportation Regulations*, S.O.R./88-58.
31. Sections 41, 53, 55, 57-67.2, 80, 86, and 174 of the *Canada Transportation Act*, S.C. 1996, c. 10.
32. Sections 44 and 50 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.
33. Rules 8, 369, and 373 of the *Federal Courts Rules*, S.O.R./98-106.
34. Such further and other grounds as the Appellant may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used for the motion:

1. Affidavit of Dr. Gábor Lukács, affirmed on July 21, 2016.

2. Such further and additional materials as the Appellant may advise and this Honourable Court may allow.

July 21, 2016

DR. GÁBOR LUKÁCS

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Appellant

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**Solicitors for the Respondent,
Newleaf Travel Company Inc.**

Court File No.: A-242-16

FEDERAL COURT OF APPEAL

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Appellant

– and –

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Respondents

UNDERTAKING FOR DAMAGES

I, Dr. Gábor Lukács, the Appellant, undertake pursuant to Rule 373(2) of the *Federal Courts Rules* to abide by any order concerning damages caused by the granting or extension of the injunction and/or the stay pending appeal.

DATED at Budapest, Hungary, this 18th day of July, 2016.

DR. GÁBOR LUKÁCS

Halifax, NS

*lukacs@AirPassengerRights.ca***Appellant**

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

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

Respondents

**AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: July 21, 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 the Appellant in the present proceeding. As such, I have personal knowledge of the matters to which I depose, except as to those matters stated to be on information and belief, which I believe to be true.

THE APPELLANT

2. On June 9, 2016, the Federal Court of Appeal granted me leave to appeal a decision made by the Canadian Transportation Agency [the Agency] dated March 29, 2016 and bearing Decision No. 100-A-2016 [Decision Under Appeal]. A copy of the Court's order is attached and marked as **Exhibit "A"**.
3. In the reasons for granting leave to appeal, a copy of which is attached and marked as **Exhibit "B"**, the Federal Court of Appeal recognized me as having both private and public interest standing.

4. I am a Canadian air passenger rights advocate. My work and public interest litigation have 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.

5. My activities as an air passenger rights advocate also include:
 - (a) filing approximately two dozen successful regulatory complaints with the 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; and
 - (c) referring passengers mistreated by airlines to legal information and resources.

6. 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."

NEWLEAF TRAVEL COMPANY INC., NEWLEAF AIRWAYS, AND NEWLEAF CORP

7. The respondent, NewLeaf Travel Company Inc. [NewLeaf] is a federally incorporated company, whose directors are Brian Reddy, Robert Jones, and Donald Young. A copy of NewLeaf's current federal corporation information is attached and marked as **Exhibit "C"**.
8. 1919183 Ontario Ltd. is a company incorporated under the laws of Ontario, with the same directors as NewLeaf. A copy of the company's corporate profile report is attached and marked as **Exhibit "D"**.
9. 1919183 Ontario Ltd. has been doing business as NewLeaf Airways. A copy of "NewLeaf Airways - Initiating Coverage," dated January 14, 2015, is attached and marked as **Exhibit "E"**.
10. Until January 22, 2016, NewLeaf and 1919183 Ontario Ltd. had the same registered office address at 130 King Street West, Suite 2120, Toronto, Ontario, M5X 1K6. A copy of NewLeaf's federal corporation information record retrieved on January 13, 2016 is attached and marked as **Exhibit "F"**.
11. On or around January 22, 2016, NewLeaf relocated its registered office address to 1 Lombard Place, Suite 2200, Winnipeg, Manitoba, R3B 0X7, which is the address of D'Arcy & Deacon LLP (Exhibit "C").
12. The domain *newleafcorp.ca* is owned and used by NewLeaf. A copy of the domain registration record, retrieved on July 9, 2016, is attached and marked as **Exhibit "G"**.

THE DECISION UNDER APPEAL

13. A copy of the affidavit of Ms. Carole Girard, the Senior Director of Regulatory Approvals and Compliance Directorate of the Industry and Determinations Branch of the Agency, sworn on February 24, 2016 in File No. A-39-16, is attached and marked as **Exhibit “H”**.
14. In August 2015, the Agency commenced an inquiry into whether NewLeaf was operating an air service, and thus was required to hold a domestic licence (Exhibit “H”, para. 9).
15. In December 2015, the Agency announced a public consultation on whether Indirect Air Service Providers [IASPs] should continue to be required to hold a domestic licence under the *Canada Transportation Act*. The IASP model was defined by the Agency as:

[...] 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.
16. On March 29, 2016, the Agency issued Decision No. 100-A-2016 [Decision Under Appeal], a copy of which is attached and marked as **Exhibit “I”**, in which it determined that:
 - (1) IASPs (resellers) of domestic air service are no longer required to hold licences under the *CTA*, so long as they do not hold themselves out as an air carrier operating an air service; and
 - (2) NewLeaf, being an IASP (reseller), is therefore not required to hold a licence.

THE PRESENT APPEAL

17. On June 9, 2016, the Federal Court of Appeal granted me leave to appeal the Decision Under Appeal, and directed that the appeal be expedited if the notice of appeal was filed within 30 days (Exhibit “A”).
18. On June 28, 2016, I filed the Notice of Appeal, a copy of which is attached and marked as **Exhibit “J”**.
19. On July 12, 2016, I filed the Appeal Book. On July 18, 2016, I filed my Memorandum of Fact and Law.
20. Opposing counsels are unavailable for a hearing of the appeal in August 2016, and for most of September 2016. Copies of the July 13, 2016 letter of Mr. Brian J. Meronek, Q.C., counsel for NewLeaf, and the July 13, 2016 email of Mr. Allan Matte, counsel for the Agency, are attached and marked as **Exhibits “K” and “L”**, respectively.

NEWLEAF’S DEALINGS WITH THE TRAVELLING PUBLIC

21. NewLeaf uses the Indirect Air Service Provider [IASP or reseller] business model: it sells air services to the public in its own name (i.e., as a principal), and performs the transportation of passengers by aircraft and flight crew rented from Flair Airlines Ltd. [Flair], a licensed airline.
22. NewLeaf does not have and has never had any licence to operate an air service under the *Canada Transportation Act*.

First Launch (January 2016)

23. On or around January 6, 2016, while the Agency's inquiry as to whether NewLeaf required a licence was ongoing, NewLeaf began selling tickets to the public for flights within Canada starting February 12, 2016 (Exhibit "H", para. 14).
24. On or around January 18, 2016, NewLeaf suspended sales, and cancelled the tickets already sold (Exhibit "H", para. 15).

Second Launch (June 2016)

25. On June 23, 2016, NewLeaf began selling tickets to the public again, this time for flights within Canada starting July 25, 2016. A copy of NewLeaf's press release is attached and marked as **Exhibit "M"**.
26. Starting July 25, 2016, NewLeaf intends to have a total of 60 non-stop flights segments per week. A copy of NewLeaf's "Routes and Schedules" retrieved on July 18, 2016 is attached and marked as **Exhibit "N"**.
27. NewLeaf will be renting Boeing 737 passenger jets with crew from Flair in order to operate its flights (Exhibit "M"). According to Flair's webpage on its fleet, a copy of which is attached and marked as **Exhibit "O"**, each of these jets can accommodate up to 156 economy class seats.
28. Thus, NewLeaf is intending to transport up to 9,360 passengers per week.

IRREPARABLE HARM TO PASSENGERS

29. I believe that:

- (a) NewLeaf does not have the financial means to deliver and sustain the services that it sells, and NewLeaf will be incapable of compensating stranded passengers for their resulting out-of-pocket expenses.
- (b) Flair will not protect stranded passengers in the event that NewLeaf becomes insolvent.
- (c) Stranded passengers will have no choice but to buy seats on Air Canada or WestJet at a last-minute price in order to get home, and will also be paying for their accommodation and meals.

I have come to this belief based on the following information and sources.

NewLeaf is unable to meet the financial fitness requirement

- 30. Under s. 8.1 of the *Air Transportation Regulations*, an applicant for a domestic licence must demonstrate that it has sufficient funding in place, without taking into account any revenue from operations, to meet the costs associated with starting up and operating the air service for a 90-day period.
- 31. For reference, on May 12, 2016, the Agency found that Canada Jetlines Ltd. would need to have over \$27 million in order to meet this financial requirement. A copy of Decision No. CONF-6-2016 of the Agency, obtained from Jetlines' website, is attached and marked as **Exhibit "P"**.

32. On December 19, 2015, Mr. Jim Young, the CEO of NewLeaf, wrote to Mr. Norman LeCavalier, a consultant of NewLeaf, about the company's financial plans that:

- \$500K allows us to announce
- \$2MM allows us to launch on Feb 12 with a cushion

A copy of the email, which was forwarded to me by Mr. LeCavalier, is attached and marked as **Exhibit "Q"**.

33. According to a January 24, 2016 email of Mr. Young to Mr. LeCavalier, which summarizes the "post mortem" of NewLeaf's first launch, the company had only \$250,000 in actual secured funds on January 6, 2016, when it began selling tickets. A copy of the email, which was forwarded to me by Mr. LeCavalier, is attached and marked as **Exhibit "R"**.

Unpaid bills of NewLeaf and/or its affiliate

34. A copy of the letter of demand of Mr. LeCavalier to Mr. Young, dated June 23, 2016, seeking payment of unpaid invoices totalling \$58,590, is attached and marked as **Exhibit "S"**. Mr. LeCavalier forwarded to me Exhibit "S", and on July 19, 2016 he advised me, and I do verily believe, that he had received no response nor payment.

35. A copy of the email of Mr. Robert Jones, Chief Operating Officer of NewLeaf, to Ms. HESSIE JONES, the CEO of ArCompany, dated April 6, 2016, acknowledging an outstanding invoice for \$76,482.12 dated May 20, 2015, is attached and marked as **Exhibit "T"**. Ms. Jones forwarded to me Exhibit "T", and advised me, and I do verily believe, that as of July 19, 2016, she had received no payment.

36. A copy of the statement of claim of ArCompany against NewLeaf, its affiliated company, and Mr. Young personally, issued on July 19, 2016, is attached and marked as **Exhibit “U”**. I received Exhibit “U” from Ms. Jones, the CEO of ArCompany.
37. On July 19, 2016, at or around 01:50 (Central European Time), Mr. Sam Samaddar, the Director of the Kelowna Airport, advised me, and I do verily believe, that all commercial users of the airport, including NewLeaf, are required to:
- (a) sign a standard user agreement with the airport, a copy of which is attached and marked as **Exhibit “V”**;
 - (b) provide a deposit for three months of fees; and
 - (c) provide a liability insurance that covers their use of the airport facilities.

Mr. Samaddar further advised me, and I do verily believe, that up to the time of our conversation, NewLeaf had not met any of these obligations.

38. On July 20, 2016, at or around 20:00 (Central European Time), I spoke to Mr. Samaddar again. He advised me, and I do verily believe, that up to time of our conversation, NewLeaf had not met any of the aforementioned obligations. A copy of an email I received from Mr. Samaddar confirming same is attached and marked as **Exhibit “W”**.

Passengers are not protected by Flair

39. Flair is not a party to the contract between the travelling public and NewLeaf. According to the July 6, 2016 email of Mr. Jim Rogers, the president of Flair, a copy of which is attached and marked as **Exhibit “X”**:

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Flair is supplying aircraft and operating under a ACMI agreement with New Leaf. The contract with the passenger is with New Leaf and they have a passenger protection plan in place [...]

[Emphasis added.]

Exhibit “X” was forwarded to me by the recipient of the email, Ms. Kristine Owram at the Financial Post.

40. A copy of my letter to Mr. Rogers, president of Flair, dated July 8, 2016, inquiring about whether Flair will honour and/or protect NewLeaf ticket holders in the event that NewLeaf becomes insolvent, is attached and marked as **Exhibit “Y”**. The answer of Mr. Rogers, dated July 17, 2016, is attached and marked as **Exhibit “Z”**.
41. My reply to Mr. Rogers, dated July 17, 2016, is attached and marked as **Exhibit “AA”**.

BALANCE OF CONVENIENCE

42. A copy of the June 23, 2016 report published on Travelmarket is attached and marked as **Exhibit “AB”**. According to the report:

Asked why NewLeaf chose to proceed with the launch before the outcome of the appeal is known, Young said he is confident that NewLeaf will prevail, although he acknowledged that the company has a backup plan.

[Emphasis added.]

43. Based on the statement of Mr. Young about NewLeaf having “a backup plan,” which I believe to be true, NewLeaf will not suffer significant prejudice if the sought stay and/or injunction are granted.

AFFIRMED before me at the
City of Budapest, Hungary
on 21st day of July, 2016.

Dr. Gábor Lukács

Halifax, NS

Tel:
lukacs@AirPassengerRights.ca

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

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Federal Court of Appeal



Cour d'appel fédérale

Date: 20160609

Docket: 16-A-17

Ottawa, Ontario, June 9, 2016

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

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

CANADIAN TRANSPORTATION AGENCY
AND NEWLEAF TRAVEL COMPANY INC.

Respondents

ORDER

The appellant is granted leave under section 41 of the *Canadian Transportation Act*, S.C. 1996, c. 10 to appeal the decision made by the Canadian Transportation Agency, dated March 29, 2016 and bearing Decision No. 100-A-2016 [the Decision].

This appeal shall be expedited provided the appellant files his Notice of Appeal within thirty (30) days of the date of this Order. If the application for judicial review in Federal Court of Appeal File No. A-39-16 is not rendered moot by this Order and if this appeal is expedited, then

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this appeal shall be heard immediately following the judicial review application in Federal Court of Appeal File No. A-39-16.

Costs of this motion for leave shall be in the cause.

"Johanne Gauthier"

J.A.

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160609

Docket: 16-A-17

Citation: 2016 FCA 174

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

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

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

Respondents

Dealt with in writing without appearance of parties.

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

REASONS FOR ORDER BY:

GLEASON J.A.

CONCURRED IN BY:

GAUTHIER J.A.
WEBB J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160609

Docket: 16-A-17

Citation: 2016 FCA 174

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

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

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

Respondents

REASONS FOR ORDER

GLEASON J.A.

[1] The appellant, Dr. Gábor Lukács, is seeking leave to appeal Decision 100-A-2016 of the Canadian Transportation Agency, issued on March 29, 2016 [the Decision]. In the Decision, the Agency made two determinations. First, it decided that resellers of domestic air service are no longer required to hold licences under the *Canada Transportation Act*, S.C. 1996, c. 10 [the CTA], so long as they do not hold themselves out as an air carrier operating an air service.

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

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

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

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

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

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

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

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

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

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

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

"Mary J.L. Gleason"

J.A.

"I agree
Johanne Gauthier J.A."

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

FEDERAL COURT OF APPEAL**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

DOCKET: 16-A-17

STYLE OF CAUSE: GÁBOR LUKÁCS v. CANADIAN
TRANSPORTATION AGENCY
AND NEWLEAF TRAVEL
COMPANY INC.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: GLEASON J.A.

CONCURRED IN BY: GAUTHIER J.A.
WEBB J.A.

WRITTEN REPRESENTATIONS BY:

Dr. Gábor Lukács FOR THE APPELLANT
(ON HIS OWN BEHALF)

Allan Matte FOR THE RESPONDENT
CANADIAN TRANSPORTATION AGENCY

Brian J. Meronek FOR THE RESPONDENT
Ian S. McIvor NEWLEAF TRAVEL COMPANY INC.

SOLICITORS OF RECORD:

Legal Services Branch FOR THE RESPONDENT
Canadian Transportation Agency CANADIAN TRANSPORTATION AGENCY
Gatineau, Quebec

D’Arcy & Deacon LLP FOR THE RESPONDENT
Barristers and Solicitors NEWLEAF TRAVEL COMPANY INC.
Winnipeg, Manitoba

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

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Federal Corporation Information

Federal Corporation Information - 913069-1

[Glossary of Terms used on this page \(http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04128.html\)](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04128.html)

⚠ Caution

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information \(https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06724.html\)](https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06724.html)).

Corporation Number	913069-1
Business Number (BN)	802496190RC0001
Corporate Name	Newleaf Travel Company Inc.
Status	Active
Governing Legislation	<i>Canada Business Corporations Act - 2015-04-15</i>

Registered Office Address

1 LOMBARD PLACE
2200
WINNIPEG MB R3B 0X7
Canada

i Note

Active CBCA corporations are required to [update this information \(bs/chngRgstrdcdrsWz.html?corporationId=9130691\)](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04178.html) within 15 days of any change. A [corporation key \(http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04178.html\)](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04178.html) is required. If you are not authorized to update this information, you can either contact

the corporation or contact [Corporations Canada \(http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html#from=Corporations&pageid=E770-Hcs00000\)](http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html#from=Corporations&pageid=E770-Hcs00000). We will inform the corporation of its [reporting obligations \(http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06646.html#toc-02\)](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06646.html#toc-02).

Directors

Minimum

Maximum

BRIAN REDDY	ROBERT JONES	DONALD YOUNG
201 GILL AVENUE	16 SHEA COURT	6253 ELDORADO PLACE
MISSISSAUGA ON L5G 2Y4	TORONTO ON M1C 2G6	NANAIMO BC V9V 1N4
Canada	Canada	Canada

Note

Active CBCA corporations are required to [update director information \(bs/chngDrctrs.html?corporationId=9130691\)](#) (names, addresses, etc.) within 15 days of any change. A [corporation key \(http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04178.html\)](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04178.html) is required. If you are not authorized to update this information, you can either contact the corporation or contact [Corporations Canada \(http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html#from=Corporations&pageid=E770-Hcs00000\)](http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html#from=Corporations&pageid=E770-Hcs00000). We will inform the corporation of its [reporting obligations \(http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06646.html#toc-02\)](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06646.html#toc-02).

Annual Filings

Anniversary Date (MM-DD)	04-15
Date of Last Annual Meeting	2016-04-26
Annual Filing Period (MM-DD)	04-15 to 06-14
Type of Corporation	Non-distributing corporation with 50 or fewer shareholders

**Status of
Annual Filings** 2016 - Filed

Corporate History

Corporate Name History

2015-04-15 to Present
Newleaf Travel Company Inc.

Certificates and Filings

Certificate of Incorporation	2015-04-15	
Certificate of Amendment *	2016-01-22	Amendment details: Province or Territory of Registered Office
Certificate of Amendment *	2016-05-10	Amendment details: Other
Certificate of Amendment *	2016-05-17	Amendment details: Other

* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. For more information, contact Corporations Canada (http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html#from=Corporations&situation=General).

[Start New Search](#)

[Return to Search Results](#)

[\(fdrlCrpSrch.html?V_SEARCH.command=refine&V_TOKEN=1468840295482&crpNm=NewLeaf&crpNmbr=&bsNmbr=\)](#)

Date Modified:

2016-06-29

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

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Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/02/25
Time Report Produced: 14:28:52
Page: 1

39

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
1919183	1919183 ONTARIO LTD.	2014/07/14
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
130 KING STREET WEST		NOT APPLICABLE
Suite # 2120		Amalgamation Ind.
TORONTO		NOT APPLICABLE
ONTARIO		
CANADA M5X 1C8		New Amal. Number
		NOT APPLICABLE
Mailing Address		Notice Date
NOT AVAILABLE		NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
		Revival Date
		NOT APPLICABLE
		Continuation Date
		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum	in Ontario
	Maximum	
	00001	00010
Activity Classification		Date Ceased
NOT AVAILABLE		in Ontario
		NOT APPLICABLE

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Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/02/25
Time Report Produced: 14:28:52
Page: 2

40

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1919183	1919183 ONTARIO LTD.

Corporate Name History	Effective Date
1919183 ONTARIO LTD.	2014/07/14

Current Business Name(s) Exist:	YES
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
ROBERT GREGORY JONES	16 SHEA COURT TORONTO ONTARIO CANADA M1C 2G6

Date Began	First Director	
2014/07/14	YES	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

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Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/02/25
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Page: 3



CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1919183	1919183 ONTARIO LTD.

Administrator: Name (Individual / Corporation)	Address
BRIAN JOSEPH REDDY	201 GILL AVENUE MISSISSAUGA ONTARIO CANADA L5G 2Y4

Date Began	First Director	Resident Canadian
2014/07/14	YES	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Administrator: Name (Individual / Corporation)	Address
DONALD JAMES YOUNG	6253 ELDORADO PLACE NANAIMO BRITISH COLUMBIA CANADA V9V 1N4

Date Began	First Director	Resident Canadian
2014/07/14	YES	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 018672113
Transaction ID: 60370820
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/02/15
Time Report Produced: 14:28:52
Page: 4

42

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1919183	1919183 ONTARIO LTD.

Last Document Recorded

Act/Code	Description	Form	Date
BCA	ARTICLES OF INCORPORATION	1	2014/07/14

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

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This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature



**NewLeaf
Airways**

Turning the page on travel.

NewLeaf Airways

INITIATING COVERAGE



John J.R. Vice, MBA

Research Analyst

Legacy Partners Wealth Strategies Inc.

647-499-8111

info@lpws.co

January 14 2015

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Summary And Recommendation

Globally, the airline industry is profitable: \$18¹ billion in 2014; up from \$10.6 billion in 2013. Rapidly declining fuel costs are augmenting this profitability. North America is leading the way with net post-tax profits of \$9.2 billion for 2014. In Canada, Air Canada and WestJet's profitable duopoly has produced much higher consumer travel prices relative to the US.

NewLeaf Airways (NewLeaf) will change this by bringing to Canada the successful Ultra Low Cost Carrier (ULCC) model: low-priced airfare by providing a no-frills service in a point-to-point route structure driven by demand-based opportunity. NewLeaf's unique approach will stimulate additional traffic from car, rail, and bus travelers. Lower fares will be offset through ancillary revenue: charging for services like food and beverage, baggage checking as well as sales commissions for car rental and hotel bookings.

NewLeaf will leverage technology, the web, and social media in innovative ways to enhance ancillary revenues while augmenting the entire customer service experience.

Quick Facts:

Strengths:

- Bringing strategy and tactics proven in Europe and US to Canada
- Leveraging technology to reduce costs and increase the quality of customers' experience
- Lowest cost provider strategy focused on lowest operating costs
- High penetration of air and non-air related ancillary services as a percent of total revenue

Opportunities:

- Existing, pent-up demand for their services
- Low base fare pricing to stimulate the market away from cars, trains, and buses on to airplanes

Conclusion:

- Innovative products in an emerging market
- Attractive returns relative to risk at \$0.23 per share

¹ All figures are in US dollars except where otherwise noted.



Industry Overview

Globally, the airline industry is doing well. Passenger growth of 5.9% in 2014 was above the 5.5% growth trend of the last two decades. This growth is being driven partly by the upturn of the economic cycle's increasing world trade.

The industry is projected to earn a net profit in 2014 of \$18 billion; a significant increase from \$10.6 billion in 2013 and \$6.1 billion in 2012.² This projection does not fully take into account rapidly declining fuel costs. The average jet fuel cost had been above \$120/barrel since 2011 but has declined rapidly to its current price of \$75.00/barrel with no bottom to the market in sight.³ This has resulted in an estimated cost savings to the industry of \$7 billion for 2014.⁴

Air travel passenger growth has been robust with a 5.9% improvement from 2013. However, the premium / business class travel component of that growth has slowed.⁵ While airline cargo revenue has been diminishing,⁶ revenue from ancillaries has been steadily rising. (See Figure 1)

The North American airline industry is delivering the world's best financial performance based on net post-tax profits - \$9.2 billion for 2014 and net profit per enplaned passenger of \$11.09. This is a significant improvement from \$2.83 two years ago. While this has been partly due to industry consolidation, the biggest operational driver behind this improvement has been ancillary revenues.⁷ Load factors have risen to record levels with the passenger load factor reaching 83.7% in April, 2014.

² "Industry Celebrates its Centennial in the Black," The International Air Transport Association, June 2, 2014, Accessed December 3, 2014, <http://www.iata.org/pressroom/pr/Pages/2014-06-02-02.aspx>.

³ "Fuel Price Analysis," The International Air Transport Association, December 29, 2014, Accessed January 4, 2015, <http://www.iata.org/publications/economics/fuel-monitor/Pages/price-analysis.aspx>.

⁴ "Fuel Price Analysis," The International Air Transport Association, November 28, 2014, Accessed December 3, 2014, <http://www.iata.org/publications/economics/fuel-monitor/Pages/price-analysis.aspx>.

⁵ "Industry Celebrates its Centennial in the Black," The International Air Transport Association, June 2, 2014, Accessed December 3, 2014, <http://www.iata.org/pressroom/pr/Pages/2014-06-02-02.aspx>.

⁶ <http://www.iata.org/whatwedo/Documents/economics/Economic-Performance-of-the-Airline-Industry-mid-year%202014-slides.pdf>

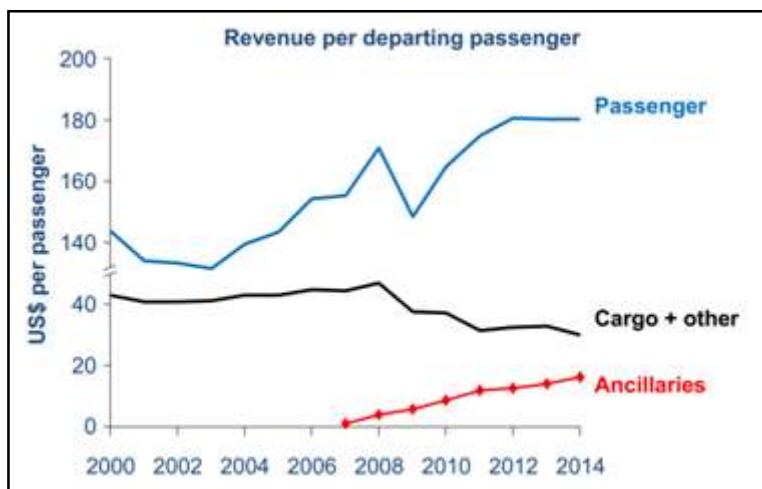
⁷ "Industry Celebrates its Centennial in the Black," The International Air Transport Association, June 2, 2014, Accessed December 3, 2014, <http://www.iata.org/pressroom/pr/Pages/2014-06-02-02.aspx>.



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Figure 1 Airline Revenue Per Departing Passenger



Source: International Air Transport Association (IATA), IdeaWorks

The Canadian airline market is primarily a duopoly between Air Canada and WestJet. This duopoly has allowed them to steadily increase their airfares and report record profits.⁸ Smaller, secondary competitors, such as Sunwing and Air Transat, focus on leisure tour operations. Thus, they avoid direct competition with this duopoly although these smaller airlines do compete with Air Canada and WestJet on large domestic and trans-border routes.

The results of the duopolistic competition are;

1. more expensive airfares in Canada relative to the US market⁹ (see Table 1);
2. secondary markets being poorly serviced in terms of the inconvenience to consumers - routing such travelers to a major airport for connecting flights; and
3. capacity is constrained as this duopoly is operating at all-time high load factors creating little opportunity for price driven growth.

⁸ Scott Deveau, "Canada Jetliners: Ultra-low cost carrier being proposed for Western Canada," National Post, November 27, 2013, Accessed December 8, 2014, <http://business.financialpost.com/2013/11/27/canada-jetliners-ultra-low-cost-carrier-being-proposed-for-western-canada>.

⁹ This is based on per seat mile comparing US and Canadian trips of similar distance.

**Table 1 Comparison Of Lowest Base Fares Between
Select US And Canadian Cities Of Similar Distance**

City Pair	Mileage (sm)	Lowest Published Base Fare ¹⁰	Yield
Dallas-Tulsa	237	\$57	\$0.241
Victoria-Kelowna	204	\$120	\$0.588
Buffalo- Seattle	2122	\$124	\$0.058
Toronto- Vancouver	2086	\$287	\$0.138
Niagara Falls- Fort Lauderdale	1176	\$65	\$0.055
Toronto- Fort Lauderdale	1214	\$187	\$0.154

Source: NewLeaf Airways Management

Two-thirds of Canadians live less than 100 kilometers from the US border.¹¹ Table 2 shows the driving distance between major Canadian cities and their respective closest US border airport for each one.

With lower airfares and more service options in the US, the result is that more than five million Canadians per year avoid Canadian airline travel by crossing the US border where they can travel on lower airfares on major US airlines or opt for even lower airfares with low cost carriers (LCCs) or ultra low cost carriers (ULCCs).¹² This has led to an estimated lost opportunity of \$1.3 billion annually to this Canadian market.¹³

¹⁰ The lowest base fare (including surcharges) posted July 22, 2014 for flights departing October 22, 2014. Source: Aircanada.com, westjet.com, Southwest.com, Spirit.com, and United.com. US fares converted to CAD at a rate of 1.10.

¹¹ "Where we live? Canada," Statistics Canada, Accessed November 28, 2014, <http://www12.statcan.gc.ca/census-recensement/2006/as-sa/97-550/vignettes/a1-eng.cfm>. This was not part of the 2011 census.

¹² Jamie Sturgeon and Vassy Kapelos, "WATCH: New ultra low-cost air carrier Jetliners aims for spring launch," Global News, July 30, 2014, Accessed December 8, 2014, <http://globalnews.ca/news/1483295/new-ultra-low-cost-air-carrier--aims-for-spring-launch>.

¹³ *The Future of Canadian Air Travel: Tool Booth or Spark Plug*, Standing Senate Committee on Transportation and Communications, June 2012, and *Transborder Demand Leakage and the US-Canadian Air Passenger Market*, Robert H. Smith School of Business, University of Maryland, June 2012.



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**Table 2 Driving Distance Between Major Canadian Cities
And Their Closest US Border Airport**

Canada	US	Distance (sm)	Drive Time (hrs)
Montreal	Burlington	97	2.5
Toronto	Buffalo	98	2.33
Ottawa	Ogdensburg	62	1
Vancouver	Bellingham	60	1.5

Source: NewLeaf Airways Management

This trend is expected to continue as American airports and airlines close to major Canadian urban areas specifically target this cross-border market of price-sensitive Canadian travelers. For example, Allegiant Airlines announced that it would help fund the extension of the Ogdensburg airport runway to allow jet service.¹⁴

Capacity

In the US, overall capacity in the industry is diminishing. This is a reflection of the aftermath of the economic recession that commenced in 2008. This trend is more acute within the leisure market where air travel is largely discretionary. The US airline industry has responded to this trend by dropping air routes that fail to generate an adequate rate of return.¹⁵

In Canada, there is high capacity at the expense of growth. The duopoly of Air Canada and WestJet has been growing by expanding into secondary markets. Air Canada's discount carrier, Rouge, commenced operation in July 2013 to service primarily leisure travelers. In 2014, Rouge expanded into western Canada servicing the leisure market from Vancouver and Calgary to the American

¹⁴ Joanne Schnurr, "Ogdensburg Airport in expansion mode to attract Ottawa passengers," *CTV News*, July 8, 2014, Accessed December 1, 2014, <http://ottawa.ctvnews.ca/ogdensburg-airport-in-expansion-mode-to-attract-ottawa-passengers-1.1904713>.

¹⁵ David Carr, "Surveying The Landscape What Will It Look Like In 5 Years?" *Wings*, November 5, 2014, Accessed December 1, 2014, <https://www.wingsmagazine.com/news/surveying-the-landscape-11197>.



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west. WestJet's regional airline, Encore, is entering into regional markets where Air Canada had near or total monopoly on low routes with low competition and high prices.

Ancillary Revenues

Ancillary revenue is revenue generated by airline activities beyond flying their customers. It is a significant and growing portion of revenue in the industry. (See Table 3) Ancillary revenues include both optional fee-for-service activities and non-fee activities. Fee-for-service activities (e.g. onboard sales of food and beverages, checked baggage, premium seat assignments, and early boarding benefits) accounted for \$28.5 billion of the \$49.9 billion projected global ancillary revenues for 2014. The remaining \$ 21.4 billion was from non-fee activities (e.g. program partner sales of frequent flyer miles and commissions from selling to existing customers related services like hotel and car rentals).¹⁶ Such activities include commissions from hotel bookings and car rentals, selling frequent flyer points to strategic partners, and providing a la carte services (e.g. checked baggage, premium seating, in-flight entertainment, and food and beverage).

Table 3 Worldwide Estimate Of Airline And Ancillary Revenue

	2014	2013	2012	2011	2010
Global Airline Revenue (billions)	\$746	\$708	\$667	\$577	\$474
Global Ancillary Revenue (billions)	\$49.9	\$42.6	\$36.1	\$32.5	\$22.6
Ancillary Revenue percent	6.7%	6%	5.4%	5.6%	4.8%

Source: IdeaWorksCompany.com Ancillary revenue statistics applied by to individual airline revenue results for the year indicated from Air Transport World, Airline Business, and at airline websites.

The importance of ancillary revenue becomes clear when the \$49.9 billion estimate of global ancillary revenue is divided by the estimated 3.32 billion passengers that comprised this revenue.¹⁷ The result is an average of \$15.03 of ancillary revenue per passenger. Conversely, the estimated

¹⁶ "Airline ancillary revenue worldwide to top US\$49.9bil in 2014," Web In Travel, April 11, 2014, Accessed December 3, 2014, <http://webintravel.com/airline-ancillary-revenue-worldwide-top-us49-9bil-2014>.

¹⁷ International Air Transport Association (IATA)



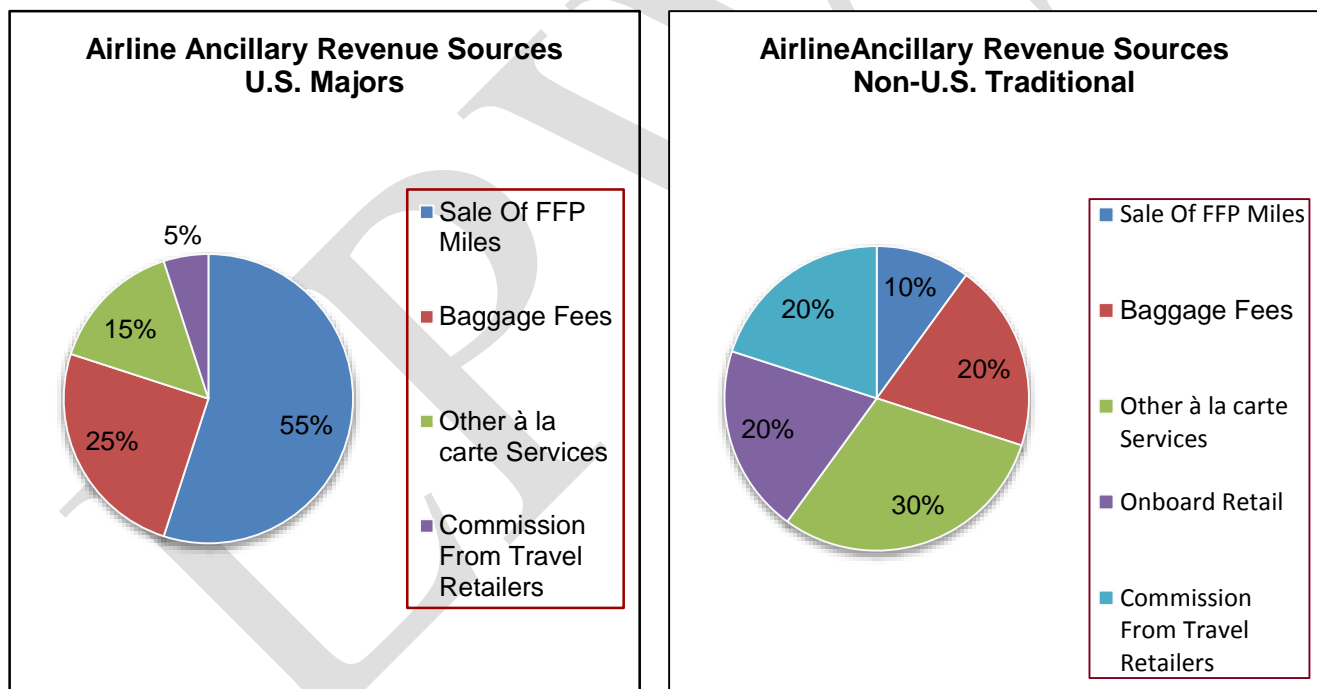
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after-tax 2014 profit for the airline industry globally is \$18 billion.¹⁸ This represents a 2.45% profit margin (on the revenue estimate of \$746 billion from Table 3) or \$5.42 per passenger. For traditional airlines with higher operating costs, ancillary revenues can mean the difference between profit and loss. For the cost-efficient LCC and ULCC, ancillary revenues mean a higher portion of overall revenues and a greater margin.

While the major US airlines generated over half of their ancillary revenues from the sale of FFP (frequent flyer point) miles, traditional airlines outside of the US have more diversity in their ancillary revenue components with the sale of FFP miles making up only 10%.¹⁹ (See Figure 2)

Figure 2 Airline Ancillary Revenue Sources



¹⁸ “Profitability Weak But Still Making Major Economic Contribution,” International Air Transport Association, June 2, 2014, Accessed December 3, 2014, <http://www.iata.org/pressroom/pr/Pages/2014-06-02-02.aspx>.

¹⁹ “Airline ancillary revenue worldwide to top US\$49.9bil in 2014,” IdeaWorksCompany, November 3, 2014, Accessed December 3, 2014, <https://www.cartrawler.com/ct/partners/reports-and-articles.html.3-4>.



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Ancillary revenues are becoming increasingly discretionary for air travel consumers. Portable internet devices are making it easy for them to research and purchase their own products and services related to their air travel. (See Side Bar)

Therefore, airlines wanting to effectively sell ancillary services must be proactive in their retailing by focusing on satisfying their customers' needs along every step of their interactions. Airlines must also ensure that their strategic partners providing ancillary services will be congruent with them in their deployment.²⁰ Data mining techniques by airlines to understand and quantify the behaviour of their customers will become increasingly important to providing the right ancillary products and services at the right time.²¹

The Ultra Low Cost Carrier Advantage

An ULCC is an airline that competes by offering lower priced airfare than conventional carriers by providing a bare-bones, no frills service in a point-to-point route structure driven by demand-based opportunity. This model has successfully delivered top quartile returns and growth to its shareholders and low cost travel to its customers. For example, Ireland-based RyanAir, founded in 1985, has demonstrated the sustained success of this business model. Spirit Airlines and Allegiant Air have successfully emulated this business model in the US and produced industry-leading margins by stimulating low-yielding traffic with low fares.

Mobile Internet Use Is Proliferating

90% percent of U.S. households have three or more Internet-connected devices (e.g., smart phones, laptops, and tablets). Just under half of households have five or more such devices and nearly a quarter use seven or more such devices. The average number of connected devices per household is 5.2 and that number is growing. Ericsson Mobility recently reported that by 2020, 90% of the world's population over six years of age will have a mobile phone. The average user engages their device(s) about 150 times each day.

Source: Ericsson Mobility

²⁰ Mary-Anne Baldwin, "Book, board and buy online," Air Fleet Management, November 27, 2014, Accessed December 1, 2014, <http://www.afm.aero/news/talking-point/item/2046-book-board-and-buy-all-online>.

²¹ Mike McGerty, CEO of CarTrawler. CarTrawler.com



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These lower yields are offset through ancillary revenue.²² In 2013, ¼ of RyanAir’s revenue was in ancillary sales.²³

The ULCC’s pricing model takes market share from existing airlines and stimulates airline industry growth by taking market share from land travelers (e.g. car, train, and coach bus).²⁴

The NewLeaf Advantage

NewLeaf Airways (NewLeaf) is a start-up ULCC airline that will be a travel and tour operator servicing the Canadian market place. The leadership team’s experience in the airline and hospitality industries is adapting the best global practices to this specific service in this specific market. In doing so, they analyzed every successful ULCC and determined the key individual and collective characteristics of ULCC success.

The NewLeaf strategic plan is based on focusing on a very specific market where a ULCC with specific service features will be able to compete effectively. The most critical differentiator is appeal to this price-sensitive target market by being the lowest cost provider. In the US, this was Spirit’s strategy to achieve a competitive advantage. NewLeaf’s second strategy is focusing on the customer’s overall experience from initial contact (through a phone call or web interaction) to post travel communications. In the US, Allegiant pursued this strategy to achieve a competitive advantage.

“Legacy” or “full service network carrier” airlines create service differentiation through pre-flight and onboard services (e.g. different service classes, in-flight meals, departure lounges, and connecting flights).²⁵ NewLeaf will create service differentiation by deploying digital and social media to create a depth to the customer experience that will be unique within the Canadian airline

²² www.IdeaWorksCompany.com

²³ www.IdeaWorksCompany.com

²⁴ German Aerospace Center DLR, October 2008.

²⁵ German Aerospace Center DLR, October 2008



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industry. Creating a positive experience will enhance the equity of the NewLeaf brand and create latitude for further ancillary sales.

NewLeaf Competitive Strategy

NewLeaf will create base fare rates approximately 40% below the lowest pricing of other incumbent scheduled airlines. These fares will be competitive with US-based ULCCs for trans-border destinations to achieve market penetration by being the lowest cost provider in an extremely price-sensitive market. Pricing can be subsequently lowered to achieve more penetration into indirect competition with the ground-based transportation market. Thus, NewLeaf is creating its own new air travel market.²⁶ This stimulation of demand will create strong load factors, adding to its revenue per seat mile. NewLeaf's lower airfares will be offset by higher margin ancillary revenues.

NewLeaf's costs are projected to be 25% below competitors through a focused strategy on five key cost drivers;

1. Seat Density

By eschewing different seating classes for a single economy class, configured at the maximum seating density, NewLeaf will have more seats per respective aircraft than current Canadian competitors (e.g. 149 seats versus 136 for same aircraft type). These larger aircraft with greater seating density will yield lower cost per available seat miles (CASM) than their competitors' yield and have high aircraft utilization. From this, NewLeaf should realise an 8% cost advantage.

2. Secondary Airports

NewLeaf will further this cost advantage by flying in and out of secondary airports (e.g. Hamilton instead of Toronto). These secondary airports not only charge lower fees, they are more convenient

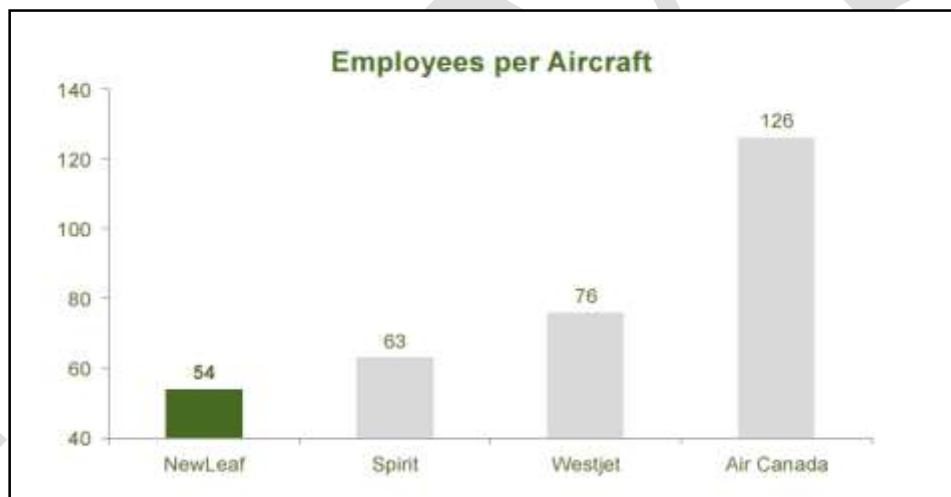
²⁶ *Transborder Demand Leakage and the US-Canadian Air Passenger Market*, Robert H. Smith School of Business, University of Maryland, June 2012.

for customers. Major airlines operating out of such secondary airports will typically have less frequent service that involves using a small, turbo prop aircraft to fly their customers to a larger airport for a connecting flight. NewLeaf will compete with non-stop lower-cost flights, typically with more frequent service. By leveraging this efficiency from secondary airports, NewLeaf should realise a 6% cost advantage.

3. Lean Staffing Model

NewLeaf's staffing model will utilize contract services extensively. This will reduce overhead salary and wage costs while allowing flexibility based on short-term market demand.

Figure 3 Employees Per Aircraft Comparison



Source: NewLeaf Airways Management

4. Low Distribution Costs

For ticket distribution, NewLeaf will reduce operating costs while retaining control by using web browser and mobile device-based ticket distribution instead of higher cost third party distribution systems.

5. Unbundled Services



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As a ULCC, NewLeaf’s basic services will be as minimalistic as possible. This ‘extreme unbundling’ will provide the leverage for NewLeaf to maximize their ancillary offerings to customers by strategic targeting based on data mining (with proprietary social and digital media) to tactically offer the right ancillaries to the right customers at the right time in the right place. Within six months of commencing operations, NewLeaf forecasts that 25% of their total revenue will be from ancillary revenue (compared to a 6.7% average for total global ancillary revenue²⁷). This extreme unbundling will allow NewLeaf to serve a broader base of customer types as customers can define their travel experience on their terms.

Figure 4 NewLeaf Cost Advantages



Source: NewLeaf Airways Management

Highly Variable Cost Structure

²⁷ IdeaWorksCompany.com, “Airline ancillary revenue projected to be \$49.9 billion worldwide in 2014,” accessed November 26, 2014, <http://www.ideaworkscompany.com/wp-content/uploads/2014/11/Press-Release-92-Global-Estimate.pdf>.



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NewLeaf will achieve further cost advantage with a highly variable cost structure. This includes wet-leasing²⁸- chartering aircraft on a block hour basis through partnerships with existing airlines such as Canjet, First Air, and Flair Air. The advantage is that NewLeaf will only pay for what they fly. The aircraft, crew, maintenance and insurance (ACMI) rate is estimated at \$2,200-\$2,500 per block hour. This will provide immediate lowest cost by leveraging the partner airlines' economies-of-scale. NewLeaf will have three aircraft under wet lease at launch and for year one. Excess market demand for NewLeaf travel will be serviced by up to four additional aircraft by damp leasing – an arrangement where the lessor provides the aircraft, flight crew, and maintenance and the lessee provides cabin crew.

Migration From Wet Lease To Dry Lease

Once NewLeaf receives its license from the Canadian Transportation Agency, and it is cost-effective to do so, NewLeaf will migrate from wet leasing to dry leasing – an arrangement where the Lessee is responsible for aircraft, crew, fuel, and maintenance. This will be financed using free cash flow from operations and smaller investments. This progression has been used successfully by other successful ULCCs around the world (e.g. Scoot - Singapore Airlines and Wizz Air - Hungary). Between owned and leased aircraft, NewLeaf plans to have an operating fleet of nine aircraft in its second year of operations and 15 aircraft in its third year.

Risk Profile

The airline industry has inherent risks. There are significant upfront, sunk capital costs to take an airline from conceptualization to service rollout. The airline industry is very competitive and susceptible to price discounting. To enter into competition with larger, established airlines that are servicing NewLeaf's existing and potential markets, there is a risk that a competitor may engage in predatory pricing. Such predatory pricing would be difficult for NewLeaf's competitors as none of them are currently structured to compete based on NewLeaf's unique unbundled pricing structure.

²⁸ Wet-leasing is where an airline carrier acting as the lessee obtains aircraft and flight crew from another carrier -- the lessor to operate pursuant to the lessee's license. Therefore, the lessor is in operational control and the lessee is in commercial control.



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There are other ULCCs planning to launch in Canada. While NewLeaf expects to be first to market, others will inevitably follow. NewLeaf is proactively engaging in brand development and pursuing this brand through its marketing efforts to promote and sustain its uniqueness.

NewLeaf will require aircraft to commence operations and expand its offerings. While there is currently an adequate supply of suitable aircraft at competitive prices and terms, this supply may change in the future. As NewLeaf will start small, problems of aircraft inoperability will be a risk. As NewLeaf's plan is to grow rapidly, this risk should diminish quickly. However, unforeseen and unexpected aircraft inoperability problems pose the most financial and reputational implications early on when NewLeaf initially becomes operational but before it has significant aircraft to mitigate this risk.

As NewLeaf seeks a competitive advantage through leveraging third party contract resources, they will be heavily reliant on service contractors to give flexibility that will create an overall lower operating cost. However, there are additional cost variables when there is no direct control over such resources.

NewLeaf will operate with lower human resources costs than traditional airlines because of lower base salaries and aircraft that have less cabin staff and more seating than conventional airlines. This will be enhanced by their flexible human resources deployment strategy that will achieve greater utilization. However, there is no assurance that these advantages can be sustained.

Financial Management

All figures in the financial statements and summaries are in Canadian dollars.



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Table 4 Financial Summary

	Year One	Year Two	Year Three
Revenue	\$114.7 M	\$247.6 M	\$467.4 M
New Income	\$12.8M	\$36.9 M	\$87.1 M
EBIT	11.1%	14.9%	18.6%

Current Financial Condition

NewLeaf Airways is a start-up venture and their current financial situation reflects the opening audited financial position with the incorporation and the issuance of the initial share holdings of the founding principals.

Assumptions

The financial projections provided below are based on several key assumptions that are on the conservative side of industry norms and practices. These metrics were further discounted to create financial projections that are attainable for the first-to-market ULCC in Canada.

The key assumptions used in the pro-forma financials presented below:

- Load Factor was established for projection purposes at 60% versus an industry standard of approximately 80%. The breakeven point on Load Factor for these projections was 52%.
- Fuel pricing was established for projection purposes at \$3.48/gal. The breakeven point on fuel price for these projections was identified as \$4.61/gal. Fuel surcharges are an accepted method for all airlines to recover increases in fuel costs.
- ACMI was established for projection purposes at \$2,057 per Block Hour. The breakeven point on ACMI for these projections is identified as \$3,380 per Block Hour.
- Ticket pricing was established for projection purposes at \$170. The breakeven point on Load Factor for these projections is \$146.



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- Ancillary revenues, which are where many ULCCs make up their additional revenue from their customers, was established for projection purposes at 25% versus the industry reported level of 38%. The breakeven point on revenues from ancillary products and services for these projections is 18.1%.

LEAFWAYS



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Projected Income Statement	31-Dec-14 (from 14-Jul-14)	Year 1 Full Year	Year 2 Full Year	Year 3 Full Year
Revenues				
New Aircraft		3	6	6
Total Aircraft		3	9	15
Flight Revenues	-	84,913,920	173,759,040	315,675,360
Non Air Package Revenue	-	1,536,652	10,466,485	27,354,183
Ancillary Revenues	-	28,304,640	63,370,944	124,356,960
Revenue Total	-	114,755,212	247,596,469	467,386,503
Aircraft Operation Expenses				
OnBoard	-	63,869,937	134,361,624	243,307,286
Non Package Revenue COGS	-	-	-	-
Ancillary COGS	-	-	-	-
Airport/Facilities	-	14,189,448	27,679,834	47,980,175
Direct S,G & A	-	19,788,282	42,261,343	80,252,476
Aircraft Operation Expense Total	-	97,847,667	204,302,801	371,539,936
Margin Contribution		16,907,545	43,293,668	95,846,567
		14.7%	17.5%	20.5%
Corporate Expense				
Personnel	493,957	2,762,874	4,383,800	5,857,781
Consultants / Advisors / Outsourcing	35,000	280,500	480,000	720,000
Expense - Other	487,102	1,081,552	1,546,723	2,152,714
Corporate Expense Total	1,016,059	4,124,926	6,410,523	8,730,495
Expenses Total	1,016,059	101,972,593	210,713,325	380,270,431
EBITDA	(1,016,059)	12,782,620	36,883,144	87,116,072
		11.1%	14.9%	18.6%
Amortization	-	1,150,995	2,484,328	4,525,995
EBIT	(1,016,059)	11,631,625	34,398,816	82,590,077
		10.1%	13.9%	17.7%



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Projected Balance Sheet	31-Dec-14 (from 14-Jul-14)	Year 1 Full Year	Year 2 Full Year	Year 3 Full Year
New Aircraft Operations		3	6	6
Existing Aircraft Operations		3	9	15
Assets				
Cash and Equivalents	10,831,040	15,743,330	44,719,462	118,910,658
Accounts Receivable	-	2,390,734	2,856,882	4,801,916
Deposits	2,125,000	2,125,000	5,875,000	11,550,000
Prepaid Expenses	2,482,917	7,448,751	7,448,751	7,448,751
Total Current Assets	15,438,957	27,707,814	60,900,095	142,711,325
Capitalized Costs (net)	2,552,984	2,201,989	3,267,661	3,916,667
Non aircraft capital expenditures (net)	600,000	300,000	2,250,000	4,275,000
Other Assets	3,152,984	2,501,989	5,517,661	8,191,667
Total Assets	18,591,941	30,209,804	66,417,757	150,902,991
Liabilities				
Accounts Payable	-	986,238	2,795,375	4,690,532
Other Current Liabilities	-	-	-	-
Total Current Liabilities	-	986,238	2,795,375	4,690,532
Other Long-Term Liabilities	1,000,000	-	-	-
Total Liabilities	1,000,000	986,238	2,795,375	4,690,532
Shareholders' Equity				
Common Stock	18,608,000	18,608,000	18,608,000	18,608,000
Preferred Stock	-	-	-	-
Retained Earnings	(1,016,059)	10,615,566	45,014,382	127,604,460
Total Shareholders' Equity	17,591,941	29,223,566	63,622,382	146,212,460
Total Liabilities and Shareholders' Equity	18,591,941	30,209,804	66,417,757	150,902,991

*Cash and Equivalents includes the \$9,413,000 Operating Reserve called for in the Use of Proceeds. The Corporation has provided for 4 months operational expense coverage.



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Projected Cash Flow	31-Dec-14 (from 14-Jul-14)	Year 1 Full Year	Year 2 Full Year	Year 3 Full Year
New Aircraft Operations		3	6	6
Existing Aircraft Operations		3	9	15
Operating Activities				
Net Operating Profit		11,631,625	34,398,816	82,590,077
Amortization		1,150,995	2,484,328	4,525,995
Credit Card Hold Back		(28,688,803)	(24,759,647)	(46,738,650)
Credit Card Receipts		26,298,070	24,293,498	44,793,617
Prepaid Expenses (Airlift)	(2,482,917)	(59,590,006)	(59,590,006)	(59,590,006)
Prepaid Expenses (Airlift Recapture)		54,624,172	59,590,006	59,590,006
Payables (Accrued)		11,704,831	24,497,100	45,935,219
Payables (Paid)		(10,718,593)	(22,687,964)	(44,040,061)
Cash Flow from Operations	(2,482,917)	6,412,290	38,226,132	87,066,196
City Launch Activities				
Development	(256,984)	-	-	-
Corporate Pre Operations Capital	(901,000)	-	-	-
Corporate Pre Operations Expense	(1,016,059)	-	-	-
Operational Startup Expense	(400,000)	-	-	-
Aircraft & Airport Deposits	(2,125,000)	-	(3,750,000)	(5,675,000)
Marketing and Reservation Startup	(1,595,000)	(500,000)	(2,500,000)	(3,000,000)
Cash Flow from City Launch	(6,294,043)	(500,000)	(9,250,000)	(12,875,000)
Financing Activities				
Issuance of Common Shares	18,608,000	-	-	-
Issuance of debt(net)	1,000,000	(1,000,000)	-	-
Cash Flow from Financing	19,608,000	(1,000,000)	-	-
Net Change in Cash	(8,776,960)	4,912,290	28,976,132	74,191,196
Beginning Cash Balance	19,608,000	10,831,040	15,743,330	44,719,462
Ending Cash Balance	10,831,040	15,743,330	44,719,462	118,910,658



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Projected Operating Statistics			
	Year 1	Year 2	Year 3
Year End Aircraft	3	9	15
Seats	5,184	11,232	21,024
Flights	5,460	11,830	22,143
Stage Length	984	984	984
Miles Flown	5,372,640	11,640,720	21,789,040
Available Seat Miles (ASM)	773,660,160	1,676,263,680	3,137,621,760
Revenue Passenger Miles (RPM)	464,196,096	1,005,758,208	1,882,573,056
Load Factor	60%	60%	60%
Average Base Fare	\$ 180.00	\$ 170.00	\$ 165.00
Yield	\$ 0.183	\$ 0.173	\$ 0.168
Passenger Revenue per ASM (PRASM)	\$ 0.110	\$ 0.104	\$ 0.101
Total Revenue per ASM (TRASM)	\$ 0.148	\$ 0.148	\$ 0.149
Passengers	471,744	1,022,112	1,913,184
Costs per ASM (CASM)	\$ 0.132	\$ 0.126	\$ 0.121
Fuel Costs per ASM	\$ 0.045	\$ 0.045	\$ 0.045
Costs per ASM excluding Fuel (CASMx)	\$ 0.086	\$ 0.080	\$ 0.076
Net Ancillary Revenue Per Passenger	63.26	72.24	79.30



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The selected common share price of C\$0.23 reflects a multiple of EBITDA per assumed outstanding common share total, discounted to reflect the start-up risk position of NewLeaf at the time of the offering.

		Start-up Risk Discount						
		30%	35%	40%	47%	50%	55%	60%
EV/ EBITDA Multiple	6.0	0.46	0.43	0.39	0.35	0.33	0.30	0.26
	5.5	0.42	0.39	0.36	0.32	0.30	0.27	0.24
	5.0	0.38	0.36	0.33	0.29	0.27	0.25	0.22
	4.5	0.34	0.32	0.30	0.26	0.25	0.22	0.20
	4.0	0.31	0.28	0.26	0.23	0.22	0.20	0.17
	3.5	0.27	0.25	0.23	0.20	0.19	0.17	0.15
	3.0	0.23	0.21	0.20	0.17	0.16	0.15	0.13
	2.5	0.19	0.18	0.16	0.14	0.14	0.12	0.11
	2.0	0.15	0.14	0.13	0.12	0.11	0.10	0.09
		Price Per Share						

* Price of \$0.23 represents a multiple of 4, which is greater than 50% of the lowest multiple of our recognized industry competitors detailed in the chart below. Additionally, we have applied a 47% discount for the initial offering to account for start-up risk.



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Industry Comparison

Airline						Industry Average
Year Founded	1997	1967	1985	1995	1993	NA
Base	USA	USA	Ireland	UK	Malaysia	NA
Aircraft (#)	60	54	303	217	169	137
Destinations (#)	99	57	68	134	88	80
Routes (#)	200	NA	1,500	600	NA	588
Ticker	Nasdaq GSALGT	Nasdaq GSSAVE	ISERY4B	LSEEZJ	KLSEAIR ASIA	NA
Market cap (M\$)	\$2,276	\$5,011	\$16,386	\$12,455	\$2,280	IPO
Enterprise value (M\$)	\$2,148	\$4,422	\$17,085	\$11,425	\$5,335	NA
EBITDA (M\$)	\$252	\$331	\$1,482	\$998	\$519	NA
EV/EBITDA	8.5x	13.4x	11.5x	11.5x	10.3x	11.0x
Gross Margin (LTM)	29.30%	30.40%	23.80%	22.00%	35.00%	28.10%
EBITDA Margin (LTM)	23.80%	18.80%	20.10%	14.10%	33.80%	22.10%
EBIT Margin (LTM)	16.90%	17.10%	13.20%	11.70%	18.60%	15.50%



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Pro Forma Capital Structure

Security Description	Number Of Authorized To Be Issued		# Outstanding as of Sept 15, 2014	# Outstanding (Assuming Completion) Max. Offering
Common Shares	Unlimited		30,000,000	116,956,522

Pro Forma Valuation

	Corporation Enterprise Value Pre-Offering	Corporation Book Value Pre-Offering	Corporation EV Post-Offering Assuming Subscription of all offered shares	Corporation Book Value Post-Offering Assuming Subscription of all offered shares
Common Shares	\$33,000	\$33,000	\$26,900,000	\$18,608,000

The valuation above represents all currently issued and outstanding common shares of NewLeaf as Enterprise Value, valued at \$0.0011 per share pre-offering, and \$0.23 per share post-offering. Book value represents the net accounting valuation of all issued and outstanding shares including all associated issuance costs, where shares are priced at \$0.0011 per share on 30,000,000 shares outstanding.

Conclusion

In conclusion, NewLeaf Airways represents an exciting investment opportunity. They are bringing a strategy and tactics proven in other markets to Canada, where there is an existing, pent-up demand for their services. Furthermore, they are leveraging technology to reduce costs and increase the quality of their customers' experience. NewLeaf Airways will compete based on a proven methodology that provides service at a lower cost than their existing competitors.



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Disclaimer

This report was produced entirely by Legacy Partners Wealth Strategies Inc (“LPWS”). Although the information contained in this report has been obtained from sources that LPWS believes to be reliable, we do not guarantee its accuracy and, as such, the information may be incomplete or condensed. All opinions, estimates and other information included in this report constitute our judgment as of the date hereof and are subject to change without notice.

All statements and other information contained in this document related to 1919183 Ontario Ltd, which is operating under the business name “NewLeaf Airways”, as well as other statements about anticipated future events or results, constitute forward-looking statements. Forward-looking statements often, but not always, are identified by the use of words such as “seek”, “anticipate”, “believe”, “plan”, “estimate”, “expect”, “intend”, “forecast”, “project”, “likely”, “potential”, “targeted” and “possible” and statements that an event or result “may”, “will”, “would”, “should”, “could” or “might” occur or be achieved and other similar expressions. Forward-looking statements are subject to known and unknown business and economic risks and uncertainties and other factors that could cause actual results of operations to differ materially from those expressed or implied by the forward-looking statements. Forward-looking statements are based on estimates and opinions of management at the date the statements are made. NewLeaf Airways does not undertake any obligation to update forward-looking statements even if circumstances or management’s estimates or opinions should change. For the reasons set forth above, investors should not place undue reliance on forward-looking statements. Investors are encouraged to consider their own risk tolerance and the risk involved in investing in NewLeaf Airways. Investors should understand that investment in the Common Shares is not guaranteed, and investors could lose part or all of their investment. The decision to invest in the Common Shares should be based solely on the contents of the confidential offering memorandum dated October 15, 2014 and the subscription agreement (collectively the “Subscription Documents”), each of which are provided to all investors. A list of risks related to the purchase of the Common Shares can be found in the confidential offering memorandum. These Subscription Documents each supersede all prior exchanges of information, whether oral or written. The Company has engaged Legacy Partners LPWS to act as its agent in distributing common shares of NewLeaf Airways. LPWS owns shares in 1919183 Ontario Limited operating as “NewLeaf Airways”. No recipient may pass on the information contained in this report to any other person without the prior written consent LPWS.



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Appendix A - Management Team

Donald James ("Jim") Young

President & Chief Executive Officer, Director

Jim Young is an experienced marketing, strategy, and commercial operations executive specializing in the air transportation, technology, and hospitality industries. He is the President and Chief Executive of the Corporation.

Throughout his 25-year career, Mr. Young has held various senior and executive management positions in the airline, hotel, and strategy consulting industries. Most recently, he was President of Canada Jetliners, Ltd. a start-up ULCC headquartered in Vancouver BC. Prior to that he was Senior Vice President of New Markets and Products for airline onboard payment processor GuestLogix. Other airline experience included Vice President and Chief Marketing Officer for Frontier Airlines, Executive Vice President, Finance and Revenue for Festival Airlines, Managing Director Distribution Planning for Continental Airlines and Head of Strategic Planning for Canadian Airlines. He was also the Senior Vice President, global distribution for the InterContinental Hotels Group.

A recognized industry leader, he was a founder of online travel agency Orbitz as well as industry standards organizations Open AXIS Group and the Open Travel Alliance. Mr. Young has also been involved in the academic community as a Fellow with the Wharton School's Operations Information Economics faculty and the 2007 Executive in Residence at the Georgia Institute of Technology School of Management.

In 1999, and again in 2004, Business Travel News and Travel Agent Magazine recognized Mr. Young as one of the most influential people in the industry.

Brian Joseph Reddy BComm (Hon), CPA, CA

Chief Financial Officer, Director

Brian Reddy is a senior financial executive with an extensive background in finance and operations management for global, public, and private companies and for an Ontario-based, federally-chartered, not-for-profit organization. He is the Chief Financial Officer of the Corporation.

Mr. Reddy has over 25 years of work experience in both domestic and international operations in the automotive manufacturing, automotive financing, health care delivery, software development, and services sectors. His executive management responsibilities have included finance, tax, human capital, corporate development, information technology, administrative services, sales, and global customer support operations.

Experienced in all aspects of corporate financing, including venture capital strategy and execution for small to medium size start-up operations as well as private placement financing, asset backed debt facilities and securitization of automotive loan and lease portfolios, Mr. Reddy's areas of technical expertise include treasury management, International Financial Reporting Standards ("IFRS"), software revenue recognition, corporate and indirect taxation, management processes for structured software development and implementation, and finance and operations-reporting dash-boards to analyze and direct rapidly growing global operations.

Mr. Reddy has solid corporate governance experience including service as a member of the Board of Directors of a global leader in the automotive sector, Secretary to the Board of a Canadian public company



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and member of the Board of Directors of a not-for profit organization. He is Audit Committee-certified (“ACC”) through McMaster University is DeGroot School of Business and the Directors College of Canada.

Robert Gregory (“Bob”) Jones

Chief Commercial Officer, Director

Bob Jones is a partner of ArCompany, a consulting firm for social media and digital media intelligence for large enterprise businesses, the author of a monthly blog on Social Selling, and is currently the Chief Commercial Officer of the Corporation.

Before his involvement with NewLeaf, Mr. Jones had senior management roles with Bell Canada where he was lastly the Vice President of Sales for National Accounts with responsibilities for major Financial Institutions with over \$150 million in revenue and more than 100 employees reporting to him. Prior to that role, he was the Vice President of Marketing and Product Management (Sales Transformation) for National Accounts with over \$1 billion in revenue and over 1,000 employees reporting to him. He was also responsible for training C Suite executives on large Enterprise sales.

A former Vice President of Marketing for AT&T Canada/Allstream, Mr. Jones had responsibilities for that company’s activities for Local, VOIP, Long Distance, International Call Centres, and Virtual Call Centre Technology Solutions. He is also an entrepreneur with nine “start-ups” in high-tech control systems, Internet and mobile applications online and mobile directories, security software, and social media/digital media.

Mr. Jones is a member of the Toronto Audio Video Entertainment Show Executive Team working with the IMAX Private Theatre Group for possible deployment in the Hotel and Hospitality sector.

Mr. Jones’ extensive background includes a role as a Keynote Speaker at UN Plenary Session in Lyon, France on the subject of E-commerce in Global Healthcare, working on international projects in US, UK, France, Algeria, Pakistan, and Egypt. A BAsC graduate in engineering from the University of Waterloo, he has an Executive MBA from the University of Toronto’s Rotman School and participated in the Executive Excellence Management Program with the Generative Leadership Group, New Jersey (now a Masters-accredited program from Centre for Leadership). Bob is a member of the Professional Engineers of Ontario (“PEO”).

James R. Weiland

Senior Vice-President, Operations

A resourceful, dedicated, and forward-thinking top aviation and aerospace executive, Jim’s core strengths include proven leadership skills, exceptional strategic planning and negotiating skills, extensive P&L responsibility, and wide ranging expertise in the following:

- aircraft evaluation and acquisition;
- aircraft and engine finance and leasing;
- airline flight and technical operations;
- regulatory compliance; and
- aircraft, equipment, service and labour contract negotiations.



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Currently a Principal with Aviation Technical Professionals, Nashville Tennessee, Mr. Weiland provides senior management-level consulting and advisory services to the Airline Industry in the areas of aircraft acquisition, purchasing, leasing and financing activities, regulatory compliance, flight operations, airport and ground operations, and maintenance and engineering operations.

His list of clients include The Carlyle Group (contract management for engine and auxiliary power unit services), MaxJet Airways, Dulles, Virginia (regulatory compliance), TIMCO Aviation Services, Greensboro, North Carolina (business development and operational planning), CloudLink (broadband network in-flight entertainment software provider), Intrepid Aviation Management (aircraft acquisition and support services), and XL Leisure Group, London, UK (operational and commercial process improvement). Prior to that Mr. Weiland served as the Executive Vice President and Chief Operating Officer for Spirit Airlines, Inc. of Miramar, Florida.

LEAFWAYS



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Appendix B - Key Statistics (in US\$)

	2012	2013	2014
Spend on Air Transport (Revenues)	\$679 billion	\$710 billion	\$746 billion
Tax Revenues Contributed	\$106 billion	\$113 billion	\$121 billion
Net Post Tax Profit (margin)	\$6.1 billion (0.9%)	\$10.6 billion (1.5%)	\$18.0 billion (2.4%)
Average post-tax profit/passenger	\$2.05	\$3.37	\$5.42
Average one-way air fare (2014\$)	\$256	\$239	\$231
Return on Invested Capital	3.7%	4.4%	5.4%
Freight rates (\$/tonne)	\$2.44	\$2.28	\$2.18
Passengers	2.977 billion	3.141 billion	3.320 billion
Passenger Demand Growth (RPK)	+5.3%	+5.7%	+5.9%
Freight Demand Growth (FTK)	-1.0%	+1.8%	+3.1%
Fleet Size (aircraft)	24,494	25,628	25,851
Passenger Load Factor	79.3%	79.7%	80.4%
Fuel efficiency (negative = improvement)	-1.5%	-1.9%	-1.7%
Carbon Emissions (tonnes)	682 million	700 million	722 million
Direct Employment (people)	2.27 million	2.33 million	2.39 million
Unique City Pairs	15,412	15,782	16,161
Value of Trade Carried	\$6.4 trillion	\$6.5 trillion	\$6.8 trillion

Source: International Air Transport Association (IATA)



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Appendix C - Use of Proceeds

Category	Amount (in C\$)	Detail
Six Months Corporate Operations	\$934,000	Salaries, travel, rent, ongoing legal and accounting expenses
Corporate Capital Startup	\$558,000	Incorporate start-up, IT and communications infrastructure, and airport new hire startup
Aircraft And Airport Startup	\$5,750,000	Expenses associated with acquiring the first three aircraft and securing airport landing rights and handling contracts
Reservations System Startup	\$500,000	Reservations system, web site, packaging system, call centre startup costs, all government filing fees and performance bonds associated with selling tickets
Marketing And Advertising	\$1,420,000	Advertising, promotion and related marketing development expenses
4 Months Operational Reserve ²⁹	\$9,413,000	4 months ACMI Minimums, 2 weeks of fuel, and 1 week of consumables

²⁹ Reserve cushions scheduled operations at zero revenue for four months.



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This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

Industry Canada

[Home](#) > [Corporations](#) > [Corporations Canada](#) > [Search for a Federal Corporation](#)

Corporations Canada

Federal Corporation Information - 9130691

[Glossary of Terms used on this page](#)

[Return to Search Results](#)

[Start New Search](#)

Corporation Number

9130691

Business Number (BN)

802496190RC0001

Governing Legislation

Canada Business Corporations Act - 2015-04-15

Corporate Name

Newleaf Travel Company Inc.

Status

Active

Registered Office Address

130 KING STREET WEST
 SUITE 2120
 TORONTO ON M5X 1K6
 Canada

Active CBCA corporations are required to [update this information](#) within 15 days of any change. A [corporation key](#) is required.

Directors

Minimum

1

Maximum

7

Directors

BRIAN REDDY
 201 GILL AVENUE
 MISSISSAUGA ON L5G 2Y4
 Canada

ROBERT JONES
 16 SHEA COURT
 TORONTO ON M1C 2G6
 Canada

DONALD YOUNG
 6253 ELDORADO PLACE
 NANAIMO BC V9V 1N4
 Canada

Active CBCA corporations are required to [update director information](#) (names, addresses, etc.) within 15 days of any change. A [corporation key](#) is required.

Annual Filings

Anniversary Date (MM-DD)

04-15

Date of Last Annual Meeting

Not Available

Annual Filing Period (MM-DD)

04-15 to 06-14

Type of Corporation

Not Available

Status of Annual Filings

2016 - Not due

Corporate History

Corporate Name History

2015-04-15 to Present

Newleaf Travel Company Inc.

Certificates and Filings

Certificate of Incorporation

2015-04-15

This is **Exhibit “G”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

Domain name: newleafcorp.ca
Domain status: registered
Creation date: 2015/01/26
Expiry date: 2020/01/26
Updated date: 2016/01/25
DNSSEC: Unsigned

Registrar:
Name: Go Daddy Domains Canada, Inc
Number: 2316042

Registrant:
Name: NewLeaf Travel Company Inc.

Administrative contact:
Name: Brian Reddy
Postal address: 28-2000 Wellington Ave
Winnipeg MB R3H1C2 Canada
Phone: +1.4162816292
Fax:
Email: djimyoung@outlook.com

Technical contact:
Name: Brian Reddy
Postal address: 28-2000 Wellington Ave
Winnipeg MB R3H1C2 Canada
Phone: +1.4162816292
Fax:
Email: djimyoung@outlook.com

Name servers:
ns.xecu.net
ns2.xecu.net

% WHOIS look-up made at 2016-07-09 12:56:56 (GMT)

%

% Use of CIRA's WHOIS service is governed by the Terms of Use in its Legal
% Notice, available at <http://www.cira.ca/legal-notice/?lang=en>

%

% (c) 2016 Canadian Internet Registration Authority, (<http://www.cira.ca/>)

This is **Exhibit “H”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

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,

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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.

6

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.



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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/Smj
~~Commissionaire d'assermentation~~
~~Notary Public~~





Government
of Canada

Gouvernement
du 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

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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

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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.

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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

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

Date modified:

2012-04-25

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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



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95

[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.

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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.

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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.

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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

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~~



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Original with 292-A-1996



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 1996-849
June 7, 1996

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.

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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.

Ceci est la pièce 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.

Veuillez 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

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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 charts 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

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>) 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

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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:

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[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)

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-  [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)

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Date modified:

2016-01-28

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Jec 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 [Signature]
~~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@otc-cta.gc.ca.

Sincerely,

Ghislain Blanchard
Director General
Industry Regulations and Determinations Branch

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sworn to before me this day of

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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.

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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

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

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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.

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“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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For more information, please contact NewLeaf Travel media relations officer Lisa Saunders at lisa@soundstrategy.ca or [204.799.4641](tel:204.799.4641).

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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- 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>
- The CTA is also holding consultations on the requirements to hold a licence. The CTA 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. Participants may submit written comments no later than Jan. 22, 2016
- NewLeaf will be providing its comments as part of the consultation process. Interested stakeholders may also submit their comments as detailed here - <https://www.otc-cta.gc.ca/eng/consultation/consultation-requirement-hold-a-licence>
- The CTA says NewLeaf is **not required** to hold a licence while it conducts a review of its legislation.
- 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.

Court File No.:A-39-16

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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This is **Exhibit “I”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature



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

[Home](#) / [Decisions](#) / [Air](#) / [2016](#) / Decision No. 100-A-2016

Decision No. 100-A-2016

March 29, 2016

DETERMINATION by the Canadian Transportation Agency as to whether resellers operate air services and should therefore be required to hold an air licence and whether NewLeaf Travel Company Inc. operates an air service and should therefore be required to hold an air licence.

Case Number: 15-03590

ISSUES

[1] The issues to be addressed in this Determination are whether:

1. resellers operate air services and should therefore be required to hold an air licence; and
2. NewLeaf Travel Company Inc. (NewLeaf), based on its proposed business model, will operate an air service and should therefore be required to hold an air licence.

SUMMARY OF CONCLUSIONS

[2] For the reasons set out below, the Canadian Transportation Agency (Agency) finds that:

1. Resellers do not operate air services and are not required to hold an air licence, as long as they do not hold themselves out to the public as an air carrier operating an air service.
2. NewLeaf, should it proceed with its proposed business model, would not operate an air service and would not be required to hold an air licence.

[3] These determinations reflect the most reasonable interpretation of the statutory requirements related to air licensing, based on a plain reading of their language, their entire statutory context, their statutory history, and an understanding of their underlying purposes.

[4] The determination on the first issue has broad applicability and will provide industry, air travellers, and other interested parties with clarity and predictability and, in so doing, will facilitate compliance with statutory requirements.

TERMINOLOGY

[5] Within the context of this Determination, the following terminology has been adopted:

"air carrier" means any person who operates aircraft on a domestic or international air service;

"charterer" means any person who charters an air carrier to operate non-resalable or resalable flights on its behalf and includes a tour operator that provides the charter as part of an inclusive tour package; and,

"reseller" means a person who does not operate aircraft and who purchases the seating capacity of an air carrier and subsequently resells those seats, in its own right, to the public.

THE LAW

[6] Paragraph 57(a) of the *Canada Transportation Act*, S.C., 1996, as amended (CTA) provides that no person shall "operate" an "air service" unless, in respect of that service, the person holds a licence issued under Part II of the CTA.

[7] Subsection 55(1) of the CTA defines "air service" as a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.

[8] The word "operate" in paragraph 57(a) is not defined within the CTA.

BACKGROUND

[9] The Agency regulates the licensing of air transportation pursuant to the CTA and the *Air Transportation Regulations*, SOR/88-58, as amended (ATR (Air Transportation Regulations)). Part II of the CTA addresses air transportation matters and details the licensing requirements administered by the Agency, which apply to any person who operates an air service in Canada.

[10] The CTA requires that persons hold the appropriate licence before they can operate an air service. Licensees are subject to a number of passenger and industry protection provisions, including with respect to tariffs, financial requirements, and Canadian ownership.

[11] When the *National Transportation Act, 1987* (subsequently consolidated and revised by the CTA) was introduced, it ushered in the deregulation of the aviation industry, eliminating restrictions on market entry, routes that could be operated, pricing, and the distinction between non-scheduled and scheduled domestic air services. Deregulation resulted in a greater reliance on market forces to achieve more competitive prices and a wider range of services. Industry developed new approaches to the provision of air services, some of which did not always fit squarely into the CTA's licensing parameters. One such approach is the reseller model, whereby the reseller has commercial control over an air service and makes decisions on matters such as routes, scheduling, pricing, and aircraft to be used, while air carriers operate the aircraft on the reseller's behalf.

[12] In 1996, the CTA's licensing parameters were tested when Greyhound Lines of Canada Ltd. (Greyhound) proposed to market and sell air services, on its own behalf, while entering into a contract with Kelowna Flightcraft Air Charter Ltd. (Kelowna Flightcraft) to operate the aircraft. The Agency, in [\(eng/ruling/232-A-1996\)Decision No. 232-A-1996 \(eng/ruling/232-a-1996\)](#) and [\(eng/ruling/292-A-1996\)Decision No. 292-A-1996 \(eng/ruling/292-a-1996\)](#), determined that Greyhound would operate the air service and, therefore, require a licence. The Agency arrived at its determination on the basis that the person that had commercial control over the sale of the air service was required to hold the licence, irrespective of whether they operated aircraft.

[13] Greyhound and Kelowna Flightcraft petitioned the Governor in Council (GIC) to reverse the Agency's decisions. The GIC, on the recommendation of the Minister of Transport, determined that Greyhound Canada Transportation Corp., a successor corporation to Greyhound, would not be operating the air service (Order-in-Council No. P.C. 1996-849). The

GIC, however, placed a number of conditions on its decision, including that Greyhound Canada Transportation Corp. inform all prospective purchasers of the air services that Kelowna Flightcraft would be providing the air service.

[14] In 2009, the GIC again reversed an Agency determination, Confidential Decision of the Agency dated June 29, 2009, that a reseller, in that case American Medical Response of Canada Inc., would operate an air service (Order-in-Council No. P.C. 2010-1143).

[15] In 2013, the Agency issued [\(/eng/ruling/390-A-2013\)](#) Decision No. 390-A-2013 [\(/eng/ruling/390-a-2013\)](#) to inform the air industry of the criteria that it will apply in interpreting what constitutes an "air service" and, more specifically, when an air service is considered to be "publicly available." The Agency determined that an air service is one that is (i) offered and made available to the public; (ii) provided pursuant to a contract or arrangement for the transportation of passengers or goods; (iii) offered for consideration; and (iv) provided by means of an aircraft. [\(/eng/ruling/390-A-2013\)](#) Decision No. 390-A-2013 [\(/eng/ruling/390-a-2013\)](#) did not specifically address resellers.

[16] For international air services, the [ATR \(Air Transportation Regulations\)](#) require the air carrier, and not the reseller, to hold the licence. For this reason, the Agency only applied the approach developed in the Greyhound case to domestic air services, resulting in resellers having to hold a licence for the sale of domestic, but not international, air services. There are currently 14 resellers that hold licences for domestic air services.

[17] The Agency's enforcement activities have revealed, however, that there is a lack of clarity among resellers as to whether they are required to hold a licence, given that they do not operate any aircraft.

[18] In light of its experiences administering the air licensing provisions and the continued development by industry of new business models, in 2014, the Agency initiated an internal review of whether resellers are operating air services and are therefore required to hold a licence. The Agency subsequently became aware of NewLeaf's plan to market and sell air services, while not operating aircraft, and in August 2015, initiated an inquiry, pursuant to section 81 of the CTA, into whether NewLeaf would be operating an air service and therefore would be required to hold a licence. The Agency decided to complete its review of whether resellers are required to hold a licence as part of this inquiry, and also decided to hold public consultations on the matter.

CONSULTATIONS

[19] On December 21, 2015, the Agency released a consultation paper and invited information and feedback on whether resellers should be considered to operate air services pursuant to section 57 of the CTA. The paper included a description of a possible approach. The Agency received submissions from 26 interested parties and has considered all of them in arriving at its determination. The parties' comments are summarized below.

[20] Some parties commented that resellers should be required to hold a licence to ensure that the licensing requirement does not favour one business model over another; i.e., to provide a level playing field. They submitted that competing businesses holding themselves out to the public as providing the same service should be subject to the same regulatory requirements. In addition, they argued that not requiring resellers to hold a licence would create a competitive disadvantage for licensed air carriers by subjecting them to the additional regulatory requirements and limiting access to foreign capital, given that licensees must be owned and controlled by Canadians. It was also suggested that not obligating resellers to hold a licence could enable persons to structure their businesses in ways that effectively circumvent the licensing requirements.

[21] Parties also commented that resellers should be required to hold a licence when they enter into a contract of carriage with the public to ensure that equal protection is afforded to passengers, regardless of the chosen business model. One party submitted that absent the requirement for the reseller to hold a licence, the lack of a contractual relationship between the air carrier and the passenger would (i) provide no recourse to the passenger against the air carrier should the air carrier not provide the contracted service; (ii) limit the air carrier's liability to the passenger to tort law (i.e., negligence), thereby negating the applicability of the air carrier's insurance to claims by passengers against the reseller; and (iii) limit any available protection for the passenger from the tariff system.

[22] Conversely, other parties commented that resellers should not be required to hold a licence, provided they have contractual arrangements with licensed air carriers. Those parties commented that adequate measures already exist to protect passengers, through existing federal and provincial legislation, including the requirement for air carriers to hold a tariff that applies to passengers.

[23] Additionally, some parties commented that the intent of deregulation was to reduce government control over or intervention in how domestic air services are delivered. It was

argued that by requiring the licensee to hold a Canadian aviation document (CAD), Parliament's intention was for the CTA to only apply to air carriers (i.e., not resellers) and that Parliament deliberately chose not to exert its authority to license resellers. It was further suggested that not requiring resellers to hold a licence would eliminate the different licensing treatment between domestic and international operations and result in increased competition and lower airfares, with the market deciding the success of any proposed air service.

[24] On the matter of what criteria should be used to determine whether a reseller is holding itself out as an air carrier, the following criteria were proposed: commercial control, acceptance of financial risk for the sale of seats, non-disclosure of the aircraft operator, promoting oneself as an air carrier (i.e., images of aircraft with their livery), the use of business name(s) and words/phrases (such as "airlines", "aviation", or similar words) that create the impression that they are an air carrier or airline, and not clearly conveying their role as a reseller of the air carrier's capacity.

ANALYSIS AND DETERMINATIONS

Issue 1: Whether resellers operate air services and should therefore be required to hold an air licence

[25] Paragraph 57(a) of the CTA states that "no person shall operate an air service unless, in respect of that service, the person holds a licence issued under this Part." In interpreting the expression "operate an air service," the words are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, the object of the legislation, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21).

[26] Having carefully considered the wording of the CTA and the ATR (Air Transportation Regulations), the CTA's underlying public policy purposes, and the submissions received during the consultation period, the Agency finds that the most reasonable interpretation of what it means to operate an air service does not capture resellers, as long as they do not hold themselves out to the public as an air carrier operating an air service.

[27] Factors that the Agency took into account in arriving at this interpretation include the plain meaning, context, and history of the statutory language; the national transportation policy, the CTA's passenger protection and Canadian ownership goals; and the manner in which resellers hold themselves out to the public.

The plain meaning, entire context, and history of the statutory language

[28] When considering what would be the most reasonable interpretation of the domestic licensing requirements in respect of resellers, a key starting point was the simple fact that Parliament both refrained from explicitly requiring entities that do not operate aircraft to hold a licence while also developing a licensing regime where the chartered air carrier is required to hold a licence for international services.

[29] The operation of an air service, pursuant to section 57 of the CTA, is the sole criterion that dictates whether a person is required to hold a licence. The interpretation of the expression "operate an air service" should be expected to produce consistent results in establishing whether or not a person is required to hold a licence, irrespective of whether the air service is domestic or international.

[30] Section 59 of the CTA prohibits persons from selling an air service unless a person holds a licence in respect of that air service. While the language in section 57 of the CTA requires a person operating an air service to hold a licence, the language in section 59 does not require the person selling the air service to be a licensee; it only requires that a licence be held in respect of that air service. When read together, these two sections lead to the conclusion that selling an air service to the public does not equate to operating an air service.

[31] Prior to deregulation, air carriers were required to hold either a scheduled or a non-scheduled domestic or international licence to operate air services. Air carriers operating pursuant to a non-scheduled licence were limited to selling their capacity to charterers, who could then resell that capacity on a unit toll or price per seat basis to the public. Resellers were not required to hold a licence. Deregulation removed the distinction between scheduled and non-scheduled for domestic air services, thereby allowing air carriers to distribute their capacity, as they see fit, with a single domestic licence. No new legislative provisions were introduced to require resellers to hold a licence.

[32] For non-scheduled international air services, the ATR (Air Transportation Regulations)'s provisions require licensed air carriers to hold the appropriate charter permit to operate charter flights on behalf of charterers who can resell that aircraft capacity directly to the public without the charterer having to hold a licence. Indeed, pursuant to Parts III and IV of the ATR (Air Transportation Regulations), the air carrier is prohibited from selling its aircraft capacity on a price per seat basis directly to the public as well as from promoting, in any manner, the resalable charter to the public. The resalable charter can only be operated according to the

conditions of a contract entered into between air carriers and charterers that require the charterers to charter the entire passenger seating capacity of an aircraft for resale by them to the public, at a price per seat. In the non-scheduled international context, the air carrier, and not the charterer, is required to hold the licence.

[33] In summary, a plain reading of the statutory provisions, informed by their history and the benefits of consistent interpretation of phrases used for both domestic and international licensing purposes, strongly suggests that Parliament did not intend for domestic licensing requirements to apply to entities that purchase air carriers' aircraft capacity for resale by them to the public, but do not themselves operate aircraft.

National transportation policy

[34] The national transportation policy, as articulated in section 5 of the CTA, provides the overall policy framework for the CTA. The policy instruments, which include legislation, regulations, programs, and actions that flow from the policy, should reflect and reinforce its intent.

[35] The policy declares the CTA's objective to be a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards. The policy provides for regulation and strategic public intervention to be targeted to situations where desired outcomes cannot be achieved satisfactorily by competition and market forces.

[36] Allowing resellers to offer their products to consumers without having to hold a licence when their partner air carrier already holds one is consistent with section 5, inasmuch as it limits regulatory intervention and administrative burdens and is more likely than not to foster competition and choice in the market.

Passenger protection

[37] The requirement to hold a licence subjects the licensee to a number of passenger protection provisions, as identified in Agency [\(/eng/ruling/390-A-2013\)Decision No. 390-A-2013 \(/eng/ruling/390-a-2013\)](#). Principal among these is the requirement for a licensed air carrier to:

- i. have, display, and apply a clear tariff that addresses certain prescribed matters and that is

- reasonable and not unduly discriminatory;
- ii. meet the prescribed financial requirements, where applicable, before a licence can be issued, which is intended to reduce the risk that underfunded applicants enter the marketplace; and
 - iii. hold the prescribed minimum passenger and third party liability insurance coverage.

[38] In weighing the relevance of the licensing provisions' consumer protection purposes to the question of whether those provisions should be interpreted as covering resellers, it is important to note that when passengers buy tickets through a reseller that is not required to hold an air licence, they will still be covered by the terms and conditions of the tariff issued by the chartered air carrier operating the aircraft on which those passengers travel. Further, the licensed air carrier will be required to hold prescribed passenger and third party liability insurance pursuant to section 7 of the ATR (Air Transportation Regulations) and to comply with applicable financial requirements pursuant to section 8.1 of the ATR (Air Transportation Regulations). On the other hand, resellers who do not have to obtain a licence from the Agency will continue to be subject to any provincial travel protection or consumer rights legislation.

[39] Thus, not requiring resellers to obtain a licence does not equate to leaving consumers without protections. The Agency's role is to administer and enforce the CTA as promulgated by Parliament, and its interpretation of the legislation must be reasonable, even if some alternate approach might provide additional protections.

Canadian ownership requirement

[40] The CTA's ownership provisions ensure that only Canadian-owned and controlled enterprises can operate domestic air services, thereby restricting foreign access to the domestic marketplace.

[41] These provisions can still be given full effect in a context where resellers are not required to obtain a licence. Should a non-Canadian reseller enter into an arrangement whereby it owns or control in fact the licensed air carrier, that air carrier would cease to be Canadian and would no longer be eligible to hold a licence. It is also worth noting that non-Canadian charterers have legally operated in Canada for many decades, reselling licensed air carriers' aircraft capacity to the public without any government intervention.

Holding out as an air carrier operating an air service

[42] While the Agency finds that, on balance, the most reasonable interpretation of the statutory licensing provisions and their underlying objectives is that resellers are not operating air services and therefore, are not required to hold a licence, this will only be the case as long as those resellers do not hold themselves out to the public as an air carrier operating an air service. The Agency finds that if they choose to do so, resellers would be operating an air service and would be required to hold a licence, thereby ensuring that the consumer protection purposes of the legislation are not undermined.

[43] In determining whether a person is holding themselves out as an air carrier operating an air service, the Agency will consider whether the person promotes themselves as an air carrier, including providing images of aircraft with their livery and using business name(s) and words/phrases that create the impression that they are an air carrier.

[44] Lack of clear disclosure on its Web site, marketing material, and on tickets it issues of the identity of the operating air carrier would be indicative of the reseller holding itself out as an air carrier operating the air service. Web sites and marketing materials that use business names (e.g., "air", "air lines", "airlines" "airways", "aviation", "fly", "jet", or "sky") or phrases and words (e.g., "our fleet of aircraft", "our crew", "we fly") that convey that the reseller is an air carrier operating the air service would also be indicative of holding oneself out as operating an air service. In contrast, clearly identifying the air carrier that will operate the air service, that the reseller's role is limited to reselling the air carrier's capacity, and that the air carrier's tariff's terms and conditions apply to the flight would not be indicative of a person holding themselves out as an air carrier operating an air service.

[45] The Agency notes that a passive approach by the reseller that neither clarifies nor refutes any impression by the public that the reseller is an air carrier operating an air service could also be indicative of the reseller holding itself out as an air carrier operating an air service. The public should be clearly informed about whether they are contracting and dealing with the operator of the air service so that they can assess any risk and make informed decisions.

[46] Where, in the opinion of the Agency, based on all of the relevant facts, the public is led to believe that the reseller is the air carrier operating the air service, the Agency will require the reseller to hold a licence and to respect all of its requirements. The Agency, in making a determination as to whether a reseller is holding itself out to the public as an air carrier operating an air service, will apply the considerations listed above, as well as any other

relevant considerations it might identify from time to time, according to the facts of each case, and will weigh all facts together to make a determination.

Issue 2 – Whether NewLeaf will operate an air service and therefore be required to hold an air licence

[47] Having determined that resellers do not operate air services and are not required to hold a licence, as long as they do not hold themselves out to the public as an air carrier operating an air service, the Agency now turns to the question of whether NewLeaf - based on the determination above and the information before the Agency about its proposed business model - will operate an air service and would therefore be required to obtain a licence.

[48] On August 21, 2015, the Agency initiated an inquiry to determine whether NewLeaf's business proposal would constitute an air service for which a licence is required, and an Inquiry Officer was appointed to conduct that inquiry. The Inquiry Officer, in turn, sought information concerning the roles and responsibilities of NewLeaf and Flair Airlines Ltd. (Flair) in their business proposal.

[49] NewLeaf's response to the Inquiry Officer stated that it would initially operate as a "charterer" or a "tour operator" as defined in the ATR (Air Transportation Regulations). NewLeaf indicated that it would market and sell air services to the public, on its own behalf, and enter into a charter arrangement with Flair, a licensed air carrier, to operate the flights. NewLeaf further indicated that it might sell the air services as part of a packaged or bundled tour product. NewLeaf would be responsible from the check-in counter to the jet bridge door and would operate baggage handling services or contract them to a third party operating at each airport. NewLeaf would not acquire, lease, or operate any aircraft or other related airport infrastructure.

[50] NewLeaf stated that it would make it evident to the consumer that NewLeaf would be responsible for ticket sales and customer service, and that Flair would operate the air services. It was possible, however, that Flair's aircraft or other infrastructure would include some NewLeaf livery features to highlight the collaboration between the two parties.

[51] In January 2016, Canada Jetlines Ltd. and 1263343 Alberta Inc. carrying on business as EnerJet made unsolicited representations to the Agency with respect to NewLeaf. In summary, they submitted that NewLeaf had commercial control over the air service and was, therefore, operating an air service without a licence. They also argued that Newleaf was representing itself as an air carrier to the public, the media, and their customers without

holding a licence. The Agency accepted the representations as part of its inquiry into whether NewLeaf would operate an air service and provided NewLeaf with an opportunity to respond by March 11, 2016. NewLeaf did not provide a response.

[52] The Agency has reviewed all available information and finds that if the proposed business model is followed, NewLeaf would be a reseller that does not operate an air service and therefore does not need to obtain a licence. The Agency notes, however, that if NewLeaf were to hold itself out to the public as an air carrier operating an air service, it would be required to hold a licence.

[53] It is noted that during the brief period in January 2016 when NewLeaf actively promoted its services through its Web site, it included images of aircraft painted in its livery. While NewLeaf is no longer promoting its services and has since removed these images from its Web site, the use of similar images in the future would suggest that NewLeaf would be holding itself out as an air carrier operating an air service.

[54] It is also noted that while NewLeaf has referred to itself as a travel company, there is public perception that NewLeaf is an air carrier. This was evident in repeated press and news articles about NewLeaf that referred to it as an air carrier. The consumer protection purposes of the CTA make it important that the public understand whether they are dealing with a reseller or an air carrier and, where there is confusion, the reseller should take appropriate actions to correct any misperceptions.

[55] Finally, the Agency notes that Flair, as a licensee operating the air service to be resold by NewLeaf, must comply with the licensing regime, including having a tariff that respects legislative and regulatory requirements related to consumer protection.

CONCLUSION

[56] For the reasons set out above, the Agency finds that resellers do not operate air services and are not required to hold a licence as long as they do not hold themselves out to the public as air carriers operating an air service.

The Agency also finds that NewLeaf will not be considered to operate an air service and required to hold a licence, as long as it operates in a manner consistent with the business proposal summarized in this Determination and does not hold itself out to the public as an air carrier operating an air service.

Member(s)

Scott Streiner

Sam Barone

P. Paul Fitzgerald

Rulings

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

Date modified:

2016-03-30

This is **Exhibit “J”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

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

Respondents

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

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IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: June 28, 2016

Issued by: _____

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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from a decision made by the Canadian Transportation Agency [the Agency] dated March 29, 2016 and bearing Decision No. 100-A-2016 [Decision Under Appeal], in which the Agency determined that:

1. Indirect Air Service Providers [IASPs or resellers] of domestic air service are no longer required to hold licences under the *Canada Transportation Act*, S.C. 1996, c. 10 [the CTA], so long as they do not hold themselves out as an air carrier operating an air service; and
2. NewLeaf Travel Company Inc. [NewLeaf], being an IASP, is therefore not required to hold a licence.

THE APPELLANT ASKS that:

1. the Decision Under Appeal be set aside;
2. this Honourable Court make the order that should have been made by the Agency, declaring that:
 - (a) Indirect Air Service Providers (also known as “resellers”) of domestic air service are required to hold licences; and
 - (b) NewLeaf Travel Company Inc. is required to hold a licence;
3. the Appellant be awarded a moderate allowance for the time and effort he devoted to preparing and presenting his case, and reasonable out-of-pocket expenses incurred in relation to the appeal; and

4. this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. Paragraph 57(a) of the *Canada Transportation Act*, S.C. 1996, c. 10 [the *CTA*] prohibits operating an air service without a licence issued by the Agency under Part II of the *CTA*. Subsection 55(1) of the *CTA* defines “air service” as a service provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.
2. Through the licensing process and conditions set out in the *CTA*, Parliament imposed numerous economic and consumer protectionist conditions on operators of air service within Canada:
 - (a) Canadian ownership, prescribed liability insurance coverage, and prescribed financial fitness (s. 61);
 - (b) notice period for discontinuance or reduction of certain services (ss. 64-65);
 - (c) prohibition against unreasonable fares or rates on routes served by only one provider (s. 66); and
 - (d) regulatory oversight of the contractual relationship between the travelling public and the service provider (ss. 67, 67.1, and 67.2).
3. Section 58 of the *CTA* provides that a licence to operate an air service is not transferable.

4. An Indirect Air Service Provider [IASP or reseller] is a person who has commercial control over an air service and makes decisions on matters such as routes, scheduling, and pricing, but performs the transportation of passengers with aircraft and flight crew rented from another person.

Decision Under Appeal, para. 11

5. IASPs (resellers) differ from travel agents: IASPs enter into agreements to transport passengers by air in their own name, while travel agents act merely as agents for third parties.

Decision Under Appeal, para. 5

6. Since 1996 and up until recently, the Agency had consistently and reasonably held that a person with commercial control over a domestic air service “operates” it within the meaning of the *CTA*, and thus required them to hold a domestic licence. In doing so, the Agency had been following the so-called *1996 Greyhound Decision*.

7. NewLeaf is a federally incorporated company whose purpose is to offer scheduled domestic air service to the Canadian public as an IASP.

8. In August 2015, the Agency launched an inquiry into whether NewLeaf required a licence.

9. On December 23, 2015, the Agency announced that it would conduct a public consultation on the requirement for IASPs to hold a licence, and 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.]

10. On March 29, 2016, the Agency issued the Decision Under Appeal, in which it adopted the “Approach under consideration” and determined that:
 - (a) IASPs (resellers) are not required to hold a licence as long as they do not hold themselves out to the public as an air carrier operating an air service; and
 - (b) NewLeaf, being an IASP, is not required to hold a licence.

11. In practical terms, the Decision Under Appeal circumvents the will of the legislature, and exposes the public to significant risks from which Parliament intended to protect the public, including:
 - (a) underfunded service providers, who are unable to deliver the air services that consumers have paid for in advance, leaving passengers stranded;
 - (b) service providers with insufficient insurance, who are thus unable to meet their liabilities in the case of a disaster (as happened in the case of the Lac-Mégantic rail disaster); and

- (c) uncompensated losses in the case of overbooked, delayed, or cancelled flights.
12. The Agency erred in law and rendered an unreasonable decision by:
- (a) departing from its considered and consistent view on the requirement to hold a licence, without explaining why;
 - (b) basing the decision on the following false premises, which are inconsistent with ss. 64-66 of the *CTA* and s. 2 of the *Air Transportation Regulations*:
 - i. “air carrier” is synonymous with the operator of the aircraft;
 - ii. “in the non-scheduled international context, the air carrier, and not the charterer, is required to hold the licence”;
 - iii. “deregulation of the aviation industry” has taken place with respect to domestic air services; and
 - iv. the distinction between scheduled and non-scheduled domestic air services has been eliminated.
 - (c) interpreting the requirement to hold a licence in a manner that:
 - i. renders ss. 64, 65, and 66 of the *CTA* futile;
 - ii. ignores s. 60(1) of the *CTA*; and
 - iii. defeats the economic and consumer protectionist purposes for which the *CTA* was enacted.

13. The Agency exceeded its jurisdiction by making the Decision Under Appeal, which has the effect of relieving IASPs from the requirement of being Canadian and from holding prescribed liability insurance coverage, contrary to the explicit language of s. 80(2) of the *CTA*.

Statutes and regulations relied on

14. Sections 2, 7, 8.1, 8.2, 8.5, and 107 of the *Air Transportation Regulations*, S.O.R./88-58.
15. Sections 41, 53, 55, 57-67.2, 80, 86, and 174 of the *Canada Transportation Act*, S.C. 1996, c. 10.
16. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

June 28, 2016

DR. GÁBOR LUKÁCS

Halifax, Nova Scotia

lukacs@AirPassengerRights.ca

Appellant

This is **Exhibit “K”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

July 13, 2016

Via Email

REFERENCE NO:

123736-0032

PLEASE REPLY TO:

Brian J. Meronek Q.C.

DIRECT LINE:

204-925-5355

EMAIL:

bmeronek@darcydeacon.com

Dr. Gábor Lukács

Halifax, NS

Canadian Transportation Agency

15 Eddy Street, 19th Floor

Gatineau, QC K1A 0N9

Attention: Allan Matte

Dear Gabor and Allan:

**Re: Dr. Gabor Lukacs v. Canadian Transportation Agency and
NewLeaf Travel Company Inc. (Court File No. A-242-16)**

LEGAL ASSISTANT:

Marion Parsons

DIRECT LINE:

204-975-2534

EMAIL:

mparsons@darcydeacon.com

In response to Gabor's email of July 12, 2016, based on a Memorandum filing date of July 22, we can have our Memorandum filed by August 12, 2016. If the Memorandum is filed earlier, then we will back date our filing date accordingly.

In terms of the hearing, we wish to have an oral hearing. We are open to the venue being either Winnipeg, Halifax or Ottawa. It does not matter to us. In terms of dates, I am available for the weeks of September 19 (except September 19) and 26; any day in the months of October and December is available as well. I am unavailable during the months of August and November.

Gabor, I am advised from my assistant Marion that you require a Consent to an Extension to File the Notice of Appearance which you have consented to give. I am attaching a Consent and would ask that it be signed by both of you immediately so that it can be filed promptly.

Yours truly,

D'ARCY & DEACON LLP

Per:



BRIAN J. MERONEK Q.C.

BJM/mp

Att.

BRANCH OFFICE - CALGARY

Services provided by:
Brian Meronek Law Corporation

o also of the Alberta Bar

This is **Exhibit “L”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From Allan.Matte@otc-cta.gc.ca Wed Jul 13 19:42:31 2016
Date: Wed, 13 Jul 2016 17:42:23 +0000
From: Allan Matte <Allan.Matte@otc-cta.gc.ca>
To: "lukacs@AirPassengerRights.ca" <lukacs@airpassengerrights.ca>, Brian J. Meronek <bmeronek@darcydeacon.com>
Cc: Marion Parsons <mparsons@darcydeacon.com>, Alexei Baturin <Alexei.Baturin@otc-cta.gc.ca>
Subject: CTA et al ats. Lukacs

[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.]

Gentlemen;

This is in response to Mr. Meronek's letter of today's date. We have executed the requested Consent.

In terms of timelines, we agree with those suggested in Mr. Meronek's letter and propose that the Agency's Memorandum be filed on or before August 12, 2016 as well. I am away on holidays the week of July 25 and therefore would like to keep the August 12 date fixed.

We also agree that the requisition for hearing will indicate that the hearing will take place in either Halifax, Ottawa or Winnipeg and that Dr. Lukacs will appear by videoconference if he is unable to attend in person. In terms of the timing of the filing of the requisition, I am unsure about what is being proposed. August 19 would seem reasonable if not sooner.

I am not available the weeks of August 22, August 29, September 26, October 24 and November 28.

Regards,

Allan Matte

Avocat/Counsel

Direction des services juridiques /Legal Services Directorate

819-994-2226 | télécopieur/facsimile 819-953-9269

allan.matte@otc-cta.gc.ca

Office des transports du Canada | 15, rue Eddy, Gatineau QC K1A 0N9

Canadian Transportation Agency | 15 Eddy St., Gatineau QC K1A 0N9

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validate the content of this document

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pa le contenu du présent document"

This is **Exhibit “M”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

NewLeaf Travel returns with more destinations and ultra low cost fares

WINNIPEG, June 23, 2016 /CNW/ - NewLeaf Travel Company Inc. today announced it will resume sales with ultra low fares and an expanded route map. Customers will be able to book flights on the NewLeaf Travel Company website (GoNewLeaf.ca) to/from an expanded list of 12 Canadian cities: **Halifax, Moncton, Hamilton, Winnipeg, Regina, Saskatoon, Edmonton, Kelowna, Kamloops, Fort St. John, Abbotsford** and **Victoria**. The first flights will take off July 25, 2016.

"We are excited to resume operations as people plan their summer vacations," said Jim Young, President and CEO of NewLeaf Travel Company. "We know Canadians have been waiting for this service, and are delighted to increase their travel options by offering more flights to more destinations, with fares as low as \$79."*

In March 2016, the Canadian Transportation Agency (CTA) completed its review of licensing regulations and determined that, as a **reseller of air services**, NewLeaf Travel Company is not required to hold an airline license. Flights booked through NewLeaf will be operated by **Flair Airlines**, a licensed Canadian airline with an experienced crew and pilots flying Boeing 737-400 passenger jets.

"We will absolutely adhere to the CTA's clarified rules for resellers, and have taken the past few months to review our practices to make sure we are in full compliance. We are glad that we took the extra time to plan our re-launch as we wanted to protect consumers and offer them long term business stability," said Young. "It has taken a bit of time to get off the ground but we are excited to now bring to Canada the ultra-low cost business model that has proven successful around the world."

As an ultra-low cost travel company, NewLeaf will work with Flair Airlines to offer base fares that are significantly less than other Canadian carriers. It will achieve this through cost-saving measures such as operating out of airports with lower landing fees; flying a simple point-to-point network with minimal time between flights; and offering customers à la carte purchase of options such as carry-on and checked baggage, priority boarding, and call centre assistance for a fee.

NewLeaf Travel Company Inc. is a privately-held Canadian company headquartered in Winnipeg, Manitoba that provides leisure travellers with low fares and travel options that are unbundled and transparent. See more at www.GoNewLeaf.ca (<http://www.gonewleaf.ca/>)

Flair Airlines Ltd. is a Canadian airline with operations based in Kelowna, Calgary and Hamilton. In business since 2003, Flair has a strong track record of safety and service. Learn more at www.Flairair.ca (<http://www.flairair.ca/>)

[*Based on introductory prices for certain markets (inclusive of taxes and fees)]

MEDIA KIT – GoNewLeaf.ca/newleaf-travel-company-media-kit/

"The Embassy of Canada does not validate the content of this document

L'Ambassade du Canada ne valide pa le contenu du présent document"

(Please **do not** include previously circulated photos of NewLeaf's livery/airplanes in your news coverage, as those are now outdated).

Please follow NewLeaf on Facebook and Twitter for live news coverage of the event.
<https://www.facebook.com/newleaftravel> (<https://www.facebook.com/newleaftravel>)
<https://twitter.com/newleaftravel> (<https://twitter.com/newleaftravel>)

Broadcast quality video of the event will be added to the Media Kit at approx. 11 a.m. CT, following the media conference.

SOURCE NewLeaf Travel

Image with caption: "NewLeaf Travel announced it will resume sales with ultra low fares and an expanded route map. Customers will be able to book flights on the NewLeaf Travel Company website (GoNewLeaf.ca) to/from an expanded list of 12 Canadian cities. Flights booked through NewLeaf will be operated by Flair Airlines. (CNW Group/NewLeaf Travel)". Image available at: http://photos.newswire.ca/images/download/20160623_C7493_PHOTO_EN_720870.jpg (http://photos.newswire.ca/images/download/20160623_C7493_PHOTO_EN_720870.jpg)

Image with caption: "NewLeaf Travel (CNW Group/NewLeaf Travel)". Image available at: http://photos.newswire.ca/images/download/20160623_C7493_PHOTO_EN_720868.jpg (http://photos.newswire.ca/images/download/20160623_C7493_PHOTO_EN_720868.jpg)

For further information: To arrange an interview, contact: National News Media:
Charlene McAdam, Birchall & Associates Public Relations, E:
charlene@birchallpr.com, T: 905-338-7600 ext. 105, C: 416-540-6642; Manitoba
Media: Lisa Saunders, Sound Strategy Communications Ltd., E:
lisa@soundstrategy.ca, T: 204-799-4641

This is **Exhibit “N”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

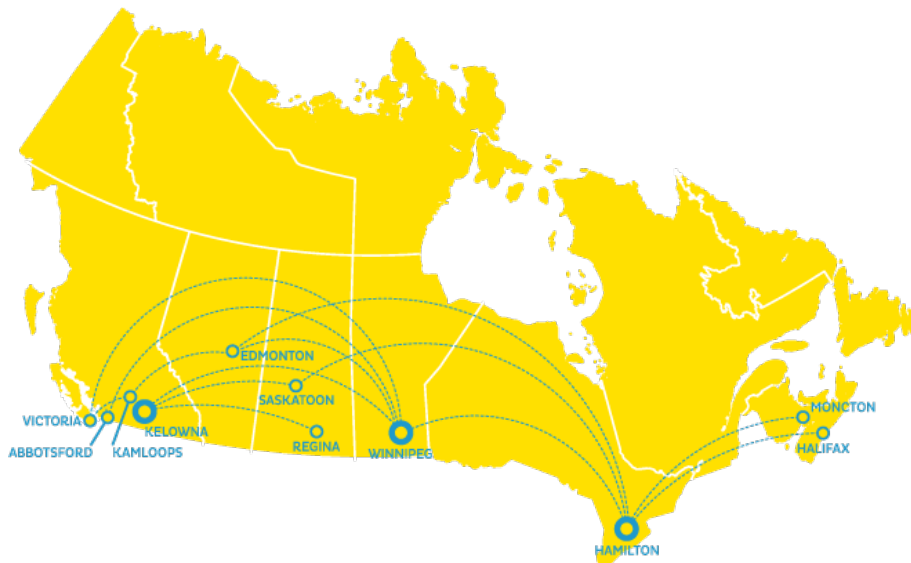
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Low fare. Here to there.

[BOOK](#) [HOW TO SAVE](#) [TRAVE](#)

ROUTES AND SCHEDULE



Current Routes and Schedule

Check marks indicate the days each route flies.
Flights showing a "via" destination have brief stopovers that don't involve deplaning.
See [NewLeaf Newbie](#) for details.

- [ROUTES AND SCHEDULE](#)
- [BAGGAGE](#)
- [SPECIAL SERVICES](#)
- [AIRPORTS](#)
- [CHILDREN](#)
- [SECURITY](#)
- [RESERVATION CHANGES](#)
- [AIRPORT CHECK-IN AND BOARDING](#)

Where we Fly	Mon	Tue	Wed	Thu	Fri	Sat	Sun
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Check marks indicate the days each route flies.
 Flights showing a "via" destination have brief stopovers that don't involve deplaning.
 See [NewLeaf Newbie](#) for details.

Where we Fly	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Abbotsford > Edmonton				✓			✓
Abbotsford > Winnipeg				✓			✓
Edmonton > Hamilton	✓				✓		
Edmonton > Kamloops			✓			✓	
Edmonton > Moncton Hamilton	✓				✓		
Edmonton > Abbotsford				✓			✓
Edmonton > Victoria Kamloops			✓			✓	
Edmonton > Winnipeg				✓			✓
Halifax > Hamilton				✓			✓
Hamilton > Edmonton	✓				✓		
Hamilton > Halifax				✓			✓

Hamilton > Kelowna	✓ Winnipeg	✓ Saskatoon	✓ Winnipeg	✓ Saskatoon	✓ Winnipeg
Hamilton > Moncton	✓		✓		
Hamilton > Winnipeg	✓		✓		✓
Hamilton > Saskatoon		✓		✓	
Kamloops > Edmonton		✓		✓	
Kamloops > Victoria		✓		✓	
Kelowna > Hamilton	✓ Winnipeg	✓ Saskatoon	✓ Winnipeg	✓ Saskatoon	✓ Winnipeg
Kelowna > Regina			✓		✓
Kelowna > Winnipeg	✓		✓		✓
Kelowna > Saskatoon		✓		✓	
Moncton > Edmonton	✓ Hamilton		✓ Hamilton		
Moncton > Hamilton	✓		✓		
Regina > Kelowna			✓		✓
Saskatoon > Hamilton		✓		✓	
Saskatoon > Kelowna		✓		✓	
Victoria > Edmonton		✓ Kamloops		✓ Kamloops	

Victoria > Kamloops			✓			✓	
Victoria > Winnipeg			✓			✓	
Winnipeg > Hamilton	✓				✓		✓
Winnipeg > Kelowna	✓				✓		✓
Winnipeg > Abbotsford				✓			✓
Winnipeg > Victoria			✓			✓	
Winnipeg > Edmonton				✓			✓

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Copyright 2016 NewLeaf Travel Company Inc. 128-2000 Wellington Ave
 Manitoba R3H 1C1

Flights operated by Flair Airlines Ltd.

GST/HST Registration 80249 6190 RT0001

This is **Exhibit “O”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

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OUR FLEET

Boeing 737-400 (5)



Fast, reliable, and efficient. The 737 series is the best-selling jet airliner in the history of aviation. The 737 has been continuously manufactured by Boeing since 1967 with 8,104 aircraft delivered and 3,931 orders yet to be fulfilled as of June 2014. On average, there are 1,250 Boeing 737s airborne at any given time.

Power: 2x CFM56-3C1 turbofan engines (23,500 lbs. thrust)

Performance: 808 kmh / 502 mph / Mach 0.74

Range: 2200 nm*

Capacity: 156 Economy Class seating or 76 Business Class seating

Weight: 68,000kg MTOW (Max Takeoff Weight)

Maximum Altitude: 11,300m / 37,000 ft

This is **Exhibit “P”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature



CONFIDENTIAL

CONF-6-2016

May 12, 2016

Case No. 16-00215

BY E-MAIL: dix.lawson@jetlines.ca

Canada Jetlines Ltd.

Attention: Dix Lawson, VP Strategic Planning & Cost Control

Re: Application by Canada Jetlines Ltd. (Jetlines) for a licence to operate a domestic service, large aircraft, pursuant to section 61 of the *Canada Transportation Act, S.C., 1996, c. 10, as amended (CTA)*.

The Canadian Transportation Agency (Agency) has reviewed the application, which was received on January 12, 2016, along with additional submissions filed up to and including May 2, 2016.

In order to be issued a licence to operate a domestic service, large aircraft, Jetlines must satisfy the Agency that it meets all of the requirements of section 61 of the CTA. This decision relates solely to the requirement for Jetlines to meet the prescribed financial requirements under subparagraph 61(a)(iv) of the CTA, and does not consider any of the other licencing requirements provided by section 61 of the CTA.

The Agency generally reviews financial requirements submissions in two distinct stages. During Stage One, the Agency will review the information and documentation submitted by an applicant pursuant to paragraph 8.1(2)(a) of the *Air Transportation Regulations, SOR/88-58, as amended (ATR)* to determine the financial requirements (i.e., funding requirement) associated with starting up and operating the proposed air service for a 90-day period. During Stage Two, the applicant must satisfy the Agency that it has either already acquired, or it can acquire, the required funds as determined by the Agency in Stage One, and that the funds are available and will remain available to finance the air service. This determination only considers the Stage One requirements with respect to the financial requirements.

Stage One – Determination of financial requirements

Paragraph 8.1(2)(a) of the ATR requires an applicant to provide the Agency with a current written statement of the start-up costs that the applicant has incurred in the preceding 12 months, with written estimates of start-up costs that the applicant expects to incur and with written estimates of operating and overhead costs for a 90-day period of operation of the air service.

The Agency has reviewed Jetlines' start-up cost statement and estimates, and finds that the statement is complete and accurate, and that the estimates are reasonable. Accordingly, the Agency determines that Jetlines has satisfied subparagraph 8.1(2)(a)(i) of the ATR.

With respect to the operating and overhead cost estimates submitted by Jetlines for its first 90-day period of operations, the Agency finds that the operating and overhead estimates are reasonable and are based on utilization of the aircraft solely on the specified air service under conditions of optimum demand, and that the proposed utilization is no less than that which is necessary for the air service to be profitable. Accordingly, the Agency determines that Jetlines has satisfied subparagraph 8.1(2)(a)(ii) of the ATR.

Based on the information filed by Jetlines, the Agency has determined the financial requirement specified in section 8.1 of the ATR to be \$27.233 million. The Agency makes this determination on its understanding that Jetlines will operate its air service using two Boeing 737-700 aircraft during the first 90 days of operation. The Agency requires that it be advised immediately should Jetlines' first 90-day operational plan change with the result that it would propose to operate more than two Boeing 737-700 aircraft or operate other aircraft with higher total operating costs. If such occurs, Jetlines would need to meet additional financial requirements over and above those specified in this decision.

Jetlines can now proceed to Stage Two where it must file proof that it has acquired, or can acquire, funds totaling at least \$27.233 million. The funds are to be comprised of liquid assets that are not encumbered. In addition, the terms and conditions under which those funds have been acquired or can be acquired must be such that the funds will remain available to finance the air service.

It should be noted that at least 50 percent of these funds must be acquired by way of capital stock that has been issued and paid for, and that cannot be redeemed for a period of at least one year after the date of issuance of the applied for licence. The remaining balance of the funding requirement, that has not been acquired through the issuance of capital stock, can be acquired by debt, including by way of a line of credit or similar financial instrument issued by a financial institution.

The licence to operate a domestic service, large aircraft will be issued once Jetlines establishes, to the satisfaction of the Agency, that it has complied with all of the licensing requirements specified in section 61 of the CTA.

BY THE AGENCY:

(signed)

Sam Barone
Member

This is **Exhibit “Q”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From: Jim Young [mailto:jim.young@newleafcorp.ca]
Sent: Saturday, December 19, 2015 10:01 AM
To: 'NORMAN LECAVALIER'; 'Sam Samaddar'
Subject: Latest information

Gents

Here is the latest information for our call:

1. Funding

- In negotiations with First Nation band for \$2MM to \$5MM in debt financing. Working to close commitment this weekend and cash before End of Year
- Neobanx still committing to end of year financing. Have been unable to get written commitment, but haven't given up yet
- \$500K allows us to announce
- \$2MM allows us to launch on Feb 12 with a cushion

2. Technology

- Website complete
- Booking engine development complete
- Jan-May schedules being loaded and priced
- Merchant account tested

3. Launch Announcement

- Announcement Jan 5 with schedules loaded to end of April
- May schedule to be added at end of Feb
- Launch Package to be sent to affected airports no later than Dec 22

4. Airport

- Airports contacted
- Ground Handlers contacted

a. ASIG

- b. IronMan
- c. RS and Assoc

D. JIM YOUNG**CHIEF EXECUTIVE OFFICER**

NewLeaf Travel Company Inc.

128-2000 Wellington Avenue

Winnipeg, Manitoba R3H 1C1

P: 647.951.5896 C: 647.229.5883

E: jim.young@newleafcorp.ca

W: www.newleaftravel.ca

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2 attachments**Feb Mar.pdf**

339K

**Position Profile- Mar Com Mgr- Kelowna.pdf**

276K

This is **Exhibit “R”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From: Jim Young [mailto:jim.young@newleafcorp.ca]
Sent: Sunday, January 24, 2016 3:12 PM
To: 'NORMAN LECAVALIER'
Subject: NewLeaf Update

Sam and Norm

My apologies for not being reachable for the last week. I have had a minute to type up a note and give you a post mortem on the last couple of weeks.

When we announced on Jan 6, we had firm commitments from three investors totaling \$750K, more than enough to launch in the agreed to model, and their agreement that announcing our schedule and commencing sales was a prudent next step,. We took in Rogers 250K prior to the announcement and used some of that money to pay employees, get the website turned on and fund our advertising. Closings from the remaining 500K were to follow in succession. We needed to complete closings in that order due to a settlement agreement we have with Flair on past debt from the Rutherford debacle.

When Flair put the ultimatum to us last weekend, we had to immediately return 50K to Flair in order for them to give us time to develop an orderly return of funds and manage communication with our customers (thank you CL for throwing me under the bus). Additionally, JR communicated with our other 250K investor, who was to close that Friday morning, his concerns and wanting us to suspend sales. That investor walked away from the table.

Further, an additional 750K in investment from Toronto which was also to close this past week was put on hold as we had to disclose our plans to suspend sales on Monday. It's been a tough week.

So, to sum it up. NewLeaf had solved its financial problems and was on a path to have all the cash necessary to launch Feb 12- in a responsible manner. Flair managers (not necessarily the owner) had lost their nerve and exerted enough pressure to force the suspension. Had they not done so, NewLeaf would have over \$1MM in sales to date, \$1.5MM in the bank and be well down the road to a successful Feb 12 launch- and all with three weeks still to go before first flight.

Where are we now?

- We have the consumer firmly on our side and I believe our relaunch will be well received
- We have the attention of the federal government at the ministerial level and will get the clarity we seek before we start selling again (projected mid March)
- Our First Nations investor has just doubled their investment to 500K (closing all funds by end of the week)
- Additionally FN lawyers are working with our lawyers to build a syndicate of other FN investors as well as banking relationships to access a line of credit for CC backstop.
- We now have significant interest from the Toronto investment community that we plan to aggressively pursue and close before our relaunch.

Sam and Norm, you has always been and continue to be a valuable member of this venture. I know I disclose more information to the two of you than I do to any other stakeholder group (including YWG!) But I trust you both implicitly and value your counsel, the support, time and effort you have both put into this from the start.

I have been unreachable in the last couple of days for a lot of the reasons stated above, but most importantly being that my wife has been in and out of hospital since Wednesday with dangerously high blood pressure due to the stress of this venture on our family's finances and my absence from home while I focus 24/7 to bring funds to the table, pay our obligations, and all the other things we need to do to get launched.... I am going home tomorrow to spend some time with her but will work to make sure we have cash from closings by the end of the week.

Call me if you have any questions.

Jim

This is **Exhibit “S”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

Silver Fox
Business Strategies Ltd.

Mobile (250) 575-0344

REGISTERED MAIL

June 23, 2016

Donald Jim Young
CEO
New Leaf Travel Company Inc.
128-2000 Wellington Ave.
Winnipeg, MB

Dear Jim,

Subject: New Leaf Airways and Silver Fox Business Strategies Inc. Agreement

Congratulations on the re-launch of New Leaf. I'm happy to see that the work I did to facilitate the partnership between New Leaf and Flair Air has helped you launch the company. As such, payment of my outstanding invoices within the next ten business days is required.

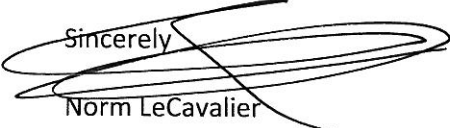
In the event I do not receive payment for these, I will proceed with legal action to recover this long overdue debt.

Please confirm receipt of this email and advise me of the date I can expect a cheque to be couriered to my home address:

49-625 Boynton Place,
Kelowna, BC V1V 3B5

I appreciate your prompt attention to this important matter.

Sincerely


Norm LeCavalier

c/c Jim Rogers, Flair Air

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pa le contenu du présent document"



Mobile (250) 575-0344

REGISTERED MAIL

March 16, 2016

Donald Jim Young
CEO
New Leaf Travel Company Inc.
128-2000 Wellington Ave.
Winnipeg, MB

Dear Mr. Young;

Subject: New Leaf and Silver Fox Business Strategies Inc. Agreement

As a follow-up to your last text messages of February 22, 2016 referencing "no delay on your part" when I mentioned the money was not in the account, you spoke to me directly and stated that Brian had asked Lisa to complete the transfer. Clearly it was never your intention to pay the promised amount of \$15,000.00 referred to in your text and furthermore the remaining full outstanding amount of \$44,568.90.

As per our signed agreement dated September 4th, 2014 which outlines the financial terms, pricing matrix and terms and conditions, there has been no communication on your part to address payment for my services. Furthermore, there have been a number of misleading communications, both from you and Brian over the past several months and as such I am officially severing any relationship with New Leaf Corporation, New Leaf Travel and New Leaf Airways effective as of today's date March 16, 2016 based on your non-performance of payment as outlined in our original agreement.

As for the outstanding debt, I will be resolving this matter.

Sincerely,


Norm LeCavalier

c/c Brian Reddy, Chief Financial Officer, New Leaf Travel Company Inc.

Bob Jones, Chief Operating Officer, New Leaf Travel Company Inc.

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Statement of Work

Prepared by:

Silver Fox
Business Strategies Inc.

For

New Leaf Airways

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Purpose

The purpose of this agreement is for New Leaf Airways (operating under Company Number 1919183 (Ontario Ltd.)), to retain Silver Fox Business Strategies Ltd. Business consultant in a consulting capacity. The services to be provided will be as follows:

- To facilitate “Third Party” Strategic Alliances and or Partnerships by identifying the core competencies, skills and strengths of potential partners who would present complimentary and or collaborative business opportunities.
- To lead and facilitate meetings and or introductions to required parties relating to opportunities and or special projects undertaken by New Leaf Airways.

Scope

- To research and facilitate potential business partnership opportunities which would provide New Leaf Airways the projected expansion and growth opportunities within their industry sector.
- To research and identify new business opportunities on behalf of New Leaf Airways based on their suite of services they will be offering within their industry sectors.
- To facilitate and or recommend strategic processes and direction in accordance with each individual opportunity.
- To identify and recommend third party Strategic Alliances which would be beneficial to the organization’s overall business growth and objectives.
- To liaise with other parties, government and or private sector as required.

Key Deliverables

- Identification and facilitation of business partnerships and or strategic alliances as per pre-defined specifications.
- Identify and facilitate new business opportunities.
- To ensure mutual objectives for all parties are clearly defined and agreed upon.
- To facilitate the appropriate third party agreements such as confidentiality agreements.
- Ongoing tracking of progress on commitments, management reporting updates as agreed upon.

Terms and Conditions

- This agreement is effective July 16, 2104.
- The term of this agreement is for six months from the above stated date.
- The term of the agreement may be extended on or prior to the expiry date.
- In the event that either party wishes to do so, they may terminate this agreement by providing thirty day’s written notice.
- The client may from time to time increase the time allocation based on specific initiatives and prior approval from both parties.

Financial Terms

- A minimum monthly retainer fee of \$3100.00 plus GST, which will yield a minimum of twenty hours working hours on a monthly basis. (Refer Pricing Matrix)
- The retainer is due/payable on the first business day of every month.
- Travel expenses will be reimbursed (subject to prior approval) and out of pocket expenses will also be reimbursed.

Pricing Matrix

- Hourly rate applicable is \$155.00 based on six month contract.
- Regular hourly rate without a minimum six month contract is \$185.00.
- Minimum half day rate (4 hours) for arranging and attending meetings.
- Some expenses to and from meetings incurred may be subject to being claimed.

Dated:

Approved By:

.....

New Leaf Airways

Per:.....

Silver Fox Business Strategies Inc.

Invoice No: NLA01312016

From: January 1, 2016 **To:** January 31, 2016

Date issued: January 16, 2016

Client Name: New Leaf Airways

Attention: Jim Young

Address: Ontario, Canada

Description of services:

Amount

Flat Monthly fee for
Business Consulting Services

PAST DUE

\$52,700.00

GST: (5%) 841524333RT0001

\$ 2635.00

Total Amount Due:

\$ 55335.00

(Invoices Due Upon Receipt)

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Invoice No: NLA10212015

From: February 1, 2016 **To:** February 29th, 2016

Date issued: February 3, 2016

Client Name: New Leaf Airways

Attention: Jim Young

Address: Ontario, Canada

Description of services:

Amount

Flat Monthly fee for
Business Consulting Services

\$3100.00

GST: (5%) 841524333RT0001
2325.00

\$ 155.00

Total Amount Due:

\$ 3255.00

PAST DUE

(Invoices Due Upon Receipt)

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This is **Exhibit “T”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From: bob.jones <bob.jones@newleafcorp.ca>
Date: Wed, Apr 6, 2016 at 3:07 PM
Subject: Fwd: Update with Hessie
To: h.jones@arcompany.co <h.jones@arcompany.co>
Cc: Bob Jones <bob.jones@newleafcorp.ca>

Hessie,

Attached is the email I sent to Jim & Brian ... FYI.

Let me know when you are available for a call on T4G?

Regards,

Bob

Mobile : [647-519-6292](tel:647-519-6292)

Sent from Samsung Mobile

----- Original message -----

From: "bob.jones"
Date: 04-06-2016 2:58 PM (GMT-05:00)
To: Jim Young , brian.reddy@newleafcorp.ca
Cc: Bob Jones
Subject: Update with Hessie

Jim / Brian,

As a follow up to the email from Hessie, I met with her on Monday to provide an update.

We had a good meeting and she is positive on the CTA decision and certainly an advocate of our successful relaunch.

Going forward, I suggest you guys send Hessie a note acknowledging the outstanding invoice for prior work done (I have included copies of the invoice and the work summary if you need them). I think you should also describe the process / timing for payment, once the investment funds are realized.

Finally, I suggest Brian be the ongoing focal point for Hessie, as it is really the payment issue to be managed.

Let me know if you have any questions.


Regards,

Bob

Mobile : [647-519-6292](tel:647-519-6292)

Sent from Samsung Mobile

2 attachments

 **ArCompany Work Done for NewLeaf 14-Apr-2015.doc**
695K

 **Invoice-0000108 NewLeaf May 20, 2015.pdf**
59K

ArCompany
1228 Bridge Gate
Pickering ON L1X 1A4



NewLeaf Corp
Brian Reddy

Invoice # 0000108
Invoice Date May 20, 2015

Balance Due (CAD) \$76,485.12

Item	Description	Unit Cost	Quantity	Line Total
Kelowna Ski Resorts Program	Website and content development, External ad creation, Advertising Program, Social Account management, Customer experience	28,200.00	1	28,200.00
NewLeaf MyAir Branding Program	Branding Program Preparation and Facilitation	20,285.95	1	20,285.95
Additional NewLeaf Projects	August 2014 - March 2015: Development of Go to Market Strategy and Iterations; Web requirements gathering, Technology Partners identification, Industry/ULL research and analysis	19,200.00	1	19,200.00

Subtotal	67,685.95
HST (85046 3332 RT0001) 13%	8,799.17
Total	76,485.12
Amount Paid	0.00
Balance Due (CAD)	\$76,485.12

Terms

BN 850463332
Net 15 days

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PAYMENT STUB

ArCompany
1228 Bridge Gate
Pickering ON L1X 1A4

Client	NewLeaf Corp
Invoice #	0000108
Invoice Date	May 20, 2015
<hr/>	
Balance Due (CAD)	\$76,485.12

Amount Enclosed
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Kelowna Ski Resorts Program (Jan – Mar 2015)

Items	Results / Impact	Person Days	Totals
<p>NewLeaf Website & Content Development Developed theme, content and set up with Xecunet hosting, domain set up, email IDs for NewLeaf personnel, info and reservations, Ski Hills Pages, One-legged ski packages, Super Savvy Airfares, Terms and Conditions & News Info. Includes regular updates. Sample Meetings included: Jan 7 (Hessie discussions with Flight Network); January 30 (Ski Hills Brief); Feb 9, Feb 13, Feb 14 (Project and Website Definition & Landing Pages); Feb 17 (Bob and Hessie 3-4); Feb 18 (brainstorm on ski resorts); Feb 19 (continue brainstorm on ski resorts); Feb 21; March 2nd (team meeting), etc.</p>	<ul style="list-style-type: none"> • Creation of a Wordpress NewLeaf.ca website for linkages to and from the Ski Resort Websites (Offer pages) • Ongoing presentation of Air Only Fares plus the detail for the fare fees and taxes breakdown through pop-up windows (updated daily as price changes occurred) • Landing page for Facebook Ad Program • Source for Terms and Conditions • Source for ongoing news • Landing page for information enquiries • Established Google Analytics linkages to other websites (e.g. Ski Resorts, Castanet, etc.) • Email IDs for NewLeaf Personnel, Info and Res functions in place 	10.5	\$12,600.00
<p>External Ads Developed concept, design and creation of clickable ads by ArCompany for third party websites to bring users back to the NewLeaf Website</p>	<ul style="list-style-type: none"> • Creation of Graphics used to create clickable linkages from external websites (YLW and YHM airports, Castanet, etc.) to click through to the NewLeaf.ca website. 	1.0	\$1,200.00
<p>Advertising Program Performed preliminary research with Flight Centre, Go-360 and Brian Carter Group; 30+ ad development, bi-weekly optimization; tracking and reporting; final post analysis report and recommendations. Sample Meetings included: Regular sometimes daily meetings with Facebook and Go 360 : Brian Carter & Lynda Harvey-FB Ad Post Mortem, (Mar various mtgs).</p>	<ul style="list-style-type: none"> • Identified scope and desired outcomes for the advertising program • Evaluated Brian Carter Group and Go360 for capabilities and suitability for the project • Managed the vendors • Provided a regularly updated Media Matrix Document to guide the vendors on a daily basis 	5.5	\$6,600.00

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NewLeaf Airways
Turning the page on travel.

Summary of ArCompany Work Performed for NewLeaf (Prior to April 2015):
Per Hessie Jones

Items	Results / Impact	Person Days	Totals
<p><u>Social Accounts for New Leaf</u> Set up social accounts, listening on Big White and other Ski Resort twitter accounts for amplification, Content Curation and Posting on Twitter and Facebook pages - Month of march; moderated as appropriate</p>	<ul style="list-style-type: none"> Created and maintained social presence for NewLeaf Facebook Page and Twitter Page 	4.5	\$5,400.00
<p><u>Customer Experience</u> Brainstorm / Ideation (2 days) and presentation of outcomes to NewLeaf Customer Experience discussion – with Jim, Jan Fogelberg, and various ArCompany resources</p>	<ul style="list-style-type: none"> Focus was on what products and services (included electronic, entertainment, and physical products) could be sold to Ski Customers what on board the aircraft, while in the Airport and online while preparing for the flight. 	2.0	\$2,400.00
Total		23.5	\$28,200.00

NewLeaf MyAir Branding Program (Oct 2014)

Items	Results / Impact	Person Days	Total
<p><u>Branding Program Preparation and Facilitation</u> Preparation, research, prior to sessions (Hugh Oddie). Facilitation Process, discussion, analysis and meeting facilities (Hugh Oddie)</p>	<ul style="list-style-type: none"> Presentation, new articles, case studies and discussion of other airline situations (Singapore, Jet Blue, etc.) Discussion of the kind of company NewLeaf wants to be Establishment of values, persona and descriptors for NewLeaf (Summary document) Secured domain names for NewLeaf and MyAir 	6.0	\$15,000.00

flymyair.co - expires 1/26/2016
iflymyair.com - same
iflymyair.net - same
myairline.co - same

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NewLeaf Airways
Turning the page on travel.

Summary of ArCompany Work Performed for NewLeaf (Prior to April 2015):
Per Hessie Jones

Items	Results / Impact	Person Days	Total
	<ul style="list-style-type: none"> newleafair.com - same newleafcorp.co same newleafcorp.net - same iflymyair.ca - same myairlines.ca - same myairtravel.ca - same newleafair.ca - same newleafcorp.info - same newleafcorp.org - same 		
	<ul style="list-style-type: none"> Documented outcomes from the session Insights from Hessie Jones and Amy Tobin 	4.0	\$4,800.00
ArCompany Team Participation	Two days from Hessie Jones and Amy Tobin		
Travel and Expenses	Airport Limo (\$64.40), Amy's flight (\$383.75), Hessie's mileage (\$37.80)		\$485.95
Total		10.0	\$20,285.95

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Additional NewLeaf Projects (Aug 2014 – Mar 2015)

Items	Results / Impact	Person Days	Totals
RBC Moneris	<ul style="list-style-type: none"> Several ArCompany resources participated in meeting to understand and support how credit card transactions with customers would be performed. Performed some research on new potential payment technologies for NewLeaf 	1.0	\$1,200.00



NewLeaf Airways
Turning the page on travel.

Summary of ArCompany Work Performed for NewLeaf (Prior to April 2015):
Per Hessie Jones

Items	Results / Impact	Person Days	Totals
<p><u>Development of Go To Market Strategy & Iterations</u> Development of a go to market plan - team strategy and development, Marketing Integrator role, and Customer Acquisition Strategy and Tactics, Initial Mountain Top Plan for the Marketing Function; Created a Customer Experience Model and the various steps in the Customer Experience Process</p>	<ul style="list-style-type: none"> Created a detailed Mountain Top plan, with several iterations Provided a detailed view of the NewLeaf Marketing Team, functions to be performed and relationships to third parties consultants Created a document on the proposed customer experience and how it would drive the NewLeaf product going forward 	5.0	\$6,000.00
<p><u>Website Requirements</u> Developed a Detailed Website Discovery, Design and Build Plan, and pursued several meetings with Mantis Technology Group Inc. and others regarding an RFP for the NewLeaf Website</p>	<ul style="list-style-type: none"> Produced a document that broke the website development into 5 phases with proposed timing, resources and ballpark costs 	3.0	\$3,600.00
<p><u>Technology Partners Identification</u> Initial Tech Partners identified - conversations with Pulse, Measurely and Go360; Go360 Hyper Local Customer Targeting video created as a demo and later used in the Ski Resorts Program for Calgary</p>	<ul style="list-style-type: none"> Defined role of social / digital / online technology partners that ArCompany would bring into play 	4.0	\$4,800.00
<p><u>Various Airline Industry / ULCC Information & Analysis</u> Tracking various Airline Industry news articles for ULCC, Social activities and Customer / Market feedback; Preliminary competitive research - web sites and social insights (e.g. KLM, etc.), Created Social Insights Document using technologies and services from Measurely, Simply Measured, Similar Web Social Insights Scan and Summary, Performed a social / online investigation of Kelowna FlightCraft and Flair Air</p>	<ul style="list-style-type: none"> Better understanding of the Airline / ULCC sector with regards to the use of Social media Produced a Social Insights document using a variety of social technologies Gleaned intelligence on key players at Kelowna FlightCraft / Flair Air 	3.0	\$3,600.00
Total		16.0	\$19,200.00

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Summary of ArCompany Work Performed
for NewLeaf (Prior to April 2015):
Per Hessie Jones

Summary of ArCompany Work Performed for NewLeaf (Aug 2014 – Mar 2015)

Programs / Projects	Person Days	Totals
Kelowna Ski Resorts Program (Jan – Mar 2015)	23.5	\$28,200.00
NewLeaf MyAir Branding Program (Oct 2014)	10.0	\$20,285.95
Additional NewLeaf Projects (Aug 2014 – Mar 2015)	16.0	\$19,200.00
Grand total		\$67,685.95

Note: Documentation for all projects noted above is available and will be put into a NewLeaf Dropbox file by April 17, 2015.

END

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This is **Exhibit “U”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

Court File No:
16-09336

**ONTARIO
SUPERIOR COURT OF JUSTICE**

8297525 CANADA INC., a company incorporated pursuant the *Canada Business Corporations Act*, with head offices in the City of Pickering, Ontario and carrying on business under the trade name **ARCOMPANY**.



PLAINTIFF

AND

NEW LEAF TRAVEL COMPANY INC., a company incorporated pursuant to the *Canada Business Corporations Act* with registered offices in the City of Winnipeg, Manitoba, 1919183 Ontario Ltd., a company incorporated pursuant to the Ontario Business Corporations Act with registered offices in the City of Toronto, **DONALD JAMES YOUNG**, an individual residing in the City of Nanaimo, British Columbia.

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date July 19, 2016

Issued by: The Registrar at Ottawa



Court Address: 1st Floor, 161 Elgin Street
Ottawa, Ontario
K2P 2K1 CANADA

TO: Newleaf Travel Company Inc.
Suite 2200 - 1 Lombard Place
Winnipeg, Manitoba R3B 0X7

AND TO: 1919183 Ontario Ltd.
Suite 2120 - 130 King Street West
Toronto, Ontario, M5X 1C8

AND TO: Donald James Young
6253 Eldorado Place
Nanaimo, BC, V9V 1N4

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. The Plaintiff's claim as against the Defendants is for the following:
 - i) damages in the amount of \$76,485.12.00 for unpaid invoices inclusive of HST;
 - ii) interest on the outstanding amount calculated from May 20, 2015 at rate of ten percent (10%) per annum or as determined acceptable by this Honourable Court;
 - iii) punitive damages in the amount of \$20,000.00; and
 - iv) costs of this proceeding against the defendant on a substantial indemnity basis;
 - v) such other relief as the plaintiff may request and this Honourable Court deems just.

2. The plaintiff, 8297525 Canada Inc. carrying on business under the trade name ArCompany (hereinafter "ArCompany") with registered office in the city of Pickering, Ontario is a consultancy providing specialized marketing, social media, set up and execution for the new proposed airline and branding and related services to the airline and related industries.

3. The defendant, NEWLEAF TRAVEL COMPANY INC., a company incorporated pursuant to the *Canada Business Corporations Act* with registered offices in the City of Winnipeg, Ontario and established for the purposes of operating a start-up company attempting to launch a regional airline (hereinafter "Newleaf").

4. The defendant, 1919183 Ontario Ltd., a company incorporated pursuant to the *Ontario Business Corporations Act* with registered offices in the City of Toronto, Ontario (hereinafter "1919183") established for the purposes of operating a startup regional airline and link by ownership interests and business plan to the other defendant Newleaf.

5. The defendant, DONALD JAMES YOUNG, an individual residing in the City of Nanaimo, British Columbia and a director and officer of both Newleaf and 1919183 and for the purposes of this claim and directing mind of both of these defendant companies (hereinafter 'Young').

FACTUAL BACKGROUND

6. ArCompany provided certain marketing, social media strategic planning and market research services for Canada Jetlines Ltd. a proposed start up airline, a regional airline of which Young was appointed President approximately at the time ArCompany was engaged.

7. All communications relating to the aforementioned work were conducted between ArCompany and Young.

8. The services as requested by Young were provided in three invoices tendered as follows:

- a. Invoice 0000043, dated March 5, 2014 for \$5,650.00 including HST;
- b. Invoice 0000057, dated May 1, 2014 for \$16,950.00 including HST; and
- c. Invoice 0000058, dated May 1, 2014 for \$16,950 including HST.

9. ArCompany subsequently learned that Young was dismissed as President of Canada Jetlines Ltd. in late June, 2014. ArCompany understood that one of the reasons for the dismissal was that Young was not authorized and had no authority to retain the services of ArCompany as such decisions could only be made with the approval of the board of directors of that company.

10. In July 2014 Young together with Mr. Bob Jones, a business associate of ArCompany, announced they would start their own company to set up a regional airline service under the name NewLeaf and that the services provided by ArCompany would be utilized and relevant for that new venture.

11. In August 2014 ArCompany is engaged to provide further services to Young as he was developing and building from the ground up his concept for a regional airline to be named NewLeaf. At all material times Young made clear to ArCompany that the previous services as rendered to Young would be honored and paid for via the Newleaf venture.

12. Based upon the representations of Young and his new partner, Mr. Bob Jones who was known to ArCompany as one of its principals, which representations were relied upon and included that the Newleaf venture was in the process of securing financing, ArCompany agree to and continue to provide services relative to the new venture.
13. Young established the defendant company 1919183 with an effective date of July 4, 2014 as the holding company for the proposed NewLeaf airline.
14. As an incentive and at the time perceived act of good faith, Young offered Newleaf common shares to ArCompany foreign equivalent equity stake of 5% in 1919183 at the founding share price of 00.001 per share. Such share offering was considered an added incentive in addition to the promises to pay previous invoices and for work that was ongoing relative to this new venture.
15. ArCompany hired third-party contractors help deliver the required services to Young and NewLeaf and 1919183 such amounts for such third-party contractors included costs incurred from for third party sub-contracts including one account for \$20,000 (US funds) and another for \$30,276.71 (Canadian funds).
16. ArCompany continued to provide services through the fall and early winter of 2014 under continued promises by Young that funding was forthcoming and that the outstanding accounts would not only be brought current but the new services delivered would be paid for as well.
17. During the period January – April, 2015 ArCompany assisted in running the Kelowna marketing and launch campaign for Newleaf on the understanding that funding would come in January of 2015. In light of the fact payment was not forthcoming, after that time period ArCompany decided to limit time and exposure relative to the Newleaf project under continued efforts to obtain payment from Young.
18. All communications from Young, Newleaf and from Bob Jones on behalf of both where that funding was forthcoming and ArCompany was assured its accounts would be addressed as the airline was close to becoming operational.

19. ArCompany eventually learned that a new company was established name NEWLEAF TRAVEL COMPANY INC. with an incorporation date April 15, 2015. The purposes of this new corporation were to pursue the contemplated regional airline service by Young.

THE CLAIM

20. ArCompany services were provided for the purposes of launching the airline Newleaf were utilized and directly benefited all of the defendants. As such, all of the defendants have ben unjustly enriched from the unpaid use of the services provided by ArCompany.

21. The defendants have not disputed for any reason the amount as herein claimed by ArCompany is due and owing and in fact have acknowledged directly and through Mr. Bob Jones that the amount is due and owing.

22. The defendants have secured funding for NewLeaf from investors and as such have funds. ArCompany therefore pleads and claims a lien and trust claim as against any investment funds secured or pending by NewLeaf or any of the defendants.

23. The final invoice tendered by ArCompany was tendered Invoice 000108, dated May 20, 2015 for a total amount of \$76,485.12 inclusive of HST and capturing all previously tendered invoices noted above.

24. Demand for payment of the above noted invoice has been made of all of the defendants including the legal counsel for the defendants the Winnipeg-based law firm, D'Arcy & Deacon.

25. The above noted invoice in the amount of \$76,485.12 remains outstanding as of the date of the issuance of the statement of claim.

26. ArCompany hereby claims the sum of \$76,485.12 from the defendants for the reasons set out above.

CLAIM AGAINST YOUNG PERSONALLY

27. ArCompany believes that Young knew or should have known that he was not authorized to retain the services of the plaintiff in his capacity as president of Canada Jetline Ltd. and as such unauthorized decision-making exposes him personally for such amounts due and owing to the plaintiff. Further, as a fonder and principal of the defendant companies Young would be unduly enriched if not held personally liable for the amounts herein claimed by ArCompany.

28. In addition, ArCompany believes it is quite coincidental that such services were requested by Young when he knew he was not authorized to solicit such services and then shortly after his departure from Canada Jetline Ltd. that he would seek to transport the benefits from the work product of ArCompany to the new venture of which he was principal, namely the Newleaf airline project.

29. ArCompany claims that Young acted in bad faith and with the intention of transporting and utilizing the services and work product of ArCompany and its contractors for his personal benefit in the new airline venture described above. Further, that the ambiguity and changes of name and corporate structures further indicate that Young displaying a corporate shell game to either avoid creditors and/or frustrate ArCompany in the collection of the amounts as herein described.

CLAIM FOR PUNITIVE DAMAGES

30. ArCompany claims that the actions of all of the corporate defendants, and the individual defendant Young indicate that they acted maliciously, intentionally and in a concerted effort to extract services from ArCompany without paying for the same.

31. In light of the above, and the claims made in previous paragraphs. The defendants should be collectively and individually required to pay punitive damages as set forth in paragraph 1 above.

**FACTS IN SUPPORT OF RULE 17.02 –
NO ORDER REQUIRED TO SERVE CLAIM OUTSIDE ONTARIO**

32. The plaintiff pleads and relies upon the following facts in support of the position that no Order of this Honourable Court should be required to serve the herein claim:

- a. Pursuant to the Rules of Civil Procedure, Rule 17.02 (g) this claim relates to a matter of contract and breach of contract that formed and executed upon in the Province of Ontario where the services contacted for were delivered in Ontario and other correspondence were emailed and sent to residents of the Province of Ontario as outlined and described in paragraphs 6 to and including 23 set out above; and
- b. Pursuant to Rules of Civil Procedure, Rule 17.02 (h) in relation to damages caused to the 8297525 CANADA INC., a company incorporated pursuant the *Canada Business Corporations Act*, with head offices in the City of Pickering, Ontario and carrying on business under the trade name ARCOMPANY as outlined and described in paragraphs 6 through and including 23 set out above.

33. ArCompany claims that the nexus of this claim is the Courts of Ontario for the following reasons:

- a. ArCompany has its office in Pickering, Ontario;
- b. Key witnesses are located in the Province of Ontario;
- c. A primary defendant, NEWLEAF TRAVEL COMPANY INC. has registered offices in the Province of Ontario; and
- d. 8297525 CANADA INC. carrying on business as ArCompany has its registered office on the Province of Ontario.

34. ArCompany based upon the facts and reasons set out above as request of this Honourable Court the relief set out above in paragraph 1.

35. ArCompany requests that the trial of this matter take place at the City of Toronto, Ontario.

Date of Issue:

Katsepontes Moutsios LLP
Barristers and Solicitors
Suite 800 – 1730 St. Laurent Boulevard
Ottawa, Ontario, K1G 5L1 Canada
Phone: 613.239.3064
Fax: 613.237.9181
Email: nicholas@kmlawfirm.ca

Nicholas P. Katsepontes
LSUC No.: 36517D
Solicitor for the Plaintiff

TO: The Registry at Ottawa

AND TO: Defendant, Newleaf Travel Company Inc.
Suite 2200 - 1 Lombard Place
Winnipeg, Manitoba R3B 0X7

AND TO: Defendant, 1919183 Ontario Ltd.
Suite 2120 – 130 King Street West
Toronto, Ontario, M5X 1C8

AND TO: Defendant, Donald James Young
6253 Eldorado Place
Nanaimo, BC, V9V 1N4

8297525 CANADA INC., carrying on business under the trade name ARCOMPANY. AND

NEWLEAF TRAVEL COMPANY INC., 1919183 Onta Ltd, DONALD JAMES YOUNG

Plaintiff

Defend:

Court File No.: 16-69336

SUPERIOR COURT OF JUSTICE

Proceeding Commenced in the City of
Ottawa

STATEMENT OF CLAIM

KATSEPONTES MOUTSIOS LLP
Barristers and Solicitors
800 - 1730 ST. LAURENT BLVD.
Ottawa, Ontario
CANADA
Phone:(613) 239-3064
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NICHOLAS P. KATSEPONTES
Solicitor for the Plaintiff,
LSUC No.: 36517D

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This is **Exhibit “V”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

KELOWNA INTERNATIONAL AIRPORT

AIR CARRIER AIRPORT USE AGREEMENT

BETWEEN THE

CITY OF KELOWNA

AND

**** AIRLINE NAME****

(Search for **Airline Name throughout this Agreement and replace
with the correct name)**

(YLW FILE NO. 1140-50)

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TABLE OF CONTENTS

<i>Article 1.00 - Purpose</i>	<i>1</i>
<i>Article 2.00 - Term of Agreement</i>	<i>2</i>
<i>Article 3.00 - Conduct of Business</i>	<i>2</i>
<i>Article 4.00 - Default</i>	<i>9</i>
<i>Article 5.00 - Assignment</i>	<i>9</i>
<i>Article 6.00 - Waiver or Non-Action</i>	<i>10</i>
<i>Article 7.00 - Hold Harmless/Indemnification/Claims</i>	<i>10</i>
<i>Article 8.00 - Members of the House of Commons</i>	<i>11</i>
<i>Article 9.00 - Choice of Law and Jurisdiction</i>	<i>11</i>
<i>Article 10.00 - Entire Agreement</i>	<i>11</i>
<i>Article 11.00 - Bribes</i>	<i>11</i>
<i>Article 12.00 - Interpretation</i>	<i>11</i>
<i>Article 13.00 - Differences</i>	<i>12</i>
<i>Article 14.00 - Effect of Agreement</i>	<i>12</i>
<i>Article 15.00 - Severance</i>	<i>12</i>
<i>Article 16.00 - No Implied Obligations</i>	<i>12</i>
<i>Article 17.00 - Notices</i>	<i>12</i>
<i>Article 18.00 - Definition</i>	<i>12</i>
<i>Schedule A - Certificate of Insurance</i>	
<i>Schedule B - AIF Monthly Remittance</i>	

THIS AGREEMENT made this _____ day of _____, 2016.

BETWEEN

City of Kelowna
1435 Water Street
Kelowna, B.C.
V1Y 1J4

(the "City")

AND

****AIRLINE NAME AND ADDRESS****

(the "Air Carrier")

WHEREAS:

- A. The City is the operator of the Kelowna International Airport (the "Airport") located in the City of Kelowna, Province of British Columbia;
- B. The Air Carrier is desirous of using, in common with others, the Airport;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the fees, charges, covenants, and agreements to be paid, observed, and performed by the Air Carrier, and other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged) the City and the Air Carrier covenant and agree as follows:

Article 1.00 - Purpose

1. The City covenants that provided the Air Carrier pays all monies due under this Agreement and performs the covenants herein on its part contained, it may:
 - 1.1. Operate its business or a part thereof at the Airport;
 - 1.2. Use, in common with others so authorized, the runways, taxiways, navigational aids and other common use landing field facilities of the Airport, for its aircraft landings and takeoffs required in connection with the operation of its air transportation business to and from the Airport;
 - 1.3. Possess the right of access from the Airport as made necessary by the Air Carrier's operations over, and upon streets, roads, paths, hallways, corridors or open spaces only, provided that the right herein defined shall not be exercised in such manner and to such extent as to impede or interfere with the operation of the Airport by the City, its lessees, air carriers or others; and

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- 1.4. On and off load its passengers or cargo from such areas of the Airport as the Airport Director may from time to time designate. Such assignment of areas shall not constitute any pre-emptive or exclusive right to areas designated. When traffic conditions are such that the areas are in use, the Air Carrier may use other areas designated by the Airport Director if, by such use, others are not inconvenienced or disturbed.

Article 2.00 - Term of Agreement

2. The term of this Agreement shall commence on the ___ day of _____, 2016 and shall continue to be in effect until terminated as hereinafter provided.
 - 2.1. This Agreement may be terminated at any time by the City in the absolute discretion of the Airport Director. Termination shall be effected by providing up to thirty (30) days prior written notice to the Air Carrier and upon the date of termination specified in the notice all rights of the Air Carrier pursuant to this Agreement shall thereupon cease.
 - 2.2. The Air Carrier may terminate this Agreement by giving thirty (30) days prior written notice to the Airport Director.
 - 2.3. This Agreement may be terminated by the mutual written consent of the parties without notice.
 - 2.4. The Air Carrier shall forthwith cease to carry on business or operation at the Airport as of the effective date of termination of this Agreement.

Article 3.00 - Conduct of Business

3. The Air Carrier covenants and agrees with the City to the terms and conditions set forth below at all times during the term of this Agreement and agrees that non-compliance with any such term or conditions at any time during the term of this Agreement shall constitute grounds for termination of this Agreement by the City by written notice to the Air Carrier, or such other remedy as the City, in its discretion, may deem appropriate. The Air Carrier waives any notice of default or termination not expressly provided for in this Agreement.
 - 3.1. The Air Carrier shall hold all required valid and subsisting agreements, certificates or permits from the federal government to provide commercial air transportation services to the routes it is serving to and from the Airport.
 - 3.2. The Air Carrier shall abide by and comply promptly with all laws, regulations, orders, rules, requirements and recommendations which may be applicable to the Air Carrier or to the use of the Airport, made by any and all federal, provincial, civil, municipal and other authorities or association of insurance underwriters or agents and all notices in pursuance of same and whether served upon the City or the Air Carrier, but if served upon the City alone, only if notice thereof is given to the Air Carrier.

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- 3.3. The Air Carrier shall comply forthwith and cause its directors, officers, employees and agents to comply with any direction of the Airport Director with respect to matters which, in the opinion of the Airport Director, concern safety, security or matters of urgency.
- 3.4. The Air Carrier shall observe and obey all reasonable rules and regulations not conflicting with the provisions of this Agreement as may now exist or may be promulgated from time to time by the Airport Director, provided that such rules and regulations shall be furnished in writing to the Air Carrier.
- 3.5. The Air Carrier shall maintain strict control over all security passes issued to the employees or agents of the Air Carrier; follow any direction of the Airport Director with respect to security measures; and report forthwith to the Airport Director any loss or misuse of security passes or the termination of its employees or agents.
- 3.6. The Air Carrier shall not, under this Agreement, conduct a separate business on or about the Airport, nor shall it offer, supply, sell or give away, whether singly or in conjunction with its air transportation business, any service or commodity other than usual food or beverages in the course of the flight unless authorized in writing by the Airport Director.
- 3.7. The Air Carrier shall, before commencing operations and subject to the approval of the Airport Director, make and maintain:
 - a) Arrangement for fuelling and ground handling; and
 - b) Provide to the Airport Director for approval, a written proposal of the Air Carrier's policy and procedures with respect to the handling and containment, clean-up, and disposal of dangerous goods and hazardous materials, including aircraft fuel and oil, de-icing chemicals and other potential pollutants at the Airport.
- 3.8. Subject to the approval of the Airport Director, the Air Carrier shall make and maintain arrangements for the use of gate/apron space, ticket counter and baggage claim.
- 3.9. The Air Carrier shall provide to the City, not later than the fifth day of each month, a report of the Air Carrier's operations at the Airport during the preceding month, separately setting forth the total number of enplaning and deplaning domestic and international passengers (including on-line and interline passengers) carried by the Air Carrier during the preceding month and the number of landings by the Air Carrier by type of aircraft. The Air Carrier shall also provide such other information on its operation in such form and at such times as may be required by the Airport Director. It is understood by the parties that such information will, with the exception of its inclusion in overall statistical totals, be kept confidential by the City, subject to applicable law.
- 3.10. The Air Carrier shall submit proposed schedules to the Airport Director in writing for the winter/spring period no later than June 15th, and for the summer/fall period no later than November 15th.

- 3.11. The Air Carrier shall at its own expense and cost, procure and maintain the insurance policies listed below with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of this Airport Use Agreement, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Airport Use Agreement until the termination of the Airport Use Agreement or such longer period as may be specified by the City.

As a minimum, the Air Carrier shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- a) Aviation Premises/Operations Liability Insurance providing for all sums which the Air Carrier shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the operations carried on in connection with this Airport Use Agreement. This insurance shall include but not be limited to aircraft liability, passenger legal liability, personal injury, premises liability, baggage and cargo liability and such other coverage as may from time to time be generally issued by insurance companies to airlines in connection with their airport operations. Limits of liability for this insurance shall not be less than an inclusive limit of twenty-five million dollars (\$25,000,000.00) for each occurrence or accident, or such greater amount as required by law or regulation applicable to the Air Carriers;
 - b) This insurance shall include a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured thereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
 - c) Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Air Carrier directly or indirectly in the performance of this Airport Use Agreement. The Limit of Liability shall not be less than two million dollars (\$2,000,000.00) inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.
- 3.12 The policy required by section 3.11 above shall provide that the City is named as an Additional Insured with respect to the Premises Liability at the Kelowna International Airport and that said policy is primary without any right of contribution from any insurance otherwise maintained by the City.
- 3.13 The Air Carrier agrees to submit a Certificate of Insurance (Schedule A) to the Airport Director prior to commencement of this Airport Use Agreement. The Certificate shall provide that 30 days written notice shall be given to the Airport

Director, prior to any material changes or cancellations of any such policy or policies.

- 3.14 After reviewing the Air Carrier's Certificate of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Airport Use Agreement and will give notification of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Air Carrier's expense.
- 3.15 The Air Carrier may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.
- 3.16 All insurance, which the Air Carrier is required to obtain with respect to this Airport Use Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
- 3.17 If the Air Carrier fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Air Carrier. The Air Carrier expressly authorizes the City to deduct from any monies owing the Air Carrier, any monies owing by the Air Carrier to the City.
- 3.18 The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Air Carrier shall not be held to waive or release the Air Carrier from any of the provisions of section 3.11 of this Airport Use Agreement, with respect to the liability of the Air Carrier. Any insurance deductible maintained by the Air Carrier under any of the insurance policies is solely for its account and any such amount incurred by the City will be recovered from the Air Carrier as stated in section 3.17.
- 3.19 The Air Carrier shall pay or cause to be paid all rates, taxes and assessments, of whatsoever description that may at any time during the existence of the Agreement be lawfully imposed, or become due and payable by the Air Carrier.
- 3.20 The Air Carrier shall pay to the City all applicable aircraft landing, parking and facility charges as amended from time to time.
- 3.21 The Air Carrier shall collect and remit to the City an Airport Improvement Fee (AIF) from all departing enplaned passengers in the amount of \$15.00 Canadian in accordance with the Memorandum of Agreement (MOA) between the Air Transport Association of Canada and Signatory Air Carriers and Certain Airports including the Kelowna International Airport dated September 23, 1997 and as amended from time to time. The amount of AIF collected may be adjusted from time to time by the City as provided for in the MOA (Article 6.2) and included in the City of Kelowna Airport Fees Bylaw No. 7982 (Section 22). The AIF shall be remitted monthly along with an Airport Improvement Fee Monthly Remittance Form (Schedule B) indicating the current month departing enplaning passengers

(DEPAX), the addition of applicable tax(es), and the quantities of DEPAX who purchased tickets, including paperless tickets which are kept in electronic form, in North America and outside North America. The remittance form shall be signed and dated by an authorized representative of the Air Carrier. The Air Carrier will remit the amount shown on the Remittance Form.

3.21.1 The obligation to collect and remit an AIF will not apply to:

- a) those passengers continuing a journey less than four hours after arrival at the Airport for domestic Canada and transborder itineraries and continuing a journey less than 24 hours after arrival at the Airport for international itineraries. A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s);
- b) airline employees travelling on business, including duty travel of crews of one air carrier on another air carrier;
- c) infants under two years of age for whom no ticket was purchased, even though a no cost ticket may have been issued in the name of the infant;
- d) those customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this clause 3.21.1 d).

3.21.2 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the party responsible for the collection and remittance of the AIF for that DEPAX passenger.

3.22 The Air Carrier shall, without limiting the liability of the Air Carrier under this Agreement or otherwise, pay to the City all costs of the City in using its employees, agents, equipment, and materials, plus a reasonable administrative charge for damage to or destruction of the property of the City, including but not limited to fuel, oil and other spills.

3.23 The Air Carrier shall pay all other fees or charges to the City arising out of the Air Carrier's operation or activities at the Airport, including any sums for employee parking, identification badges, keys and the like.

3.24 The Air Carrier shall pay interest thereon at the rate of 1.5 percent per month (equivalent to 18.00 percent per annum) or such other rate which the City shall determine from time to time in its absolute discretion to reflect prevailing interest rates until the amount of the default and all interest thereon have been paid. All interest shall be calculated daily and compounded monthly and shall apply retroactively from the due date for payment.

- 3.25 In the event the City shall prevail in any action for the enforcement of any of its rights hereunder, the Air Carrier shall pay the City such reasonable legal costs, in addition to any other debt or damages recoverable in such action.
- 3.26 Before commencing operations, the Air Carrier shall pursuant to the City's Bylaw No. 7982 provide the Airport Director with a security deposit calculated to be the sum of three (3) months landing fees plus general terminal fees based upon the proposed schedule(s) submitted to the Airport Director plus all other related fees and charges (the "Security Deposit").
- a) The Security Deposit shall be in the form of cash, bank draft, certified cheque, or irrevocable letter of credit in a form acceptable to the City. Interest will not be paid when the Security Deposit is remitted in the form of an irrevocable letter of credit. Where payable, interest will be calculated at a rate determined by the City. In the case of a letter of credit, if the Air Carrier fails to provide the Airport Director with a renewal or replacement letter of credit at least sixty (60) days prior to the date on which such previous letter of credit expires, then the City shall have the right to terminate this Agreement by written notice to the Air Carrier.
 - b) The Security Deposit plus interest will be retained by the City for the term of this Agreement or until the Agreement otherwise comes to an end, whichever comes first, and shall be returned to the Air Carrier or shall be credited to its account. However, if the Air Carrier fails to pay all sums herein described and/or impairs or damages the Airport or any part thereof during the currency of this Agreement, the City may apply the Security Deposit and accrued interest, if any, or any part thereof to the arrears of sums and/or damages and injuries. If the Security Deposit is so applied by the City, then within fifteen (15) days of having received written notification, the Air Carrier shall restore the Security Deposit to the amount as provided herein. The application of the Security Deposit and interest by the City shall not constitute a waiver nor in any way defeat or affect the rights and remedies which the City has in law.
 - c) The Air Carrier asserts that monies deposited herein as security are not subject to any existing encumbrance, charge, or security agreement.
 - d) The Air Carrier covenants and agrees that it will not assign or encumber nor attempt to assign or encumber the monies deposited herein as security and that the City shall not be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.
 - e) The City shall have the right on at least thirty (30) days prior written notice to the Air Carrier to increase or decrease the amount of the Security Deposit that the Air Carrier is required to maintain hereunder so that such amount continues to represent the amount that the City estimates will be payable as determined by this Agreement. If the Air Carrier does not provide the City, prior to the expiration of such thirty (30) day period, with the full amount of any such increase in the form of

a Security Deposit, then the City shall have the right to terminate this Agreement by written notice to the Air Carrier.

- 3.27 The Air Carrier shall at all times maintain the airside surfaces free of all foreign objects and litter, and shall whenever directed to do so by the Airport Director, remove immediately from the airside surfaces or a portion thereof all of its equipment and anything related to its operations.
- 3.28 The Air Carrier shall require its personnel and employees to maintain and keep the areas of the Airport used by it in the loading and unloading of its passengers or cargo in a neat, clean and orderly condition, free from litter, debris, refuse, petroleum products or grease that may accumulate thereon as a result of the use of the said areas by its passengers, or its employees, contractors, or others servicing and operating its aircraft.
- 3.29 The Air Carrier shall immediately remove any aircraft owned or operated by the Air Carrier that, through accident or for any other reason, becomes disabled or be abandoned in any area which could interfere with the continuous normal operations of any of the Airport landing and field facilities to such location as shall be designated by the Airport Director unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agencies of the federal government.
- Should the Air Carrier fail to immediately remove such disabled aircraft as herein provided, or should aircraft owned or operated by the Air Carrier be allowed to remain on the Airport beyond the needs of normal operation, the City shall have the right to remove such aircraft by any means the City deems necessary under the circumstances, and the Air Carrier shall indemnify and save harmless the City, its officers, officials, employees and agents from any and all costs, liability, damage or expense, including all reasonable legal costs and storage costs incurred by the City or claimed by anyone by reason of removal of such aircraft.
- 3.30 The Air Carrier shall comply with the Airport's noise management and abatement program and with any procedures or directions of the Airport Director with respect to noise management and abatement at the Airport.
- 3.31 The Air Carrier shall comply with the City of Kelowna Local Airport Traffic Directives for the operation of vehicles on airport movement areas, as published by the Airport Director, or any revision or amendment as made from time to time.
- 3.32 The Air Carrier shall provide resources and services for disabled persons.
- 3.33 Where required by the Airport Director, the Air Carrier shall ensure that all signs are provided in both English and French, with equal prominence given to the two languages.
- 3.34 The Air Carrier shall obtain the written approval of the Airport Director for all signs and advertising materials including lettering and other advertising media erected, installed or placed in the Airport and the Air Carrier shall conform to

the aesthetic standards of the Airport and any direction the Airport Director may make from time to time with respect to displays and advertising signs and the Air Carrier shall pay the costs of installing, maintaining, changing and removing all such signs or displays.

- 3.35 The Air Carrier shall not cause or allow air freight and cargo items, excluding passenger luggage and related articles, to be handled through the Air Terminal Building unless approved in writing by the Airport Director.

Article 4.00 - Default

4. It shall constitute default of the terms of this Agreement and justification for immediate termination by the City upon the occurrence of the following:
- 4.1 The Air Carrier fails to observe or perform any of its covenants and obligations under this Agreement and the Air Carrier has not within fifteen (15) days or sooner in the case of emergency or necessity (as determined in the discretion of the Airport Director) after notice from the City specifying the default, cured the default, or if the cure reasonably requires a longer period, the Air Carrier has not written notice signed by the Airport Director setting out the particulars of such breach; or
- 4.2 The Air Carrier becomes bankrupt or insolvent or takes the benefit of any legislation in force for bankrupt or insolvent debtors; or
- 4.3 The making or entering into by the Air Carrier of any assignment for the benefit of creditors; or
- 4.4 Proceedings are instituted for the winding-up or termination of the corporate existence of the Air Carrier; or
- 4.5 The levy of any attachment, execution, appointment of a receiver or other process of court by which the operating rights herein granted may be claimed or attempted to be held and used by any person by reason thereof, whether such person is an officer or appointee of court or otherwise, or any attempted assignment of this Agreement by operation of law; or
- 4.6 Any violation or disregard of the provisions of this Agreement which endangers safety, security, life or property on the Airport.

Article 5.00 - Assignment

- 5.1 The Air Carrier may not assign this Agreement or the benefit of this Agreement without the City's prior consent in writing. The City may withhold such consent at its sole discretion and without reason. The Air Carrier shall be responsible for all costs associated with any assignment of the Agreement, including the City's associated legal and administrative costs.
- 5.2 If, after the date of execution of this Agreement, shares in the authorized share structure of the Air Carrier are transferred by sale, assignment, bequest,

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inheritance, operation of law or other disposition, or are issued by subscription or allotment or are cancelled or redeemed so as to result in a change in the effective voting or other control of the Air Carrier from the person or persons holding control on the date of execution of this Agreement or if other steps are taken to effect a change of control, such change of control will be considered to be an assignment of this Agreement to which this section applies.

- 5.3 The acceptance of any monies from or the performance of any obligation hereunder by a person other than the Air Carrier shall not be construed as an admission by the City to any right or interest of such person as an assignee, transferee or otherwise in the place of the Air Carrier.

Article 6.00 - Waiver or Non-Action

6. The acceptance of the City of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the City to payment in full of such sums or a waiver of any other right of the City or obligation of the Air Carrier. Failure by the City to take action in respect of any breach of any Air Carrier obligation under this Agreement by the Air Carrier shall not be considered to be a waiver of such obligation.

Article 7.00 - Hold Harmless/Indemnification/Claims

7. The Air Carrier:
- 7.1 Shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the "Indemnitees") including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Airport Use Agreement, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.
- 7.2 Shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Airport Use Agreement, excepting only where such claim, demand, action proceeding or liability is based on the sole negligence of the Indemnitees.
- 7.3 Expressly waive any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment or any of the services to or in any space at the Airport, including but not limited to, power, gas, telephone, steam, heating, air conditioning, water supply system, drainage or sewerage systems, or dome wires leading to or inside of any space used, or by reason of any loss resulting from the failure of any such system or facilities which may occur from time to time from any cause, and the Air Carrier hereby expressly releases and discharges the Indemnitees from any and all demands, claims, actions and causes of action arising from any of the causes aforesaid.

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Article 8.00 - Members of the House of Commons

8. No member of the House of Commons of Canada shall be admitted to any share or part of this Agreement, or to any benefit to arise therefrom.

Article 9.00 - Choice of Law and Jurisdiction

9. This Agreement shall be construed according to the laws of the Province of British Columbia.

Article 10.00 - Entire Agreement

10. The provisions in this Agreement constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants or agreements, whether verbal or written, between the parties with respect to the subject matter of the Agreement. This Agreement may be altered or amended only by written instrument executed by both parties hereto.

Article 11.00 - Bribes

11. The Air Carrier hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the City for, or with a view to, obtaining the rights granted herein any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person to solicit or secure the rights granted herein upon any agreement for a commission, percentage, brokerage or contingent fee.

Article 12.00 - Interpretation

12. In this Agreement:
- 12.1 reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
 - 12.2 a particular numbered section or lettered schedule is a reference to the correspondingly numbered section or lettered schedule of this Agreement;
 - 12.3 an "enactment" is a reference to an enactment as that term is defined in the Interpretation Act (British Columbia) on the day this Agreement is made;
 - 12.4 any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
 - 12.5 section headings are inserted for ease of reference and are not to be used in interpreting this Agreement;
 - 12.6 The following are schedules to this Agreement and form an integral part of this Agreement:

Schedule A - Certificate of Insurance
Schedule B - AIF Monthly Remittance Form

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- 12.7 a “party” is a reference to a party to this Agreement;
- 12.8 time is of the essence; and
- 12.9 where the word “including” is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word “including”.

Article 13.00 - Differences

13. All matters of difference arising between the City and the Air Carrier in any matter connected with or arising out of this Agreement whether as to interpretation or otherwise, shall be determined by the Agreement but without prejudice to any recourse available under law.

Article 14.00 - Effect of Agreement

14. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors of each of the parties hereto, and where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context, and all covenants and obligations shall be deemed joint and several.

Article 15.00 - Severance

15. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

Article 16.00 - No Implied Obligations

16. No implied terms or obligations of any kind by or on behalf of the City shall arise from anything in this Agreement and the express covenants and agreements herein contained and made by the City are the only covenants and agreements upon which any rights against the City may be founded.

Article 17.00 - Notices

17. Where any notice, request, direction or other communication (any of which is a “Notice”) is to be given or made by a party under the Agreement, it shall be in writing and is effective if delivered in person or sent by mail to the address above. A Notice is deemed given if delivered in person, when delivered or if by mail, 5 days following deposit with Canada Post. A party may change its address or fax number by giving notice to the other party under this section.

Article 18.00 - Definition

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18. In the Agreement "Airport Director" shall mean the Airport Director or the person acting on his or her behalf at the Kelowna International Airport.

IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

CITY OF KELOWNA

By its authorized signatory(ies)

Mayor

City Clerk

****AIRLINE NAME****

By its Authorized signatory(ies):

Name and Title

DRAFT



Kelowna International Airport

This Certificate is issued to:

The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

Insured

Name:	**AIRLINE NAME**
Address	**AIRLINE ADDRESS**

Broker

Name:	
Address:	

Location and nature of operation or contract to which this Certificate applies:

Operations by **AIRLINE NAME** as an air carrier at the Kelowna International Airport as covered under the Air Carrier Airport Use Agreement between **AIRLINE NAME** and the City of Kelowna.

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Aviation Premises/Operations Liability; • Blanket Contractual; • Contractor’s Protective; • Personal Injury; • Contingent Employer’s Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>25,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name

Authorized Signatory

Date

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**CITY OF KELOWNA
KELOWNA INTERNATIONAL AIRPORT**

AIRPORT IMPROVEMENT FEE

MONTHLY REMITTANCE FORM

Air Carrier: ****AIRLINE NAME**** Month/Year: _____

Current Month DEPAX: _____ X \$ 15.00 = \$ _____
(AIF Rate) (Gross Remittance)

	Gross AIF Remittance (Per Above)
Before Tax	\$ _____
5% GST	\$ _____
Total	\$ _____

Authorized Air Carrier Representative

- | | | |
|--|-------|--------------------|
| 1. DEPAX who purchased ticket
In North America | _____ | _____
Signature |
| 2. DEPAX who purchased ticket
Outside North America | _____ | _____
Title |
| 3. Total DEPAX reported this
Month (1 + 2 = 3) | _____ | _____
Date |

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This is **Exhibit “W”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From ssamaddar@kelowna.ca Wed Jul 20 20:57:12 2016
Date: Wed, 20 Jul 2016 18:57:03 +0000
From: Sam Samaddar <ssamaddar@kelowna.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>
Subject: RE: Any update on NewLeaf?

[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.]

Gabor:

Since we spoke last we do not have the 3 items noted below in place. We are getting indications from New Leaf that they will be signing the agreement this afternoon and the deposit will be wired tomorrow.

Thank you for your continued interest in this.

Sam

Sam Samaddar, Airport Director
Kelowna International Airport

TEL 250 807-4301
FAX 250 765-0213
Twitter@ylwkelowna
Facebook ylw.kelownaairport

Kelowna International Airport - YLW #1-5533 Airport Way, Kelowna BC V1V 1S1 ylw.kelowna.ca

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

From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
Sent: Tuesday, July 19, 2016 10:04 PM
To: Sam Samaddar <ssamaddar@kelowna.ca>
Subject: Any update on NewLeaf?

Hi Sam,

I understand that NewLeaf needs to do three things in order to be able to operate at Kelowna airport:

- (a) sign a standard user agreement;
- (b) provide a deposit for three months of fees; and
- (c) provide a liability insurance that covers their use of airport facilities.

I was wondering if NewLeaf has complied with these requirements as of today?

Best wishes,
Gabor

--
Dr. Gabor Lukacs
Air Passenger Rights
Tel : (647) 724 1727

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Twitter : @AirPassRightsCA

Facebook: <https://www.facebook.com/AirPassengerRights/>

On Tue, 19 Jul 2016, Sam Samaddar wrote:

> Toni:

>
> Could you please send Gabor our standard Airline/Airport Use Agreement?
>
> Also Gabor I can confirm as of this morning we do not have a signed agreement yet from New Leaf.

>
> Sam

>
>
> Sam Samaddar, Airport Director
> Kelowna International Airport

> TEL 250 807-4301

> FAX 250 765-0213

> Twitter@ylwkelowna

> Facebook ylw.kelownaairport

>
> Kelowna International Airport - YLW #1-5533 Airport Way, Kelowna BC

> V1V 1S1 ylw.kelowna.ca

>

>

>

>

>

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

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

> Sent: Monday, July 18, 2016 5:23 PM

> To: Sam Samaddar <ssamaddar@kelowna.ca>

> Subject: Two follow-up questions

>

> Hi Sam,

>

> It was a pleasure speaking to you tonight. I was wondering if you could:

>

> (a) send me a copy of Kelowna Airport's standard user agreement; and

>

> (b) confirm whether NewLeaf has paid Kelowna Airport the required deposit.

>

> I look forward to hearing from you.

>

> Best wishes,

> Gabor

>

> --

> Dr. Gabor Lukacs

> Air Passenger Rights

> Tel : (647) 724 1727

> Twitter : @AirPassRightsCA

> Facebook: <https://www.facebook.com/AirPassengerRights/>

>

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This is **Exhibit “X”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From: Jim Rogers <Jim.Rogers@flairair.ca>
Date: Wednesday, July 6, 2016 at 6:05 PM
To: "Owram, Kristine" <kOwram@postmedia.com>
Subject: RE: Question re: NewLeaf

Hi Kristine,

In answer to your questions re Flair's relationship with NewLeaf:

Flair did meet the financial requirements in 2005 when it applied and received its Operating Certificate for 705 Large Aircraft.

Flair is supplying aircraft and operating under a ACMI agreement with New Leaf. The contract with the passenger is with New Leaf and they have a passenger protection plan in place and would suggest you contact them for details.

Cheers, Jim Rogers, President

From: Bill Hardy
Sent: Wednesday, July 06, 2016 2:34 PM
To: Jim Rogers
Subject: FW: Question re: NewLeaf

From: Owram, Kristine [kOwram@postmedia.com]
Sent: July 5, 2016 8:25 AM
To: Info at Flair Air
Subject: Question re: NewLeaf

Hi there,

I'm wondering if Flair, through its relationship with NewLeaf, is required to meet the following licensing requirement under the Canada Transportation Act:

"Under the financial requirements test, the applicant is required to demonstrate that it has sufficient funding in place, without taking into account any revenue from operations, to meet the costs, or in other words, the cash disbursements, associated with starting up and operating the air service for a 90-day period."

If NewLeaf is unable to meet its financial obligations to its passengers, will Flair step in or is it simply a provider of aircraft?

Thank you,

Kristine

--

Kristine Owram

Transportation Reporter, the Financial Post

kowram@postmedia.com

416-383-2489

@KristineOwram

This is **Exhibit “Y”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

AIR 
PASSENGER
 RIGHTS

Halifax, NS

lukacs@AirPassengerRights.ca

July 8, 2016

VIA EMAIL: jim.rogers@flairair.ca and FAX: 250-765-8397

Jim Rogers, President
Flair Airlines Ltd.

Dear Mr. Rogers,

Re: Protection of stranded passengers in the event of insolvency or default of NewLeaf

In light of the recent news, I am writing to inquire about Flair Airlines' commitment to passengers in the event that NewLeaf becomes insolvent and/or otherwise defaults on its obligations to Flair.

I respectfully ask that Flair Airlines inform the public about the following:

- Will Flair Airlines honour all tickets sold by NewLeaf in the event that NewLeaf becomes insolvent and/or defaults on its obligations to Flair?
- Will Flair Airlines buy passengers seats on other airlines if it is unable to transport them on its own flights due to the insolvency and/or default of NewLeaf?

As a veteran of the airline business, I am sure you understand that a mere refund of airfare paid would likely leave each stranded passenger with thousands of dollars of uncompensated expenses (alternative transportation, accommodation, meals, lost wages, etc.).

I look forward to hearing from you.

Sincerely yours,

Dr. Gábor Lukács

Cc: Mr. Chris Lapointe, Flair Airlines Ltd. (chris.lapointe@flairair.ca)
Mr. Bill Clark, counsel for Flair Airlines Ltd. (clark@yyzlaw.com)
Mr. Jim Young, CEO, NewLeaf (jim.young@newleafcorp.ca)
Mr. Bob Jones, NewLeaf (bob.jones@newleafcorp.ca)
Mr. Brian Reddy, NewLeaf (brian.reddy@newleafcorp.ca)
Mr. Brian J. Meronek, counsel for NewLeaf (bmeronek@DarcyDeacon.com)
Mr. Ian McIvor, counsel for NewLeaf (imcivor@darcydeacon.com)
Mr. Orvel L. Currie, counsel for NewLeaf (ocurrie@darcydeacon.com)

This is **Exhibit “Z”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

From windrow@shaw.ca Sun Jul 17 21:09:27 2016
Date: Sun, 17 Jul 2016 12:09:12 -0700
From: rogers <windrow@shaw.ca>
To: lukacs@airpassengerrights.ca
Subject: email July 8th

Mr. Lukacs;

Further to this attached letter Flair Air received its? 705 OC for large aircraft in 2005 and did meet all the requirements for financial requirements at that time.

Yours truly,

Jim Rogers

Avast logo

This email has been checked for viruses by Avast antivirus software.
www.avast.com

[Part 2, Application/PDF (Name: "CCE07172016.pdf") 417 KB.]
[Unable to print this part.]

July 14, 2016

Mr. Gabor Lukacs
c/o AirPassengerRights.ca

Halifax, NS

Dear Mr. Lukacs;

Thank you very much for your correspondence dated July 8, 2016.

Here at **Flair Airlines Ltd.**, passenger protection and safety is our top priority. To provide a bit of background, Flair Airlines is a privately owned Canadian charter airline based in Kelowna, B.C. Flair Air's management team combines extensive industry experience with a commitment to professionalism and customer satisfaction to create a safe, reliable and economic charter experience.

We are excited about our new arrangement with Winnipeg-based **NewLeaf Travel Company Inc.**, and look forward to serving Canadian customers beginning July 25, 2016. Customers are very well protected under our Domestic Charter Passenger Tariff, which you are more than welcome to read online at <http://flairair2.ca/newleaf-travel/tariff/>

While we appreciate the hypothetical questions in your letter, we prefer to stick with the fact at hand: that Flair has a solid, growing arrangement with NewLeaf Travel that benefits Canadian air travelers greatly with the addition of ultra low cost fares in the marketplace. Should you require further information on NewLeaf's Reservation Terms and Conditions, you may view them online at <http://gonewleaf.ca/reservation-terms-conditions/>

Furthermore, you may also read NewLeaf's Booking Terms and Conditions at <http://gonewleaf.ca/terms-conditions/>

As a potential customer of NewLeaf Travel, we look forward to bringing you a world-class flying experience on our planes. As you are based in Halifax, you are well situated to travel to many Canadian destinations in NewLeaf Travel's network. Please feel free to book a flight at GoNewLeaf.ca. Our Flair Airlines flight staff look forward to serving you soon.

Warm Regards,



Jim Rogers; President
Flair Airlines Ltd.

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This is **Exhibit “AA”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature



AIR
PASSENGER
RIGHTS

Halifax, NS

lukacs@AirPassengerRights.ca

July 17, 2016

VIA EMAIL: jim.rogers@flairair.ca and FAX: 250-765-8397

Jim Rogers, President
Flair Airlines Ltd.

Dear Mr. Rogers,

**Re: Protection of stranded passengers in the event of insolvency or default of NewLeaf
Your statement to the Financial Post and your email of July 17, 2016**

I have been unable to reconcile the vague statements in your letter of July 14, 2016, attached to your email of today, with your statement quoted in the Financial Post (July 15, 2016):

Because NewLeaf is not technically an airline, it doesn't need to meet the 90-day funding requirement, and Flair president Jim Rogers has said his airline is not responsible for passenger protection since it is only providing the aircraft.

[Emphasis added.]

Furthermore, I have become increasingly concerned over the financial stability of NewLeaf in light of the December 19, 2015 and January 24, 2016 emails of Mr. Jim Young, CEO of NewLeaf. These communications reveal that NewLeaf seeks to operate with a shoestring budget of a fraction of what is required to meet the financial fitness requirements under the *Canada Transportation Act*.

Therefore, I respectfully reiterate my request that Flair Airlines inform the public about the answers to the following:

- Will Flair Airlines honour all tickets sold by NewLeaf in the event that NewLeaf becomes insolvent and/or defaults on its obligations to Flair?
- Will Flair Airlines buy passengers seats on other airlines if it is unable to transport them on its own flights due to the insolvency and/or default of NewLeaf?

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Please be advised that should I not receive clear and unambiguous answers to these urgent questions by **5:00 pm Vancouver's Time on Monday, July 18, 2016**, I may be making an emergency motion to the Federal Court of Appeal for an interlocutory injunction imposing substantial restrictions on NewLeaf Travel Company and/or Flair Airlines.

I look forward to hearing from you.

Yours very truly,

Dr. Gábor Lukács

Cc: Mr. Chris Lapointe, Flair Airlines Ltd. (chris.lapointe@flairair.ca)
Mr. Bill Clark, counsel for Flair Airlines Ltd. (clark@yyzlaw.com)
Mr. Jim Young, CEO, NewLeaf (jim.young@newleafcorp.ca)
Mr. Bob Jones, NewLeaf (bob.jones@newleafcorp.ca)
Mr. Brian Reddy, NewLeaf (brian.reddy@newleafcorp.ca)
Mr. Brian J. Meronek, counsel for NewLeaf (bmeronek@DarcyDeacon.com)
Mr. Ian McIvor, counsel for NewLeaf (imcivor@darcydeacon.com)
Mr. Orvel L. Currie, counsel for NewLeaf (ocurrie@darcydeacon.com)

This is **Exhibit “AB”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on July 21, 2016

Signature

NewLeaf Travel Sets New Launch Date For Low-Fare Service In Canada

by [Michele McDonald](#) / June 23, 2016

NewLeaf Travel Co., the start-up that wants to bring ultra-low-fare air service to Canada, is once again accepting bookings and plans a July 25 launch.

The company began taking bookings for a brief period in January for an anticipated Feb. 12 launch but had to put its plans on hold due to a legal challenge.

At a press conference in Winnipeg, NewLeaf's president and chief executive officer Jim Young announced that Ben Baldanza, former CEO of Spirit Airlines, will serve as the chairman of NewLeaf Travel's board of directors.

He also said NewLeaf has expanded its route map from 7 to 12 Canadian cities: Halifax, Moncton, Hamilton, Winnipeg, Regina, Saskatoon, Edmonton, Kelowna, Kamloops, Fort St. John, Abbotsford and Victoria. Young said Hamilton-Halifax was the only route with nonstop competition.

Young said that serving secondary airports will enable the company to pass on significant savings to consumers. He noted that many Canadians drive three hours to cross the U.S. border to take advantage of lower fares.

NewLeaf's introductory fares, available for travel through Oct. 2, range from CAD79 to CAD119.

"We think there are a lot of Canadians who just don't fly because they can't afford it," Young said. "Our fares are similar to a restaurant bill."

Flights will operate two to three times a week, targeting leisure travelers who want to take short breaks or weeklong vacations. The flights will operate on 737 aircraft flown by Flair Airlines, a 10-year-old Canadian charter carrier, or by Flair's subcontractor, Enerjet. NewLeaf is acting as a reseller of Flair's flights, not as an airline.

That distinction was at the root of a challenge by Gabor Lukacs, a self-styled "consumer advocate" who questioned whether the arrangement was legal because NewLeaf does not have its own license to

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operate an airline.

The Canadian Transportation Agency conducted a review of its licensing rules and in March determined that resellers—companies that purchase seats from an air carrier and resell them to the public—are not required to hold an air license as long as they do not hold themselves out to the public as being an airline that is operating an air service.

Lukacs, who has targeted both Canadian and U.S. airlines over the years, is appealing the decision.

Asked why NewLeaf chose to proceed with the launch before the outcome of the appeal is known, Young said he is confident that NewLeaf will prevail, although he acknowledged that the company has a backup plan.

“We have one individual who claims to have the moral authority to represent all Canadians,” Young said. “We can’t sit around and wait for someone to make a decision for us. We have a business to run.”

He also noted that an unfavorable decision would affect the 15 other air travel resellers in Canada, predominantly in the far North, causing great inconvenience to residents in those regions.

👍 0 💬 0

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

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

Respondents

MEMORANDUM OF FACT AND LAW OF THE MOVING PARTY**PART I – STATEMENT OF FACTS****A. OVERVIEW****(i) The present appeal**

1. An Indirect Air Service Provider [IASP or reseller] is a person who has commercial control over an air service and makes decisions on matters such as routes, scheduling, and pricing, but performs the transportation of passengers with aircraft and flight crew rented from another person.

**Decision Under Appeal, para. 11
being Exhibit “I” to the Lukács Affidavit**

Tab 3I, p. 132

2. On March 29, 2016, in Decision No. 100-A-2016 [Decision Under Appeal], the Canadian Transportation Agency [Agency] purported to determine that:

(1) IASPs of domestic air service are no longer required to hold licences under the *Canada Transportation Act*, S.C. 1996, c. 10 [the *CTA*], so long as they do not hold themselves out as an air carrier operating an air service; and

- (2) NewLeaf Travel Company Inc. [NewLeaf], being an IASP, is therefore not required to hold a licence.

Lukács Affidavit, Exhibit ‘I’

Tab 3I, p. 129

3. The Appellant, Dr. Gábor Lukács, is a Canadian air passenger rights advocate, whose work and public interest advocacy have been widely recognized in Canada, including in a number of judgments of this Honourable Court.

Lukács Affidavit, paras. 4-6

Tab 3, p. 12

4. On June 9, 2016, this Honourable Court granted Lukács, leave to appeal the Decision Under Appeal, and recognized Lukács as having both private and public interest standing.

***Lukács v. Canada (CTA)*, 2016 FCA 174,
paras. 4 and 6**

Tab 3B, p. 26

5. The following steps have been completed in the appeal:

- (a) The Notice of Appeal has been filed on June 28, 2016.

Lukács Affidavit, Exhibit ‘J’

Tab 3J, p. 143

- (b) The Appeal Book has been filed on July 12, 2016.

- (c) The Appellant’s Memorandum has been filed on July 18, 2016.

Lukács Affidavit, para. 19

Tab 3, p. 143

6. Due to the unavailabilities of opposing counsels in August and most of September 2016, the appeal is unlikely to be heard in the coming weeks.

Lukács Affidavit, Exhibits ‘K’ & ‘L’

Tab 3K & 3L, pp. 152 & 154

(ii) **The present motion**

7. On June 23, 2016, NewLeaf Travel Company Inc. [NewLeaf] began (again) selling tickets to the public for flights within Canada.

Lukács Affidavit, Exhibit “M”

Tab 3M, p. 157

8. On July 25, 2016, NewLeaf will begin to transport passengers on 60 non-stop flight segments per week, each carrying up to 156 passengers, for a total of up to 9,360 passengers per week.

Lukács Affidavit, Exhibits “N” & “O”

Tabs 3N & 3O, pp. 160 & 165

9. NewLeaf has no license to operate any air service under the *Canada Transportation Act* [the CTA].

10. It rents aircraft and crew from Flair Airlines Ltd. [Flair], a licensed air-line, to transport passengers by air, but NewLeaf bears the full financial risk and liability to passengers, because Flair has no contractual relationship with NewLeaf’s passengers. Thus, Flair assumes no risk.

Lukács Affidavit, Exhibit “X”

Tab 3X, p. 226

11. NewLeaf is a fledgling, financially unstable shell company without significant assets that is unlikely to be able to deliver the services that it has sold or pay compensation to passengers whom it may strand as a result of non-performance.

Lukács Affidavit, Exhibits “Q” & “R”

Tabs 3Q & 3R, pp. 170 & 173

Lukács Affidavit, paras. 34-37

Tab 3, p. 19

12. In the present motion, brought in the public interest, Lukács is seeking:
- (a) a stay of the Decision Under Appeal, pending disposition of the appeal; and
 - (b) an interlocutory injunction enjoining NewLeaf from operating as an Indirect Air Service Provider (reseller), unless it posts a performance bond and/or security and/or guarantee in the amount of \$3,744,000 for the claims of stranded passengers.
13. The purpose of the motion is not to shut down NewLeaf, but to ensure that it is NewLeaf and its investors that bear the financial risk rather than the travelling public. In other words, the purpose of the motion is to ensure that NewLeaf puts its money where its mouth is. The financial guarantee sought by way of the interlocutory injunction would provide passengers who purchased tickets from NewLeaf in good faith a somewhat similar protection that was contemplated by Parliament in enacting s. 61(1)(iv) of the *CTA*.
14. The amount of financial guarantee of \$3,744,000 sought from NewLeaf will allow compensating one week's load of stranded passengers carried by NewLeaf from their homes to another destination, and is based on the following conservative calculation:
- (a) NewLeaf carrying 7,488 passengers per week (80% load factor);
 - (b) one half (3,744) of these passengers are travelling from their homes to another destination where they get stranded; and
 - (c) an average repatriation cost of \$1,000 per stranded passenger in excess of the amounts paid to NewLeaf.

B. THE FINANCIAL FITNESS REQUIREMENT (S. 61(1)(IV) OF THE CTA)

15. Paragraph 57(a) of the *CTA* prohibits operating an air service without a licence issued by the Agency under Part II of the *CTA*. Subsection 55(1) of the *CTA* defines “air service” as a service provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.

***Canada Transportation Act*, ss. 55(1) & 57(a) App. A, pp. 284 & 288**

16. A licence to operate an air service is not transferable, and operating an air service without a licence is an offence punishable on summary conviction

***Canada Transportation Act*, ss. 58 & 174 App. A, pp. 288 & 307**

17. Parliament imposed a number of economic and consumer protectionist conditions for obtaining a licence for operating an air service within Canada, including prescribed financial fitness requirements. (This requirement did not exist in the *National Transportation Act, 1987*, but was added by Parliament in 1996, and has remained in place since then.)

***Canada Transportation Act*, s. 61(a)(iv) App. A, p. 289**

***National Transportation Act*, s. 72 App. A, p. 321**

18. Subsection 8.1(2) of the *Air Transportation Regulations* [the *ATR*], promulgated pursuant to s. 61(a)(iv) of the *ATR*, provides that an applicant for a licence to operate domestic service (“domestic licence”) must demonstrate having sufficient funds for the cost of operating the air service for 90 days, even without any revenue.

***Air Transportation Regulations*, s. 8.1 App. A, 271**

19. Paragraph 8.1(2)(vi) of the *ATR* requires at least 50% of the required capital to be locked in for a period of at least one year:

(vi) subject to paragraph (b), where the applicant is a corporation, at least 50% of the funds required by subparagraph (iii) have been acquired by way of capital stock that has been issued and paid for and that cannot be redeemed for a period of at least one year after the date of the issuance or reinstatement of the licence, [...]

[Emphasis added.]

Air Transportation Regulations, s. 8.1(2)(vi)

App. A, 271

20. For reference, in May 2016, the Agency found that Canada Jetlines Ltd. would need to raise over \$27 million in order to meet the financial requirement.

**CTA Decision No. CONF-6-2016
being Exhibit “P” to the Lukács Affidavit**

Tab 3P, p. 167

21. Since 1996 and until the Decision Under Appeal, the Agency had consistently held that a person with commercial control over a domestic air service “operates” it within the meaning of the *CTA*, and thus required them to hold a domestic licence. In doing so, the Agency had been following the so-called *1996 Greyhound Decision*.

**Girard Affidavit, paras. 4-7
being Exhibit “H” to the Lukács Affidavit**

Tab 3H, p. 79

22. In the *1996 Greyhound Decision*, the Agency correctly recognized the relationship between financial risks and the requirement to hold a licence:

The assumption of substantially all of the risks and, entitlement to substantially all of the benefits, associated with the operation of the air services, is commensurate with the operation of air services by an air carrier.

Greyhound Decision, p. 3

Tab 6, p. 340

C. NEWLEAF'S FINANCES AND STRATEGY

23. NewLeaf uses the IASP (reseller) business model: it sells air services to the public in its own name (i.e., as a principal), and performs the transportation of passengers by aircraft and flight crew rented from Flair, a licensed airline.

**Decision Under Appeal, para. 49
being Exhibit "I" to the Lukács Affidavit**

Tab 3I, p. 140

24. NewLeaf does not have and has never had any licence to operate an air service under the *Canada Transportation Act*. In particular, NewLeaf never had to meet the stringent financial fitness requirements set out in the *CTA* and *ATR*.

25. NewLeaf's financial plan includes:

- (a) announcing its services and beginning to sell tickets with a capital of \$500,000 (less than 2% of what is reasonably required); and
- (b) commencing operations and transporting passengers with a capital of \$2,000,000 (less than 7.5% of what is reasonably required).

Lukács Affidavit, Exhibit "Q"

Tab 3Q, p. 170

(i) First Launch (January 2016)

26. On January 6, 2016, NewLeaf began selling tickets to the public for flights within Canada starting February 12, 2016.

**Girard Affidavit, para. 14
being Exhibit "H" to the Lukács Affidavit**

Tab 3H, p. 79

27. When NewLeaf began selling tickets, it had only \$250,000 in actual secured funds (less than 1% of what is reasonably required).

Lukács Affidavit, Exhibit "R"

Tab 3R, p. 173

28. Not surprisingly, merely twelve (12) days after its launch, on January 18, 2016, NewLeaf suspended sales, and cancelled the tickets already sold.

**Girard Affidavit, para. 15
being Exhibit “H” to the Lukács Affidavit**

Tab 3H, p. 79

(ii) Second Launch (June 2016)

29. On June 23, 2016, NewLeaf began selling tickets to the public again, this time for flights within Canada starting July 25, 2016. NewLeaf will be renting Boeing 737-400 passenger jets with crew from Flair in order to operate its flights.

Lukács Affidavit, Exhibit “M”

Tab 3M, p. 157

30. Starting July 25, 2016, NewLeaf intends to have a total of 60 non-stop flights segment per week. Flair’s aircraft can accommodate up to 156 economy class seats. Thus, NewLeaf is intending to transport up to 9,360 passengers per week.

Lukács Affidavit, Exhibits “N” & “O”

Tab 3N & 3O, pp. 160 & 165

(iii) Unpaid bills of NewLeaf and/or affiliate company

31. 1919183 Ontario Ltd., doing business as NewLeaf Airways, is an affiliate company incorporated in Ontario, having the same directors as NewLeaf, and up until January 22, 2016 they shared the same registered office.

Lukács Affidavit, Exhibits “C”-“F”

Tab 3C-3F, pp. 33-74

32. NewLeaf and/or 1919183 Ontario Ltd. owe approximately \$135,000 in unpaid bills to vendors.

Lukács Affidavit, Exhibits “S” & “T”

Tab 3S & 3T, pp. 176 & 184

33. NewLeaf, 1919183 Ontario Ltd., and Mr. Jim Young, NewLeaf's CEO, have been named by an unpaid vendor as defendants in a legal action in the Ontario Superior Court of Justice, seeking damages of approximately \$96,000.

Lukács Affidavit, Exhibit "U"

Tab 3U, p. 194

(iv) Kelowna airport: no deposit nor insurance

34. NewLeaf has scheduled and sold flights to and from the Kelowna Airport.

Lukács Affidavit, Exhibit "N"

Tab 3N, pp. 160

35. All commercial users of the airport, including NewLeaf, are required to:

- (a) sign a standard user agreement with the airport, a copy of which is attached and marked as **Exhibit "V"**;
- (b) provide a deposit for three months of fees; and
- (c) provide a liability insurance that covers their use of the airport facilities.

As of July 20, 2016, that is, five (5) days before its first flight, NewLeaf has not met any of these obligations.

Lukács Affidavit, Exhibit "W"

Tab 3W, p. 223

D. FLAIR WILL NOT PROTECT STRANDED NEWLEAF PASSENGERS

36. It is common ground that Flair, the actual airline that is behind NewLeaf, is licensed, has met the financial fitness requirements, and has assets. That is, however, no help to NewLeaf's customers.

37. Flair is shielded from liability for the performance of the air transportation services sold by NewLeaf, because Flair has no contractual relationship with the passengers. This was confirmed by Mr. Jim Rogers, the president of Flair:

Flair is supplying aircraft and operating under a ACMI agreement with New Leaf. The contract with the passenger is with New Leaf and they have a passenger protection plan in place [...]

[Emphasis added.]

Thus, Flair assumes no risk, and Flair will not compensate or otherwise protect passengers stranded by NewLeaf.

Lukács Affidavit, Exhibit “X”

Tab 3X, p. 226

38. Flair provided an evasive answer to the attempts of Lukács to ascertain whether:

- (a) Flair will honour the tickets sold by NewLeaf in the event that NewLeaf becomes insolvent and/or defaults on its obligations to Flair; and/or
- (b) Flair will buy passengers seats on other airlines if it is unable to transport them on its own flights due to the insolvency and/or default of NewLeaf.

Lukács Affidavit, Exhibits “Y”-“AA”

Tab 3Y-3AA, pp. 229-235

39. Lukács is asking the Honourable Court to draw adverse inference from the failure of Flair to address these questions in a forthright manner, and to find that Flair will abandon NewLeaf ticket holders in the event that NewLeaf becomes insolvent or otherwise defaults in its obligations to Flair.

PART II – STATEMENT OF THE POINTS IN ISSUE

40. The issues to be determined on this motion are:
- (a) whether the timelines for filing the responding motion record and the reply in the present motion should be abridged;
 - (b) whether the Decision Under Appeal should be stayed pending the appeal; and
 - (c) whether NewLeaf Travel Company Inc. should be enjoined from operating as an Indirect Air Service Provider (reseller), unless it posts a performance bond and/or security and/or guarantee in the amount of \$3,744,000 for the claims of stranded passengers.

PART III – STATEMENT OF SUBMISSIONS**A. ABRIDGING TIMELINES FOR THE MOTION**

41. Pursuant to Rule 8(1), this Honourable Court may abridge the period provided by the Rules.

Rule 8(1)

App. A, p. 312

42. The present motion has been brought in writing, under Rule 369, because opposing counsels indicated that they are not available for an oral hearing in August and most of September 2016.

Lukács Affidavit, Exhibits “K” & “L”

Tabs 3K & 3L, pp. 152 & 154

43. Rule 369 provides 10 days for the Respondents for serving and filing their responding motion records, and then 4 days for the moving party for a reply. Thus, following the timelines set out in Rule 369 would result in a decision being rendered only in several weeks.

Rule 369

App. A, p. 313

44. The present motion is urgent, and of the “justice delayed is justice denied” type, because NewLeaf will begin transporting passengers on July 25, 2016.

Lukács Affidavit, Exhibit “M”

Tab 3M, p. 157

45. Thus, Lukács is asking the Honourable Court to abridge the delays set out in Rule 369 in the manner that it finds reasonable and necessary in the circumstances to expedite the determination of the motion.

B. INTERLOCUTORY INJUNCTION AND STAY PENDING APPEAL

46. Pursuant to ss. 44 and 50 of the *Federal Courts Act*, the Federal Court of Appeal has jurisdiction to grant an interlocutory injunction and/or to stay a decision of a federal tribunal even before leave to appeal is granted.

***Federal Courts Act*, ss. 44 and 50**

App. A, pp. 309 and 310

***Association des Compagnies de Téléphone du Québec Inc. v. Canada (Attorney General)*, 2012 FCA 203, paras. 19 & 30-33**

Tab 5, pp. 332 & 335

47. In the present case, leave to appeal has already been granted, and the appeal is already before the Court.

48. There is no discretionary bar to the present motion. First, since the appeal is already pending before this Court, the Court is the most adequate and effective forum for seeking a stay. Second, due to the urgent nature of the motion, it would be impractical to ask the Governor in Council to stay the Decision Under Appeal. Third, the Governor in Council has no jurisdiction to make an injunction.

49. The legal test for an injunction and for a motion to stay pending appeal are the same, and call for considering:

- (a) whether there is a serious issue to be tried;
- (b) irreparable harm; and
- (c) the balance of convenience.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311**

Tab 11, p. 373

50. Lukács submits that this test is met in the case at bar.

(i) Serious issue

51. The threshold for this branch of the test is a low one:

Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, para. 50** **Tab 11, p. 391**

52. Since this Honourable Court granted Lukács leave to appeal, the appeal is neither vexatious nor frivolous:

[4] Contrary to what Newleaf asserts, the materials filed do raise an arguable case [...]

***Lukács v. Canada (CTA)*, 2016 FCA 174, para. 4** **Tab 3B, p. 26**

(ii) Irreparable harm

53. In order to satisfy this branch of the test, the moving party must demonstrate that the nature (not the magnitude) of the harm is irreparable if the relief is not granted.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, para. 59** **Tab 11, p. 394**

54. In the context of airlines, Justice Noël (as he was then) held that:

Even if the harms complained of are compensable by way of damages, they would be irreparable by virtue of the fact that Fortunair is a fledgling, financially unstable company that would not likely be in a position to pay a damage award against it. Even where, theoretically, damages could furnish adequate compensation, if it appears to the Court that the defendant will not be able to meet a damage award, then the harm will in fact prove to be irreparable, although, in essence or in theory, it is capable of being repaired [...]

***Fednav Ltd. v. Fortunair Canada Inc.*, [1994] F.C.J. No. 1969, para. 16** **Tab 9, p. 355**

55. Lukács submits that if the relief sought is not granted, the travelling public will suffer harm of the very same nature and for the same reasons as in *Fortunair*, for the following reasons:

- (a) The air service business is capital intensive, and requires deep pockets to reach the point where a business becomes profitable.
- (b) NewLeaf is attempting to operate with a shoestring budget that is a small fraction of what would reasonably be required.
- (c) NewLeaf is a “fledgling, financially unstable company.” NewLeaf and/or its affiliate company have unpaid invoices totalling approximately \$135,000 and have been named as defendants in an action for recovery of debt by an unpaid vendor.
- (d) NewLeaf has not yet paid its deposit to the Kelowna Airport either, even though it is essential for its operation.
- (e) Thus, NewLeaf is unlikely to be able to deliver and sustain the services that it sold to the public, nor does it have the financial ability to compensate passengers who are stranded as a result of its non-performance.
- (f) Passengers stranded by NewLeaf will have no choice but to buy seats on Air Canada or WestJet at a last-minute price in order to get home, and will also be paying for their accommodation and meals.
- (g) Flair will not compensate or otherwise protect passengers stranded by NewLeaf.

(iii) **Balance of convenience**(a) **Status quo**

56. The state of the law for the past twenty years prior to the Decision Under Appeal has been summarized by the Agency as follows:

Duke Jets is reminded that only air carriers holding a valid Agency licence may enter into an agreement to provide an air service to, from or within Canada. [...] As such, the charter agreement with the air carrier must clearly indicate that Duke Jets has entered into the agreement on behalf of the named client failing which other regulatory requirements may apply and need to be met.

CTA Decision No. 222-A-2010, p. 2

Tab 7, p. 347

57. The Decision Under Appeal has disturbed the twenty-year-old interpretation of the *CTA* as requiring IASPs to hold a domestic licence.

**Girard Affidavit, para. 7
being Exhibit “H” to the Lukács Affidavit**

Tab 3H, p. 79

58. Thus, staying the Decision Under Appeal would maintain and/or restore the *status quo* until such time as this Honourable Court is able to hear and determine the appeal.

(b) **Public interest: shifting financial risk back to NewLeaf**

59. The intent of Parliament in adding the financial fitness requirement to the licensing conditions set out in s. 61 of the *CTA* was to protect the public from underfunded service providers, who may strand passengers by being unable to deliver the transportation services that consumers have paid for in advance.

Canada Transportation Act, s. 61(a)(iv)

App. A, p. 289

60. The Decision Under Appeal purports to allow NewLeaf to enter into agreements to provide an air service to the travelling public without NewLeaf having met the stringent financial fitness requirements.

61. The effect of refusing the relief sought is that the travelling public will shoulder the financial risk associated with NewLeaf's business plan:

- (a) In the absence of the capital necessary for operating for 90 days without revenue, NewLeaf is relying on the revenue from tickets sold for the future to finance its operations in the present. (For example, revenue from tickets sold for September may be used to pay Flair for NewLeaf's flights in July or August.)
- (b) The pyramid of forward-sale is likely to eventually break down, at which point, passengers who booked flights for earlier dates may have paid a low price for their tickets, but those booked on later flights do not receive the services they have paid for, and get stranded.

62. The effect of granting the relief sought is shifting the financial risk back to NewLeaf and its investors by requiring a financial guarantee for compensating the travelling public in the event that NewLeaf fails. Providing such a guarantee is consistent with the protection that was contemplated by Parliament in enacting s. 61(1)(iv) of the *CTA*, and the requirement of 8.1(2)(vi) of the *ATR* that 50% of the capital be locked in for one year.

Air Transportation Regulations, s. 8.1(2)(vi)

App. A, 271

63. Thus, the public interest militates in favour of granting the relief sought.

(c) Leaving the door open for NewLeaf

64. Although there are serious concerns about the legality of NewLeaf operating without a licence, it is important to stress that the objective of the relief sought is not to shut down NewLeaf.

65. Granting the relief sought will allow NewLeaf to operate until this Honourable Court decides the appeal, provided that NewLeaf's investors are willing to give the sought financial guarantee, and put their money where their mouth is.

66. NewLeaf has publicly stated that it has "a backup plan" even if this Court finds that NewLeaf is required to hold a licence. In particular, NewLeaf will suffer no harm if the relief sought on the present motion is granted.

Lukács Affidavit, Exhibit "AB"

Tab 3AB, p. 238

67. Therefore, the balance of convenience favours granting the relief sought.

C. COSTS

68. Lukács respectfully asks this Honourable Court that he be awarded his disbursements on this motion in any event of the cause, and if successful, also a modest allowance for his time, for the following reasons:

- (a) The appeal is in the nature of public interest litigation, as this Honourable Court found in its reasons for granting leave to appeal that Lukács has public interest standing.
- (b) The motion is not frivolous, and is also in the nature of public interest litigation.

***Lukács v. Canada (CTA)*, 2016 FCA 174,
paras. 4 and 6**

Tab 3B, p. 26

***Lukács v. Canada (CTA)*, 2014 FCA 76,
para. 62**

Tab 10, p. 372

PART IV – ORDER SOUGHT

69. The Appellant, Dr. Gábor Lukács, is seeking an Order:
- (a) abridging the timelines for the filing of the responding motion record and the reply in the present motion;
 - (b) staying the decision of the Canadian Transportation Agency dated March 29, 2016 and bearing Decision No. 100-A-2016 pending disposition of the appeal;
 - (c) enjoining NewLeaf Travel Company Inc. from operating as an Indirect Air Service Provider (reseller), unless it posts a performance bond and/or security and/or guarantee in the amount of \$3,744,000 for the claims of stranded passengers;
 - (d) awarding the Appellant a moderate allowance for the time and effort he devoted to preparing and presenting his case, and reasonable out-of-pocket expenses incurred in relation to the motion; and
 - (e) granting such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

July 21, 2016

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Appellant

PART V – LIST OF AUTHORITIES

STATUTES AND REGULATIONS

Air Transportation Regulations, S.O.R./88-58,
ss. 2, 7, 8.1, 8.2, 8.5, 107

Canada Transportation Act, S.C. 1996, c. 10,
ss. 41, 53, 55, 57-67.2, 80, 86, 174

LEGISLATIVE HISTORY

National Transportation Act, 1987 [Repealed], R.S.C. 1985,
Chap. 28 (3rd Supp.), ss. 67, 71, 72, 76, 80, 83-84

CASE LAW

Association des Compagnies de Téléphone du Québec Inc. v. Canada (Attorney General), 2012 FCA 203

Confidential Decision of the National Transportation Agency, dated April 16, 1996 [Greyhound Decision]

Determination of whether Duke Jets Ltd. requires a licence pursuant to Part II of the Canada Transportation Act,
Canadian Transportation Agency, Decision No. 222-A-2010

Determination of application by Air Transat on behalf of itself and Flair, Canadian Transportation Agency, Decision No. 112-A-2016

Fednav Ltd. v. Fortunair Canada Inc., [1994] F.C.J. No. 1969

Lukács v. Canada (Transportation Agency), 2014 FCA 76

Lukács v. Canada (Canadian Transportation Agency), 2016 FCA 174

Appendix A

Statutes and Regulations



CANADA

CONSOLIDATION

CODIFICATION

Air Transportation Regulations

Règlement sur les transports aériens

SOR/88-58

DORS/88-58

Current to February 15, 2016

À jour au 15 février 2016

Last amended on December 14, 2012

Dernière modification le 14 décembre 2012

Regulations Respecting Air Transportation

Short Title

1 These Regulations may be cited as the *Air Transportation Regulations*.

Interpretation

2 In these Regulations and Part II of the Act,

ABC/ITC means a passenger charter flight on which both advance booking passengers and inclusive tour participants are carried and that is operated pursuant to Division IV of Part III; (*VARA/VAFO*)

ABC/ITC (domestic) [Repealed, SOR/96-335, s. 1]

accommodation means sleeping facilities provided on a commercial basis to the general public; (*logement*)

Act means the *Canada Transportation Act*; (*Loi*)

advance booking charter or **ABC** means a round-trip passenger flight originating in Canada that is operated according to the conditions of a contract entered into between one or two air carriers and one or more charterers that requires the charterer or charterers to charter the entire passenger seating capacity of an aircraft for resale by them to the public, at a price per seat, not later than a specified number of days prior to the date of departure of the flight from its origin in Canada; (*vol affrété avec réservation anticipée ou VARA*)

advance booking charter (domestic) or **ABC (domestic)** [Repealed, SOR/96-335, s. 1]

air carrier means any person who operates a domestic service or an international service; (*transporteur aérien*)

air crew means the flight crew and one or more persons who, under the authority of an air carrier, perform in-flight duties in the passenger cabin of an aircraft of the air carrier; (*personnel d'aéronef*)

aircrew [Repealed, SOR/96-335, s. 1]

all-cargo aircraft means an aircraft that is equipped for the carriage of goods only; (*aéronef tout-cargo*)

back-to-back flights [Repealed, SOR/96-335, s. 1]

Règlement concernant les transports aériens

Titre abrégé

1 *Règlement sur les transports aériens*.

Définitions

2 Les définitions qui suivent s'appliquent au présent règlement et à la partie II de la Loi.

aéronef moyen Aéronef équipé pour le transport de passagers et ayant une capacité maximale certifiée de plus de 39 passagers sans dépasser 89 passagers. (*medium aircraft*)

aéronef tout-cargo Aéronef équipé exclusivement pour le transport de marchandises. (*all-cargo aircraft*)

affréteur des États-Unis Personne qui a pris des arrangements avec le transporteur aérien afin d'offrir des vols affrétés en provenance des États-Unis. (*United States charterer*)

autorisation [Abrogée, DORS/96-335, art. 1(F)]

base [Abrogée, DORS/96-335, art. 1]

bureau Est assimilé à un bureau du transporteur aérien tout endroit au Canada où celui-ci reçoit des marchandises en vue de leur transport ou met en vente des billets de passagers. La présente définition exclut les bureaux d'agents de voyages. (*business office*)

capacité maximale certifiée Selon le cas :

a) le nombre maximum de passagers précisé sur la fiche de données d'homologation de type ou la fiche de données de certificat de type délivrée ou acceptée pour les type et modèle d'aéronef par l'autorité compétente canadienne,

b) pour un aéronef ayant été modifié pour recevoir un plus grand nombre de passagers, le nombre maximum de passagers précisé sur l'homologation de type supplémentaire ou le certificat de type supplémentaire délivré ou accepté par l'autorité compétente canadienne. (*certificated maximum carrying capacity*)

cinquième liberté Privilège d'un transporteur aérien non canadien qui effectue un vol affrété d'embarquer ou

base [Repealed, SOR/96-335, s. 1]

business office, with respect to an air carrier, includes any place in Canada where the air carrier receives goods for transportation or offers passenger tickets for sale, but does not include an office of a travel agent; (*bureau*)

Canadian charter carrier licensee means a person who is a Canadian and holds a non-scheduled international licence that is valid for charters; (*transporteur fréteur licencié du Canada*)

certificated maximum carrying capacity means

(a) the maximum number of passengers specified in the Type Approval Data Sheet or the Type Certificate Data Sheet issued or accepted by the competent Canadian authority for the aircraft type and model, or

(b) in respect of a particular aircraft that has been modified to allow a higher number of passengers, the maximum number of passengers specified in the Supplemental Type Approval or the Supplemental Type Certificate issued or accepted by the competent Canadian authority; (*capacité maximale certifiée*)

common purpose charter or **CPC** means a round-trip passenger flight originating in Canada that is operated according to the conditions of a contract entered into between one or two air carriers and one or more charterers that requires the charterer or charterers to charter the entire passenger seating capacity of an aircraft to provide transportation at a price per seat to passengers

(a) travelling to and from a CPC event, or

(b) participating in a CPC educational program; (*vol affrété à but commun ou VABC*)

common purpose charter (domestic) or **CPC (domestic)** [Repealed, SOR/96-335, s. 1]

courier service means an enterprise engaged in the door-to-door transportation of consignments for overnight or earlier delivery; (*service de messageries*)

CPC educational program means a program for educational purposes organized for the exclusive benefit of full-time elementary or secondary school students, or both; (*programme éducatif VABC*)

CPC event means a presentation, performance, exhibition, competition, gathering or activity that

(a) is of apparent significance unrelated to the general interest inherent in travel, and

de débarquer au Canada des passagers ou des marchandises en provenance ou à destination du territoire d'un pays autre que celui du transporteur aérien. (*fifth freedom*)

équipage Une ou plusieurs personnes qui, pendant le temps de vol, agissent à titre de commandant de bord, de commandant en second, de copilote, de navigateur ou de mécanicien navigant. (*flight crew*)

événement VABC Présentation, spectacle, exposition, concours, rassemblement ou activité :

a) qui est d'une importance manifeste, et qui est motivé par des raisons autres que l'agrément de voyager; et

b) qui n'est pas mis sur pied ni organisé dans le but premier d'engendrer du trafic aérien d'affrètement. (*CPC event*)

gros aéronef Aéronef équipé pour le transport de passagers et ayant une capacité maximale certifiée de plus de 89 passagers. (*large aircraft*)

jour ouvrable Dans le cas du dépôt d'un document auprès de l'Office, à son siège ou à un bureau régional, jour normal d'ouverture des bureaux de l'administration publique fédérale dans la province où est situé le siège ou le bureau. (*working day*)

logement Chambre mise à la disposition du public à des fins commerciales. (*accommodation*)

Loi La Loi sur les transports au Canada. (*Act*)

marchandises Objets pouvant être transportés par la voie aérienne. La présente définition comprend les animaux. (*goods*)

mille Mille terrestre, sauf s'il est précisé qu'il s'agit d'un mille marin. (*mile*)

MMHD Pour un aéronef, la masse maximale homologuée au décollage indiquée dans le manuel de vol de l'aéronef dont fait mention le certificat de navigabilité délivré par l'autorité canadienne ou étrangère compétente. (*MC-TOW*)

particularités du voyage Les marchandises, services, installations et avantages, autres que le logement et le transport, qui sont compris dans un programme VAFO au prix de voyage à forfait ou qui sont offerts aux participants à titre facultatif moyennant un supplément. (*tour features*)

(b) is not being created or organized for the primary purpose of generating charter air traffic; (*événement VABC*)

door-to-door transportation means the carriage of consignments between points of pick-up and points of delivery determined by the consignor, the consignee or both, including the surface transportation portion; (*transport de porte-à-porte*)

entity charter means a flight operated according to the conditions of a charter contract under which

(a) the cost of transportation of passengers or goods is paid by one person, corporation or organization without any contribution, direct or indirect, from any other person, and

(b) no charge or other financial obligation is imposed on a passenger as a condition of carriage or otherwise in connection with the transportation; (*vol affrété sans participation*)

fifth freedom means the privilege of a non-Canadian air carrier, where operating a charter flight, of embarking or disembarking in Canada passengers or goods destined for, or coming from, the territory of a country other than that of the non-Canadian air carrier; (*cinquième liberté*)

flight crew means one or more persons acting as pilot-in-command, second officer, co-pilot, flight navigator or flight engineer during flight time; (*équipage*)

fourth freedom means the privilege of a non-Canadian air carrier, where operating a charter flight, of embarking in Canada passengers or goods destined for the territory of the country of the non-Canadian air carrier and includes the privilege of disembarking such passengers in Canada on return from that territory; (*quatrième liberté*)

goods means anything that can be transported by air, including animals; (*marchandises*)

inclusive tour or **tour** means a round or circle trip performed in whole or in part by aircraft for an inclusive tour price for the period from the time of departure of the participants from the starting point of the journey to the time of their return to that point; (*voyage à forfait*)

inclusive tour charter or **ITC** means a passenger flight operated according to the conditions of a contract entered into between an air carrier and one or more tour operators that requires the tour operator or tour operators to charter the entire passenger seating capacity of an aircraft for resale by them to the public at an inclusive

passager Personne, autre qu'un membre du personnel d'aéronef, qui voyage à bord d'un aéronef du service intérieur ou du service international du transporteur aérien aux termes d'un contrat ou d'une entente valides. (*passenger*)

permis Document délivré ou réputé délivré par l'office qui autorise le transporteur aérien titulaire d'une licence internationale service à la demande, valable pour le vol ou la série de vols projetés, à effectuer un vol affrété ou une série de vols affrétés. (*permit*)

personnel d'aéronef L'équipage ainsi que les personnes qui, sous l'autorité du transporteur aérien, exercent des fonctions pendant le vol dans la cabine passagers d'un aéronef de ce transporteur. (*air crew*)

petit aéronef Aéronef équipé pour le transport de passagers et ayant une capacité maximale certifiée d'au plus 39 passagers. (*small aircraft*)

point [Abrogée, DORS/96-335, art. 1]

prix de voyage à forfait Sont assimilés au prix de voyage à forfait d'un participant les frais exigibles pour le transport, le logement et, s'il y a lieu, les particularités du voyage. (*inclusive tour price*)

prix par place Somme, exprimée en dollars canadiens, qui est payée à l'affréteur ou à son agent pour l'achat d'un billet de transport aller-retour d'un passager d'un VARA ou d'un VABC. (*price per seat*)

programme éducatif VABC Programme à but éducatif organisé dans l'intérêt exclusif des élèves à plein temps du primaire ou du secondaire ou des deux niveaux. (*CPC educational program*)

quatrième liberté Privilège d'un transporteur aérien non canadien qui effectue un vol affrété d'embarquer au Canada des passagers ou des marchandises à destination du territoire de son pays, y compris le privilège de débarquer ces passagers au Canada à leur retour de ce territoire. (*fourth freedom*)

responsabilité civile Responsabilité légale du transporteur aérien découlant de la propriété, de la possession ou de l'utilisation d'un aéronef, à l'égard :

a) des blessures ou du décès de personnes autres que ses passagers, son personnel d'aéronef et ses employés;

b) des dommages matériels autres que les dommages aux biens dont il a la charge. (*public liability*)

tour price per seat; (*vol affrété pour voyage à forfait ou VAFO*)

inclusive tour charter (domestic) or **ITC (domestic)** [Repealed, SOR/96-335, s. 1]

inclusive tour price includes, for a participant in an inclusive tour, charges for transportation, accommodation and, where applicable, tour features; (*prix de voyage à forfait*)

large aircraft means an aircraft equipped for the carriage of passengers and having a certificated maximum carrying capacity of more than 89 passengers; (*gros aéronef*)

MCTOW means the maximum certificated take-off weight for aircraft as shown in the aircraft flight manual referred to in the aircraft's Certificate of Airworthiness issued by the competent Canadian or foreign authority; (*MMHD*)

medium aircraft means an aircraft equipped for the carriage of passengers and having a certificated maximum carrying capacity of more than 39 but not more than 89 passengers; (*aéronef moyen*)

mile means a statute mile unless a nautical mile is specified; (*mille*)

passenger means a person, other than a member of the air crew, who uses an air carrier's domestic service or international service by boarding the air carrier's aircraft pursuant to a valid contract or arrangement; (*passager*)

permit means a document issued or deemed to be issued by the Agency authorizing an air carrier holding a non-scheduled international licence, valid for the proposed flight or series of flights, to operate a charter flight or series of charter flights; (*permis*)

point [Repealed, SOR/96-335, s. 1]

price per seat means the amount, expressed in Canadian dollars, by the payment of which round-trip air transportation may be purchased from a charterer or the charterer's agent for a passenger on an ABC or CPC; (*prix par place*)

public liability means legal liability of an air carrier, arising from the air carrier's operation, ownership or possession of an aircraft, for

(a) injury to or death of persons other than the air carrier's passengers, air crew or employees, and

secrétaire Le secrétaire de l'Office. (*Secretary*)

série [Abrogée, DORS/96-335, art. 1]

service de messageries Entreprise de transport de porte-à-porte d'envois pour livraison le lendemain au plus tard. (*courier service*)

taxe [Abrogée, DORS/2012-298, art. 1]

territoire S'entend des étendues de terre, y compris les eaux territoriales adjacentes, qui sont placées sous la souveraineté, la compétence ou la tutelle d'un État. Toute mention d'un État doit s'interpréter, le cas échéant, comme une mention du territoire de cet État, et toute mention d'une zone géographique qui comprend plusieurs États doit s'interpréter, le cas échéant, comme une mention de l'ensemble des territoires des États qui composent cette zone géographique. (*territory*)

trafic Les personnes ou les marchandises transportées par la voie aérienne. (*traffic*)

transport À l'égard d'un vol affrété pour voyage à forfait, le transport par air ou par tout autre mode :

a) entre tous les points de l'itinéraire du voyage;

b) entre les aéroports ou les terminaux terrestres et l'endroit où le logement est fourni aux points de l'itinéraire du voyage autres que le point d'origine. (*transportation*)

transport de porte-à-porte Transport d'envois entre les points de ramassage et de livraison déterminés par l'expéditeur, le destinataire ou les deux. La présente définition comprend la partie du transport de surface. (*door-to-door transportation*)

transporteur aérien Personne qui exploite un service intérieur ou un service international. (*air carrier*)

transporteur fréteur licencié des États-Unis Citoyen des États-Unis, au sens de la définition de **citizen of the United States** à la partie 204 du règlement intitulé *Federal Aviation Regulations*, publié par le gouvernement des États-Unis, qui détient une licence internationale service à la demande valable pour les vols affrétés entre le Canada et les États-Unis. (*United States charter carrier licensee*)

transporteur fréteur licencié du Canada Personne qui est un Canadien et qui détient une licence internationale service à la demande valable pour les vols affrétés. (*Canadian charter carrier licensee*)

(b) damage to property other than property in the air carrier's charge; (*responsabilité civile*)

Secretary means the Secretary of the Agency; (*secrétaire*)

small aircraft means an aircraft equipped for the carriage of passengers and having a certificated maximum carrying capacity of not more than 39 passengers; (*petit aéronef*)

territory means the land areas under the sovereignty, jurisdiction or trusteeship of a state, as well as territorial waters adjacent thereto, and any reference to a state shall be construed, where applicable, as a reference to the territory of that state and any reference to a geographical area comprising several states shall be construed, where applicable, as a reference to the aggregate of the territories of the states constituting that geographical area; (*territoire*)

third freedom means the privilege of a non-Canadian air carrier, where operating a charter flight, of disembarking in Canada passengers who, or goods that, originated in the territory of the country of the non-Canadian air carrier and includes the privilege of re-embarking such passengers in Canada for the purpose of returning them to that territory; (*troisième liberté*)

toll [Repealed, SOR/2012-298, s. 1]

tour features means all goods, services, facilities and benefits, other than accommodation and transportation, that are included in an ITC program at the inclusive tour price or made available to tour participants as optional extras at an additional charge; (*particularités du voyage*)

tour operator means a charterer with whom an air carrier has contracted to charter an aircraft in whole or in part for the purpose of operating an inclusive tour; (*voyagiste*)

traffic means any persons or goods that are transported by air; (*trafic*)

transborder goods charter or **TGC** means a one-way or return charter that originates in Canada and that is operated between Canada and the United States according to the conditions of a charter contract to carry goods, entered into between one or two air carriers and one or more charterers, under which the charterer or charterers charter the entire payload capacity of an aircraft; (*vol affrété transfrontalier de marchandises* or *VAM*)

troisième liberté Privilège d'un transporteur aérien non canadien qui effectue un vol affrété de débarquer au Canada des passagers ou des marchandises provenant du territoire de son pays, y compris le privilège de rembarquer les passagers au Canada pour les retourner dans ce territoire. (*third freedom*)

VARA/VAFO Vol passagers affrété transportant des passagers avec réservation anticipée et des participants à un voyage à forfait, qui est effectué conformément à la section IV de la partie III. (*ABC/ITC*)

VARA/VAFO (intérieur) [Abrogée, DORS/96-335, art. 1]

vol affrété à but commun ou **VABC** Vol passagers aller-retour en provenance du Canada, effectué aux termes d'un contrat passé entre un ou deux transporteurs aériens et un ou plusieurs affréteurs, selon lequel l'affréteur ou les affréteurs s'engagent à retenir toutes les places de l'aéronef destinées aux passagers pour fournir le transport à un prix par place à des passagers qui :

a) soit se rendent à un événement VABC et en reviennent;

b) soit participent à un programme éducatif VABC. (*common purpose charter* or *CPC*)

vol affrété à but commun (intérieur) ou **VABC (intérieur)** [Abrogée, DORS/96-335, art. 1]

vol affrété avec réservation anticipée ou **VARA** Vol passagers aller-retour en provenance du Canada, effectué aux termes d'un contrat passé entre un ou deux transporteurs aériens et un ou plusieurs affréteurs, selon lequel l'affréteur ou les affréteurs s'engagent à retenir toutes les places de l'aéronef destinées aux passagers pour les revendre au public à un prix par place avant un certain nombre de jours précédant la date de départ du vol du point d'origine au Canada. (*advance booking charter* or *ABC*)

vol affrété avec réservation anticipée (intérieur) ou **VARA (intérieur)** [Abrogée, DORS/96-335, art. 1]

vol affrété pour voyage à forfait ou **VAFO** Vol passagers effectué aux termes d'un contrat passé entre un transporteur aérien et un ou plusieurs voyagistes, selon lequel le ou les voyagistes s'engagent à retenir toutes les places de l'aéronef destinées aux passagers pour les revendre au public à un prix de voyage à forfait par place. (*inclusive tour charter* or *ITC*)

vol affrété pour voyage à forfait (intérieur) ou **VAFO (intérieur)** [Abrogée, DORS/96-335, art. 1]

transborder passenger charter or **TPC** means a one-way or return charter that originates in Canada and that is operated between Canada and the United States according to the conditions of a charter contract to carry passengers, entered into between one or two air carriers and one or more charterers, under which the charterer or charterers charter the entire passenger seating capacity of an aircraft, for resale by the charterer or charterers; (*vol affrété transfrontalier de passagers or VAP*)

transborder passenger non-resaleable charter or **TP-NC** means a one-way or return charter that originates in Canada and that is operated between Canada and the United States according to the conditions of a charter contract to carry passengers, entered into between one or two air carriers and one or more charterers, under which the charterer or charterers charter the entire passenger seating capacity of an aircraft and do not resell that passenger seating capacity; (*vol affrété transfrontalier de passagers non revendable or VAPNOR*)

transborder United States charter or **TUSC** means a charter originating in the United States that is destined for Canada; (*vol affrété transfontalier des États-Unis or VAEU*)

transportation, in respect of an inclusive tour charter, means transportation by air or any other mode

- (a) between all points in the tour itinerary, and
- (b) between airports or land terminals and the location where accommodation is provided at any point in the tour itinerary, other than the point of origin; (*transport*)

United States charter carrier licensee means a person who is a citizen of the United States, as defined in Part 204 of the *Federal Aviation Regulations*, published by the Government of the United States, and who holds a non-scheduled international licence that is valid for charters between Canada and the United States; (*transporteur fréteur licencié des États-Unis*)

United States charterer means a person who has entered into an arrangement with an air carrier to provide charter air transportation originating in the United States; (*affréteur des États-Unis*)

working day, in respect of the filing of a document with the Agency, at its head office or a regional office, means a day on which offices of the Public Service of Canada are generally open in the province where the head office or regional office is situated. (*jour ouvrable*)

SOR/90-740, s. 1; SOR/93-253, s. 2; SOR/94-379, s. 4; SOR/96-335, s. 1; SOR/2012-298, s. 1.

vol affrété sans participation Vol effectué aux termes d'un contrat d'affrètement selon lequel :

- a) le coût du transport des passagers ou des marchandises est payé par une seule personne, une seule société ou un seul organisme et n'est partagé, directement ou indirectement, par aucune autre personne;
- b) nuls frais ni autre obligation financière ne sont imposés aux passagers comme condition de transport ou autrement pour le voyage. (*entity charter*)

vol affrété transfrontalier de marchandises ou **VAM** Vol affrété aller ou aller-retour en provenance du Canada effectué entre le Canada et les États-Unis aux termes d'un contrat d'affrètement pour le transport de marchandises passé entre un ou deux transporteurs aériens et un ou plusieurs affréteurs, selon lequel l'affréteur ou les affréteurs s'engagent à retenir toute la capacité payante de l'aéronef. (*transborder goods charter or TGC*)

vol affrété transfrontalier de passagers ou **VAP** Vol affrété aller ou aller-retour en provenance du Canada effectué entre le Canada et les États-Unis aux termes d'un contrat d'affrètement pour le transport de passagers passé entre un ou deux transporteurs aériens et un ou plusieurs affréteurs, selon lequel l'affréteur ou les affréteurs s'engagent à retenir toutes les places de l'aéronef destinées aux passagers en vue de les revendre. (*transborder passenger charter or TPC*)

vol affrété transfrontalier de passagers non revendable ou **VAPNOR** Vol affrété aller ou aller-retour en provenance du Canada effectué entre le Canada et les États-Unis aux termes d'un contrat d'affrètement pour le transport de passagers passé entre un ou deux transporteurs aériens et un ou plusieurs affréteurs, selon lequel l'affréteur ou les affréteurs s'engagent à retenir toutes les places de l'aéronef destinées aux passagers et à ne pas les revendre. (*transborder passenger non-resaleable charter or TPNC*)

vol affrété transfrontalier des États-Unis ou **VAEU** Vol affrété en provenance des États-Unis dont la destination est le Canada. (*transborder United States charter or TUSC*)

voyage à forfait Voyage aller-retour ou voyage circulaire effectué en totalité ou en partie par aéronef, à un prix de voyage à forfait, pour la période comprise entre le départ des participants et leur retour au point de départ. (*inclusive tour or tour*)

(ii) scheduled international service, medium aircraft,

(iii) scheduled international service, large aircraft, and

(iv) scheduled international service, all-cargo aircraft; and

(b) with respect to services operated by a non-Canadian air carrier, scheduled international service.

(3) The following classes of air services that may be operated under a non-scheduled international licence are hereby established:

(a) with respect to services operated by a Canadian air carrier,

(i) non-scheduled international service, small aircraft,

(ii) non-scheduled international service, medium aircraft,

(iii) non-scheduled international service, large aircraft, and

(iv) non-scheduled international service, all-cargo aircraft; and

(b) with respect to services operated by a non-Canadian air carrier, non-scheduled international service.

(4) Where an air carrier holds a licence that authorizes the operation of an air service of a class established by subsection (1), (2) or (3), that air carrier and that licence shall be assigned the same designation as that of the class of air service.

SOR/96-335, s. 2.

Liability Insurance

6 In section 7 and Schedule I, “passenger seat” means a seat on board an aircraft that may be permanently occupied by a passenger for the period during which the aircraft is being used for a domestic service or an international service.

7 (1) No air carrier shall operate a domestic service or an international service unless, for every accident or incident related to the operation of that service, it has

(a) liability insurance covering risks of injury to or death of passengers in an amount that is not less than the amount determined by multiplying \$300,000 by

(ii) service international régulier (aéronefs moyens),

(iii) service international régulier (gros aéronefs),

(iv) service international régulier (aéronefs tout-cargo);

b) quant aux services exploités par le transporteur aérien non canadien, le service international régulier.

(3) Sont établies les catégories suivantes de services aériens qui peuvent être exploités aux termes d’une licence internationale service à la demande :

a) quant aux services exploités par le transporteur aérien canadien :

(i) service international à la demande (petits aéronefs),

(ii) service international à la demande (aéronefs moyens),

(iii) service international à la demande (gros aéronefs),

(iv) service international à la demande (aéronefs tout-cargo);

b) quant aux services exploités par le transporteur aérien non canadien, le service international à la demande.

(4) Le transporteur aérien qui détient une licence pour l’exploitation d’un service aérien d’une catégorie visée aux paragraphes (1), (2) ou (3) de même que cette licence sont désignés par la même appellation que la catégorie de service aérien.

DORS/96-335, art. 2.

Assurance responsabilité

6 Aux fins de l’article 7 et de l’annexe I, «siège passager» désigne un siège d’un aéronef qui peut être occupé en permanence par un passager pendant que l’aéronef est affecté à un service intérieur ou à un service international.

7 (1) Il est interdit au transporteur aérien d’exploiter un service intérieur ou un service international à moins de posséder les assurances suivantes couvrant tout accident ou incident lié à l’exploitation du service :

a) une assurance responsabilité couvrant les blessures et le décès de passagers pour un montant au moins

the number of passenger seats on board the aircraft engaged in the service; and

(b) insurance covering risks of public liability in an amount that is not less than

(i) \$1,000,000, where the MCTOW of the aircraft engaged in the service is not greater than 7,500 pounds,

(ii) \$2,000,000, where the MCTOW of the aircraft engaged in the service is greater than 7,500 pounds but not greater than 18,000 pounds, and

(iii) where the MCTOW of the aircraft engaged in the service is greater than 18,000 pounds, \$2,000,000 plus an amount determined by multiplying \$150 by the number of pounds by which the MCTOW of the aircraft exceeds 18,000 pounds.

(2) The insurance coverage required by paragraph (1)(a) need not extend to any passenger who is an employee of an air carrier if workers' compensation legislation governing a claim for damages against that air carrier by the employee is applicable.

(3) No air carrier shall take out liability insurance to comply with subsection (1) that contains an exclusion or waiver provision reducing insurance coverage for any accident or incident below the applicable minima determined pursuant to that subsection, unless that provision

(a) consists of standard exclusion clauses adopted by the international aviation insurance industry dealing with

(i) war, hijacking and other perils,

(ii) noise and pollution and other perils, or

(iii) aviation radioactive contamination;

(b) is in respect of chemical drift;

(c) is to the effect that the insurance does not apply to liability assumed by the air carrier under any contract or agreement unless such liability would have attached to the air carrier even in the absence of such contract or agreement; or

(d) is to the effect that the entire policy shall be void if the air carrier has concealed or misrepresented any material fact or circumstance concerning the insurance or the subject thereof or if there has been any fraud, attempted fraud or false statement by the air carrier touching any matter relating to the insurance or the subject thereof, whether before or after a loss.

égal au produit de 300 000 \$ multiplié par le nombre de sièges passagers à bord de l'aéronef affecté au service;

b) une assurance couvrant la responsabilité civile pour un montant au moins égal à :

(i) 1 000 000 \$ si la MMHD de l'aéronef affecté au service ne dépasse pas 7 500 livres,

(ii) 2 000 000 \$ si la MMHD de l'aéronef affecté au service est supérieure à 7 500 livres sans dépasser 18 000 livres,

(iii) si la MMHD de l'aéronef affecté au service est supérieure à 18 000 livres, 2 000 000 \$ plus le produit de 150 \$ multiplié par l'excédent de la MMHD.

(2) Il n'est pas nécessaire que l'assurance prescrite à l'alinéa (1)a) s'étende aux passagers qui sont les employés du transporteur aérien si les réclamations en dommages des employés contre ce transporteur aérien sont régies par une loi sur les accidents de travail.

(3) Il est interdit au transporteur aérien de souscrire, pour se conformer au paragraphe (1), une assurance responsabilité comportant une clause d'exclusion ou de renonciation qui réduit l'étendue des risques assurés en cas d'accident ou d'incident en deçà des montants minimaux prévus à ce paragraphe, sauf si cette clause, selon le cas :

a) est une clause d'exclusion usuelle adoptée par les compagnies d'assurance en aviation internationale, qui vise :

(i) soit la guerre, la piraterie aérienne et d'autres dangers,

(ii) soit le bruit, la pollution et d'autres dangers,

(iii) soit la contamination radioactive aérienne;

b) porte sur l'épandage de produits chimiques;

c) précise que l'assurance ne s'applique pas à la responsabilité assumée par le transporteur aérien aux termes d'un contrat ou d'une entente, sauf si le transporteur aérien avait à s'acquitter de pareille responsabilité même en l'absence du contrat ou de l'entente;

d) précise que la police devient nulle si le transporteur aérien a caché ou faussé un fait ou une circonstance pertinents concernant l'assurance ou le sujet assuré, ou s'il y a eu fraude, tentative de fraude ou fausse déclaration de la part du transporteur aérien relative-

(4) An air carrier may have a comprehensive single limit liability coverage where liability risks are covered by a single policy or a combination of primary and excess policies, but no single limit liability coverage of that air carrier shall be for an amount that is less than the applicable combined insurance minima determined pursuant to paragraphs (1)(a) and (b).

SOR/96-335, s. 3.

8 (1) Every applicant for a licence or for an amendment to or renewal of a licence, and every licensee, shall file with the Agency, in respect of the service to be provided or being provided, as the case may be, a valid certificate of insurance in the form set out in Schedule I.

(2) A person referred to in subsection (1) who files a certificate of insurance electronically shall, on the request of the Agency, file forthwith a certified true copy of the certificate.

SOR/96-335, s. 4.

Financial Requirements

8.1 (1) In this section, “applicant” means a Canadian who applies for

(a) a domestic licence, non-scheduled international licence or scheduled international licence that authorizes the operation of an air service using medium aircraft, or for the reinstatement of such a licence that has been suspended for 60 days or longer; or

(b) a domestic licence, non-scheduled international licence or scheduled international licence that authorizes the operation of an air service using large aircraft, or for the reinstatement of such a licence that has been suspended for 60 days or longer.

(2) Subject to subsection (3), an applicant shall

(a) in respect of the air service specified in the application, provide the Agency with a current written statement of the start-up costs that the applicant has incurred in the preceding 12 months, with written estimates of start-up costs that the applicant expects to incur and with written estimates of operating and overhead costs for a 90-day period of operation of the air service, and establish that

ment à toute question se rapportant à l’assurance ou au sujet assuré, que ce soit avant ou après une perte.

(4) Le transporteur aérien peut souscrire une assurance tous risques à limite d’indemnité unique lorsque sa responsabilité est couverte par une seule police ou par un ensemble de polices primaires et complémentaires, auquel cas cette assurance doit prévoir une protection pour un montant au moins égal aux montants minimaux d’assurance combinés prévus aux alinéas (1)a) et b).

DORS/96-335, art. 3.

8 (1) Toute personne qui demande la délivrance, la modification ou le renouvellement d’une licence ainsi que tout licencié doivent déposer auprès de l’Office un certificat d’assurance valide, conforme à l’annexe I, à l’égard du service projeté ou fourni, selon le cas.

(2) En cas de dépôt par voie électronique, l’intéressé doit, à la demande de l’Office, déposer sans délai une copie certifiée conforme du certificat d’assurance.

DORS/96-335, art. 4.

Exigences financières

8.1 (1) Dans le présent article, « demandeur » s’entend d’un Canadien qui demande :

a) soit une licence intérieure, une licence internationale service à la demande ou une licence internationale service régulier qui autorise l’exploitation d’un service aérien utilisant des aéronefs moyens, ou le rétablissement d’une telle licence suspendue depuis au moins 60 jours;

b) soit une licence intérieure, une licence internationale service à la demande ou une licence internationale service régulier qui autorise l’exploitation d’un service aérien utilisant des gros aéronefs, ou le rétablissement d’une telle licence suspendue depuis au moins 60 jours.

(2) Sous réserve du paragraphe (3), le demandeur doit :

a) quant au service aérien visé par la demande, remettre à l’Office, par écrit, un relevé à jour des frais de démarrage qu’il a engagés au cours des 12 mois précédents, une estimation des frais de démarrage qu’il prévoit d’engager ainsi qu’une estimation des frais d’exploitation et des frais généraux qu’il prévoit d’engager pendant une période de 90 jours d’exploitation du service aérien, et démontrer :

(i) que le relevé est complet et exact et que l’estimation est raisonnable quant aux frais de démarrage,

(i) in respect of the start-up costs, the statement is complete and accurate and the estimates are reasonable,

(ii) in respect of the operating and overhead costs, the estimates are reasonable and are based on utilization of the aircraft solely on the specified air service under conditions of optimum demand, which utilization shall be no less than that which is necessary for the air service to be profitable,

(iii) subject to subparagraph (b)(i), the applicant has acquired or can acquire funds in an amount at least equal to the total costs included in the statement and in the estimates,

(iv) the funds are not encumbered and are comprised of liquid assets that have been acquired or that can be acquired by way of a line of credit issued by a financial institution or by way of a similar financial instrument,

(v) the terms and conditions under which those funds have been acquired or can be acquired are such that the funds are available and will remain available to finance the air service,

(vi) subject to paragraph (b), where the applicant is a corporation, at least 50% of the funds required by subparagraph (iii) have been acquired by way of capital stock that has been issued and paid for and that cannot be redeemed for a period of at least one year after the date of the issuance or reinstatement of the licence, and

(vii) subject to paragraph (b), where the applicant is a proprietorship or partnership, at least 50% of the funds required by subparagraph (iii) have been acquired by way of the proprietor's or partners' capital that has been injected into the proprietorship or partnership and that cannot be withdrawn for a period of at least one year after the date of the issuance or reinstatement of the licence;

(b) where the applicant is or has been in operation,

(i) increase the amount of funds required by subparagraph (a)(iii) by the amount of any shareholders', proprietor's or partners' deficit that is disclosed in the applicant's current audited financial statements which are prepared in accordance with generally accepted accounting principles in Canada, and those additional funds shall be acquired by way of capital stock that has been issued and paid for in the case of a corporation, or by way of the proprietor's or partners' invested capital in the case of a proprietorship or partnership, which capital stock

(ii) que l'estimation des frais d'exploitation et des frais généraux est raisonnable et fondée sur l'utilisation des aéronefs uniquement pour ce service aérien dans des conditions de demande optimale, laquelle utilisation représente au moins le minimum nécessaire pour assurer la rentabilité du service aérien,

(iii) sous réserve du sous-alinéa b)(i), qu'il a acquis ou est en mesure d'acquérir des fonds au moins équivalents au total des frais inscrits dans le relevé et dans les estimations,

(iv) que les fonds ne sont pas grevés et qu'ils sont constitués de liquidités acquises ou pouvant l'être au moyen d'une marge de crédit accordée par une institution financière ou au moyen de tout instrument financier semblable,

(v) que les modalités selon lesquelles ces fonds ont été acquis ou peuvent l'être sont telles que les fonds sont disponibles et continueront de l'être pour financer le service aérien,

(vi) sous réserve de l'alinéa b), s'il s'agit d'une société, qu'au moins 50 pour cent des fonds exigés par le sous-alinéa (iii) ont été acquis au moyen d'actions du capital-actions émises et libérées qui ne peuvent être rachetées pendant une période minimale d'un an après la date de délivrance ou de rétablissement de la licence,

(vii) sous réserve de l'alinéa b), s'il s'agit d'une entreprise individuelle ou d'une société de personnes, qu'au moins 50 pour cent des fonds exigés par le sous-alinéa (iii) ont été acquis au moyen du capital investi par le propriétaire ou les associés dans l'entreprise ou la société qui ne peut en être retiré pendant une période minimale d'un an après la date de délivrance ou de rétablissement de la licence;

b) s'il est en exploitation ou l'a été :

(i) augmenter le montant des fonds exigés par le sous-alinéa a)(iii) du montant du déficit des actionnaires, du propriétaire ou des associés figurant dans ses états financiers courants vérifiés, établis conformément aux principes comptables généralement reconnus au Canada; ces fonds additionnels doivent être acquis au moyen d'actions du capital-actions émises et libérées, dans le cas d'une société, ou au moyen du capital investi par le propriétaire ou les associés, dans le cas d'une entreprise individuelle ou d'une société de personnes, et ces actions ou ce capital investi sont assujettis à la condition prévue aux sous-alinéas a)(vi) ou (vii),

or invested capital is to be subject to the condition prescribed in subparagraph (a)(vi) or (vii), and

(ii) decrease the amount of the capital stock that is required by subparagraph (a)(vi) to be issued and paid for in the case of a corporation, or the amount of the proprietor's or partners' capital that is required by subparagraph (a)(vii) to be invested in the case of a proprietorship or partnership, by the amount of any shareholders', proprietor's or partners' equity that is disclosed in the applicant's current audited financial statements which are prepared in accordance with generally accepted accounting principles in Canada; and

(c) file with the Agency, on request, any information that the Agency requires to determine whether the applicant has complied with the requirements of paragraphs (a) and (b).

(3) Subsection (2) does not apply to

(a) an applicant that, at the proposed time of the issuance or reinstatement of the licence, operates an air service using medium or large aircraft in the case of an applicant referred to in paragraph (1)(a), or using large aircraft in the case of an applicant referred to in paragraph (1)(b), pursuant to

(i) a non-scheduled international licence or a scheduled international licence, or

(ii) a domestic licence in respect of which the applicant has, within 12 months before the proposed time of issuance or reinstatement of the licence, complied with subsection (2); and

(b) an applicant for the renewal of a licence referred to in paragraph (1)(a) or (b).

SOR/96-335, s. 4.

Provision of Aircraft with Flight Crew

8.2 (1) For the purposes of section 60 of the Act and subject to section 8.3, approval of the Agency is required before a person may provide all or part of an aircraft, with a flight crew, to a licensee for the purpose of providing an air service pursuant to the licensee's licence and before a licensee may provide an air service using all or part of an aircraft, with flight crew, provided by another person.

(2) The person who provides an aircraft to a licensee and the licensee shall apply to the Agency for an approval referred to in subsection (1) at least 45 days before the first planned flight.

(ii) diminuer le montant des actions du capital-actions qui, selon le sous-alinéa a)(vi), doivent être émises et libérées, dans le cas d'une société, ou le montant du capital du propriétaire ou des associés qui doit être investi selon le sous-alinéa a)(vii), dans le cas d'une entreprise individuelle ou d'une société de personnes, du montant de tout avoir des actionnaires, du propriétaire ou des associés figurant dans ses états financiers courants vérifiés, établis conformément aux principes comptables généralement reconnus au Canada;

c) déposer auprès de l'Office, sur demande, les renseignements dont celui-ci a besoin pour vérifier si les exigences des alinéas a) et b) sont respectées.

(3) Le paragraphe (2) ne s'applique pas :

a) au demandeur qui, à la date prévue pour la délivrance ou le rétablissement de la licence, exploite un service aérien utilisant des aéronefs moyens ou des gros aéronefs, s'il s'agit du demandeur visé à l'alinéa (1)a), ou des gros aéronefs, s'il s'agit du demandeur visé à l'alinéa (1)b), aux termes :

(i) soit d'une licence internationale service à la demande ou d'une licence internationale service régulier,

(ii) soit d'une licence intérieure à l'égard de laquelle il s'est conformé aux exigences du paragraphe (2) dans les 12 mois précédant cette date;

b) au demandeur qui demande le renouvellement d'une licence visée aux alinéas (1)a) ou b).

DORS/96-335, art. 4.

Fourniture d'aéronefs avec équipage

8.2 (1) Pour l'application de l'article 60 de la Loi, la fourniture de tout ou partie d'un aéronef, avec équipage, à un licencié en vue de la prestation d'un service aérien conformément à sa licence et la fourniture, par un licencié, d'un service aérien utilisant tout ou partie d'un aéronef, avec équipage, appartenant à un tiers sont, sous réserve de l'article 8.3, assujetties à l'autorisation préalable de l'Office.

(2) Le licencié et la personne qui lui fournit l'aéronef doivent demander cette autorisation à l'Office au moins 45 jours avant le premier vol prévu.

(3) The application shall include the following:

- (a)** in respect of the proposed air service, evidence that the appropriate licence authority, charter permit and Canadian aviation document and the liability insurance coverage referred to in subsection (4) and, where applicable, subsection (5) are in effect;
- (b)** the name of the licensee;
- (c)** if applicable, the name of the charterer or charterers and the charter program permit or authorization number;
- (d)** the name of the person providing the aircraft with flight crew;
- (e)** the aircraft type to be provided;
- (f)** the maximum number of seats and the cargo capacity of the aircraft to be provided and, where applicable, the maximum number of seats and the cargo capacity to be provided for use by the licensee;
- (g)** the points to be served;
- (h)** the frequency of service;
- (i)** the period covered by the proposed air service; and
- (j)** an explanation of why the use by the licensee of all or part of an aircraft with a flight crew provided by another person is necessary.

(4) The licensee shall maintain passenger and third party liability insurance coverage for a service for which another person provides an aircraft with flight crew, at least in the amounts set out in section 7,

- (a)** by means of its own policy; or
- (b)** subject to subsection (5), by being named as an additional insured under the policy of the other person.

(5) Where the licensee is named as an additional insured under the policy of the person referred to in subsection (4), there must be a written agreement between the licensee and the person to the effect that, for all flights for which the person provides aircraft with flight crew, the person will hold the licensee harmless from, and indemnify the licensee for, all passenger and third party liabilities while passengers or cargo transported under contract with the licensee are under the control of the person.

(3) La demande d'autorisation doit contenir les renseignements suivants :

- a)** quant au service aérien projeté, la preuve que la licence requise, le cas échéant, le permis d'affrètement et le document d'aviation canadien requis ainsi que la police d'assurance responsabilité visée au paragraphe (4) et, s'il y a lieu, au paragraphe (5) sont en vigueur;
- b)** le nom du licencié;
- c)** le cas échéant, le nom de l'affréteur ou des affréteurs et le numéro du permis-programme ou de la permission;
- d)** le nom de la personne qui fournit l'aéronef avec équipage;
- e)** le type d'aéronef qui sera fourni;
- f)** le nombre maximal de places de l'aéronef et sa capacité pour le transport de marchandises et, s'il y a lieu, le nombre maximal de places et sa capacité pour le transport de marchandises offerts au licencié pour son usage;
- g)** les points à desservir;
- h)** la fréquence du service;
- i)** la période visée par le service aérien projeté;
- j)** les raisons pour lesquelles le licencié doit utiliser tout ou partie d'un aéronef, avec équipage, fourni par un tiers.

(4) Le licencié doit maintenir l'assurance responsabilité à l'égard des passagers et autres personnes, selon les montants minimaux prévus à l'article 7, pour tout service utilisant un aéronef, avec équipage, fourni par un tiers :

- a)** soit par l'intermédiaire de sa propre police;
- b)** soit, sous réserve du paragraphe (5), en étant inscrit à titre d'assuré additionnel dans la police du tiers.

(5) Si le licencié est inscrit à titre d'assuré additionnel dans la police du tiers, les deux doivent avoir conclu une entente par écrit portant que, pour tous les vols pour lesquels le tiers fournit un aéronef avec équipage, il exonérera le licencié de toute responsabilité à l'égard des réclamations des passagers et autres personnes pendant que les passagers ou les marchandises transportés aux termes du contrat avec celui-ci sont sous sa responsabilité.

(6) The licensee and the person who provides the aircraft with flight crew shall notify the Agency in writing forthwith if the liability insurance coverage referred to in subsection (4) and, where applicable, subsection (5) has been cancelled or altered in any manner that results in failure by the licensee or the person to maintain the coverage.

SOR/96-335, s. 4.

8.3 (1) The approval referred to in section 8.2 is not required if, in respect of the air service to be provided, the appropriate licence authority, charter permit and Canadian aviation document and the liability insurance coverage referred to in subsection 8.2(4) and, where applicable, subsection 8.2(5), are in effect and

(a) both the person providing an aircraft to the licensee and the licensee are Canadian, the person is a licensee and the air service to be provided is a domestic service or an air service between Canada and the United States; or

(b) where the air service to be provided is an international service, a temporary and unforeseen circumstance has transpired within 72 hours before the planned departure time of a flight or the first flight of a series of flights that has forced the use of all or part of an aircraft, with a flight crew, provided by another person for a period of not more than one week, and the licensee

(i) has notified the Agency of the proposed flight or the first flight of a series of flights covering a period of not more than one week in accordance with subsection (2), and

(ii) has received an acknowledgement that the conditions of this paragraph have been met.

(2) The notification referred to in paragraph (1)(b) shall be given before the proposed flight or flights and shall contain

(a) a description of the temporary and unforeseen circumstance and an explanation of why it requires the use of all or part of an aircraft with a flight crew provided by another person;

(b) in respect of the air service to be provided,

(i) a statement that the appropriate licence authority, charter permit and Canadian aviation document and the liability insurance coverage referred to in subsection 8.2(4) and, where applicable, subsection 8.2(5) are in effect and that the liability insurance coverage is available for inspection by the Agency on request, or

(6) Le licencié et le tiers doivent aviser l'Office par écrit dès que la police d'assurance responsabilité visée au paragraphe (4) et, s'il y a lieu, au paragraphe (5) est annulée ou modifiée de façon qu'elle n'est plus maintenue par l'un ou l'autre.

DORS/96-335, art. 4.

8.3 (1) L'autorisation visée à l'article 8.2 n'est pas obligatoire pour le service aérien projeté si la licence requise, le cas échéant, le permis d'affrètement et le document d'aviation canadien requis ainsi que la police d'assurance responsabilité visée au paragraphe 8.2(4) et, s'il y a lieu, au paragraphe 8.2(5) sont en vigueur et si, selon le cas :

a) le tiers et le licencié sont des Canadiens, le tiers est un licencié et le service aérien est un service intérieur ou un service aérien entre le Canada et les États-Unis;

b) lorsqu'il s'agit d'un service international, une situation temporaire et imprévue est survenue dans les 72 heures précédant l'heure de départ prévue d'un vol ou du premier vol d'une série de vols et rend nécessaire l'utilisation, pour une période maximale d'une semaine, de tout ou partie d'un aéronef, avec équipage, fourni par un tiers, et le licencié :

(i) a avisé l'Office, conformément au paragraphe (2), du vol proposé ou du premier vol de la série de vols s'étendant sur une période maximale d'une semaine,

(ii) a reçu confirmation que les conditions énoncées au présent alinéa sont remplies.

(2) L'avis visé à l'alinéa (1)b doit être donné avant le vol ou les vols proposés et doit contenir les renseignements suivants :

a) une description de la situation temporaire et imprévue et les raisons pour lesquelles il est nécessaire d'utiliser tout ou partie d'un aéronef, avec équipage, fourni par un tiers;

b) quant au service aérien projeté :

(i) une déclaration portant que la licence requise, le cas échéant, le permis d'affrètement et le document d'aviation canadien requis ainsi que la police d'assurance responsabilité visée au paragraphe 8.2(4) et, s'il y a lieu, au paragraphe 8.2(5) sont en vigueur et que la police peut, sur demande, être mise à la disposition de l'Office pour examen,

(ii) where use of the aircraft and flight crew does not require an Agency licence, a copy of the Canadian aviation document and the certificate of liability insurance;

(c) where the aircraft to be used is larger than that authorized in the charter permit, a statement that the number of seats sold will not be greater than the number authorized in the charter permit;

(d) the name of the licensee;

(e) the name of the person providing the aircraft with a flight crew;

(f) the aircraft type to be provided;

(g) the number of seats and the cargo capacity of the aircraft to be provided;

(h) the date of each flight; and

(i) the routing of each flight.

SOR/96-335, s. 4.

8.4 Where the Agency has granted an approval, or no approval is required pursuant to section 8.3, the licensee is not required to

(a) notwithstanding paragraph 18(a), furnish the services, equipment and facilities that are necessary for the purposes of the provision of the air service; or

(b) satisfy the condition set out in paragraph 18(c).

SOR/96-335, s. 4.

Public Disclosure

8.5 (1) Subject to subsection (4), a licensee that intends to provide an air service described in subsection 8.2(1) shall so notify the public in accordance with subsection (2).

(2) The licensee shall give notification that the air service referred to in subsection (1) is being operated using an aircraft and a flight crew provided by another person, and shall identify that person and specify the aircraft type

(a) on all service schedules, timetables, electronic displays and any other public advertising of the air service; and

(b) to travellers

(ii) dans les cas où l'utilisation de l'aéronef et de l'équipage exige l'obtention d'une licence de l'Office, une copie du document d'aviation canadien et du certificat d'assurance responsabilité;

c) lorsque l'aéronef à utiliser est plus gros que celui autorisé par le permis d'affrètement, une déclaration portant que le nombre de places vendues ne dépassera pas le nombre autorisé par ce permis;

d) le nom du licencié;

e) le nom du tiers fournissant l'aéronef avec équipage;

f) le type d'aéronef devant être fourni;

g) le nombre de places de l'aéronef et sa capacité pour le transport de marchandises;

h) la date de chaque vol;

i) l'itinéraire de chaque vol.

DORS/96-335, art. 4.

8.4 Dans le cas où l'Office a donné son autorisation ou dans le cas visé à l'article 8.3 où cette autorisation n'est pas obligatoire, le licencié n'est pas tenu :

a) malgré l'alinéa 18a), de fournir les services, le matériel et les installations nécessaires à la prestation du service aérien;

b) de remplir la condition énoncée à l'alinéa 18c).

DORS/96-335, art. 4.

Divulgateion au public

8.5 (1) Sous réserve du paragraphe (4), le licencié qui a l'intention de fournir un service aérien visé au paragraphe 8.2(1) doit en informer le public de la manière prévue au paragraphe (2).

(2) Le licencié doit annoncer que ce service aérien est exploité au moyen d'un aéronef, avec équipage, fourni par un tiers et préciser le nom du tiers et le type d'aéronef :

a) sur tous les indicateurs, horaires et systèmes d'affichage électronique et dans toute autre publicité concernant le service aérien;

b) aux voyageurs, aux moments suivants :

(i) avant la réservation, ou après celle-ci si l'entente relative au service aérien a été conclue après qu'une réservation a été faite,

(i) before reservation, or after reservation if the arrangement for the air service has been entered into after a reservation has been made, and

(ii) on check-in.

(3) A licensee shall identify the person providing the aircraft and specify the aircraft type for each segment of the journey on all travel documents, including, if issued, itineraries.

(4) Where paragraph 8.3(1)(b) applies, a licensee is exempt from having to comply with the requirements of subsection (1), paragraph (2)(a), subparagraph (2)(b)(i) and subsection (3) only if the licensee has made every effort to comply with them.

(5) Where an approval is required by subsection 8.2(1) or an acknowledgement is required by paragraph 8.3(1)(b), the licensee may give the notification referred to in subsection (2) before receipt of the approval or acknowledgement if the notification contains a statement that the provision of the air service using all or part of an aircraft, with a flight crew, provided by a person other than the licensee is subject to the consent of the Agency.

SOR/96-335, s. 4.

9 [Repealed, SOR/96-335, s. 4]

PART II

Domestic and International Licences and Reduction in Domestic Services

[SOR/96-335, s. 5]

Domestic Licensing

10 (1) An applicant for a domestic licence, or for an amendment to or a renewal of such a licence, shall submit to the Agency documentary evidence to establish that the applicant

(a) is a Canadian or is exempted from that requirement under section 62 of the Act;

(b) holds a Canadian aviation document that is valid in respect of the air service to be provided under the licence;

(c) has the liability insurance coverage required by section 7 in respect of the air service to be provided under the licence and has complied with section 8; and

(ii) au moment de l'enregistrement.

(3) Le licencié doit indiquer sur tous les documents de voyage, y compris l'itinéraire, s'il y a lieu, le nom du tiers fournissant l'aéronef et le type d'aéronef pour chaque segment du voyage.

(4) Dans le cas où l'alinéa 8.2(1)b) s'applique, le licencié n'est exempté de l'application du paragraphe (1), de l'alinéa (2)a), du sous-alinéa (2)b)(i) et du paragraphe (3) que s'il a fait tout son possible pour s'y conformer.

(5) Dans les cas où l'autorisation visée au paragraphe 8.2(1) ou la confirmation visée à l'alinéa 8.3(1)b) est exigée, le licencié peut faire l'annonce mentionnée au paragraphe (2) avant d'avoir reçu l'autorisation ou la confirmation, pourvu qu'il y précise que la prestation du service aérien au moyen de tout ou partie d'un aéronef, avec équipage, fourni par un tiers est subordonnée au consentement de l'Office.

DORS/96-335, art. 4.

9 [Abrogé, DORS/96-335, art. 4]

PARTIE II

Licences intérieures et internationales et réduction des services intérieurs

[DORS/96-335, art. 5]

Licences intérieures

10 (1) Le demandeur qui désire obtenir, modifier ou renouveler une licence intérieure doit déposer auprès de l'Office une preuve documentaire établissant à la fois :

a) qu'il est Canadien ou qu'il est exempté de l'obligation de justifier de cette qualité en vertu de l'article 62 de la Loi;

b) qu'il détient un document d'aviation canadien valable pour le service aérien visé par la licence;

c) qu'il détient une police d'assurance responsabilité conforme à l'article 7 à l'égard du service aérien visé par la licence et qu'il s'est conformé à l'article 8;

local tariff means a tariff containing the local tolls of the air carrier named therein; (*tarif unitransporteur*)

local toll means a toll that applies to traffic between points served by one air carrier; (*taxe unitransporteur*)

through toll means the aggregate toll from a point of origin to a point of destination. (*taxe totale*)

SOR/93-253, s. 2(E).

taxe pluritransporteur Taxe applicable au trafic acheminé par deux transporteurs aériens ou plus, qui est publiée en tant que taxe unique. (*joint toll*)

taxe spécifique Taux ou frais applicables à des marchandises spécifiquement désignées dans le tarif. (*commodity toll*)

taxe totale Taxe globale applicable au trafic acheminé d'un point d'origine et à un point de destination. (*through toll*)

taxe unitransporteur Taxe applicable au trafic acheminé entre les points desservis par un seul transporteur aérien. (*local toll*)

DORS/93-253, art. 2(A).

DIVISION I

Domestic

Application

105 A tariff referred to in section 67 of the Act shall include the information required by this Division.

SOR/96-335, s. 53.

Exception

106 The holder of a domestic licence in respect of a domestic service that serves the transportation needs of the bona fide guests, employees and workers of a lodge operation, including the transportation of luggage, materials and supplies of those guests, employees or workers, is excluded, in respect of the service of those needs, from the requirements of section 67 of the Act.

SOR/96-335, s. 53.

Contents of Tariffs

107 (1) Every tariff shall contain

- (a) the name of the issuing air carrier and the name, title and full address of the officer or agent issuing the tariff;
- (b) the tariff number, and the title that describes the tariff contents;
- (c) the dates of publication, coming into effect and expiration of the tariff, if it is to expire on a specific date;
- (d) a description of the points or areas from and to which or between which the tariff applies;

SECTION I

Service intérieur

Application

105 Les tarifs visés à l'article 67 de la Loi doivent contenir les renseignements exigés par la présente section.

DORS/96-335, art. 53.

Exception

106 Le titulaire d'une licence intérieure pour l'exploitation d'un service intérieur servant à répondre aux besoins de transport des véritables clients, employés et travailleurs d'un hôtel pavillonnaire, y compris le transport de leurs bagages, matériel et fournitures, est exempté des exigences de l'article 67 de la Loi à l'égard de ce service.

DORS/96-335, art. 53.

Contenu des tarifs

107 (1) Tout tarif doit contenir :

- a) le nom du transporteur aérien émetteur ainsi que le nom, le titre et l'adresse complète du dirigeant ou de l'agent responsable d'établir le tarif;
- b) le numéro du tarif et son titre descriptif;
- c) les dates de publication et d'entrée en vigueur ainsi que la date d'expiration s'il s'applique à une période donnée;
- d) la description des points ou des régions en provenance et à destination desquels ou entre lesquels il s'applique;

(e) in the case of a joint tariff, a list of all participating air carriers;

(f) a table of contents showing the exact location where information under general headings is to be found;

(g) where applicable, an index of all goods for which commodity tolls are specified, with reference to each item or page of the tariff in which any of the goods are shown;

(h) an index of points from, to or between which tolls apply, showing the province or territory in which the points are located;

(i) a list of the airports, aerodromes or other facilities used with respect to each point shown in the tariff;

(j) where applicable, information respecting prepayment requirements and restrictions and information respecting non-acceptance and non-delivery of goods, unless reference is given to another tariff number in which that information is contained;

(k) a full explanation of all abbreviations, notes, reference marks, symbols and technical terms used in the tariff and, where a reference mark or symbol is used on a page, an explanation of it on that page or a reference thereon to the page on which the explanation is given;

(l) the terms and conditions governing the tariff, generally, stated in such a way that it is clear as to how the terms and conditions apply to the tolls named in the tariff;

(m) any special terms and conditions that apply to a particular toll and, where the toll appears on a page, a reference on that page to the page on which those terms and conditions appear;

(n) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

- (i)** the carriage of persons with disabilities,
- (ii)** acceptance of children,
- (iii)** compensation for denial of boarding as a result of overbooking,
- (iv)** passenger re-routing,
- (v)** failure to operate the service or failure to operate on schedule,

e) s'il s'agit d'un tarif pluritransporteur, la liste des transporteurs aériens participants;

f) une table des matières donnant un renvoi précis aux rubriques générales;

g) s'il y a lieu, un index de toutes les marchandises pour lesquelles des taxes spécifiques sont prévues, avec renvoi aux pages ou aux articles pertinents du tarif;

h) un index des points en provenance et à destination desquels ou entre lesquels s'appliquent les taxes, avec mention de la province ou du territoire où ils sont situés;

i) la liste des aérodromes, aéroports ou autres installations utilisés pour chaque point mentionné dans le tarif;

j) s'il y a lieu, les renseignements concernant les exigences et les restrictions de paiement à l'avance ainsi que le refus et la non-livraison des marchandises; toutefois, ces renseignements ne sont pas nécessaires si un renvoi est fait au numéro d'un autre tarif qui contient ces renseignements;

k) l'explication complète des abréviations, notes, appels de notes, symboles et termes techniques employés dans le tarif et, lorsque des appels de notes ou des symboles figurent sur une page, leur explication sur la page même ou un renvoi à la page qui en donne l'explication;

l) les conditions générales régissant le tarif, énoncées en des termes qui expliquent clairement leur application aux taxes énumérées;

m) les conditions particulières qui s'appliquent à une taxe donnée et, sur la page où figure la taxe, un renvoi à la page où se trouvent les conditions;

n) les conditions de transport, dans lesquelles est énoncée clairement la politique du transporteur aérien concernant au moins les éléments suivants :

- (i)** le transport des personnes ayant une déficience,
- (ii)** l'admission des enfants,
- (iii)** les indemnités pour refus d'embarquement à cause de sur réservation,
- (iv)** le réacheminement des passagers,
- (v)** l'inexécution du service et le non-respect de l'horaire,

(vi) refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason,

(vii) ticket reservation, cancellation, confirmation, validity and loss,

(viii) refusal to transport passengers or goods,

(ix) method of calculation of charges not specifically set out in the tariff,

(x) limits of liability respecting passengers and goods,

(xi) exclusions from liability respecting passengers and goods, and

(xii) procedures to be followed, and time limitations, respecting claims;

(o) the tolls, shown in Canadian currency, together with the names of the points from, to or between which the tolls apply, arranged in a simple and systematic manner with, in the case of commodity tolls, goods clearly identified;

(p) the routings related to the tolls unless reference is made in the tariff to another tariff in which the routings appear; and

(q) the official descriptive title of each type of passenger fare, together with any name or abbreviation thereof.

(2) Every original tariff page shall be designated "Original Page", and changes in, or additions to, the material contained on the page shall be made by revising the page and renumbering it accordingly.

(3) Where an additional page is required within a series of pages in a tariff, that page shall be given the same number as the page it follows but a letter shall be added to the number.

(4) and (5) [Repealed, SOR/96-335, s. 54]

SOR/93-253, s. 2; SOR/93-449, s. 1; SOR/96-335, s. 54.

Interest

107.1 Where the Agency, by order, directs an air carrier to refund specified amounts to persons that have been

(vi) le remboursement des services achetés mais non utilisés, intégralement ou partiellement, par suite de la décision du client de ne pas poursuivre son trajet ou de son incapacité à le faire, ou encore de l'inaptitude du transporteur aérien à fournir le service pour une raison quelconque,

(vii) la réservation, l'annulation, la confirmation, la validité et la perte des billets,

(viii) le refus de transporter des passagers ou des marchandises,

(ix) la méthode de calcul des frais non précisés dans le tarif,

(x) les limites de responsabilité à l'égard des passagers et des marchandises,

(xi) les exclusions de responsabilité à l'égard des passagers et des marchandises,

(xii) la marche à suivre ainsi que les délais fixés pour les réclamations;

(o) les taxes, exprimées en monnaie canadienne, et les noms des points en provenance et à destination desquels ou entre lesquels elles s'appliquent, le tout étant disposé d'une manière simple et méthodique et les marchandises étant indiquées clairement dans le cas des taxes spécifiques;

(p) les itinéraires visés par les taxes; toutefois, ces itinéraires n'ont pas à être indiqués si un renvoi est fait à un autre tarif qui les contient;

(q) le titre descriptif officiel de chaque type de prix passagers, ainsi que tout nom ou abréviation servant à désigner ce prix.

(2) Les pages originales du tarif doivent porter la mention «page originale» et, lorsque des changements ou des ajouts sont apportés, la page visée doit être révisée et numérotée en conséquence.

(3) S'il faut intercaler une page supplémentaire dans une série de pages d'un tarif, cette page doit porter le même numéro que la page qui la précède, auquel une lettre est ajoutée.

(4) et (5) [Abrogés, DORS/96-335, art. 54]

DORS/93-253, art. 2; DORS/93-449, art. 1; DORS/96-335, art. 54.

Intérêts

107.1 Dans le cas où, en vertu de l'alinéa 66(1)c) de la Loi, l'Office enjoint, par ordonnance, à un transporteur



CANADA

CONSOLIDATION

CODIFICATION

Canada Transportation Act

Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

Current to February 15, 2016

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that is the property or under the control of any person the entry or inspection of which appears to the inquirer to be necessary; and

(b) exercise the same powers as are vested in a superior court to summon witnesses, enforce their attendance and compel them to give evidence and produce any materials, books, papers, plans, specifications, drawings and other documents that the inquirer thinks necessary.

Review and Appeal

Governor in Council may vary or rescind orders, etc.

40 The Governor in Council may, at any time, in the discretion of the Governor in Council, either on petition of a party or an interested person or of the Governor in Council's own motion, vary or rescind any decision, order, rule or regulation of the Agency, whether the decision or order is made *inter partes* or otherwise, and whether the rule or regulation is general or limited in its scope and application, and any order that the Governor in Council may make to do so is binding on the Agency and on all parties.

Appeal from Agency

41 (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.

Time for making appeal

(2) No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made.

Powers of Court

(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.

Agency may be heard

(4) The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.

tériel roulant ou navire — , quel qu'en soit le propriétaire ou le responsable, si elle l'estime nécessaire à l'enquête;

b) exercer les attributions d'une cour supérieure pour faire comparaître des témoins et pour les contraindre à témoigner et à produire les pièces — objets, livres, plans, cahiers des charges, dessins ou autres documents — qu'elle estime nécessaires à l'enquête.

Révision et appel

Modification ou annulation

40 Le gouverneur en conseil peut modifier ou annuler les décisions, arrêtés, règles ou règlements de l'Office soit à la requête d'une partie ou d'un intéressé, soit de sa propre initiative; il importe peu que ces décisions ou arrêtés aient été pris en présence des parties ou non et que les règles ou règlements soient d'application générale ou particulière. Les décrets du gouverneur en conseil en cette matière lient l'Office et toutes les parties.

Appel

41 (1) Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.

Délai

(2) Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.

Pouvoirs de la cour

(3) L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.

Plaidoirie de l'Office

(4) L'Office peut plaider sa cause à l'appel par procureur ou autrement.

Review of Act

Statutory review

53 (1) The Minister shall, no later than eight years after the day this subsection comes into force, appoint one or more persons to carry out a comprehensive review of the operation of this Act and any other Act of Parliament for which the Minister is responsible that pertains to the economic regulation of a mode of transportation or to transportation activities under the legislative authority of Parliament.

Objective of review

(2) The person or persons conducting the review shall assess whether the legislation referred to in subsection (1) provides Canadians with a transportation system that is consistent with the national transportation policy set out in section 5 and, if necessary or desirable, may recommend amendments to

- (a)** the national transportation policy; and
- (b)** the legislation referred to in subsection (1).

Consultations

(3) The review shall be undertaken in consultation with purchasers and suppliers of transportation services and any other persons whom the Minister considers appropriate.

Powers on review

(4) Every person appointed to carry out the review has, for the purposes of the review, the powers of a commissioner under Part I of the *Inquiries Act* and may engage the services of experts, professionals and other staff deemed necessary for making the review at the rates of remuneration that the Treasury Board approves.

Report

(5) The review shall be completed and a report of the review submitted to the Minister within 18 months after the appointment referred to in subsection (1).

Tabling of report

(6) The Minister shall have a copy of the report laid before each House of Parliament on any of the first thirty days on which that House is sitting after the Minister receives it.

1996, c. 10, s. 53; 2007, c. 19, s. 12.

Examen de la loi

Examen complet

53 (1) Le ministre nommé, dans les huit ans suivant la date d'entrée en vigueur du présent paragraphe, une ou plusieurs personnes chargées de procéder à un examen complet de l'application de la présente loi et de toute autre loi fédérale dont le ministre est responsable et qui porte sur la réglementation économique d'un mode de transport ou sur toute activité de transport assujettie à la compétence législative du Parlement.

But de l'examen

(2) Les personnes qui effectuent l'examen vérifient si les lois visées au paragraphe (1) fournissent aux Canadiens un système de transport qui est conforme à la politique nationale des transports énoncée à l'article 5. Si elles l'estiment utile, elles peuvent recommander des modifications :

- a)** à cette politique;
- b)** aux lois visées au paragraphe (1).

Consultations

(3) L'examen doit être effectué en consultation avec les acheteurs et les fournisseurs de services de transport et les autres personnes que le ministre estime indiquées.

Pouvoirs

(4) Chaque personne nommée pour effectuer l'examen dispose à cette fin des pouvoirs d'un commissaire nommé aux termes de la partie I de la *Loi sur les enquêtes* et peut, conformément au barème de rémunération approuvé par le Conseil du Trésor, engager le personnel — experts, professionnels et autres — nécessaire pour effectuer l'examen.

Rapport

(5) L'examen doit être terminé, et le rapport sur celui-ci présenté au ministre, dans les dix-huit mois suivant la date de la nomination prévue au paragraphe (1).

Dépôt du rapport

(6) Le ministre fait déposer une copie du rapport devant chaque chambre du Parlement dans les trente premiers jours de séance de celle-ci suivant sa réception.

1996, ch. 10, art. 53; 2007, ch. 19, art. 12.

with the orders, regulations and directions made or issued under this Act, notwithstanding the fact that the receiver, manager, official or person has been appointed by or acts under the authority of a court.

Adaptation orders

(2) Wherever by reason of insolvency, sale under mortgage or any other cause, a transportation undertaking or a portion of a transportation undertaking is operated, managed or held otherwise than by the carrier, the Agency or the Minister may make any order it considers proper for adapting and applying the provisions of this Act.

PART II

Air Transportation

Interpretation and Application

Definitions

55 (1) In this Part,

aircraft has the same meaning as in subsection 3(1) of the *Aeronautics Act*; (*aéronef*)

air service means a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both; (*service aérien*)

basic fare means

(a) the fare in the tariff of the holder of a domestic licence that has no restrictions and represents the lowest amount to be paid for one-way air transportation of an adult with reasonable baggage between two points in Canada, or

(b) where the licensee has more than one such fare between two points in Canada and the amount of any of those fares is dependent on the time of day or day of the week of travel, or both, the highest of those fares; (*prix de base*)

Canadian means a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, a government in Canada or an agent of such a government or a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least seventy-five per cent, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians; (*Canadien*)

en vertu de la présente loi, en dépit du fait que sa nomination a été faite par le tribunal ou que ses attributions lui ont été confiées par celui-ci.

Modification

(2) L'Office ou le ministre peut, par arrêté, adapter les dispositions de la présente loi si, notamment pour insolvabilité ou vente hypothécaire, une entreprise de transport échappe, en tout ou en partie, à la gestion, à l'exploitation ou à la possession du transporteur en cause.

PARTIE II

Transport aérien

Définitions et champ d'application

Définitions

55 (1) Les définitions qui suivent s'appliquent à la présente partie.

aéronef S'entend au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*. (*aircraft*)

Canadien Citoyen canadien ou résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*; la notion englobe également les administrations publiques du Canada ou leurs mandataires et les personnes ou organismes, constitués au Canada sous le régime de lois fédérales ou provinciales et contrôlés de fait par des Canadiens, dont au moins soixante-quinze pour cent — ou tel pourcentage inférieur désigné par règlement du gouverneur en conseil — des actions assorties du droit de vote sont détenues et contrôlées par des Canadiens. (*Canadian*)

document d'aviation canadien S'entend au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*. (*Canadian aviation document*)

licencié Titulaire d'une licence délivrée par l'Office en application de la présente partie. (*licensee*)

prix de base

a) Prix du tarif du titulaire d'une licence intérieure qui est sans restriction et qui constitue le montant le moins élevé à payer pour le transport aller, entre deux points situés au Canada, d'un adulte accompagné d'une quantité normale de bagages;

Canadian aviation document has the same meaning as in subsection 3(1) of the *Aeronautics Act*; (*document d'aviation canadien*)

domestic licence means a licence issued under section 61; (*Version anglaise seulement*)

domestic service means an air service between points in Canada, from and to the same point in Canada or between Canada and a point outside Canada that is not in the territory of another country; (*service intérieur*)

international service means an air service between Canada and a point in the territory of another country; (*service international*)

licensee means the holder of a licence issued by the Agency under this Part; (*licencié*)

non-scheduled international licence means a licence issued under subsection 73(1); (*Version anglaise seulement*)

non-scheduled international service means an international service other than a scheduled international service; (*service international à la demande*)

prescribed means prescribed by regulations made under section 86; (*règlement*)

scheduled international licence means a licence issued under subsection 69(1); (*Version anglaise seulement*)

scheduled international service means an international service that is a scheduled service pursuant to

(a) an agreement or arrangement for the provision of that service to which Canada is a party, or

(b) a determination made under section 70; (*service international régulier*)

tariff means a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and other incidental services. (*tarif*)

Affiliation

(2) For the purposes of this Part,

(a) one corporation is affiliated with another corporation if

(i) one of them is a subsidiary of the other,

(ii) both are subsidiaries of the same corporation, or

(b) dans les cas où un tel prix peut varier selon le moment du jour ou de la semaine, ou des deux, auquel s'effectue le voyage, le montant le plus élevé de ce prix. (*basic fare*)

règlement Règlement pris au titre de l'article 86. (*prescribed*)

service aérien Service offert, par aéronef, au public pour le transport des passagers, des marchandises, ou des deux. (*air service*)

service intérieur Service aérien offert soit à l'intérieur du Canada, soit entre un point qui y est situé et un point qui lui est extérieur sans pour autant faire partie du territoire d'un autre pays. (*domestic service*)

service international Service aérien offert entre le Canada et l'étranger. (*international service*)

service international à la demande Service international autre qu'un service international régulier. (*non-scheduled international service*)

service international régulier Service international exploité à titre de service régulier aux termes d'un accord ou d'une entente à cet effet dont le Canada est signataire ou sous le régime d'une qualification faite en application de l'article 70. (*scheduled international service*)

tarif Barème des prix, taux, frais et autres conditions de transport applicables à la prestation d'un service aérien et des services connexes. (*tariff*)

texte d'application Arrêté ou règlement pris en application de la présente partie ou de telle de ses dispositions. (*French version only*)

Groupe

(2) Pour l'application de la présente partie :

(a) des personnes morales sont du même groupe si l'une est la filiale de l'autre, si toutes deux sont des filiales d'une même personne morale ou si chacune d'elles est contrôlée par la même personne;

- (iii)** both are controlled by the same person;
- (b)** if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other;
- (c)** a partnership or sole proprietorship is affiliated with another partnership or sole proprietorship if both are controlled by the same person;
- (d)** a corporation is affiliated with a partnership or a sole proprietorship if both are controlled by the same person;
- (e)** a corporation is a subsidiary of another corporation if it is controlled by that other corporation or by a subsidiary of that other corporation;
- (f)** a corporation is controlled by a person other than Her Majesty in right of Canada or a province if
- (i)** securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person, and
 - (ii)** the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;
- (g)** a corporation is controlled by Her Majesty in right of Canada or a province if
- (i)** the corporation is controlled by Her Majesty in the manner described in paragraph (f), or
 - (ii)** in the case of a corporation without share capital, a majority of the directors of the corporation, other than *ex officio* directors, are appointed by
 - (A)** the Governor in Council or the Lieutenant Governor in Council of the province, as the case may be, or
 - (B)** a Minister of the government of Canada or the province, as the case may be; and
- (h)** a partnership is controlled by a person if the person holds an interest in the partnership that entitles the person to receive more than 50% of the profits of the partnership or more than 50% of its assets on dissolution.
- b)** si deux personnes morales sont du groupe d'une même personne morale au même moment, elles sont réputées être du même groupe;
- c)** une société de personnes ou une entreprise individuelle est du groupe d'une autre société de personnes ou d'une autre entreprise individuelle si toutes deux sont contrôlées par la même personne;
- d)** une personne morale est du groupe d'une société de personnes ou d'une entreprise individuelle si toutes deux sont contrôlées par la même personne;
- e)** une personne morale est une filiale d'une autre personne morale si elle est contrôlée par cette autre personne morale ou par une filiale de celle-ci;
- f)** une personne morale est contrôlée par une personne autre que Sa Majesté du chef du Canada ou d'une province si :
- (i)** des valeurs mobilières de la personne morale conférant plus de cinquante pour cent des votes qui peuvent être exercés lors de l'élection des administrateurs de la personne morale en question sont détenues, directement ou indirectement, notamment par l'intermédiaire d'une ou de plusieurs filiales, autrement qu'à titre de garantie uniquement, par cette personne ou pour son bénéfice,
 - (ii)** les votes que comportent ces valeurs mobilières sont suffisants, en supposant leur exercice, pour élire une majorité des administrateurs de la personne morale;
- g)** une personne morale est contrôlée par Sa Majesté du chef du Canada ou d'une province si :
- (i)** la personne morale est contrôlée par Sa Majesté de la manière décrite à l'alinéa f),
 - (ii)** dans le cas d'une personne morale sans capital-actions, une majorité des administrateurs de la personne morale, autres que les administrateurs d'office, sont nommés par :
 - (A)** soit le gouverneur en conseil ou le lieutenant-gouverneur en conseil de la province, selon le cas,
 - (B)** soit un ministre du gouvernement du Canada ou de la province, selon le cas;
- h)** contrôle une société de personnes la personne qui détient dans cette société des titres de participation lui donnant droit de recevoir plus de cinquante pour cent des bénéfices de la société ou plus de cinquante pour

cent des éléments d'actif de celle-ci au moment de sa dissolution.

Definition of "person"

(3) In subsection (2), *person* includes an individual, a partnership, an association, a corporation, a trustee, an executor, a liquidator of a succession, an administrator or a legal representative.

Control in fact

(4) For greater certainty, nothing in subsection (2) shall be construed to affect the meaning of the expression "controlled in fact" in the definition "Canadian" in subsection (1).

1996, c. 10, s. 55; 2000, c. 15, s. 1; 2001, c. 27, s. 222.

Non-application of Part

56 (1) This Part does not apply to a person that uses an aircraft on behalf of the Canadian Armed Forces or any other armed forces cooperating with the Canadian Armed Forces.

Specialty service exclusion

(2) This Part does not apply to the operation of an air flight training service, aerial inspection service, aerial construction service, aerial photography service, aerial forest fire management service, aerial spraying service or any other prescribed air service.

Emergency service exclusion

(3) This Part does not apply to the provision of an air service if the federal government or a provincial or a municipal government declares an emergency under federal or provincial law, and that government directly or indirectly requests that the air service be provided to respond to the emergency.

Public interest

(4) The Minister may, by order, prohibit the provision of an air service under subsection (3) or require the discontinuance of that air service if, in the opinion of the Minister, it is in the public interest to do so.

Not a statutory instrument

(5) The order is not a statutory instrument within the meaning of the *Statutory Instruments Act*.

1996, c. 10, s. 56; 2007, c. 19, s. 14.

56.1 [Repealed, 2007, c. 19, s. 15]

56.2 [Repealed, 2007, c. 19, s. 15]

Définition de « personne »

(3) Au paragraphe (2), *personne* s'entend d'un particulier, d'une société de personnes, d'une association, d'une personne morale, d'un fiduciaire, d'un exécuteur testamentaire ou du liquidateur d'une succession, d'un tuteur, d'un curateur ou d'un mandataire.

Contrôle de fait

(4) Il demeure entendu que le paragraphe (2) n'a pas pour effet de modifier le sens de l'expression « contrôle de fait » dans la définition de « Canadien » au paragraphe (1).

1996, ch. 10, art. 55; 2000, ch. 15, art. 1; 2001, ch. 27, art. 222.

Exclusions – forces armées

56 (1) La présente partie ne s'applique pas aux personnes qui utilisent un aéronef pour le compte des Forces armées canadiennes ou des forces armées coopérant avec celles-ci.

Exclusion – services spécialisés

(2) La présente partie ne s'applique pas à l'exploitation d'un service aérien de formation en vol, d'inspection, de travaux publics ou de construction, de photographie, d'épandage, de contrôle des incendies de forêt ou autre service prévu par règlement.

Exclusion – urgences

(3) La présente partie ne s'applique pas à la fourniture d'un service aérien dans le cas où le gouvernement fédéral, le gouvernement d'une province ou une administration municipale déclare en vertu d'une loi fédérale ou provinciale qu'une situation de crise existe et présente directement ou indirectement une demande en vue d'obtenir ce service pour faire face à la situation de crise.

Intérêt public

(4) Le ministre peut, par arrêté, interdire la fourniture d'un service aérien au titre du paragraphe (3) ou exiger qu'il y soit mis fin s'il estime qu'il est dans l'intérêt public de le faire.

Loi sur les textes réglementaires

(5) Les arrêtés ne sont pas des textes réglementaires au sens de la *Loi sur les textes réglementaires*.

1996, ch. 10, art. 56; 2007, ch. 19, art. 14.

56.1 [Abrogé, 2007, ch. 19, art. 15]

56.2 [Abrogé, 2007, ch. 19, art. 15]

56.3 [Repealed, 2007, c. 19, s. 15]

56.4 [Repealed, 2007, c. 19, s. 15]

56.5 [Repealed, 2007, c. 19, s. 15]

56.6 [Repealed, 2007, c. 19, s. 15]

56.7 [Repealed, 2007, c. 19, s. 15]

Prohibitions

Prohibition re operation

57 No person shall operate an air service unless, in respect of that service, the person

- (a) holds a licence issued under this Part;
- (b) holds a Canadian aviation document; and
- (c) has the prescribed liability insurance coverage.

Licence not transferable

58 A licence issued under this Part for the operation of an air service is not transferable.

Prohibition re sale

59 No person shall sell, cause to be sold or publicly offer for sale in Canada an air service unless, if required under this Part, a person holds a licence issued under this Part in respect of that service and that licence is not suspended.

1996, c. 10, s. 59; 2007, c. 19, s. 16.

Provision of aircraft with flight crew

60 (1) No person shall provide all or part of an aircraft, with a flight crew, to a licensee for the purpose of providing an air service pursuant to the licensee's licence and no licensee shall provide an air service using all or part of an aircraft, with a flight crew, provided by another person except

- (a) in accordance with regulations made by the Agency respecting disclosure of the identity of the operator of the aircraft and other related matters; and
- (b) where prescribed, with the approval of the Agency.

Conditions and Ministerial directions

(2) Approval by the Agency under subsection (1) is subject to any directions to the Agency issued by the Minister and to any terms and conditions that the Agency may specify in the approval, including terms and conditions respecting routes to be followed, points or areas to be served, size and type of aircraft to be operated, schedules,

56.3 [Abrogé, 2007, ch. 19, art. 15]

56.4 [Abrogé, 2007, ch. 19, art. 15]

56.5 [Abrogé, 2007, ch. 19, art. 15]

56.6 [Abrogé, 2007, ch. 19, art. 15]

56.7 [Abrogé, 2007, ch. 19, art. 15]

Interdictions

Conditions d'exploitation

57 L'exploitation d'un service aérien est subordonnée à la détention, pour celui-ci, de la licence prévue par la présente partie, d'un document d'aviation canadien et de la police d'assurance responsabilité réglementaire.

Inaccessibilité

58 Les licences d'exploitation de services aériens sont inaccessibles.

Opérations visant le service

59 La vente, directe ou indirecte, et l'offre publique de vente, au Canada, d'un service aérien sont subordonnées à la détention, pour celui-ci, d'une licence en règle délivrée sous le régime de la présente partie.

1996, ch. 10, art. 59; 2007, ch. 19, art. 16.

Fourniture d'aéronefs

60 (1) La fourniture de tout ou partie d'aéronefs, avec équipage, à un licencié en vue de la prestation, conformément à sa licence, d'un service aérien et celle, par un licencié, d'un service aérien utilisant tout ou partie d'aéronefs, avec équipage, appartenant à un tiers sont assujetties :

- a) au respect des règlements, notamment en matière de divulgation de l'identité des exploitants d'aéronefs;
- b) si les règlements l'exigent, à l'autorisation de l'Office.

Directives ministérielles et conditions

(2) L'autorisation est assujettie aux directives que le ministre peut lui donner et peut comporter, lors de la délivrance ou par la suite en tant que de besoin, les conditions qu'il estime indiqué d'imposer, notamment en ce qui concerne les routes aériennes à suivre, les points ou régions à desservir, la dimension et la catégorie des aéro-

places of call, tariffs, fares, rates and charges, insurance, carriage of passengers and, subject to the *Canada Post Corporation Act*, carriage of goods.

Licence for Domestic Service

Issue of licence

61 On application to the Agency and on payment of the specified fee, the Agency shall issue a licence to operate a domestic service to the applicant if

(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant

(i) is a Canadian,

(ii) holds a Canadian aviation document in respect of the service to be provided under the licence,

(iii) has the prescribed liability insurance coverage in respect of the service to be provided under the licence, and

(iv) meets prescribed financial requirements; and

(b) the Agency is satisfied that the applicant has not contravened section 59 in respect of a domestic service within the preceding twelve months.

Qualification exemption

62 (1) Where the Minister considers it necessary or advisable in the public interest that a domestic licence be issued to a person who is not a Canadian, the Minister may, by order, on such terms and conditions as may be specified in the order, exempt the person from the application of subparagraph 61(a)(i) for the duration of the order.

Statutory Instruments Act

(2) The order is not a regulation for the purposes of the *Statutory Instruments Act*.

Publication

(3) The Minister must, as soon as feasible, make the name of the person who is exempted and the exemption's duration accessible to the public through the Internet or by any other means that the Minister considers appropriate.

1996, c. 10, s. 62; 2013, c. 31, s. 5.

nefs à exploiter, les horaires, les escales, les tarifs, l'assurance, le transport des passagers et, sous réserve de la *Loi sur la Société canadienne des postes*, celui des marchandises.

Service intérieur

Délivrance de la licence

61 L'Office, sur demande et paiement des droits indiqués, délivre une licence pour l'exploitation d'un service intérieur au demandeur :

a) qui, dans la demande, justifie du fait :

(i) qu'il est Canadien,

(ii) qu'à l'égard du service, il détient un document d'aviation canadien,

(iii) qu'à l'égard du service, il détient la police d'assurance responsabilité réglementaire,

(iv) qu'il remplit les exigences financières réglementaires;

b) dont il est convaincu qu'il n'a pas, dans les douze mois précédents, enfreint l'article 59 relativement à un service intérieur.

Exemption

62 (1) Lorsqu'il estime souhaitable ou nécessaire dans l'intérêt public de délivrer une licence intérieure à une personne qui n'a pas la qualité de Canadien, le ministre peut, par arrêté assorti ou non de conditions, l'exempter de l'obligation de justifier de cette qualité, l'exemption restant valide tant que l'arrêté reste en vigueur.

Loi sur les textes réglementaires

(2) L'arrêté n'est pas un règlement pour l'application de la *Loi sur les textes réglementaires*.

Publication

(3) Dès que possible, le ministre rend le nom de la personne bénéficiant de l'exemption et la durée de celle-ci accessibles au public par Internet ou par tout autre moyen qu'il estime indiqué.

1996, ch. 10, art. 62; 2013, ch. 31, art. 5.

Mandatory suspension or cancellation

63 (1) The Agency shall suspend or cancel the domestic licence of a person where the Agency determines that, in respect of the service for which the licence was issued, the person ceases to meet any of the requirements of subparagraphs 61(a)(i) to (iii).

Discretionary suspension or cancellation

(2) The Agency may suspend or cancel a domestic licence

(a) where the Agency determines that, in respect of the service for which the domestic licence was issued, the licensee has contravened, or does not meet the requirements of, any regulation or order made under this Part or any provision of this Part other than subparagraphs 61(a)(i) to (iii); or

(b) subject to section 64, in accordance with a request from the licensee for the suspension or cancellation.

Reinstatement condition

(3) The Agency shall not reinstate a domestic licence that has been suspended for sixty days or longer unless the licensee establishes to the satisfaction of the Agency that the person meets the prescribed financial requirements.

Notice of discontinuance or reduction of certain services

64 (1) Where a licensee proposes to discontinue a domestic service or to reduce the frequency of such a service to a point to less than one flight per week and, as a result of the proposed discontinuance or reduction, there will be only one licensee or no licensee offering at least one flight per week to that point, the licensee shall give notice of the proposal in prescribed form and manner to such persons as are prescribed.

Notice of discontinuance of certain services

(1.1) If a licensee proposes to discontinue its year-round non-stop scheduled air service between two points in Canada and that discontinuance would result in a reduction, as compared to the week before the proposal is to take effect, of at least 50% of the weekly passenger-carrying capacity of all licensees operating year-round non-stop scheduled air services between those two points, the licensee shall give notice of the proposal in the prescribed form and manner to the prescribed persons.

Discussion with elected officials

(1.2) A licensee shall, as soon as practicable, provide an opportunity for elected officials of the municipal or local government of the community of the point or points, as

Suspension ou annulation obligatoire

63 (1) L'Office suspend ou annule la licence s'il est convaincu que le licencié ne répond plus à telle des conditions mentionnées aux sous-alinéas 61a)(i) à (iii).

Suspension ou annulation facultative

(2) L'Office peut suspendre ou annuler la licence :

a) s'il est convaincu que le licencié a, relativement au service, enfreint d'autres conditions que celles mentionnées au paragraphe (1) ou telle des dispositions de la présente partie ou de ses textes d'application;

b) sous réserve de l'article 64, sur demande du licencié.

Rétablissement de la licence

(3) L'Office ne peut rétablir une licence suspendue depuis au moins soixante jours que si l'intéressé justifie du fait qu'il remplit les exigences financières réglementaires.

Interruption ou réduction de services

64 (1) Le licencié qui se propose d'interrompre un service intérieur à un point ou d'en ramener la fréquence à moins d'un vol hebdomadaire est tenu, si cette mesure a pour effet qu'il y aura au plus un licencié offrant un service à une fréquence minimale d'un vol hebdomadaire, d'aviser, en la forme et selon les modalités réglementaires, les destinataires désignés par règlement.

Avis d'interruption de services

(1.1) Le licencié qui se propose d'interrompre un service aérien régulier sans escale offert à longueur d'année entre deux points au Canada, est tenu d'en aviser, selon les modalités réglementaires, les personnes désignées par règlement si l'interruption aurait pour effet de réduire d'au moins cinquante pour cent la capacité hebdomadaire de transport de passagers, par rapport à celle de la semaine précédant son entrée en vigueur, de l'ensemble des licenciés offrant à longueur d'année des services aériens réguliers sans escale entre ces deux points.

Consultation

(1.2) Le licencié offre dans les meilleurs délais aux représentants élus des administrations municipales ou locales de la collectivité où se trouvent le ou les points touchés la possibilité de le rencontrer et de discuter avec lui

the case may be, to meet and discuss with the licensee the impact of the proposed discontinuance or reduction.

Notice period

(2) A licensee shall not implement a proposal referred to in subsection (1) or (1.1) until the expiry of 120 days, or 30 days if the service referred to in that subsection has been in operation for less than one year, after the notice is given or until the expiry of any shorter period that the Agency may, on application by the licensee, specify by order.

Considerations re whether exemption to be granted

(3) In considering whether to specify a shorter period under subsection (2), the Agency shall have regard to

- (a)** the adequacy of alternative modes of public transportation available at or in the vicinity of the point referred to in subsection (1) or between the points referred to in subsection (1.1);
- (b)** other means by which air service to the point or between the points is or is likely to be provided;
- (c)** whether the licensee has complied with subsection (1.2); and
- (d)** the particular circumstances of the licensee.

Definition of “non-stop scheduled air service”

(4) In this section, *non-stop scheduled air service* means an air service operated between two points without any stops in accordance with a published timetable or on a regular basis.

1996, c. 10, s. 64; 2000, c. 15, s. 3; 2007, c. 19, s. 17.

Complaints re non-compliance

65 Where, on complaint in writing to the Agency by any person, the Agency finds that a licensee has failed to comply with section 64 and that it is practicable in the circumstances for the licensee to comply with an order under this section, the Agency may, by order, direct the licensee to reinstate the service referred to in that section

- (a)** for such a period, not exceeding 120 days after the date of the finding by the Agency, as the Agency deems appropriate; and
- (b)** at such a frequency as the Agency may specify.

1996, c. 10, s. 65; 2007, c. 19, s. 18.

Unreasonable fares or rates

66 (1) If, on complaint in writing to the Agency by any person, the Agency finds that a licensee, including affiliated licensees, is the only person providing a domestic

de l'effet qu'auraient l'interruption ou la réduction du service.

Délai

(2) Le licencié ne peut donner suite au projet mentionné aux paragraphes (1) ou (1.1) avant l'expiration soit de cent vingt jours ou, dans le cas où le service visé à ces paragraphes est offert depuis moins d'un an, des trente jours suivant la signification de l'avis, soit du délai inférieur fixé, à sa demande, par ordonnance de l'Office.

Examen relatif à l'exemption

(3) Pour décider s'il convient de fixer un délai inférieur, l'Office tient compte :

- a)** du fait que les autres modes de transport desservant le point visé au paragraphe (1), ou ses environs, ou existant entre les points visés au paragraphe (1.1), sont satisfaisants ou non;
- b)** de l'existence ou de la probabilité d'autres liaisons aériennes à destination du point ou entre les points;
- c)** du fait que le licencié a respecté ou non les exigences du paragraphe (1.2);
- d)** de la situation particulière du licencié.

Définition de « service aérien régulier sans escale »

(4) Au présent article, *service aérien régulier sans escale* s'entend d'un service aérien sans escale offert entre deux points soit régulièrement, soit conformément à un horaire publié.

1996, ch. 10, art. 64; 2000, ch. 15, art. 3.; 2007, ch. 19, art. 17.

Plaintes relatives aux infractions

65 L'Office, saisi d'une plainte formulée par écrit à l'encontre d'un licencié, peut, s'il constate que celui-ci ne s'est pas conformé à l'article 64 et que les circonstances permettent à celui-ci de se conformer à l'arrêté, ordonner à celui-ci de rétablir le service pour la période, d'au plus cent vingt jours après la date de son constat, qu'il estime indiquée, et selon la fréquence qu'il peut fixer.

1996, ch. 10, art. 65; 2007, ch. 19, art. 18.

Prix ou taux excessifs

66 (1) S'il conclut, sur dépôt d'une plainte, qu'un licencié, y compris les licenciés de son groupe, est la seule personne à offrir un service intérieur entre deux points,

service between two points and that a fare, cargo rate or increase in a fare or cargo rate published or offered in respect of the service is unreasonable, the Agency may, by order,

- (a) disallow the fare, rate or increase;
- (b) direct the licensee to amend its tariff by reducing the fare, rate or increase by the amounts and for the periods that the Agency considers reasonable in the circumstances; or
- (c) direct the licensee, if practicable, to refund amounts specified by the Agency, with interest calculated in the prescribed manner, to persons determined by the Agency to have been overcharged by the licensee.

Complaint of inadequate range of fares or rates

(2) If, on complaint in writing to the Agency by any person, the Agency finds that a licensee, including affiliated licensees, is the only person providing a domestic service between two points and that it is offering an inadequate range of fares or cargo rates in respect of that service, the Agency may, by order, direct the licensee, for a period that the Agency considers reasonable in the circumstances, to publish and apply in respect of that service one or more additional fares or cargo rates that the Agency considers reasonable in the circumstances.

Relevant information

(3) When making a finding under subsection (1) or (2) that a fare, cargo rate or increase in a fare or cargo rate published or offered in respect of a domestic service between two points is unreasonable or that a licensee is offering an inadequate range of fares or cargo rates in respect of a domestic service between two points, the Agency may take into consideration any information or factor that it considers relevant, including

- (a) historical data respecting fares or cargo rates applicable to domestic services between those two points;
- (b) fares or cargo rates applicable to similar domestic services offered by the licensee and one or more other licensees, including terms and conditions related to the fares or cargo rates, the number of seats available at those fares and the cargo capacity and cargo container types available at those rates;
- (b.1) the competition from other modes of transportation, if the finding is in respect of a cargo rate, an increase in a cargo rate or a range of cargo rates; and

d'une part, et qu'un prix ou un taux, ou une augmentation de prix ou de taux, publiés ou appliqués à l'égard de ce service sont excessifs, d'autre part, l'Office peut, par ordonnance :

- a) annuler le prix, le taux ou l'augmentation;
- b) enjoindre au licencié de modifier son tarif afin de réduire d'une somme, et pour une période, qu'il estime indiquées dans les circonstances le prix, le taux ou l'augmentation;
- c) lui enjoindre de rembourser, si possible, les sommes qu'il détermine, majorées des intérêts calculés de la manière réglementaire, aux personnes qui, selon lui, ont versé des sommes en trop.

Gamme de prix insuffisante

(2) S'il conclut, sur dépôt d'une plainte, qu'un licencié, y compris les licenciés de son groupe, est la seule personne à offrir un service intérieur entre deux points, d'une part, et que celui-ci offre une gamme de prix ou de taux insuffisante à l'égard de ce service, d'autre part, l'Office peut, par ordonnance, enjoindre au licencié, pour la période qu'il estime indiquée dans les circonstances, de publier et d'appliquer à l'égard de ce service un ou plusieurs prix ou taux supplémentaires qu'il estime indiqués dans les circonstances.

Facteurs à prendre en compte

(3) Pour décider, au titre des paragraphes (1) ou (2), si le prix, le taux ou l'augmentation de prix ou de taux publiés ou appliqués à l'égard d'un service intérieur entre deux points sont excessifs ou si le licencié offre une gamme de prix ou de taux insuffisante à l'égard d'un service intérieur entre deux points, l'Office peut tenir compte de tout renseignement ou facteur qu'il estime pertinent, notamment :

- a) de renseignements relatifs aux prix ou aux taux appliqués antérieurement à l'égard des services intérieurs entre ces deux points;
- b) des prix ou des taux applicables à l'égard des services intérieurs similaires offerts par le licencié et un ou plusieurs autres licenciés, y compris les conditions relatives aux prix ou aux taux applicables, le nombre de places offertes à ces prix et la capacité de transport et les types de conteneurs pour le transport disponibles à ces taux;
- b.1) de la concurrence des autres moyens de transport, si la décision vise le taux, l'augmentation de taux ou la gamme de taux;

(c) any other information provided by the licensee, including information that the licensee is required to provide under section 83.

Alternative domestic services

(4) The Agency may find that a licensee is the only person providing a domestic service between two points if every alternative domestic service between those points is, in the Agency's opinion, unreasonable, taking into consideration the number of stops, the number of seats offered, the frequency of service, the flight connections and the total travel time and, more specifically, in the case of cargo, the cargo capacity and cargo container types available.

Alternative service

(4.1) The Agency shall not make an order under subsection (1) or (2) in respect of a licensee found by the Agency to be the only person providing a domestic service between two points if, in the Agency's opinion, there exists another domestic service that is not between the two points but is a reasonable alternative taking into consideration the convenience of access to the service, the number of stops, the number of seats offered, the frequency of service, the flight connections and the total travel time and, more specifically, in the case of cargo, the cargo capacity and cargo container types available.

Consideration of representations

(5) Before making a direction under paragraph (1)(b) or subsection (2), the Agency shall consider any representations that the licensee has made with respect to what is reasonable in the circumstances.

(6) and (7) [Repealed, 2007, c. 19, s. 19]

Confidentiality of information

(8) The Agency may take any measures or make any order that it considers necessary to protect the confidentiality of any of the following information that it is considering in the course of any proceedings under this section:

- (a) information that constitutes a trade secret;
- (b) information the disclosure of which would likely cause material financial loss to, or prejudice to the competitive position of, the person providing the information or on whose behalf it is provided; and
- (c) information the disclosure of which would likely interfere with contractual or other negotiations being conducted by the person providing the information or on whose behalf it is provided.

1996, c. 10, s. 66; 2000, c. 15, s. 4; 2007, c. 19, s. 19.

(c) des autres renseignements que lui fournit le licencié, y compris ceux qu'il est tenu de fournir au titre de l'article 83.

Services insuffisants

(4) L'Office peut conclure qu'un licencié est la seule personne à offrir un service intérieur entre deux points s'il estime que tous les autres services intérieurs offerts entre ces points sont insuffisants, compte tenu du nombre d'escales, de correspondances ou de places disponibles, de la fréquence des vols et de la durée totale du voyage et, plus précisément, dans le cas du transport de marchandises, de la capacité de transport et des types de conteneurs disponibles.

Autres services

(4.1) L'Office ne rend pas l'ordonnance prévue aux paragraphes (1) ou (2) à l'égard du licencié s'il conclut que celui-ci est la seule personne à offrir un service intérieur entre deux points et s'il estime qu'il existe un autre service intérieur, qui n'est pas offert entre ces deux points, mais qui est suffisant compte tenu de la commodité de l'accès au service, du nombre d'escales, de correspondances ou de places disponibles, de la fréquence des vols et de la durée totale du voyage et, plus précisément, dans le cas du transport de marchandises, de la capacité de transport et des types de conteneurs disponibles.

Représentations

(5) Avant de rendre l'ordonnance mentionnée à l'alinéa (1)b) ou au paragraphe (2), l'Office tient compte des observations du licencié sur les mesures qui seraient justifiées dans les circonstances.

(6) et (7) [Abrogés, 2007, ch. 19, art. 19]

Confidentialité des renseignements

(8) L'Office peut prendre toute mesure, ou rendre toute ordonnance, qu'il estime indiquée pour assurer la confidentialité des renseignements ci-après qu'il examine dans le cadre du présent article :

- a) les renseignements qui constituent un secret industriel;
- b) les renseignements dont la divulgation risquerait vraisemblablement de causer des pertes financières importantes à la personne qui les a fournis ou de nuire à sa compétitivité;
- c) les renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations — contractuelles ou autres — menées par la personne qui les a fournis.

1996, ch. 10, art. 66; 2000, ch. 15, art. 4; 2007, ch. 19, art. 19.

Tariffs to be made public

67 (1) The holder of a domestic licence shall

- (a)** display in a prominent place at the business offices of the licensee a sign indicating that the tariffs for the domestic service offered by the licensee, including the terms and conditions of carriage, are available for public inspection at the business offices of the licensee, and allow the public to make such inspections;
- (a.1)** publish the terms and conditions of carriage on any Internet site used by the licensee for selling the domestic service offered by the licensee;
- (b)** in its tariffs, specifically identify the basic fare between all points for which a domestic service is offered by the licensee; and
- (c)** retain a record of its tariffs for a period of not less than three years after the tariffs have ceased to have effect.

Prescribed tariff information to be included

(2) A tariff referred to in subsection (1) shall include such information as may be prescribed.

No fares, etc., unless set out in tariff

(3) The holder of a domestic licence shall not apply any fare, rate, charge or term or condition of carriage applicable to the domestic service it offers unless the fare, rate, charge, term or condition is set out in a tariff that has been published or displayed under subsection (1) and is in effect.

Copy of tariff on payment of fee

(4) The holder of a domestic licence shall provide a copy or excerpt of its tariffs to any person on request and on payment of a fee not exceeding the cost of making the copy or excerpt.

1996, c. 10, s. 67; 2000, c. 15, s. 5; 2007, c. 19, s. 20.

Fares or rates not set out in tariff

67.1 If, on complaint in writing to the Agency by any person, the Agency finds that, contrary to subsection 67(3), the holder of a domestic licence has applied a fare, rate, charge or term or condition of carriage applicable to the domestic service it offers that is not set out in its tariffs, the Agency may order the licensee to

- (a)** apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs;
- (b)** compensate any person adversely affected for any expenses they incurred as a result of the licensee's fail-

Publication des tarifs

67 (1) Le licencié doit :

- a)** poser à ses bureaux, dans un endroit bien en vue, une affiche indiquant que les tarifs et notamment les conditions de transport pour le service intérieur qu'il offre sont à la disposition du public pour consultation à ses bureaux et permettre au public de les consulter;
- a.1)** publier les conditions de transport sur tout site Internet qu'il utilise pour vendre le service intérieur;
- b)** indiquer clairement dans ses tarifs le prix de base du service intérieur qu'il offre entre tous les points qu'il dessert;
- c)** conserver ses tarifs en archive pour une période minimale de trois ans après leur cessation d'effet.

Renseignements tarifaires

(2) Les tarifs comportent les renseignements exigés par règlement.

Interdiction

(3) Le titulaire d'une licence intérieure ne peut appliquer à l'égard d'un service intérieur que le prix, le taux, les frais ou les conditions de transport applicables figurant dans le tarif en vigueur publié ou affiché conformément au paragraphe (1).

Exemplaire du tarif

(4) Il fournit un exemplaire de tout ou partie de ses tarifs sur demande et paiement de frais non supérieurs au coût de reproduction de l'exemplaire.

1996, ch. 10, art. 67; 2000, ch. 15, art. 5; 2007, ch. 19, art. 20.

Prix, taux, frais ou conditions non inclus au tarif

67.1 S'il conclut, sur dépôt d'une plainte, que le titulaire d'une licence intérieure a, contrairement au paragraphe 67(3), appliqué à l'un de ses services intérieurs un prix, un taux, des frais ou d'autres conditions de transport ne figurant pas au tarif, l'Office peut, par ordonnance, lui enjoindre :

- a)** d'appliquer un prix, un taux, des frais ou d'autres conditions de transport figurant au tarif;
- b)** d'indemniser toute personne lésée des dépenses qu'elle a supportées consécutivement à la non-applica-

ure to apply a fare, rate, charge or term or condition of carriage that was set out in its tariffs; and

(c) take any other appropriate corrective measures.

2000, c. 15, s. 6; 2007, c. 19, s. 21.

When unreasonable or unduly discriminatory terms or conditions

67.2 (1) If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

Prohibition on advertising

(2) The holder of a domestic licence shall not advertise or apply any term or condition of carriage that is suspended or has been disallowed.

2000, c. 15, s. 6; 2007, c. 19, s. 22(F).

Non-application of fares, etc.

68 (1) Sections 66 to 67.2 do not apply in respect of fares, rates or charges applicable to a domestic service provided for under a contract between a holder of a domestic licence and another person whereby the parties to the contract agree to keep its provisions confidential.

Non-application of terms and conditions

(1.1) Sections 66 to 67.2 do not apply in respect of terms and conditions of carriage applicable to a domestic service provided for under a contract referred to in subsection (1) to which an employer is a party and that relates to travel by its employees.

Provisions regarding exclusive use of services

(2) The parties to the contract shall not include in it provisions with respect to the exclusive use by the other person of a domestic service operated by the holder of the domestic licence between two points in accordance with a published timetable or on a regular basis, unless the contract is for all or a significant portion of the capacity of a flight or a series of flights.

Retention of contract required

(3) The holder of a domestic licence who is a party to the contract shall retain a copy of it for a period of not less than three years after it has ceased to have effect and, on request made within that period, shall provide a copy of it to the Agency.

1996, c. 10, s. 68; 2000, c. 15, s. 7; 2007, c. 19, s. 23.

tion du prix, du taux, des frais ou des autres conditions qui figuraient au tarif;

(c) de prendre toute autre mesure corrective indiquée.

2000, ch. 15, art. 6; 2007, ch. 19, art. 21.

Conditions déraisonnables

67.2 (1) S'il conclut, sur dépôt d'une plainte, que le titulaire d'une licence intérieure a appliqué pour un de ses services intérieurs des conditions de transport déraisonnables ou injustement discriminatoires, l'Office peut suspendre ou annuler ces conditions et leur en substituer de nouvelles.

Interdiction d'annoncer

(2) Il est interdit au titulaire d'une licence intérieure d'annoncer ou d'appliquer une condition de transport suspendue ou annulée.

2000, ch. 15, art. 6; 2007, ch. 19, art. 22(F).

Non-application de certaines dispositions

68 (1) Les articles 66 à 67.2 ne s'appliquent pas aux prix, taux ou frais applicables au service intérieur qui fait l'objet d'un contrat entre le titulaire d'une licence intérieure et une autre personne et par lequel les parties conviennent d'en garder les stipulations confidentielles.

Non-application aux conditions de transport

(1.1) Les articles 66 à 67.2 ne s'appliquent pas aux conditions de transport applicables au service intérieur qui fait l'objet d'un contrat visé au paragraphe (1) portant sur les voyages d'employés faits pour le compte d'un employeur qui est partie au contrat.

Stipulations interdites

(2) Le contrat ne peut comporter aucune clause relative à l'usage exclusif par l'autre partie des services intérieurs offerts entre deux points par le titulaire de la licence intérieure, soit régulièrement, soit conformément à un horaire publié, sauf s'il porte sur la totalité ou une partie importante des places disponibles sur un vol ou une série de vols.

Double à conserver

(3) Le titulaire d'une licence intérieure est tenu de conserver, au moins trois ans après son expiration, un double du contrat et d'en fournir un exemplaire à l'Office pendant cette période s'il lui en fait la demande.

1996, ch. 10, art. 68; 2000, ch. 15, art. 7; 2007, ch. 19, art. 23.

Licence for Scheduled International Service

Issue of licence

69 (1) On application to the Agency and on payment of the specified fee, the Agency shall issue a licence to operate a scheduled international service to the applicant if

- (a)** the applicant establishes in the application to the satisfaction of the Agency that the applicant
 - (i)** is, pursuant to subsection (2) or (3), eligible to hold the licence,
 - (ii)** holds a Canadian aviation document in respect of the service to be provided under the licence,
 - (iii)** has the prescribed liability insurance coverage in respect of the service to be provided under the licence, and
 - (iv)** where the applicant is a Canadian, meets the prescribed financial requirements; and
- (b)** the Agency is satisfied that the applicant has not contravened section 59 in respect of the service to be provided under the licence within the preceding twelve months.

Eligibility of Canadians

(2) The Minister may, in writing, designate any Canadian as eligible to hold a scheduled international licence. That Canadian remains eligible while the designation remains in force.

Eligibility of non-Canadians

(3) A non-Canadian is eligible to hold a scheduled international licence if the non-Canadian

- (a)** has been designated by a foreign government or an agent of a foreign government to operate an air service under the terms of an agreement or arrangement between that government and the Government of Canada; and
- (b)** holds, in respect of the air service, a document issued by a foreign government or agent that, in respect of the service to be provided under the document, is equivalent to a scheduled international licence.

1996, c. 10, s. 69; 2013, c. 31, s. 6.

Service international régulier

Délivrance de la licence

69 (1) L'Office, sur demande et paiement des droits indiqués, délivre une licence pour l'exploitation d'un service international régulier au demandeur :

- a)** qui, dans la demande, justifie du fait :
 - (i)** qu'il y est habilité, sous le régime des paragraphes (2) ou (3),
 - (ii)** qu'à l'égard du service, il détient un document d'aviation canadien,
 - (iii)** qu'à l'égard du service, il détient la police d'assurance responsabilité réglementaire,
 - (iv)** qu'il remplit, s'agissant d'un Canadien, les exigences financières réglementaires;
- b)** dont il est convaincu qu'il n'a pas, dans les douze mois précédents, enfreint l'article 59 relativement au service.

Habilitation des Canadiens

(2) Le ministre peut, par écrit, désigner des Canadiens qu'il habilite à détenir une licence pour l'exploitation d'un service international régulier; l'habilitation reste valide tant que la désignation est en vigueur.

Habilitation des non-Canadiens

(3) Peut détenir une telle licence le non-Canadien qui :

- a)** a fait l'objet, de la part d'un gouvernement étranger ou du mandataire de celui-ci, d'une désignation l'habilitant à exploiter un service aérien aux termes d'un accord ou d'une entente entre ce gouvernement et celui du Canada;
- b)** détient en outre, à l'égard du service, un document délivré par un gouvernement étranger, ou par son mandataire, équivalant à une licence internationale service régulier.

1996, ch. 10, art. 69; 2013, ch. 31, art. 6.

Determination of scheduled international service

70 The Minister may, in writing to the Agency,

- (a) determine that an international service is a scheduled international service; or
- (b) withdraw a determination made under paragraph (a).

Terms and conditions of scheduled international licence

71 (1) Subject to any directions issued to the Agency under section 76, the Agency may, on the issuance of a scheduled international licence or from time to time thereafter, make the licence subject, in addition to any terms and conditions prescribed in respect of the licence, to such terms and conditions as the Agency deems to be consistent with the agreement, convention or arrangement pursuant to which the licence is being issued, including terms and conditions respecting routes to be followed, points or areas to be served, size and type of aircraft to be operated, schedules, places of call, tariffs, fares, rates and charges, insurance, carriage of passengers and, subject to the *Canada Post Corporation Act*, carriage of goods.

Compliance with terms and conditions

(2) The holder of a scheduled international licence shall comply with every term and condition to which the licence is subject.

Mandatory suspension or cancellation

72 (1) The Agency shall suspend or cancel a scheduled international licence where the Agency determines that, in respect of the service for which the licence was issued, the licensee ceases to meet any of the requirements of subparagraphs 69(1)(a)(i) to (iii).

Discretionary suspension or cancellation

(2) The Agency may suspend or cancel a scheduled international licence

- (a) where the Agency determines that, in respect of the service for which the licence was issued, the licensee has contravened, or does not meet the requirements of, any regulation or order made under this Part or any provision of this Part other than subparagraphs 69(1)(a)(i) to (iii); or
- (b) in accordance with a request from the licensee for the suspension or cancellation.

Qualification : service international régulier

70 Le ministre peut, par note expédiée à l'Office, qualifier de régulier un service international ou révoquer une telle qualification.

Conditions liées à la licence

71 (1) Sous réserve des directives visées à l'article 76, l'Office peut, lors de la délivrance de la licence ou par la suite en tant que de besoin, assujettir celle-ci aux conditions — outre les conditions réglementaires — réputées conformes à l'accord, la convention ou l'entente au titre duquel elle est délivrée, notamment en ce qui concerne les routes aériennes à suivre, les points ou régions à desservir, la dimension et la catégorie des aéronefs à exploiter, les horaires, les escales, les tarifs, l'assurance, le transport des passagers et, sous réserve de la *Loi sur la Société canadienne des postes*, celui des marchandises.

Obligations du licencié

(2) Le licencié est tenu de respecter toutes les conditions auxquelles sa licence est assujettie.

Suspension ou annulation obligatoire

72 (1) L'Office suspend ou annule la licence s'il est convaincu que le licencié ne répond plus à telle des conditions mentionnées aux sous-alinéas 69(1)a)(i) à (iii).

Suspension ou annulation facultative

(2) L'Office peut suspendre ou annuler la licence :

- a) s'il est convaincu que le licencié a, relativement au service, enfreint des conditions autres que celles mentionnées au paragraphe (1) ou telle des dispositions de la présente partie ou de ses textes d'application;
- b) sur demande du licencié.

Reinstatement condition

(3) The Agency shall not reinstate the scheduled international licence of a Canadian that has been suspended for sixty days or longer unless the Canadian establishes to the satisfaction of the Agency that the Canadian meets the prescribed financial requirements.

Licence for Non-scheduled International Service

Issue of licence

73 (1) Subject to any directions issued to the Agency under section 76, on application to the Agency and on payment of the specified fee, the Agency shall issue a licence to operate a non-scheduled international service to the applicant if

(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant

(i) is a Canadian,

(ii) holds a Canadian aviation document in respect of the service to be provided under the licence,

(iii) has the prescribed liability insurance coverage in respect of the service to be provided under the licence, and

(iv) meets prescribed financial requirements; and

(b) the Agency is satisfied that the applicant has not contravened section 59 in respect of the service to be provided under the licence within the preceding twelve months.

Non-Canadian applicant

(2) Subject to any directions issued to the Agency under section 76, on application to the Agency and on payment of the specified fee, the Agency may issue a non-scheduled international licence to a non-Canadian applicant if the applicant establishes in the application to the satisfaction of the Agency that the applicant

(a) holds a document issued by the government of the applicant's state or an agent of that government that, in respect of the service to be provided under the document, is equivalent to the non-scheduled international licence for which the application is being made; and

(b) meets the requirements of subparagraphs (1)(a)(ii) and (iii) and paragraph (1)(b).

Rétablissement de la licence

(3) L'Office ne peut rétablir la licence d'un Canadien suspendue depuis au moins soixante jours que si celui-ci justifie du fait qu'il remplit les exigences financières réglementaires.

Service international à la demande

Délivrance aux Canadiens

73 (1) Sous réserve des directives visées à l'article 76, l'Office, sur demande et paiement des droits indiqués, délivre une licence pour l'exploitation d'un service international à la demande au demandeur :

a) qui, dans la demande, justifie du fait :

(i) qu'il est Canadien,

(ii) qu'à l'égard du service, il détient un document d'aviation canadien,

(iii) qu'à l'égard du service, il détient la police d'assurance responsabilité réglementaire,

(iv) qu'il remplit les exigences financières réglementaires;

b) dont il est convaincu qu'il n'a pas, dans les douze mois précédents, enfreint l'article 59 relativement au service à offrir.

Délivrance aux non-Canadiens

(2) Sous réserve des directives visées à l'article 76, l'Office, sur demande et paiement des droits indiqués, peut délivrer une licence pour l'exploitation d'un service international à la demande au non-Canadien qui, dans la demande, justifie du fait, qu'à l'égard du service :

a) il détient un document, délivré par le gouvernement de son État ou par son mandataire, équivalant à une licence internationale service à la demande;

b) il remplit les conditions mentionnées aux sous-alinéas (1)a)(ii) et (iii) et à l'alinéa (1)b).

Terms and conditions of non-scheduled international licence

74 (1) Subject to any directions issued to the Agency under section 76, the Agency may, on the issuance of a non-scheduled international licence or from time to time thereafter, make the licence subject, in addition to any terms and conditions prescribed in respect of the licence, to such terms and conditions as the Agency deems appropriate, including terms and conditions respecting points or areas to be served, size and type of aircraft to be operated, schedules, places of call, tariffs, fares, rates and charges, insurance, carriage of passengers and, subject to the *Canada Post Corporation Act*, carriage of goods.

Compliance with terms and conditions

(2) The holder of a non-scheduled international licence shall comply with every term and condition to which the licence is subject.

Mandatory suspension or cancellation

75 (1) The Agency shall suspend or cancel a non-scheduled international licence where the Agency determines that, in respect of the service for which the licence was issued, the licensee ceases to meet any of the requirements of

(a) in respect of a Canadian licensee, subparagraphs 73(1)(a)(i) to (iii); and

(b) in respect of a non-Canadian licensee, subparagraphs 73(1)(a)(ii) and (iii) and paragraph 73(2)(a).

Discretionary suspension or cancellation

(2) The Agency may suspend or cancel a non-scheduled international licence

(a) where the Agency determines that, in respect of the service for which the licence was issued, the licensee has contravened, or does not meet the requirements of, any regulation or order made under this Part or any provision of this Part other than the provisions referred to in paragraphs (1)(a) and (b); or

(b) in accordance with a request from the licensee for the suspension or cancellation.

Reinstatement condition

(3) The Agency shall not reinstate the non-scheduled international licence of a Canadian that has been suspended for sixty days or longer unless the Canadian establishes to the satisfaction of the Agency that the Canadian meets the prescribed financial requirements.

Conditions liées à la licence

74 (1) Sous réserve des directives visées à l'article 76, l'Office peut, lors de la délivrance de la licence ou par la suite en tant que de besoin, assujettir celle-ci aux conditions — outre les conditions réglementaires — qu'il estime indiqué d'imposer, notamment en ce qui concerne les points ou régions à desservir, la dimension et la catégorie des aéronefs à exploiter, les horaires, les escales, les tarifs, l'assurance, le transport des passagers et, sous réserve de la *Loi sur la Société canadienne des postes*, celui des marchandises.

Obligations du licencié

(2) Le licencié est tenu de respecter toutes les conditions auxquelles sa licence est assujettie.

Suspension ou annulation obligatoire

75 (1) L'Office suspend ou annule la licence s'il est convaincu que le licencié ne répond plus à telle des conditions mentionnées, pour un Canadien, aux sous-alinéas 73(1)a)(i) à (iii) et, pour un non-Canadien, aux sous-alinéas 73(1)a)(ii) et (iii) ou à l'alinéa 73(2)a).

Suspension ou annulation facultative

(2) L'Office peut suspendre ou annuler la licence :

a) s'il est convaincu que le licencié a, relativement au service, enfreint des conditions autres que celles mentionnées au paragraphe (1) ou telle des dispositions de la présente partie ou de ses textes d'application;

b) sur demande du licencié.

Rétablissement de la licence

(3) L'Office ne peut rétablir la licence d'un Canadien suspendue depuis au moins soixante jours que si celui-ci justifie du fait qu'il remplit les exigences financières réglementaires.

Issuance of International Charter Permits

Issuance, amendment and cancellation of permits

75.1 The issuance of a permit for the operation of an international charter to a licensee and the amendment or cancellation of the permit shall be made in accordance with regulations made under paragraph 86(1)(e).

2007, c. 19, s. 24.

Ministerial Directions for International Service

Minister may issue directions

76 (1) Where the Minister determines that it is necessary or advisable to provide direction to the Agency in respect of the exercise of any of its powers or the performance of any of its duties or functions under this Part relating to international service,

(a) in the interest of the safety or security of international civil aviation,

(b) in connection with the implementation or administration of an international agreement, convention or arrangement respecting civil aviation to which Canada is a party,

(c) in the interest of international comity or reciprocity,

(d) for the purpose of enforcing Canada's rights under an international agreement, convention or arrangement respecting civil aviation or responding to acts, policies or practices by a contracting party to any such agreement, convention or arrangement, or by an agency or citizen of such a party, that adversely affect or lead either directly or indirectly to adverse effects on Canadian international civil aviation services, or

(e) in connection with any other matter concerning international civil aviation as it affects the public interest,

the Minister may, subject to subsection (3), issue to the Agency directions that, notwithstanding any other provision of this Part, are binding on, and shall be complied with by, the Agency in the exercise of its powers or the performance of its duties or functions under this Part relating to international service.

Nature of directions

(2) Directions issued under subsection (1) may relate to

Délivrance de permis d'affrètement international

Délivrance, modification et annulation de permis

75.1 La délivrance d'un permis d'affrètement international à un licencié, de même que la modification ou l'annulation d'un tel permis, est faite en conformité avec les règlements pris en vertu de l'alinéa 86(1)e).

2007, ch. 19, art. 24.

Directives ministérielles en matière de service international

Directives ministérielles

76 (1) Le ministre peut donner des directives à l'Office, s'il l'estime nécessaire ou souhaitable aux fins suivantes dans le cadre de l'exercice de ses attributions relativement aux services internationaux :

a) la sécurité ou la sûreté de l'aviation civile internationale;

b) la mise en œuvre ou la gestion d'ententes, conventions ou accords internationaux, relatifs à l'aviation civile, dont le Canada est signataire;

c) la courtoisie ou la réciprocité internationale;

d) le respect des droits du Canada sous le régime d'ententes, accords ou conventions internationaux sur l'aviation civile ou l'objectif de réagir contre des mesures, prises soit par des parties à ces ententes, conventions ou accords, soit par des ressortissants ou organismes publics de celles-ci, qui portent atteinte ou sont, directement ou indirectement, susceptibles de porter atteinte aux services internationaux de l'aviation civile canadienne;

e) toute autre question d'intérêt public relative à l'aviation civile internationale.

Ces directives sont, par dérogation aux autres dispositions de la présente partie, obligatoires pour l'Office, lequel est tenu de s'y conformer.

Objet des directives

(2) Les directives peuvent porter sur :

- (a) persons or classes of persons to whom licences to operate an international service shall or shall not be issued;
- (b) the terms and conditions of such licences, or their variation;
- (c) the suspension or cancellation of such licences; and
- (d) any other matter concerning international service that is not governed by or under the *Aeronautics Act*.

Concurrence required for certain directions

(3) A direction by the Minister relating to a matter referred to in paragraph (1)(c), (d) or (e) may be issued only with the concurrence of the Minister of Foreign Affairs.

Duties and Powers of Agency

Duties and functions of Agency under international agreements, etc.

77 Where the Agency is identified as the aeronautical authority for Canada under an international agreement, convention or arrangement respecting civil aviation to which Canada is a party, or is directed by the Minister to perform any duty or function of the Minister pursuant to any such agreement, convention or arrangement, the Agency shall act as the aeronautical authority for Canada or perform the duty or function in accordance with the agreement, convention, arrangement or direction, as the case may be.

Agency powers qualified by certain agreements, etc.

78 (1) Subject to any directions issued to the Agency under section 76, the powers conferred on the Agency by this Part shall be exercised in accordance with any international agreement, convention or arrangement relating to civil aviation to which Canada is a party.

Variations from agreements, etc.

(2) Notwithstanding subsection (1) and subject to any directions issued to the Agency under section 76, the Agency may issue a licence or suspend a licence, or vary the terms and conditions of a licence, on a temporary basis for international air services that are not permitted in an agreement, convention or arrangement relating to civil aviation to which Canada is a party.

Agency may refuse licence — individuals

79 (1) Where the Agency has suspended or cancelled the licence of an individual under this Part or where an individual has contravened section 59, the Agency may, for a period not exceeding twelve months after the date

- a) les personnes ou catégories de personnes à qui une licence d'exploitation d'un service international doit ou non être délivrée;
- b) les conditions auxquelles ces licences peuvent être assujetties et la modification de ces conditions;
- c) la suspension ou l'annulation des licences;
- d) toute question de service international non visée par la *Loi sur l'aéronautique*.

Approbation pour certaines directives

(3) Les directives portant sur les questions visées aux alinéas (1)c), d) ou e) sont données avec le concours du ministre des Affaires étrangères.

Attributions de l'Office

Attributions de l'Office

77 L'Office agit comme l'autorité canadienne en matière d'aéronautique dès lors qu'une entente, une convention ou un accord internationaux, relatifs à l'aviation civile, dont le Canada est signataire, le prévoit ou dans les cas où le ministre le charge d'exercer tout ou partie des attributions que lui confèrent ces textes.

Conventions internationales

78 (1) Sous réserve des directives visées à l'article 76, l'exercice des attributions conférées à l'Office par la présente partie est assujetti aux ententes, conventions ou accords internationaux, relatifs à l'aviation civile, dont le Canada est signataire.

Dérogations

(2) Sous réserve des directives visées à l'article 76, l'Office peut toutefois, mais seulement à titre provisoire, délivrer une licence ou la suspendre, ou en modifier les conditions, pour le service international non permis par les textes visés au paragraphe (1).

Refus par l'Office

79 (1) L'Office, s'il a suspendu ou annulé la licence d'une personne physique, ou que celle-ci a contrevenu à l'article 59, peut refuser de lui délivrer toute licence relative à un service aérien pendant une période maximale de

of the suspension, cancellation or contravention, refuse to issue a licence in respect of an air service to the individual or to any corporation of which the individual is a principal.

Agency may refuse licence — corporations

(2) Where the Agency has suspended or cancelled the licence of a corporation under this Part or where a corporation has contravened section 59, the Agency may, for a period not exceeding twelve months after the date of the suspension, cancellation or contravention, refuse to issue a licence in respect of an air service to

- (a) the corporation;
- (b) any person who, as a principal of the corporation, directed, authorized, assented to, acquiesced in or participated in a contravention that gave rise to the suspension or cancellation; and
- (c) any body corporate of which the corporation or the person referred to in paragraph (b) is a principal.

Exemption

80 (1) The Agency may, by order, on such terms and conditions as it deems appropriate, exempt a person from the application of any of the provisions of this Part or of a regulation or order made under this Part where the Agency is of the opinion that

- (a) the person has substantially complied with the provision;
- (b) an action taken by the person is as effective as actual compliance with the provision; or
- (c) compliance with the provision by the person is unnecessary, undesirable or impractical.

Exemption not to provide certain relief

(2) No exemption shall be granted under subsection (1) that has the effect of relieving a person from any provision of this Part that requires a person to be a Canadian and to have a Canadian aviation document and prescribed liability insurance coverage in respect of an air service.

Exemption not to provide certain relief — section 69

(3) No exemption shall be granted under subsection (1) that has the effect of relieving a person from the provisions of section 69 that require, in order to be eligible to hold a scheduled international licence,

- (a) a Canadian to be designated by the Minister to hold such a licence; or

douze mois suivant la prise de la mesure ou la contravention. Ce refus peut aussi viser toute personne morale dont l'intéressé est un dirigeant.

Refus par l'Office

(2) L'Office, s'il a suspendu ou annulé la licence d'une personne morale, ou que celle-ci a contrevenu à l'article 59, peut refuser de lui délivrer toute licence relative à un service aérien pendant une période maximale de douze mois suivant la prise de la mesure ou la date de la contravention. Ce refus peut viser une personne qui, à titre de dirigeant de la personne morale, a ordonné ou autorisé la contravention qui a entraîné la mesure ou y a acquiescé ou participé et toute autre personne morale dont la personne physique ou morale précédemment mentionnée est un dirigeant.

Exemptions

80 (1) L'Office peut, par arrêté assorti des conditions qu'il juge indiquées, soustraire quiconque à l'application de toute disposition de la présente partie ou de ses textes d'application s'il estime que l'intéressé, selon le cas :

- a) s'y est déjà, dans une large mesure, conformé;
- b) a pris des mesures équivalant à l'application effective de la disposition;
- c) se trouve dans une situation ne rendant ni nécessaire, ni même souhaitable ou commode, cette application.

Exception

(2) L'exemption ne peut avoir pour effet de soustraire quiconque aux dispositions relatives à la qualité de Canadien et à la détention d'un document d'aviation canadien et d'une police d'assurance responsabilité réglementaire en matière de service aérien.

Exception — article 69

(3) L'exemption ne peut avoir pour effet de soustraire quiconque aux dispositions de l'article 69 qui exigent, en vue de permettre la détention d'une licence pour l'exploitation d'un service international régulier, selon le cas :

- a) la désignation d'un Canadien, par le ministre, l'habilitant à détenir une telle licence;

(b) a non-Canadian to be designated by a foreign government or an agent of a foreign government to operate an air service under the terms of an agreement or arrangement between that government and the Government of Canada.

1996, c. 10, s. 80; 2013, c. 31, s. 7.

Inquiry into licensing matters

81 For the purposes of ensuring compliance with this Part, the Agency may inquire into any matter for which a licence, permit or other document is required under this Part.

Licensee to provide notification

82 Every licensee shall notify the Agency without delay, in writing, if

(a) the liability insurance coverage in respect of the air service for which the licence is issued is cancelled or is altered in a manner that results in the failure by the licensee to have the prescribed liability insurance coverage for that service;

(b) the licensee's operations change in a manner that results in the failure by the licensee to have the prescribed liability insurance coverage for that service; or

(c) any change occurs that affects, or is likely to affect, the licensee's status as a Canadian.

Disclosure of information required

83 A licensee shall, at the request of the Agency, provide the Agency with information or documents available to the licensee that relate to any complaint under review or any investigation being conducted by the Agency under this Part.

Notification of agent required

84 (1) A licensee who has an agent in Canada shall, in writing, provide the Agency with the agent's name and address.

Appointment and notice of agent

(2) A licensee who does not have a place of business or an agent in Canada shall appoint an agent who has a place of business in Canada and, in writing, provide the Agency with the agent's name and address.

Notice of change of address

85 Where the address of a licensee's principal place of business in Canada or the name or address of the licensee's agent in Canada is changed, the licensee shall notify the Agency in writing of the change without delay.

b) la désignation d'un non-Canadien, par un gouvernement étranger ou un mandataire de celui-ci, l'habilitant à exploiter un service aérien aux termes d'un accord ou d'une entente entre ce gouvernement et celui du Canada.

1996, ch. 10, art. 80; 2013, ch. 31, art. 7.

Enquêtes sur les licences

81 Dans le but de faire appliquer la présente partie, l'Office peut faire enquête sur toute question relative à une licence, un permis ou un autre document requis par la présente partie.

Avis

82 Le licencié est tenu d'aviser l'Office par écrit et sans délai de l'annulation de la police d'assurance responsabilité ou de toute modification — soit de celle-ci, soit de son exploitation — la rendant non conforme au règlement et de toute modification touchant ou susceptible de toucher sa qualité de Canadien.

Obligation

83 Le licencié est tenu, à la demande de l'Office, de lui fournir les renseignements et documents dont il dispose concernant toute plainte faisant l'objet d'un examen ou d'une enquête de l'Office sous le régime de la présente partie.

Mandataire

84 (1) Le licencié qui a un mandataire au Canada est tenu de communiquer par écrit à l'Office les nom et adresse de celui-ci.

Constitution obligatoire

(2) Le licencié qui n'a pas d'établissement ni de mandataire au Canada est tenu d'en nommer un qui y ait un établissement et de communiquer par écrit à l'Office les nom et adresse du mandataire.

Avis de changement

85 En cas de changement de l'adresse de son principal établissement ou de celle de son mandataire au Canada, ou s'il change de mandataire, le licencié est tenu d'en aviser sans délai par écrit l'Office.

Air Travel Complaints

Review and mediation

85.1 (1) If a person has made a complaint under any provision of this Part, the Agency, or a person authorized to act on the Agency's behalf, shall review and may attempt to resolve the complaint and may, if appropriate, mediate or arrange for mediation of the complaint.

Report

(2) The Agency or a person authorized to act on the Agency's behalf shall report to the parties outlining their positions regarding the complaint and any resolution of the complaint.

Complaint not resolved

(3) If the complaint is not resolved under this section to the complainant's satisfaction, the complainant may request the Agency to deal with the complaint in accordance with the provisions of this Part under which the complaint has been made.

Further proceedings

(4) A member of the Agency or any person authorized to act on the Agency's behalf who has been involved in attempting to resolve or mediate the complaint under this section may not act in any further proceedings before the Agency in respect of the complaint.

Extension of time

(5) The period of 120 days referred to in subsection 29(1) shall be extended by the period taken by the Agency or any person authorized to act on the Agency's behalf to review and attempt to resolve or mediate the complaint under this section.

Part of annual report

(6) The Agency shall, as part of its annual report, indicate the number and nature of the complaints filed under this Part, the names of the carriers against whom the complaints were made, the manner complaints were dealt with and the systemic trends observed.

2000, c. 15, s. 7.1; 2007, c. 19, s. 25.

Regulations

Regulations

86 (1) The Agency may make regulations

- (a)** classifying air services;
- (b)** classifying aircraft;

Plaintes relatives au transport aérien

Examen et médiation

85.1 (1) L'Office ou son délégué examine toute plainte déposée en vertu de la présente partie et peut tenter de régler l'affaire; il peut, dans les cas indiqués, jouer le rôle de médiateur entre les parties ou pourvoir à la médiation entre celles-ci.

Communication aux parties

(2) L'Office ou son délégué fait rapport aux parties des grandes lignes de la position de chacune d'entre elles et de tout éventuel règlement.

Affaire non réglée

(3) Si l'affaire n'est pas réglée à la satisfaction du plaignant dans le cadre du présent article, celui-ci peut demander à l'Office d'examiner la plainte conformément aux dispositions de la présente partie en vertu desquelles elle a été déposée.

Inhabilité

(4) Le membre de l'Office ou le délégué qui a tenté de régler l'affaire ou joué le rôle de médiateur en vertu du présent article ne peut agir dans le cadre de procédures ultérieures, le cas échéant, devant l'Office à l'égard de la plainte en question.

Prolongation

(5) La période de cent vingt jours prévue au paragraphe 29(1) est prolongée de la durée de la période durant laquelle l'Office ou son délégué agit en vertu du présent article.

Inclusion dans le rapport annuel

(6) L'Office inclut dans son rapport annuel le nombre et la nature des plaintes déposées au titre de la présente partie, le nom des transporteurs visés par celles-ci, la manière dont elles ont été traitées et les tendances systémiques qui se sont manifestées.

2000, ch. 15, art. 7.1; 2007, ch. 19, art. 25.

Règlements

Pouvoirs de l'Office

86 (1) L'Office peut, par règlement :

- a)** classifier les services aériens;
- b)** classifier les aéronefs;

- (c)** prescribing liability insurance coverage requirements for air services or aircraft;
- (d)** prescribing financial requirements for each class of air service or aircraft;
- (e)** respecting the issuance, amendment and cancellation of permits for the operation of international charters;
- (f)** respecting the duration and renewal of licences;
- (g)** respecting the amendment of licences;
- (h)** respecting traffic and tariffs, fares, rates, charges and terms and conditions of carriage for international service and
- (i)** providing for the disallowance or suspension by the Agency of any tariff, fare, rate or charge,
 - (ii)** providing for the establishment and substitution by the Agency of any tariff, fare, rate or charge disallowed by the Agency,
 - (iii)** authorizing the Agency to direct a licensee or carrier to take corrective measures that the Agency considers appropriate and to pay compensation for any expense incurred by a person adversely affected by the licensee's or carrier's failure to apply the fares, rates, charges or terms or conditions of carriage applicable to the service it offers that were set out in its tariffs, and
 - (iv)** requiring a licensee or carrier to display the terms and conditions of carriage for its international service on its Internet site, if the site is used for selling the international service of the licensee or carrier;
- (i)** requiring licensees to file with the Agency any documents and information relating to activities under their licences that are necessary for the purposes of enabling the Agency to exercise its powers and perform its duties and functions under this Part and respecting the manner in which and the times at which the documents and information are to be filed;
- (j)** requiring licensees to include in contracts or arrangements with travel wholesalers, tour operators, charterers or other persons associated with the provision of air services to the public, or to make those contracts and arrangements subject to, terms and conditions specified or referred to in the regulations;
- (k)** defining words and expressions for the purposes of this Part;
- (c)** prévoir les exigences relatives à la couverture d'assurance responsabilité pour les services aériens et les aéronefs;
- (d)** prévoir les exigences financières pour chaque catégorie de service aérien ou d'aéronefs;
- (e)** régir la délivrance, la modification et l'annulation des permis d'affrètements internationaux;
- (f)** fixer la durée de validité et les modalités de renouvellement des licences;
- (g)** régir la modification des licences;
- (h)** prendre toute mesure concernant le trafic et les tarifs, prix, taux, frais et conditions de transport liés au service international, notamment prévoir qu'il peut :
- (i)** annuler ou suspendre des tarifs, prix, taux ou frais,
 - (ii)** établir de nouveaux tarifs, prix, taux ou frais en remplacement de ceux annulés,
 - (iii)** enjoindre à tout licencié ou transporteur de prendre les mesures correctives qu'il estime indiquées et de verser des indemnités aux personnes lésées par la non-application par le licencié ou transporteur des prix, taux, frais ou conditions de transport applicables au service et qui figuraient au tarif,
 - (iv)** obliger tout licencié ou transporteur à publier les conditions de transport du service international sur tout site Internet qu'il utilise pour vendre ce service;
- (i)** demander aux licenciés de déposer auprès de lui les documents ainsi que les renseignements relatifs aux activités liées à leurs licences et nécessaires à l'exercice de ses attributions dans le cadre de la présente partie, et fixer les modalités de temps ou autres du dépôt;
- (j)** demander aux licenciés d'inclure dans les contrats ou ententes conclus avec les grossistes en voyages, voyagistes, affréteurs ou autres personnes associées à la prestation de services aériens au public les conditions prévues dans les règlements ou d'assujettir ces contrats ou ententes à ces conditions;
- (k)** définir les termes non définis de la présente partie;
- (l)** exempter toute personne des obligations imposées par la présente partie;

(l) excluding a person from any of the requirements of this Part;

(m) prescribing any matter or thing that by this Part is to be prescribed; and

(n) generally for carrying out the purposes and provisions of this Part.

Exclusion not to provide certain relief

(2) No regulation shall be made under paragraph (1)(l) that has the effect of relieving a person from any provision of this Part that requires a person to be a Canadian and to have a Canadian aviation document and prescribed liability insurance coverage in respect of an air service.

(3) [Repealed, 2007, c. 19, s. 26]

1996, c. 10, s. 86; 2000, c. 15, s. 8; 2007, c. 19, s. 26.

Advertising regulations

86.1 (1) The Agency shall make regulations respecting advertising in all media, including on the Internet, of prices for air services within, or originating in, Canada.

Contents of regulations

(2) Without limiting the generality of subsection (1), regulations shall be made under that subsection requiring a carrier who advertises a price for an air service to include in the price all costs to the carrier of providing the service and to indicate in the advertisement all fees, charges and taxes collected by the carrier on behalf of another person in respect of the service, so as to enable a purchaser of the service to readily determine the total amount to be paid for the service.

Regulations may prescribe

(3) Without limiting the generality of subsection (1), the regulations may prescribe what are costs, fees, charges and taxes for the purposes of subsection (2).

2007, c. 19, s. 27.

Regulations and orders

86.2 A regulation or order made under this Part may be conditional or unconditional or qualified or unqualified and may be general or restricted to a specific area, person or thing or group or class of persons or things.

2007, c. 19, s. 27.

(m) prendre toute mesure d'ordre réglementaire prévue par la présente partie;

(n) prendre toute autre mesure d'application de la présente partie.

Exception

(2) Les obligations imposées par la présente partie relativement à la qualité de Canadien, au document d'aviation canadien et à la police d'assurance responsabilité réglementaire en matière de service aérien ne peuvent faire l'objet de l'exemption prévue à l'alinéa (1)l).

(3) [Abrogé, 2007, ch. 19, art. 26]

1996, ch. 10, art. 86; 2000, ch. 15, art. 8; 2007, ch. 19, art. 26.

Règlement concernant la publicité des prix

86.1 (1) L'Office régit, par règlement, la publicité dans les médias, y compris dans Internet, relative aux prix des services aériens au Canada ou dont le point de départ est au Canada.

Contenu des règlements

(2) Les règlements exigent notamment que le prix des services aériens mentionné dans toute publicité faite par le transporteur inclue les coûts supportés par celui-ci pour la fourniture des services et que la publicité indique les frais, droits et taxes perçus par lui pour le compte d'autres personnes, de façon à permettre à l'acheteur de déterminer aisément la somme à payer pour ces services.

Précisions

(3) Les règlements peuvent également préciser, pour l'application du paragraphe (2), les types de coûts, frais, droits et taxes visés à ce paragraphe.

2007, ch. 19, art. 27.

Textes d'application

86.2 Les textes d'application de la présente partie peuvent être conditionnels ou absolus, assortis ou non de réserves, et de portée générale ou limitée quant aux zones, personnes, objets ou catégories de personnes ou d'objets visés.

2007, ch. 19, art. 27.

any person acting on behalf of the Agency or the Minister in connection with any matter under this Act.

Obstruction and false statements

(2) No person shall knowingly obstruct or hinder, or make any false or misleading statement, either orally or in writing, to a person designated as an enforcement officer pursuant to paragraph 178(1)(a) who is engaged in carrying out functions under this Act.

Offence

174 Every person who contravenes a provision of this Act or a regulation or order made under this Act, other than an order made under section 47, is guilty of an offence punishable on summary conviction and liable

(a) in the case of an individual, to a fine not exceeding \$5,000; and

(b) in the case of a corporation, to a fine not exceeding \$25,000.

Officers, etc., of corporation re offences

175 Where a corporation commits an offence under this Act, every person who at the time of the commission of the offence was a director or officer of the corporation is guilty of the like offence unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence.

Time limit for commencement of proceedings

176 Proceedings by way of summary conviction in respect of an offence under this Act may be instituted within but not later than twelve months after the time when the subject-matter of the proceedings arose.

Administrative Monetary Penalties

Definition of *Tribunal*

176.1 For the purposes of sections 180.1 to 180.7, *Tribunal* means the Transportation Appeal Tribunal of Canada established by subsection 2(1) of the *Transportation Appeal Tribunal of Canada Act*.

2007, c. 19, s. 48.

Regulation-making powers

177 (1) The Agency may, by regulation,

(a) designate

(i) any provision of this Act or of any regulation, order or direction made pursuant to this Act,

agissant au nom de l'Office ou du ministre relativement à une question visée par la présente loi.

Entrave

(2) Il est interdit, sciemment, d'entraver l'action de l'agent verbalisateur désigné au titre du paragraphe 178(1) dans l'exercice de ses fonctions ou de lui faire, oralement ou par écrit, une déclaration fautive ou trompeuse.

Infraction et peines

174 Quiconque contrevient à la présente loi ou à un texte d'application de celle-ci, autre qu'un décret prévu à l'article 47, commet une infraction et est passible, sur déclaration de culpabilité par procédure sommaire :

a) dans le cas d'une personne physique, d'une amende maximale de 5 000 \$;

b) dans le cas d'une personne morale, d'une amende maximale de 25 000 \$.

Dirigeants des personnes morales

175 En cas de perpétration par une personne morale d'une infraction à la présente loi, celui qui, au moment de l'infraction, en était administrateur ou dirigeant la commet également, sauf si l'action ou l'omission à l'origine de l'infraction a eu lieu à son insu ou sans son consentement ou qu'il a pris toutes les mesures nécessaires pour empêcher l'infraction.

Prescription

176 Les poursuites intentées sur déclaration de culpabilité par procédure sommaire sous le régime de la présente loi se prescrivent par douze mois à compter du fait générateur de l'action.

Sanctions administratives pécuniaires

Définition de *Tribunal*

176.1 Pour l'application des articles 180.1 à 180.7, *Tribunal* s'entend du Tribunal d'appel des transports du Canada, constitué par le paragraphe 2(1) de la *Loi sur le Tribunal d'appel des transports du Canada*.

2007, ch. 19, art. 48.

Pouvoirs réglementaires de l'Office

177 (1) L'Office peut, par règlement :

a) désigner comme un texte dont la contravention est assujettie aux articles 179 et 180 :

(i) toute disposition de la présente loi ou de ses textes d'application,



CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Act

Loi sur les Cours fédérales

R.S.C., 1985, c. F-7

L.R.C. (1985), ch. F-7

Current to February 15, 2016

À jour au 15 février 2016

Last amended on June 23, 2015

Dernière modification le 23 juin 2015

(c) any ship owned or operated by a sovereign power other than Canada, or any cargo laden thereon, with respect to any claim where, at the time the claim arises or the action is commenced, the ship is being used exclusively for non-commercial governmental purposes.

Arrest

(8) The jurisdiction conferred on the Federal Court by section 22 may be exercised *in rem* against any ship that, at the time the action is brought, is owned by the beneficial owner of the ship that is the subject of the action.

Reciprocal security

(9) In an action for a collision in which a ship, an aircraft or other property of a defendant has been arrested, or security has been given to answer judgment against the defendant, and in which the defendant has instituted a cross-action or counter-claim in which a ship, an aircraft or other property of the plaintiff is liable to arrest but cannot be arrested, the Federal Court may stay the proceedings in the principal action until security has been given to answer judgment in the cross-action or counter-claim.

R.S., 1985, c. F-7, s. 43; 1990, c. 8, s. 12; 1996, c. 31, s. 83; 2002, c. 8, s. 40; 2009, c. 21, s. 18(E).

Mandamus, injunction, specific performance or appointment of receiver

44 In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a *mandamus*, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

R.S., 1985, c. F-7, s. 44; 2002, c. 8, s. 41.

Procedure

Giving of judgment after judge ceases to hold office

45 (1) A judge of the Federal Court of Appeal or the Federal Court who resigns or is appointed to another court or otherwise ceases to hold office may, at the request of the Chief Justice of that court, at any time within eight weeks after that event, give judgment in any cause, action or matter previously tried by or heard before the judge as if he or she had continued in office.

c) un navire possédé ou exploité par un État souverain étranger — ou sa cargaison — et accomplissant exclusivement une mission non commerciale au moment où a été formulée la demande ou intentée l'action les concernant.

Saisie de navire

(8) La compétence de la Cour fédérale peut, aux termes de l'article 22, être exercée en matière réelle à l'égard de tout navire qui, au moment où l'action est intentée, appartient au véritable propriétaire du navire en cause dans l'action.

Garantie réciproque

(9) Dans une action pour collision où un navire, aéronef ou autre bien du défendeur est saisi, ou un cautionnement est fourni, et où le défendeur présente une demande reconventionnelle en vertu de laquelle un navire, aéronef ou autre bien du demandeur est saisissable, la Cour fédérale peut, s'il ne peut être procédé à la saisie de ces derniers biens, suspendre l'action principale jusqu'au dépôt d'un cautionnement par le demandeur.

L.R. (1985), ch. F-7, art. 43; 1990, ch. 8, art. 12; 1996, ch. 31, art. 83; 2002, ch. 8, art. 40; 2009, ch. 21, art. 18(A).

Mandamus, injonction, exécution intégrale ou nomination d'un séquestre

44 Indépendamment de toute autre forme de réparation qu'elle peut accorder, la Cour d'appel fédérale ou la Cour fédérale peut, dans tous les cas où il lui paraît juste ou opportun de le faire, décerner un *mandamus*, une injonction ou une ordonnance d'exécution intégrale, ou nommer un séquestre, soit sans condition, soit selon les modalités qu'elle juge équitables.

L.R. (1985), ch. F-7, art. 44; 2002, ch. 8, art. 41.

Procédure

Jugement rendu après cessation de fonctions

45 (1) Le juge de la Cour d'appel fédérale ou de la Cour fédérale qui a cessé d'occuper sa charge, notamment par suite de démission ou de nomination à un autre poste, peut, dans les huit semaines qui suivent et à la demande du juge en chef du tribunal concerné, rendre son jugement dans toute affaire qu'il a instruite.

error in Council of the making thereof on which that House is sitting.

R.S., 1985, c. F-7, s. 46; 1990, c. 8, s. 14; 1992, c. 1, s. 68; 2002, c. 8, s. 44.

47 [Repealed, 1990, c. 8, s. 15]

How proceeding against Crown instituted

48 (1) A proceeding against the Crown shall be instituted by filing in the Registry of the Federal Court the original and two copies of a document that may be in the form set out in the schedule and by payment of the sum of \$2 as a filing fee.

Procedure for filing originating document

(2) The original and two copies of the originating document may be filed as required by subsection (1) by being forwarded, together with a remittance for the filing fee, by registered mail addressed to “The Registry, The Federal Court, Ottawa, Canada”.

R.S., 1985, c. F-7, s. 48; 2002, c. 8, s. 45.

No juries

49 All causes or matters before the Federal Court of Appeal or the Federal Court shall be heard and determined without a jury.

R.S., 1985, c. F-7, s. 49; 2002, c. 8, s. 45.

Stay of proceedings authorized

50 (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

Stay of proceedings required

(2) The Federal Court of Appeal or the Federal Court shall, on application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown if it appears that the claimant has an action or a proceeding in respect of the same claim pending in another court against a person who, at the time when the cause of action alleged in the action or proceeding arose, was, in respect of that matter, acting so as to engage the liability of the Crown.

Lifting of stay

(3) A court that orders a stay under this section may subsequently, in its discretion, lift the stay.

R.S., 1985, c. F-7, s. 50; 2002, c. 8, s. 46.

celle-ci qui suit leur approbation par le gouverneur en conseil.

L.R. (1985), ch. F-7, art. 46; 1990, ch. 8, art. 14; 1992, ch. 1, art. 68; 2002, ch. 8, art. 44.

47 [Abrogé, 1990, ch. 8, art. 15]

Acte introductif d’instance contre la Couronne

48 (1) Pour entamer une procédure contre la Couronne, il faut déposer au greffe de la Cour fédérale l’original et deux copies de l’acte introductif d’instance, qui peut suivre le modèle établi à l’annexe, et acquitter la somme de deux dollars comme droit correspondant.

Procédure de dépôt

(2) Les deux formalités prévues au paragraphe (1) peuvent s’effectuer par courrier recommandé expédié à l’adresse suivante : Greffe de la Cour fédérale, Ottawa, Canada.

L.R. (1985), ch. F-7, art. 48; 2002, ch. 8, art. 45.

Audition sans jury

49 Dans toutes les affaires dont elle est saisie, la Cour fédérale ou la Cour d’appel fédérale exerce sa compétence sans jury.

L.R. (1985), ch. F-7, art. 49; 2002, ch. 8, art. 45.

Suspension d’instance

50 (1) La Cour d’appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :

a) au motif que la demande est en instance devant un autre tribunal;

b) lorsque, pour quelque autre raison, l’intérêt de la justice l’exige.

Idem

(2) Sur demande du procureur général du Canada, la Cour d’appel fédérale ou la Cour fédérale, selon le cas, suspend les procédures dans toute affaire relative à une demande contre la Couronne s’il apparaît que le demandeur a intenté, devant un autre tribunal, une procédure relative à la même demande contre une personne qui, à la survenance du fait générateur allégué dans la procédure, agissait en l’occurrence de telle façon qu’elle engageait la responsabilité de la Couronne.

Levée de la suspension

(3) Le tribunal qui a ordonné la suspension peut, à son appréciation, ultérieurement la lever.

L.R. (1985), ch. F-7, art. 50; 2002, ch. 8, art. 46.



CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Rules

Règles des Cours fédérales

SOR/98-106

DORS/98-106

Current to May 24, 2016

À jour au 24 mai 2016

Last amended on January 30, 2015

Dernière modification le 30 janvier 2015

Limitation

(2) An extension of a period under subsection (1) shall not exceed one half of the period sought to be extended.

Exception

(3) No extension may be made on consent of the parties in respect of a period fixed by an order of the Court or under subsection 203(1), 304(1) or 339(1).

Extension or abridgement

8 (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

When motion may be brought

(2) A motion for an extension of time may be brought before or after the end of the period sought to be extended.

Motions for extension in Court of Appeal

(3) Unless the Court directs otherwise, a motion to the Federal Court of Appeal for an extension of time shall be brought in accordance with rule 369.

SOR/2004-283, s. 32.

PART 2**Administration of the Court****Officers of the Court**

9. to 11 [Repealed, SOR/2004-283, s. 4]

Court registrars

12 (1) The Administrator shall arrange that there be in attendance at every sitting of the Court a duly qualified person to act as court registrar for the sitting, who shall, subject to the direction of the Court,

- (a)** make all arrangements necessary to conduct the sitting in an orderly, efficient and dignified manner;
- (b)** keep a record of every material event that transpires during the sitting;
- (c)** keep and be responsible for all books and records of the Court used at the sitting; and
- (d)** keep and be responsible for all exhibits filed during the sitting and mark them, record them and indicate by whom they were filed.

Limite

(2) La prorogation selon le paragraphe (1) ne peut excéder la moitié du délai en cause.

Exception

(3) Les délais fixés par une ordonnance de la Cour et ceux prévus aux paragraphes 203(1), 304(1) et 339(1) ne peuvent être prorogés par le consentement des parties.

Délai prorogé ou abrégé

8 (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.

Moment de la présentation de la requête

(2) La requête visant la prorogation d'un délai peut être présentée avant ou après l'expiration du délai.

Requête présentée à la Cour d'appel fédérale

(3) Sauf directives contraires de la Cour, la requête visant la prorogation d'un délai qui est présentée à la Cour d'appel fédérale doit l'être selon la règle 369.

DORS/2004-283, art. 32.

PARTIE 2**Administration de la cour****Fonctionnaires de la cour**

9. à 11 [Abrogés, DORS/2004-283, art. 4]

Greffiers

12 (1) Sous réserve des directives de la Cour, l'administrateur veille à ce qu'une personne qualifiée pour agir à titre de greffier de la Cour soit présente à chacune des séances de la Cour; cette personne :

- a)** prend les dispositions nécessaires pour assurer l'ordre, la bonne marche et la dignité de la séance;
- b)** enregistre les événements importants de la séance;
- c)** a la garde et la responsabilité de tous les livres et registres de la Cour utilisés au cours de la séance;
- d)** a la garde et la responsabilité de toutes les pièces déposées au cours de la séance, les marque, les enregistre et indique par qui elles ont été déposées.

Contents of motion record

(2) The motion record of a respondent to a motion shall contain, on consecutively numbered pages and in the following order,

- (a) a table of contents;
- (b) all affidavits and other material to be used by the respondent on the motion that is not included in the moving party's motion record;
- (c) subject to rule 368, the portions of any transcripts on which the respondent intends to rely;
- (d) subject to rule 366, written representations; and
- (e) any other filed material not contained in the moving party's motion record that is necessary for the hearing of the motion.

SOR/2009-331, s. 6; SOR/2013-18, s. 13; SOR/2015-21, s. 28.

Memorandum of fact and law required

366 On a motion for summary judgment or summary trial, for an interlocutory injunction, for the determination of a question of law or for the certification of a proceeding as a class proceeding, or if the Court so orders, a motion record shall contain a memorandum of fact and law instead of written representations.

SOR/2002-417, s. 22; SOR/2007-301, s. 8; SOR/2009-331, s. 7.

Documents filed as part of motion record

367 A notice of motion or any affidavit required to be filed by a party to a motion may be served and filed as part of the party's motion record and need not be served and filed separately.

Transcripts of cross-examinations

368 Transcripts of all cross-examinations on affidavits on a motion shall be filed before the hearing of the motion.

Motions in writing

369 (1) A party may, in a notice of motion, request that the motion be decided on the basis of written representations.

Request for oral hearing

(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days after being served under rule 364 and, if

Contenu du dossier de réponse

(2) Le dossier de réponse contient, sur des pages numérotées consécutivement, les éléments suivants dans l'ordre indiqué ci-après :

- a) une table des matières;
- b) les affidavits et autres documents et éléments matériels dont l'intimé entend se servir relativement à la requête et qui ne figurent pas dans le dossier de requête;
- c) sous réserve de la règle 368, les extraits de toute transcription dont l'intimé entend se servir et qui ne figurent pas dans le dossier de requête;
- d) sous réserve de la règle 366, les prétentions écrites de l'intimé;
- e) les autres documents et éléments matériels déposés qui sont nécessaires à l'audition de la requête et qui ne figurent pas dans le dossier de requête.

DORS/2009-331, art. 6; DORS/2013-18, art. 13; DORS/2015-21, art. 28.

Mémoire requis

366 Dans le cas d'une requête en jugement sommaire ou en procès sommaire, d'une requête pour obtenir une injonction interlocutoire, d'une requête soulevant un point de droit ou d'une requête en autorisation d'une instance comme recours collectif, ou lorsque la Cour l'ordonne, le dossier de requête contient un mémoire des faits et du droit au lieu de prétentions écrites.

DORS/2002-417, art. 22; DORS/2007-301, art. 8; DORS/2009-331, art. 7.

Dossier de requête

367 L'avis de requête ou les affidavits qu'une partie doit déposer peuvent être signifiés et déposés à titre d'éléments de son dossier de requête ou de réponse, selon le cas. Ils n'ont pas à être signifiés et déposés séparément.

Transcriptions des contre-interrogatoires

368 Les transcriptions des contre-interrogatoires des auteurs des affidavits sont déposés avant l'audition de la requête.

Procédure de requête écrite

369 (1) Le requérant peut, dans l'avis de requête, demander que la décision à l'égard de la requête soit prise uniquement sur la base de ses prétentions écrites.

Demande d'audience

(2) L'intimé signifie et dépose son dossier de réponse dans les 10 jours suivant la signification visée à la règle 364 et, s'il demande l'audition de la requête, inclut une

the respondent objects to disposition of the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.

Reply

(3) A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).

Disposition of motion

(4) On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.

Abandonment of motion

370 (1) A party who brings a motion may abandon it by serving and filing a notice of abandonment in Form 370.

Deemed abandonment

(2) Where a moving party fails to appear at the hearing of a motion without serving and filing a notice of abandonment, it is deemed to have abandoned the motion.

Testimony regarding issue of fact

371 On motion, the Court may, in special circumstances, authorize a witness to testify in court in relation to an issue of fact raised on a motion.

PART 8

Preservation of Rights in Proceedings

General

Motion before proceeding commenced

372 (1) A motion under this Part may not be brought before the commencement of a proceeding except in a case of urgency.

Undertaking to commence proceeding

(2) A party bringing a motion before the commencement of a proceeding shall undertake to commence the proceeding within the time fixed by the Court.

mention à cet effet, accompagnée des raisons justifiant l'audition, dans ses prétentions écrites ou son mémoire des faits et du droit.

Réponse du requérant

(3) Le requérant peut signifier et déposer des prétentions écrites en réponse au dossier de réponse dans les quatre jours après en avoir reçu signification.

Décision

(4) Dès le dépôt de la réponse visée au paragraphe (3) ou dès l'expiration du délai prévu à cette fin, la Cour peut statuer sur la requête par écrit ou fixer les date, heure et lieu de l'audition de la requête.

Désistement

370 (1) La partie qui a présenté une requête peut s'en désister en signifiant et en déposant un avis de désistement, établi selon la formule 370.

Désistement présumé

(2) La partie qui ne se présente pas à l'audition de la requête et qui n'a ni signifié ni déposé un avis de désistement est réputée s'être désistée de sa requête.

Témoignage sur des questions de fait

371 Dans des circonstances particulières, la Cour peut, sur requête, autoriser un témoin à témoigner à l'audience quant à une question de fait soulevée dans une requête.

PARTIE 8

Sauvegarde des droits

Dispositions générales

Requête antérieure à l'instance

372 (1) Une requête ne peut être présentée en vertu de la présente partie avant l'introduction de l'instance, sauf en cas d'urgence.

Engagement

(2) La personne qui présente une requête visée au paragraphe (1) s'engage à introduire l'instance dans le délai fixé par la Cour.

Interim and Interlocutory Injunctions

Availability

373 (1) On motion, a judge may grant an interlocutory injunction.

Undertaking to abide by order

(2) Unless a judge orders otherwise, a party bringing a motion for an interlocutory injunction shall undertake to abide by any order concerning damages caused by the granting or extension of the injunction.

Expedited hearing

(3) Where it appears to a judge that the issues in a motion for an interlocutory injunction should be decided by an expedited hearing of the proceeding, the judge may make an order under rule 385.

Evidence at hearing

(4) A judge may order that any evidence submitted at the hearing of a motion for an interlocutory injunction shall be considered as evidence submitted at the hearing of the proceeding.

Interim injunction

374 (1) A judge may grant an interim injunction on an *ex parte* motion for a period of not more than 14 days where the judge is satisfied

- (a)** in a case of urgency, that no notice is possible; or
- (b)** that to give notice would defeat the purpose of the motion.

Extension

(2) A motion to extend an interim injunction that was granted on an *ex parte* motion may be brought only on notice to every party affected by the injunction, unless the moving party can demonstrate that a party has been evading service or that there are other sufficient reasons to extend the interim injunction without notice to the party.

Limitation

(3) Where a motion to extend an interim injunction under subsection (2) is brought *ex parte*, the extension may be granted for a further period of not more than 14 days.

Injonctions interlocutoires et provisoires

Injonction interlocutoire

373 (1) Un juge peut accorder une injonction interlocutoire sur requête.

Engagement

(2) Sauf ordonnance contraire du juge, la partie qui présente une requête pour l'obtention d'une injonction interlocutoire s'engage à se conformer à toute ordonnance concernant les dommages-intérêts découlant de la délivrance ou de la prolongation de l'injonction.

Instruction accélérée

(3) Si le juge est d'avis que les questions en litige dans la requête devraient être tranchées par une instruction accélérée de l'instance, il peut rendre une ordonnance aux termes de la règle 385.

Preuve à l'audition

(4) Le juge peut ordonner que la preuve présentée à l'audition de la requête soit considérée comme une preuve présentée à l'instruction de l'instance.

Injonction provisoire

374 (1) Une injonction provisoire d'une durée d'au plus 14 jours peut être accordée sur requête *ex parte* lorsque le juge estime :

- a)** soit, en cas d'urgence, qu'aucun avis n'a pu être donné;
- b)** soit que le fait de donner un avis porterait irrémédiablement préjudice au but poursuivi.

Prolongation

(2) Lorsque l'injonction provisoire a été accordée sur requête *ex parte*, tout avis de requête visant à en prolonger la durée est signifié aux parties touchées par l'injonction, sauf si le requérant peut démontrer qu'une partie s'est soustraite à la signification ou qu'il existe d'autres motifs suffisants pour prolonger la durée de l'injonction sans en aviser la partie.

Période limite

(3) La prolongation visée au paragraphe (2) qui est accordée sur requête *ex parte* ne peut dépasser 14 jours.



CHAPTER 28 (3rd Supp.)

An Act respecting national transportation

[1987, c. 34, assented to
28th August, 1987]

SHORT TITLE

Short title **1.** This Act may be cited as the *National Transportation Act, 1987*.

APPLICATION

Binding on Her Majesty **2.** (1) This Act is binding on Her Majesty in right of Canada or a province.

Application generally (2) Unless the contrary intention appears, this Act applies only in respect of the following modes of transportation:

- (a) transport by railways to which the *Railway Act* applies;
- (b) transport by air to which Part II applies;
- (c) transport by water to which the legislative authority of Parliament extends;
- (d) transport by a commodity pipeline as defined in Part VI; and
- (e) transport for hire or reward by an extra-provincial bus undertaking or an extra-provincial truck undertaking to which Part IV applies.

NATIONAL TRANSPORTATION POLICY

Declaration **3.** (1) It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services making the best use of all available modes of transportation at the lowest total cost is essential to serve the transportation needs of shippers and travellers and to maintain the economic well-being and growth of Canada and its regions and that those objectives are most likely to be achieved when all carriers are able to

CHAPITRE 28 (3^e suppl.)

Loi nationale concernant les transports

[1987, ch. 34, sanctionné le
28 août 1987]

TITRE ABRÉGÉ

1. *Loi de 1987 sur les transports nationaux.* Titre abrégé

APPLICATION

2. (1) La présente loi lie Sa Majesté du chef du Canada ou d'une province. Obligation de Sa Majesté

(2) La présente loi s'applique, sauf intention contraire, aux modes de transport suivants : Champ d'application

- a) le transport ferroviaire visé par la *Loi sur les chemins de fer*;
- b) le transport aérien visé par la partie II;
- c) le transport par eau qui relève de la compétence législative du Parlement;
- d) le transport par productoduc au sens de la partie VI;
- e) le transport à titre onéreux effectué par une entreprise extra-provinciale de transport par autocar ou une entreprise de camionnage extra-provinciale visée par la partie IV.

POLITIQUE NATIONALE DES TRANSPORTS

3. (1) Il est déclaré que, d'une part, la mise en place d'un réseau sûr, rentable et bien adapté de services de transport viables et efficaces, utilisant au mieux et aux moindres frais globaux tous les modes de transport existants, est essentielle à la satisfaction des besoins des expéditeurs et des voyageurs en matière de transports comme à la prospérité et à la croissance économique du Canada et de ses régions, d'autre part, ces objectifs ont le plus de chances

annual report on the activities of the Agency for the year describing briefly, in respect of the year,

- (a) applications to the Agency and the findings thereon;
- (b) the findings of the Agency in regard to any matter or thing respecting which the Agency has acted on the request of the Minister; and
- (c) such other matters as appear to the Agency to be of public interest in connection with the persons and modes of transportation to which this Act applies.

Tabling of report

(2) The Minister shall cause a copy of each report made under this section to be laid before each House of Parliament on any of the first thirty days on which that House is sitting after the report is received by the Minister from the Agency.

conseil, par l'intermédiaire du ministre, un rapport annuel de ses activités résumant :

- a) les demandes qui lui ont été présentées et les conclusions auxquelles il est arrivé;
- b) ses conclusions concernant les questions ou les objets à l'égard desquels il a agi à la demande du ministre;
- c) toutes autres questions qu'il estime d'intérêt public en ce qui concerne les personnes et les modes de transports visés par la présente loi.

(2) Dans les trente jours de séance de chaque chambre du Parlement suivant la réception du rapport par le ministre, celui-ci le fait déposer devant chacune de celles-ci.

Dépôt

PART II

AIR TRANSPORTATION

Interpretation

Definitions

"aircraft"
«aéronefs»

"air service"
«service aérien»

"basic fare"
«prix de base»

67. (1) In this Part, "aircraft" has the same meaning as in the *Aeronautics Act*;

"air service" means a service provided by means of an aircraft;

"basic fare" means (a) subject to paragraph (b), the fare in the tariff of the holder of a domestic licence that is not a premium fare, has no restrictions in respect thereof and represents the lowest amount to be paid for one-way air transportation of an adult with reasonable baggage between two points in Canada, or

(b) where the licensee has more than one such fare between two points in Canada and the amount of any of those fares is dependent on the time of day or day of the week, or both, of travel, the highest of those fares;

"Canadian"
«Canadien»

"Canadian" means a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*, a government in Canada or an agent thereof or any other person or entity that is controlled in fact by Canadians and of which at least seventy-five

PARTIE II

TRANSPORTS AÉRIENS

Définitions

Définitions

67. (1) Les définitions qui suivent s'appliquent à la présente partie.

«aéronef» S'entend au sens de la *Loi sur l'aéronautique*.

«Canadien» Citoyen canadien ou résident permanent au sens de la *Loi sur l'immigration*; la notion englobe également les administrations publiques du Canada ou leurs mandataires et les personnes ou organismes, contrôlés de fait par des Canadiens, dont au moins soixante-quinze pour cent, ou tel pourcentage inférieur des actions assorties du droit de vote désigné par règlement du gouverneur en conseil, sont détenues et contrôlées par des Canadiens.

«collectivité» Municipalité ou autre établissement humain.

«document d'aviation canadien» S'entend au sens de la *Loi sur l'aéronautique*.

«licence intérieure» Licence délivrée en application de la présente partie, autorisant le licencié à exploiter un service intérieur.

«licence internationale service à la demande» Licence délivrée en application de la présente

«aéronef»
"aircraft"

«Canadien»
"Canadian"

«collectivité»
"community"

«document d'aviation canadien»
"Canadian aviation..."

«licence intérieure»
"domestic licence"

«licence internationale service à la demande»
"non-scheduled international licence"

	per cent, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians;	partie, autorisant le licencié à exploiter un service international à la demande.	
«Canadian aviation document» «document...»	«Canadian aviation document» has the same meaning as in the <i>Aeronautics Act</i> ;	«licence internationale service régulier» Licence délivrée en application de la présente partie, autorisant le licencié à exploiter un service international régulier.	«licence internationale service régulier» «scheduled international licence»
«community» «collectivité»	«community» means a municipality or any other settlement;	«licencié» Le titulaire d'une licence délivrée par l'Office en application de la présente partie.	«licencié» «licensee»
«designated area» «zone...»	«designated area» means, subject to any regulations made under section 102, that part of Canada north of a line described as follows: (a) commencing on the point of intersection of the Atlantic coast of Canada with the fiftieth parallel, (b) thence west along the fiftieth parallel to the point of intersection of that parallel with the border of Ontario and Manitoba, (c) thence northwesterly along a straight line drawn from the intersection of the fiftieth parallel with the border of Ontario and Manitoba to the intersection of the fifty-third parallel with the border of Manitoba and Saskatchewan, (d) thence northwesterly along a straight line drawn from the intersection of the fifty-third parallel with the border of Manitoba and Saskatchewan to the intersection of the fifty-fifth parallel with the border of Saskatchewan and Alberta, and (e) thence west along the fifty-fifth parallel to the Pacific coast of Canada;	«prix de base» a) Sous réserve de l'alinéa b), prix du tarif du titulaire d'une licence intérieure, autre qu'un prix supérieur, qui est sans restriction et qui constitue le montant le moins élevé à payer pour le transport aller entre deux points situés au Canada d'un adulte accompagné d'une quantité normale de bagages; b) dans les cas où un tel prix peut varier selon le moment du jour ou de la semaine, ou des deux, auquel s'effectue le voyage, le montant le plus élevé de ce prix.	«prix de base» «basic...»
		«prix supérieur» Prix du tarif du titulaire d'une licence intérieure qui est plus élevé que le prix de base pratiqué pour le transport aérien entre les mêmes points et qui est attribuable à un service voyageur d'une qualité supérieure.	«prix supérieur» «premium...»
		«règlement» Règlement pris au titre de l'article 102.	«règlement» «prescribed»
		«service aérien» Service offert par aéronef.	«service aérien» «air...»
		«service intérieur» Service aérien offert au public pour le transport des passagers, des marchandises, ou des deux, soit à l'intérieur du Canada, soit entre un point qui y est situé et un point qui lui est extérieur, sans pour autant faire partie d'un autre pays.	«service intérieur» «domestic service»
«domestic licence» «licence intérieure»	«domestic licence» means a licence issued under this Part that permits the licensee to operate a domestic service;	«service international» Service aérien offert au public pour le transport des passagers ou des marchandises, ou des deux, entre le Canada et l'étranger.	«service international» «international...»
«domestic service» «service intérieur»	«domestic service» means an air service that is publicly available for the transportation of passengers or goods, or both, between points in Canada, from and to the same point in Canada or between Canada and a point outside Canada that is not in the territory of another country;	«service international à la demande» Service international autre qu'un service international régulier.	«service international à la demande» «non-scheduled international service»
«international service» «service international»	«international service» means an air service that is publicly available for the transportation of passengers or goods, or both, between Canada and a point in the territory of another country;	«service international régulier» Service international exploité à titre de service régulier aux termes d'un accord ou d'une entente à cet effet dont le Canada est signataire ou sous le régime d'une désignation faite en application du paragraphe (2).	«service international régulier» «scheduled international service»
«licensee» «licencié»	«licensee» means the holder of a licence issued by the Agency under this Part;		
«non-scheduled international licence» «licence internationale service à la demande»	«non-scheduled international licence» means a licence issued under this Part that permits		

	the licensee to operate a non-scheduled international service;	«tarif» Barème des prix, taux, frais et autres conditions de transport applicables à la prestation d'un service aérien et des services connexes.	«tarif» "tariff"
"non-scheduled international service" «service internationale à la demande»	“non-scheduled international service” means an international service other than a scheduled international service;	«texte d'application» Arrêté, directive ou règlement pris en application de la présente partie ou de telle de ses dispositions.	«texte d'application» French version only
"premium fare" «prix supérieurs»	“premium fare” means any fare in the tariff of the holder of a domestic licence that is higher than the basic fare for air transportation between the same points and that provides for a superior level of passenger comfort or service;	«zone désignée» Sous réserve du règlement, partie du Canada située au nord du tracé constitué des segments de droite joignant, d'est en ouest, les points suivants :	«zone désignée» "designated..."
"prescribed" «règlement»	“prescribed” means prescribed by regulations made under section 102;	a) intersection de la côte atlantique du Canada et du cinquantième parallèle;	
"scheduled international licence" «licence internationale service régulier»	“scheduled international licence” means a licence issued under this Part that permits the licensee to operate a scheduled international service;	b) intersection du cinquantième parallèle et de la limite Ontario — Manitoba;	
"scheduled international service" «service international régulier»	“scheduled international service” means an international service that is a scheduled service pursuant to	c) intersection du cinquante-troisième parallèle et de la limite Manitoba — Saskatchewan;	
	(a) an agreement or arrangement for the provision of that service to which Canada is a party, or	d) intersection du cinquante-cinquième parallèle et de la limite Saskatchewan — Alberta;	
	(b) a designation under subsection (2);	e) intersection du cinquante-cinquième parallèle et de la côte pacifique du Canada.	
"tariff" «tarif»	“tariff” means a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and services incidental thereto.		
Designation of scheduled international service	(2) Where the Minister determines that it is in the public interest to do so, the Minister may in writing addressed to the Agency	(2) S'il décide qu'il est d'intérêt public de le faire, le ministre peut, par note expédiée à l'Office, désigner comme régulier un service international ou annuler une telle désignation.	Désignation : service international régulier
	(a) designate an international service to be a scheduled international service; or		
	(b) withdraw a designation under paragraph (a).		

General

68. (1) This Part does not apply in respect of aircraft that are used by the Canadian Armed Forces or by any other armed forces cooperating with the Canadian Armed Forces and that bear the insignia or markings of the Canadian Armed Forces or those other armed forces.

(2) This Part does not apply in respect of the operation of an air flight training service, aerial inspection service, aerial construction service, aerial photography service, aerial forest fire

Dispositions générales

68. (1) La présente partie ne s'applique pas aux aéronefs utilisés par les Forces armées canadiennes ou par celles coopérant avec elles et sur lesquels paraissent leurs insignes ou marques respectifs.

(2) La présente partie ne s'applique pas à l'exploitation d'un service aérien de formation en vol, d'inspection, de travaux publics ou construction, de photographie, d'épandage, de con-

Restriction

Exclusion des services spécialisés

management service, aerial spraying service or any other prescribed air service.

trôle des incendies de forêt ou autre service prévu par règlement.

Agency powers qualified by certain agreements, etc.

69. Subject to any directions issued to the Agency under section 86, the powers conferred on the Agency by this Part shall be exercised in accordance with any international agreement, convention or arrangement relating to civil aviation to which Canada is a party.

69. Sous réserve des instructions visées à l'article 86, l'exercice des attributions conférées à l'Office par la présente partie est assujéti aux ententes, accords ou conventions internationales, relatifs à l'aviation civile, dont le Canada est signataire.

Conventions internationales

Exemptions from requirements

70. (1) The Agency may, by order, on such terms and conditions as it deems appropriate, exempt a person from any of the requirements of this Part or of a regulation or order made under this Part where the Agency is of the opinion that

70. (1) L'Office peut, par directive assortie des conditions qu'il juge indiquées, exempter quiconque d'une obligation imposée par une disposition de la présente partie ou de ses textes d'application s'il estime que l'intéressé, selon le cas :

Exemptions

- (a) the requirement has been substantially complied with in the case of the person;
- (b) an action taken or a provision made by the person respecting the subject-matter of the requirement is as effective as actual compliance with the requirement; or
- (c) compliance with the requirement in the case of the person is unnecessary, undesirable or impractical.

- a) s'y est déjà, dans une large mesure, conformé;
- b) a pris des mesures équivalant à l'exécution effective de l'obligation;
- c) se trouve dans une situation ne rendant ni nécessaire, ni même souhaitable ou commode, cette exécution.

Exemption not to provide certain relief

(2) No exemption shall be granted under subsection (1) that has the effect of relieving a person from any provision of this Part that requires a person to be a Canadian and to have a Canadian aviation document and prescribed liability insurance coverage in respect of an air service.

(2) Les obligations relatives à la qualité de Canadien, au document d'aviation canadien et à la police d'assurance responsabilité réglementaire en matière de service aérien ne peuvent faire l'objet d'une exemption.

Exception

Domestic Service

Service intérieur

Prohibition re operation

71. (1) A person shall not operate a domestic service unless, in respect of that service, the person

71. (1) L'exploitation d'un service intérieur est subordonnée à la détention d'une licence intérieure, d'un document d'aviation canadien et de la police d'assurance responsabilité réglementaire à l'égard du service.

Conditions d'exploitation

- (a) holds a domestic licence;
- (b) holds a Canadian aviation document; and
- (c) has prescribed liability insurance coverage.

Idem

(2) A person shall not operate a domestic service using fixed wing aircraft between points or to or from any point in the designated area unless, in respect of that service, the person

(2) L'exploitation d'un service intérieur, par aéronefs à voilure fixe, à l'intérieur, à destination ou en provenance de tout point de la zone désignée, est subordonnée à la détention de la licence intérieure visée au paragraphe 72(2) à l'égard du point en cause, d'un document d'aviation canadien et de la police d'assurance responsabilité réglementaire à l'égard du service.

Idem

- (a) holds a domestic licence issued under subsection 72(2) in respect of the points or point;
- (b) holds a Canadian aviation document; and

(c) has prescribed liability insurance coverage.

Issue of licence

72. (1) On application to the Agency in respect of a domestic service, other than a domestic service referred to in subsection (2), and on payment of the appropriate fee, the Agency shall issue a domestic licence to the applicant if the applicant establishes in the application to the satisfaction of the Agency that the applicant

(a) is a Canadian;

(b) holds a Canadian aviation document in respect of the service to be provided under the licence; and

(c) has prescribed liability insurance coverage or evidence of such insurability in respect of the service to be provided under the licence.

72. (1) L'Office, sur demande et paiement des droits indiqués, délivre une licence intérieure au demandeur d'une licence non visée au paragraphe (2) qui justifie du fait qu'il est Canadien et qu'il détient et un document d'aviation canadien et la police d'assurance responsabilité réglementaire, ou qu'il possède une preuve d'assurabilité, à l'égard du service.

Délivrance de la licence

Idem

(2) On application to the Agency and on payment of the appropriate fee, the Agency shall issue to the applicant a domestic licence that permits the applicant to operate a domestic service using fixed wing aircraft between points or to or from any point in the designated area if

(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant

(i) is a Canadian,

(ii) holds a Canadian aviation document in respect of the service to be provided under the licence, and

(iii) has prescribed liability insurance coverage or evidence of such insurability in respect of the service to be provided under the licence; and

(b) where an objection is made by an interested community, person or entity against the issuance of the licence, the Agency is satisfied that the issuance would not lead to a significant decrease or instability in the level of domestic service provided between points or to or from any point in the designated area.

(2) L'Office, sur demande et paiement des droits indiqués, délivre une licence intérieure pour l'exploitation d'un service intérieur par aéronefs à voilure fixe à l'intérieur, à destination ou en provenance de la zone désignée, si :

a) le demandeur justifie du fait qu'il est Canadien et qu'il détient et un document d'aviation canadien et la police d'assurance responsabilité réglementaire, ou qu'il possède une preuve d'assurabilité, à l'égard du service;

b) en cas d'opposition d'une collectivité ou personne ou de tout organisme ayant un intérêt à cet égard, l'Office est convaincu que la délivrance n'amènera pas une réduction importante du service intérieur à l'intérieur, à destination ou en provenance de tout point de la zone désignée ou n'y perturbera pas la prestation des services aériens.

Idem

Time limit for decision

(3) The Agency shall, on an application under subsection (2), render its decision in respect of the matter described in paragraph (2)(b) not later than one hundred and twenty days after the Agency receives the application unless the applicant agrees to an extension.

(3) Sauf accord du demandeur en vue d'une prorogation du délai, la décision de l'Office sur une situation visée à l'alinéa (2)b) est à rendre dans les cent vingt jours suivant réception de la demande.

Délai

Terms and conditions of certain domestic licences

(4) The Agency may, on the issuance of a domestic licence under subsection (2), or from time to time thereafter, make the licence subject, in addition to such terms and conditions as may be prescribed in respect of the licence, to such terms and conditions as the Agency deems appropriate in the public interest, including, without limiting the generality of the foregoing, terms and conditions respecting routes to be followed, points or areas to be served, size and type of aircraft to be operated, schedules, places of call, tariffs, fares, rates and charges, insurance, carriage of passengers and, subject to the *Canada Post Corporation Act*, carriage of goods.

(4) L'Office peut, lors de la délivrance de la licence intérieure visée au paragraphe (2) ou par la suite en tant que de besoin, outre les conditions réglementaires, assujettir la licence aux autres conditions qu'il estime indiqué d'imposer dans l'intérêt public, notamment en ce qui concerne les routes aériennes à suivre, les points ou régions à desservir, la dimension et la catégorie des aéronefs à exploiter, les horaires, les escales, les tarifs, prix, taux ou frais, l'assurance, le transport des passagers et, sous réserve de la *Loi sur la Société canadienne des postes*, celui des marchandises.

Conditions liées à la licence

Compliance with terms required

(5) The holder of a domestic licence issued under subsection (2) shall comply with every term and condition to which the licence is subject.

(5) Le titulaire d'une licence visée au paragraphe (2) est tenu de respecter toutes les conditions auxquelles la licence est assujettie.

Respect des conditions

Qualification exemption

73. Where the Minister considers it necessary or advisable in the public interest that a domestic licence be issued to a person who, under paragraph 72(1)(a) or subparagraph 72(2)(a)(i), is not qualified to obtain the licence, the Minister may, by order, on such terms and conditions as may be specified in the order, exempt the person from the application of that paragraph or subparagraph, as the case may be, and in such case that paragraph or subparagraph shall not apply in respect of the person while the order remains in effect.

73. Lorsqu'il estime souhaitable ou nécessaire dans l'intérêt public de délivrer une licence intérieure à une personne qui n'a pas la qualité de Canadien, le ministre peut, par arrêté assorti ou non de conditions, l'exempter de l'obligation de justifier de cette qualité, l'exemption restant valide tant que l'arrêté reste en vigueur.

Exemption

Licence not transferable
Suspension or cancellation of licence

74. A domestic licence is not transferable.

74. La licence intérieure est incessible.

Incessibilité

75. (1) The Agency may suspend or cancel the domestic licence of any person where the Agency believes on reasonable grounds that, in respect of the service for which the licence is issued, the person

75. (1) L'Office peut suspendre ou annuler la licence intérieure de toute personne dont il est fondé à croire que, relativement au service, elle ne répond plus aux conditions de délivrance de la licence ou a enfreint telle des dispositions de la présente partie ou de ses textes d'application.

Suspension ou annulation

(a) ceases to have the qualifications necessary for the issuance of the licence; or

(b) has contravened any provision of this Part or any regulation or order made under this Part.

Idem

(2) Subject to section 76, the Agency may, where it considers it to be appropriate to do so, suspend or cancel the domestic licence of a person in accordance with a request from the person for the suspension or cancellation.

(2) Sous réserve de l'article 76, l'Office peut, s'il l'estime indiqué, suspendre ou annuler la licence intérieure d'une personne conformément à la demande de celle-ci à cet effet.

Idem

Notice of discontinuance or reduction of certain services

76. Where a domestic service has been provided to or from a point not less frequently than once a week during any period of six months or more and the licensee for the service proposes

76. Le licencié qui se propose d'abandonner un service intérieur desservant un point et assuré au moins une fois par semaine pendant au moins six mois ou d'en ramener la fréquence

Avis d'abandon ou de réduction de certains services

- (a) to discontinue the service, or
 (b) to reduce the frequency of the service to less than one flight per week,

the licensee shall give notice of the proposal in prescribed form and manner to such persons as are prescribed and shall not implement the proposal until the expiration of one hundred and twenty days after the notice is given or until the expiration of such shorter period as may be prescribed or as the Agency may, by order, on application by the licensee, specify.

Complaints re non-compliance

77. Where, on complaint in writing to the Agency by any person, the Agency finds that a licensee has failed to comply with section 76 and that it is practicable in the circumstances for the licensee to comply with an order under this section, the Agency may, by order, direct the licensee to reinstate the service referred to in that section

- (a) for such period, not exceeding one hundred and twenty days after the date of the finding by the Agency, as the Agency deems appropriate; and
 (b) at a frequency of at least one flight per week or at such lesser frequency as the Agency may specify.

Consideration re whether exemption, etc., to be granted

78. In considering pursuant to section 76 whether to specify a shorter period in respect of an application referred to in that section or in considering pursuant to section 70 whether to exempt a licensee from the requirements of section 76, the Agency shall have regard to

- (a) the adequacy of alternative modes of public transportation available at or in the vicinity of the point referred to in section 76;
 (b) other means by which the point is or is likely to be served by air; and
 (c) the particular circumstances of the licensee.

Domestic Service Fares, Rates and Charges

Non-application of fare, etc., provisions

79. (1) Sections 80 to 84 do not apply in respect of any fares, rates, charges or terms and conditions of carriage applicable to a domestic service provided for under a contract between a holder of a domestic licence and another person whereby the parties to the contract agree to keep the provisions thereof confidential.

Retention of contract required

(2) The holder of a domestic licence in respect of whom subsection (1) applies shall retain a copy of the confidential contract

à moins d'un vol hebdomadaire est tenu d'aviser, en la forme et selon les modalités réglementaires, les destinataires désignés par règlement. Il ne peut donner suite à son projet avant l'expiration des cent vingt jours suivant la signification de l'avis ou du délai inférieur fixé par règlement ou, à sa demande, par directive de l'Office.

77. L'Office, saisi d'une plainte formulée par écrit à l'encontre d'un licencié, peut par directive, s'il constate que celui-ci ne s'est pas conformé à l'article 76 et que les circonstances permettent au licencié de se conformer à la directive, ordonner à celui-ci de rétablir le service pour la période, d'au plus cent vingt jours suivant la date de son constat, qu'il estime indiquée, et selon la fréquence minimale d'un vol hebdomadaire ou la fréquence inférieure qu'il peut fixer.

Plaintes relatives aux infractions

78. Pour décider de l'à-propos d'accorder le délai inférieur visé à l'article 76 ou l'exemption, sous le régime de l'article 70, des obligations prévues à l'article 76, l'Office tient compte de la suffisance des autres modes de transports en commun desservant le point en cause ou les environs de celui-ci, de l'existence ou de la probabilité d'autres liaisons aériennes en provenance ou à destination du point et de la situation particulière du licencié.

Examen relatif à l'exemption

Prix et conditions relatifs au service intérieur

79. (1) Les articles 80 à 84 ne s'appliquent pas aux prix et conditions contractuels relatifs au service intérieur dont le secret est stipulé dans tout contrat auquel le titulaire d'une licence intérieure est partie.

Non-application de certaines dispositions

(2) Le titulaire d'une licence intérieure est tenu de conserver, au moins trois ans après son

Double à conserver

referred to in that subsection for a period of not less than three years after it has ceased to have effect.

Disallowance, etc., of basic fare increase

80. (1) Where, on complaint in writing to the Agency by any person, the Agency finds that there is no alternative, effective, adequate and competitive transportation service other than the domestic service operated under a licence issued under subsection 72(1) and that the licensee has imposed an unreasonable basic fare increase, the Agency may, by order,

- (a) disallow the increase in the basic fare; or
- (b) direct the licensee

- (i) to reduce the increase in the basic fare by such amounts and for such periods as the Agency considers reasonable in the circumstances, and

- (ii) where practicable, to refund amounts specified by the Agency, with interest calculated in the manner prescribed, to persons determined by the Agency to have been overcharged by the licensee as a result of the increase in the basic fare.

Disallowance, etc., of basic fare level or increase

(2) Where, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence issued under subsection 72(2) has an unreasonable basic fare level or has imposed an unreasonable basic fare increase in respect of the service operated under the licence, the Agency may, by order,

- (a) disallow the increase in the basic fare; or
- (b) direct the licensee

- (i) to reduce the level of, or the increase in, the basic fare by such amounts and for such periods as the Agency considers reasonable in the circumstances, and

- (ii) where practicable, to refund amounts specified by the Agency, with interest calculated in the manner prescribed, to persons determined by the Agency to have been overcharged by the licensee as a result of the level of, or the increase in, the basic fare.

Time limit for decision

81. The Agency shall render its decision on a complaint under section 80 not later than one hundred and twenty days after the Agency receives the complaint unless the complainant and licensee affected agree to an extension.

Operation of other Acts

82. Nothing in or done under the authority of section 80 or 81 affects the operation of any other Act of Parliament that applies to or in

expiration, un double de tout contrat visé au paragraphe (1).

80. (1) Sur plainte écrite à lui faite, s'il estime qu'il n'existe aucun autre service de transport efficace, bien adapté et concurrentiel pour remplacer un service intérieur exploité aux termes d'une licence délivrée sous le régime du paragraphe 72(1) et que le licencié a imposé une augmentation excessive du prix de base, l'Office peut, par directive, soit refuser l'augmentation, soit ordonner au licencié de la réduire et de procéder, si possible, à des remboursements sur les excédents imposés. Le cas échéant, il peut, quant à la réduction, fixer les montants et les périodes qu'il estime justifiées et, quant au remboursement, préciser les montants, majorés des intérêts calculés de la manière réglementaire, et la qualité des bénéficiaires.

Refus ou réduction de l'augmentation du prix de base

(2) Sur plainte écrite à lui faite, s'il estime que le titulaire d'une licence intérieure délivrée sous le régime du paragraphe 72(2) pratique un prix de base excessif ou impose une augmentation excessive de celui-ci à l'égard du service qu'il exploite, l'Office peut, par directive, soit refuser l'augmentation, soit ordonner au licencié de réduire le prix ou l'augmentation et de procéder, si possible, à des remboursements sur les excédents imposés. Le cas échéant, il peut, quant à la réduction, fixer les montants et les périodes qu'il estime justifiées et, quant au remboursement, préciser les montants, majorés des intérêts calculés de la manière réglementaire, et la qualité des bénéficiaires.

Refus ou réduction relative au prix de base

81. Sauf accord entre l'auteur de la plainte et le licencié en vue d'une prorogation du délai, la décision de l'Office, visée à l'article 80, est à rendre dans les cent vingt jours suivant réception de la plainte.

Délai

82. Ni les articles 80 ou 81, ni aucune mesure prise sous leur régime, n'ont pour effet de porter atteinte à l'application d'une autre loi

Application des autres lois

respect of any particular business or class of businesses.

fédérale à une entreprise ou à une catégorie d'entreprises.

Tariffs to be made public

83. (1) The holder of a domestic licence shall

83. (1) Le titulaire d'une licence intérieure doit :

Publication des tarifs

(a) publish or display and make available for public inspection at the business offices of the licensee all the tariffs for the domestic service offered by the licensee;

a) publier ou afficher et permettre au public de consulter à ses bureaux tous les tarifs du service intérieur qu'il offre;

(b) in its tariffs, specifically identify the basic fare between all points for which the domestic service is offered by the licensee; and

b) indiquer clairement dans ses tarifs le prix de base du service intérieur qu'il offre entre tous les points qu'il dessert;

(c) retain a record of its tariffs for a period of not less than three years after the tariffs have ceased to have effect.

c) conserver un registre de ses tarifs au moins trois ans après que ceux-ci ont cessé d'être en vigueur.

No fares, etc., unless set out in tariff

(2) The holder of a domestic licence shall not impose any fare, rate or charge for the domestic service offered by the licensee unless it is a fare, rate or charge set out in the tariff that has been published or displayed under subsection (1) and is in effect.

(2) Il ne peut imposer de prix, taux ou frais autres que ceux des tarifs ainsi publiés ou affichés tant que ceux-ci sont en vigueur.

Interdiction

Copy of tariff on payment of fee

(3) The holder of a domestic licence shall provide a copy of its tariffs or of a portion thereof to any person on the request of that person and on payment by that person of a fee not exceeding the cost of making the copy.

(3) Le titulaire d'une licence intérieure fournit un exemplaire de tout ou partie de ses tarifs sur demande et paiement de frais non supérieurs au coût de reproduction de l'exemplaire.

Exemplaire du tarif

Agency determines fees in case of dispute

(4) In the event of any dispute with respect to the amount of the fee to be paid by a person to the holder of a domestic licence for a copy provided under subsection (3), the Agency shall, on request, determine the amount of the fee.

(4) En cas de différend sur les frais de tout ou partie de l'exemplaire d'un tarif, l'Office les détermine sur demande.

Détermination des frais en cas de différend

Prescribed tariff information to be included

84. A tariff referred to in section 83 shall include such information as may be prescribed in relation thereto.

84. Les tarifs visés à l'article 83 comportent les renseignements requis par règlement.

Renseignements tarifaires

Financial Assistance

Aide financière

Financial assistance for certain services

85. (1) Where the Minister determines that a domestic service that is in operation on the day on which this section comes into force is essential and that it is necessary to provide direct or indirect financial assistance in order that the service or some level thereof can be maintained, the Minister may, on such terms and conditions as the Governor in Council may approve, provide the assistance in respect of the service.

85. (1) S'il décide qu'un service intérieur exploité lors de l'entrée en vigueur du présent article est essentiel et qu'il est nécessaire d'apporter une aide financière directe ou indirecte afin d'en assurer le maintien total ou partiel, le ministre peut, aux conditions que le gouverneur en conseil peut approuver, accorder une telle aide pour le service.

Aide financière

Public tenders required

(2) Where financial assistance in respect of a domestic service is to be provided under subsection (1), the Minister shall, where feasible,

(2) Le ministre détermine ensuite, en procédant, dans la mesure où les circonstances le permettent, par voie d'appels d'offres publics,

Appels d'offres

Appendix “B”
Case Law

Case Name:

**Assoc. des compagnies de téléphone du Québec Inc. v. Canada
(Attorney General)**

Between

**L'Association des compagnies de téléphone du Québec Inc. and
the Ontario Telecommunications Association, Moving Parties,
and**

**Attorney General of Canada, Rogers Communications
Partnership, Cogeco Cable Inc., Bragg Communications Inc.
(carrying on business as Eastlink), Cablovision Warwick Inc.,
Bell Alliant Regional Communications, Bell Canada and Telus
Communications Company, Respondents**

[2012] F.C.J. No. 1162

[2012] A.C.F. no 1162

2012 FCA 203

435 N.R. 239

Docket 12-A-23

Federal Court of Appeal
Ottawa, Ontario

Stratas J.A.

Heard: June 27, 2012.

Judgment: July 3, 2012.

(48 paras.)

Media and communications law -- Canadian Radio-television and Telecommunications Commission proceedings -- Enforcement of decisions -- Motion by L'Association des Compagnies de TÚÚphone du QuÚbec and the Ontario Telecommunications Association to stay implementation of part or all of certain decisions of Canadian Radio-Television and Telecommunications Commission dismissed -- Associations had appealed two decisions to Governor in Council -- Although Court had

jurisdiction to grant stay, Governor in Council was adequate, available forum in which moving parties could seek their stay.

Media and communications law -- Canadian Radio-television and Telecommunications Commission reviews and appeals -- Cabinet appeals -- Motion by L'Association des Compagnies de Téléphone du Québec and the Ontario Telecommunications Association to stay implementation of part or all of certain decisions of Canadian Radio-Television and Telecommunications Commission dismissed -- Associations had appealed two decisions to Governor in Council -- Although Court had jurisdiction to grant stay, Governor in Council was adequate, available forum in which moving parties could seek their stay.

Motion by L'Association des Compagnies de Téléphone du Québec and the Ontario Telecommunications Association to stay the implementation of part or all of certain decisions of the Canadian Radio-Television and Telecommunications Commission. The Associations argued that these decisions, directives and policies exposed their members to greater competition and detrimentally changed subsidies and other payments they received. As a result, their members and the public would suffer detrimental effects. Although the Associations had only appealed two of these decisions to the Governor in Council, they sought to stay most of the decisions or directives not under appeal until the appeal of the two decisions was determined. The Associations had already asked the CRTC to stay the decisions but the request was refused.

HELD: Motion dismissed. Although the Court had the jurisdiction under ss. 44 and 50 of the Federal Courts Act to grant injunctive relief concerning administrative proceedings and decisions, even in circumstances where there was no proceeding before this Court, the circumstances in which that jurisdiction could be exercised were rare. Discretionary bars existed in this case to foreclose this Court's consideration of the moving parties' stay motion. The Governor in Council was an adequate, available forum in which the moving parties could seek their stay. The Court also had the ability to decline to hear a matter and to refer it to another body with jurisdiction in circumstances where that body was more appropriate or better suited to decide the matter, such as the Governor in Council in this case. Considering that the Associations had appealed to the Governor in Council, the stay was really a matter for the Governor in Council to decide.

Statutes, Regulations and Rules Cited:

Federal Courts Act, R.S.C. 1985, c. F-7, s. 44, s. 50

Telecommunications Act, S.C. 1993, c. 38, s. 12, s. 62, s. 64(1)

A motion to stay the implementation of part or all of certain decisions of the Canadian Radio-Television and Telecommunications Commission rendered between May 2011 and January 2012.

Counsel:

Alan M. Riddell and Stephen Shaddock, for the Moving Parties.

Gerald Kerr-Wilson and Marisa Victor, for the Respondents.

Rogers Communications Partnership, Cogeco Cable Inc., Bragg Communications Inc. (carrying on business as Eastlink), and Cablovision Warwick Inc.

Christopher Rootham and Stephen Schmidt, for the Respondent, Telus Communications Company.

REASONS FOR ORDER

1 STRATAS J.A.:-- The moving parties, L'Association des Compagnies de Téléphone du Québec Inc. and the Ontario Telecommunications Association, have brought a motion for an order staying certain decisions, directives and policies made by the Canadian Radio-television and Telecommunications Commission.

2 The respondents oppose the motion on the basis that the test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 has not been met. In particular, they say that the moving parties have not established the existence of irreparable harm and have not established that the balance of convenience is in favour of granting a stay. The respondents also note that the moving parties are associations and submit it is their members, not the associations themselves, that will suffer irreparable harm, if any. To deal with that submission, the moving parties have brought an additional motion, seeking to add some of their members as moving parties.

3 The respondents have also asserted a number of preliminary objections. For the reasons that follow, I find that two of these preliminary objections are well-founded and so I must dismiss the moving parties' stay motion.

A. The basic facts

4 Since this Court is not dismissing the moving parties' stay motion on its merits and since it is possible that, as a result of these reasons, the moving parties may apply to the Governor in Council for a stay, only a brief recounting of the facts is necessary and appropriate.

(1) What the CRTC has done

5 Over the past year, the CRTC has made a number of decisions, directives and policies that the moving parties say adversely affect their members: Telecom Regulatory Policy CRTC 2011-291;

Telecom Notice of Consultation, CRTC 2011-348; Telecom Decisions CRTC 2011-733, 2012-35, 2012-36, 2012-37, 2012-38, 2012-39, 2012-40, 2012-41, 2012-42, 2012-43, 2012-44, 2012-45, 2012-46 and 2012-47.

(2) Effects on the moving parties

6 The moving parties say that these decisions, directives and policies expose their members to greater competition and detrimentally change subsidies and other payments they receive. As a result, their members and the public will suffer detrimental effects. Further, they say that their members' financial viability is at stake.

(3) The moving parties' appeals

7 Under the *Telecommunications Act*, S.C. 1993, c. 38, "decisions" may be varied, rescinded or referred back to the CRTC by way of petition to the Governor in Council under section 12 (collectively "appealed"). They may also be appealed to this Court, with leave, on questions of law or jurisdiction (section 64). "Decisions" are "determination[s] made by the Commission in any form" (section 2).

8 The moving parties have appealed only two decisions to the Governor in Council: Telecom Regulatory Policy, CRTC 2011-291 and Telecom Decision CRTC 2011-733 (a decision that is not sought to be stayed). These have not been appealed to this Court.

(4) The moving parties' motion to this Court

9 In their motion in this Court, the moving parties seek a stay of all or part of the decisions, directives and policies set out in paragraph 5, above. They ask that the decisions, directives and policies - most of them not under appeal - be stayed until the Governor in Council determines their appeal of Telecom Regulatory Policy, CRTC 2011-291 and Telecom Decision CRTC 2011-733.

10 The bottom line is that the moving parties seek a stay from this Court even though the only appeals on the merits have been made to the Governor in Council.

B. Places where the moving parties could seek a stay of the CRTC's decisions

11 In these circumstances, the moving parties had three places which they could seek a stay of the CRTC's decisions.

(1) The CRTC

12 After the CRTC makes a decision, an aggrieved party may ask the CRTC to stay it. The CRTC exercises this jurisdiction under section 62 of the *Telecommunications Act*. Among other things, that section allows it to "vary any decision made by it."

13 Although the CRTC often describes its power as a power to grant stays, in law it is really varying the effective date of its decision. For example, a decision that was to take immediate effect can be varied to come into effect at a future time.

14 By Practice Note dated February 28, 1997, the CRTC has announced that it will consider stay applications by examining the test set out by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *RJR-MacDonald Inc.*, *supra*.

15 In this case, the moving parties asked the CRTC to stay the decisions, directives and policies set out in paragraph 5, above. On March 30, 2012, the majority of the CRTC (with one dissenter) refused the request. The majority found that the moving parties had not established the existence of irreparable harm, nor had they established that the balance of convenience was in favour of granting a stay. The moving parties have brought a motion for leave to appeal to this Court from the CRTC's decision not to grant a stay. That motion remains pending before this Court.

(2) The Governor in Council

16 The respondent, TELUS, submits that the Governor in Council has the power to stay CRTC decisions. It says that this power exists under section 12 of the *Telecommunications Act*.

17 I agree with this submission. Section 12 provides as follows:

12. (1) Within one year after a decision by the Commission, the Governor in Council may, on petition in writing presented to the Governor in Council within ninety days after the decision, or on the Governor in Council's own motion, by order, vary or rescind the decision or refer it back to the Commission for reconsideration of all or a portion of it.

* * *

12. (1) Dans l'année qui suit la prise d'une décision par le Conseil, le gouverneur en conseil peut, par décret, soit de sa propre initiative, soit sur demande écrite présentée dans les quatre-vingt-dix jours de cette prise, modifier ou annuler la décision ou la renvoyer au Conseil pour réexamen de tout ou partie de celle-ci et nouvelle audience.

18 Many CRTC decisions take effect on the date on which they were pronounced. The Governor in Council can use section 12 to vary the time when they take effect. In effect, they are stayed or suspended until the times specified by the Governor in Council. The Governor in Council has exercised this power on a number of occasions: P.C. 1981-2151, 1981-3382 and 1981-3456 (*Telsat Canada*) (on its own motion); P.C. 1988-2386, 1989-1238 and 1990-620 (*Call-Net*) (on its own motion); *C.W.C. v. Canada (Attorney General)*, [1989] 1 F.C. 643 at paragraph 4 (in response to a party's request).

(3) The Federal Court of Appeal

19 When a party brings a motion for leave to appeal to this Court from a CRTC decision on the merits, on occasion the party also seeks a stay of a decision of the CRTC until final judgment of this Court. Our jurisdiction to grant such a stay is undoubted: sections 44 and 50 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 and see, e.g., *North American Gateway Inc. v. CRTC* (1997), 74 C.P.R. (3d) 156 (F.C.A.). When a potential appellant or an appellant is before our Court, our Court has the ability to protect that party from the effects of a CRTC decision under challenge. We do so when the test in *RJR-MacDonald*, *supra*, is met.

20 However, this case is different. As mentioned above, the moving parties have appealed the CRTC decisions only to the Governor in Council, not to this Court. Does this Court have any jurisdiction to entertain a stay motion in circumstances where the only appeal is before the Governor in Council, not this Court?

C. Preliminary Objections

21 That question is one of the preliminary objections advanced by the respondent TELUS. It answers that question in the negative. It adds that the Governor in Council is an adequate alternative forum for advancing a stay. Finally, it submits that the moving parties are barred from bringing a stay in this Court as a result of issue estoppel caused by the CRTC's decision not to grant a stay.

22 In my view, this Court can entertain a stay motion in circumstances where the only appeal is before the Governor in Council, but there are important qualifications to this. As will be seen, the circumstances in which that jurisdiction can be exercised are rare.

23 This Court does have the jurisdiction to grant injunctive relief - and stays are a form of injunctive relief - concerning administrative proceedings and decisions, even in circumstances where there is no proceeding before this Court. A good example is *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626. The basis for this jurisdiction is section 44 of the *Federal Courts Act*. It provides as follows:

44. In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a mandamus, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

* * *

44. Indépendamment de toute autre forme de réparation qu'elle peut accorder, la Cour d'appel fédérale ou la Cour fédérale peut, dans tous les cas où il lui paraît

juste ou opportun de le faire, décerner un mandamus, une injonction ou une ordonnance d'exécution intégrale, ou nommer un séquestre, soit sans condition, soit selon les modalités qu'elle juge équitables.

24 An alternative basis for this jurisdiction is section 50 of the *Federal Courts Act*. It provides as follows:

50. (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

* * *

50. (1) La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :

a) au motif que la demande est en instance devant un autre tribunal;

b) lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

25 The scope of this Court's jurisdiction under these sections is unclear.

26 On one view, this Court has "a general administrative jurisdiction over federal tribunals" that "should not be interpreted in a narrow fashion": *Canadian Liberty Net, supra* at paragraph 36. This is a "plenary jurisdiction" identical to that existing in superior courts to "regulate disputes related to the control and exercise of powers of an administrative agency," for example through "injunctive relief in certain urgent situations": *ibid.*; *Okwuobi v. Lester B. Pearson School Board*; *Casimir v. Quebec (Attorney General)*; *Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16, [2005] 1 S.C.R. 257 at paragraphs 50-53. However, although the Court has this jurisdiction, as a discretionary matter it can decide not to exercise it. For example, there may be other available, adequate and effective administrative avenues for relief: *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3; *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61; D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (looseleaf) (Toronto: Canvasback Publishing, 2007) at paragraph 3:2000. Alternatively, another forum may possess

superior expertise or be better suited to deciding the issue: *Reza v. Canada*, [1994] 2 S.C.R. 394. But the mere existence of an alternative administrative scheme does not, by itself, oust this Court's jurisdiction: *Canadian Liberty Net, supra*; *A.B.L.E. Association for Betterment of Literacy & Education v. The Queen* (1998), 52 D.T.C. 6668 at paragraph 7 (F.C.A), *Canada (Minister of National Revenue) v. Swiftsure Taxi Co.*, 2005 FCA 136 at paragraphs 3-6.

27 On another view, this Court's jurisdiction is only "residuary," a word that does not necessarily mean the same thing as "other available, adequate and effective administrative avenues for relief" in the authorities mentioned above. See, e.g., *Canadian Liberty Net, supra* at paragraph 41, where, apparently contrary to other passages in the judgment, it is said that "no jurisdiction" should be found where another forum exists. See also *Okwuobi, supra* at paragraph 1 and *Brotherhood, supra* at paragraph 5. On this view, the existence of another forum in which the relief could potentially be sought could deprive this Court of jurisdiction, regardless of the circumstances.

28 Under either view, the Court's jurisdiction to grant injunctive relief can be ousted by a clear indication of statutory intention to exclude it: *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *Okwuobi, supra* at paragraph 38; *Vaughan v. Canada*, 2005 SCC 11, [2005] 1 S.C.R. 146 at paragraphs 27-29. Even then, in exceptional circumstances, such an ouster might be regarded as similar to a privative clause and so it may be that this Court can still act, albeit deferentially, under its constitutional jurisdiction founded on the rule of law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 27-29. This may be one of the bases for the emergency injunctive power discussed in *Okwuobi, supra*.

29 Were it necessary to decide between these two views, I would subscribe to the former view, the view that our jurisdiction is full and plenary. This view maximizes this Court's ability to react to unusual circumstances while drawing upon the rich jurisprudence on adequate alternative remedies to ensure that administrative regimes are respected and are allowed to operate effectively. Also it is more in accord with the normal analytical framework that applies in administrative matters. Under that framework, three questions are to be asked:

- *Jurisdiction*. Does the Court have jurisdiction? In other words, can it consider the matter placed before it?
- *Discretionary bars*. Do any discretionary bars exist against exercising jurisdiction? In other words, even though it can consider the matter placed before it, should it? The two matters mentioned in paragraph 26, above - the existence of other available, adequate and effective administrative avenues for relief and the existence of another forum which possesses superior expertise or is better suited to deciding the issue - fall to be considered here.
- *Merits*. How should the Court exercise its jurisdiction? In other words, given that the Court can and should consider the matter, what result on the merits should it reach?

In these reasons, I shall follow this analytical framework.

D. Analysis

(1) Does the Court have jurisdiction?

30 In this case, the moving parties seek relief from the Governor in Council under the provisions of the federal *Telecommunications Act*. In these circumstances, sections 44 and 50 of the *Federal Courts Act* potentially give this Court jurisdiction to grant a stay pending an appeal to the Governor in Council.

31 The *Telecommunications Act* does not expressly exclude that jurisdiction. There is only a restriction on appealing the merits of a CRTC decision to this Court (see section 64).

32 Further, it cannot be said that that jurisdiction is impliedly or necessarily excluded by the *Telecommunications Act*. By way of illustration, suppose that a party that has received an adverse decision from the CRTC and has a strong appeal from it. Also suppose that it will be gravely and irreparably affected by it in the next three days. Finally, suppose that the Governor in Council cannot meet within those three days to deal with the party's request for a stay. In my view, there is nothing in the *Telecommunications Act* that would impliedly or necessarily require this Court to stand by and let injustice happen in those urgent circumstances. See *Okwuobi, supra* at paragraphs 51-53 (albeit in the context of superior courts).

33 Therefore, in my view, this Court has jurisdiction to entertain the moving party's stay motion.

(2) Do any discretionary bars exist against exercising jurisdiction?

34 TELUS submits that the moving parties are barred by way of issue estoppel from seeking a stay from this Court. The estoppel is said to arise from the CRTC's dismissal of the moving parties' application for a stay before it. TELUS submits that the CRTC applied the *RJR-MacDonald* test and this is the same test that must be applied on the motion in this Court.

35 In order for issue estoppel to constitute a complete bar to this Court's consideration of the moving parties' stay motion, the issues considered by the CRTC must be the same as those to be considered in this Court. Here, although there is substantial overlap in the issues - and indeed, the CRTC uses the same test that this Court uses on stay motions - the issues are not necessarily identical. The CRTC is acting under its power in section 62 of the *Telecommunications Act* to vary one of its decisions. This Court does not vary the CRTC's decision but rather exercises its own original jurisdiction to stay it under either of sections 44 and 50 of the *Federal Courts Act*. Different considerations can potentially come to bear on these two different matters: *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312.

36 A more fundamental impediment to the application of issue estoppel in these circumstances is

the lack of finality associated with the CRTC's decision not to grant the moving parties a stay. As mentioned in paragraph 15, above, the moving parties have brought a motion seeking leave to appeal that decision to this Court under subsection 64(1) of the *Telecommunications Act*.

37 I would add that although issue estoppel is not a complete bar to this Court's consideration of the moving parties' stay motion, the doctrine of abuse of process may prevent certain matters from being relitigated: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77. It is not necessary to consider this further, as two other discretionary bars exist to foreclose this Court's consideration of the moving parties' stay motion.

38 The first discretionary bar is the fact that the Governor in Council is an adequate, available forum in which the moving parties can seek their stay: *Matsqui Indian Band, supra*; *C.B. Powell Limited, supra*; *Brown and Evans, supra* at paragraph 3:2000. As mentioned in paragraph 18, above, the Governor in Council has the power to stay CRTC decisions and has shown a willingness to exercise that power.

39 Although the Governor in Council is an adequate, available forum for obtaining the remedy they seek, the moving parties have not availed themselves of it. Indeed, their petition to the Governor in Council does not request a stay, nor does it even ask the Governor in Council to speed up its decision-making.

40 The moving parties submitted that the Governor in Council is not an adequate forum because it is ill-suited to the receipt of complicated evidence, fact-finding and legal submissions. This is essentially a factual submission made without evidence as to the nature of the Governor in Council's consideration of such matters or its inadequacy or inability to act. In any event, the cases show that the Governor in Council is sometimes required under statutes to consider complicated evidence, fact-finding and legal submissions alongside policy considerations, and it does so: *e.g.*, *Globalive Wireless Management Corp. v. Public Mobile Inc.*, 2011 FCA 194; *League for Human Rights of B'Nai Brith Canada v. Odyinsky*, 2010 FCA 307.

41 In a future case, conditions of urgency or emergency might be demonstrated that would prompt this Court not to apply this discretionary bar and to grant relief, at least until the Governor in Council can consider the matter. In another future case, the Governor in Council, although requested to stay a CRTC decision, might be dilatory in reacting to the request and this Court's intervention might be necessary in the circumstances. In another future case, proof might be supplied that shows that the Governor in Council is not an adequate, available forum for the granting of relief.

42 But the present case is quite different. For one thing, conditions of urgency or emergency sufficient to overcome this Court's view on the discretionary bar have not been demonstrated. I am not convinced that the financial viability of the moving parties' members is at imminent peril. The moving parties have proceeded at a fairly sedate pace, bringing their stay motion in this Court well after the CRTC decisions were made.

43 The second discretionary bar is this Court's ability to decline to hear a matter but rather to refer it to another body with jurisdiction in circumstances where that body is more appropriate or better suited to decide the matter: *Reza, supra*. In this case, that body is the Governor in Council.

44 The moving parties' appeal on the merits of the CRTC's decisions has been made to the Governor in Council under section 12 of the *Telecommunications Act*. In these circumstances, this Court would be meddling in a matter that is really for the Governor in Council to decide. Further, in addition to the sorts of factors described in *RJR-MacDonald, supra* that the Governor in Council may consider, there may also be relevant policy considerations. As a policy body, the Governor in Council can consider these.

45 In a future case, a party might demonstrate conditions of urgency, emergency or other compelling circumstance that might overcome the factors supporting a referral of the matter to the Governor in Council. But that has not been demonstrated here.

46 Therefore, I apply these two discretionary bars against the moving parties' stay motion. The motion must be dismissed.

(3) The merits of the stay application

47 It is not necessary to consider the merits of the stay motion. It is also not necessary to deal with the moving parties' motion to add some of their members as moving parties.

E. Disposition

48 For the foregoing reasons, I shall dismiss the stay motion with costs.

STRATAS J.A.



Office national des transports du Canada
National Transportation Agency of Canada

CONFIDENTIAL ✓

APR 16 1996

File No.: M4205/K14
Docket No.: 960315

TO:
Greyhound Lines of Canada Ltd.
c/o Osler, Hoskin & Harcourt
Barristers & Solicitors
Suite 1500
50 O'Connor Street
Ottawa, Ontario
K1P 6L2

Attention: Mr. Michael L. Phelan

TO:
Kelowna Flightcraft Air Charter Ltd.
c/o McMillan Binch
Barristers & Solicitors
Suite 3800 - South Tower
Royal Bank Plaza
Toronto, Ontario
M5J 2J7

Attention: Mr. Vernon V. Kakoschke

Dear Sirs:

Re: Complaint filed by WestJet Airlines Ltd. against Kelowna Flightcraft Air Charter Ltd. and Greyhound Lines of Canada Ltd.

Pursuant to its decision of April 12, 1996, the Agency determined that, if air services commence as proposed in the confidential documents filed on April 3, 1996 by Greyhound Lines of Canada Ltd. (Greyhound) and Kelowna Flightcraft Air Charter Ltd. (Kelowna), Greyhound will be operating a publicly available domestic air service for which it will be required to hold a domestic licence. These are the Agency's reasons for this determination.

Pursuant to subsection 71(1) of the National Transportation Act, 1987 (NTA, 1987),

A person shall not operate a domestic service unless, in respect of that service, the person

- (a) holds a domestic licence;
- (b) holds a Canadian aviation document; and
- (c) has prescribed liability insurance coverage.

Subsection 71(1) of the NTA, 1987 is contained in Part II of that Act and, for the purposes of that Part, the terms "domestic licence", "domestic service" and "air service" are defined, respectively, in section 67 of the NTA, 1987, as follows:

Canada



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2

"domestic licence" means a licence issued under this Part that permits the licensee to operate a domestic service;

"domestic service" means an air service that is publicly available for the transportation of passengers or goods, or both, between points in Canada, from and to the same point in Canada or between Canada and a point outside Canada that is not in the territory of another country; and

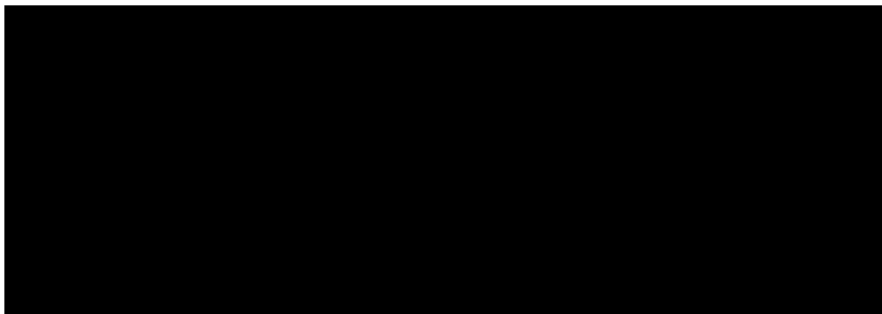
"air service" means a service provided by means of an aircraft.

The word *operate* in subsection 71(1) is not defined in either the NTA, 1987, or in other legislation. Therefore, in interpreting this phrase, the Agency has been mindful of the scheme and object of the NTA, 1987 and the intention of Parliament. The purpose of the NTA, 1987 is to regulate the economic aspects of both domestic and international air services and one important way in which it does this is by means of licensing requirements. As the economic regulator and given its specific mandate to license air services, the Agency has acquired a very broad knowledge and expertise with respect to the various types of financial, operational and business arrangements which may be entered into with respect to the operation of publicly available air services. Over time, the Agency has developed a number of factors that it considers relevant in determining whether a person is in fact operating a publicly available domestic air service and thereby is required to hold a domestic licence.

The factors that the Agency has taken into consideration, both individually and collectively, in determining whether Greyhound will be operating a publicly available domestic air service which would require it to hold a domestic licence are set out in detail below.

In response to the Agency's request of March 29, 1996 for "...all agreements, arrangements and contracts that have been or are to be entered into between Kelowna and Greyhound and their affiliates concerning proposed operations", Kelowna and Greyhound provided the Agency with the following documents, attested to by affidavit, on April 3, 1996:

1. Air Charter Agreement between Greyhound, Kelowna and Kelowna Flightcraft Ltd., dated February 6, 1996 (executed) (the Agreement);



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1. Risks and Benefits Associated with the Operation of the Proposed Air Services

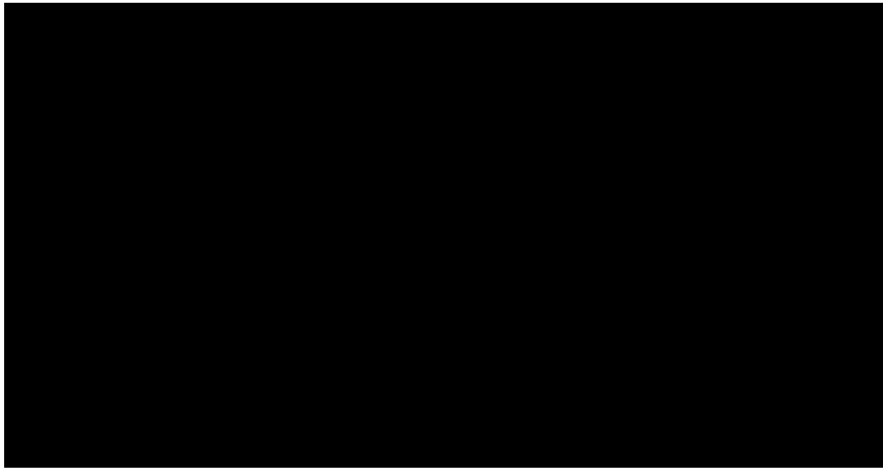
The Agreement discloses that Greyhound will directly or indirectly assume substantially all of the risks associated with the operation of the air services. The Agreement also discloses that, [REDACTED] Greyhound will be directly or indirectly entitled to substantially all of the benefits associated with the operation of the air services. This assumption of substantially all of the risks and, entitlement to substantially all of the benefits, associated with the operation of the air services, is commensurate with the operation of air services by an air carrier.



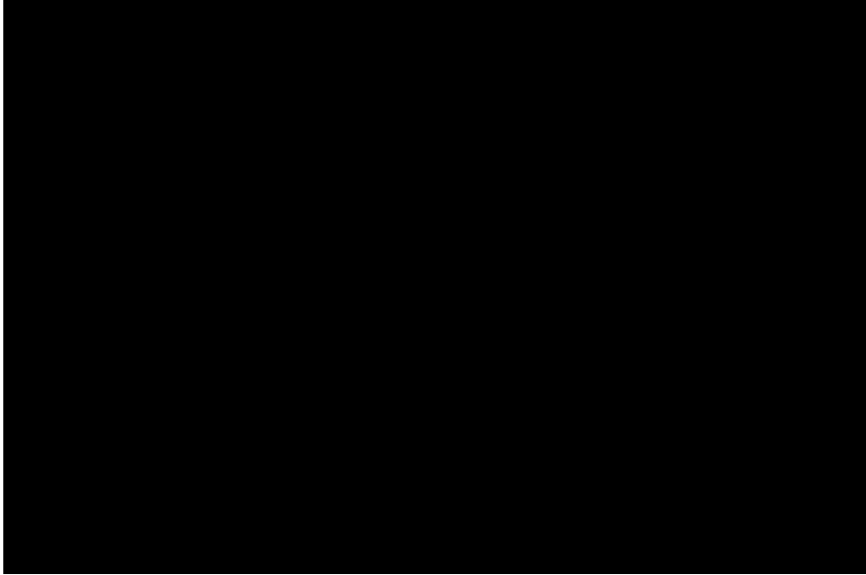
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The [redacted] provisions significantly reduce Kelowna's risk, and thereby increase Greyhound's, of operating the air services and establish the profit to which Kelowna will be entitled.

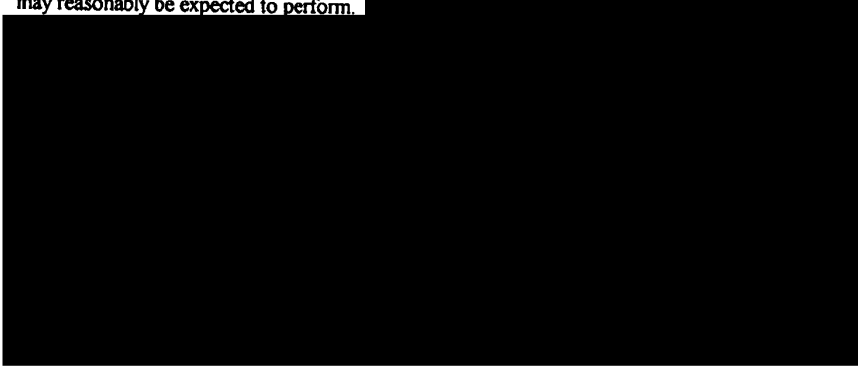


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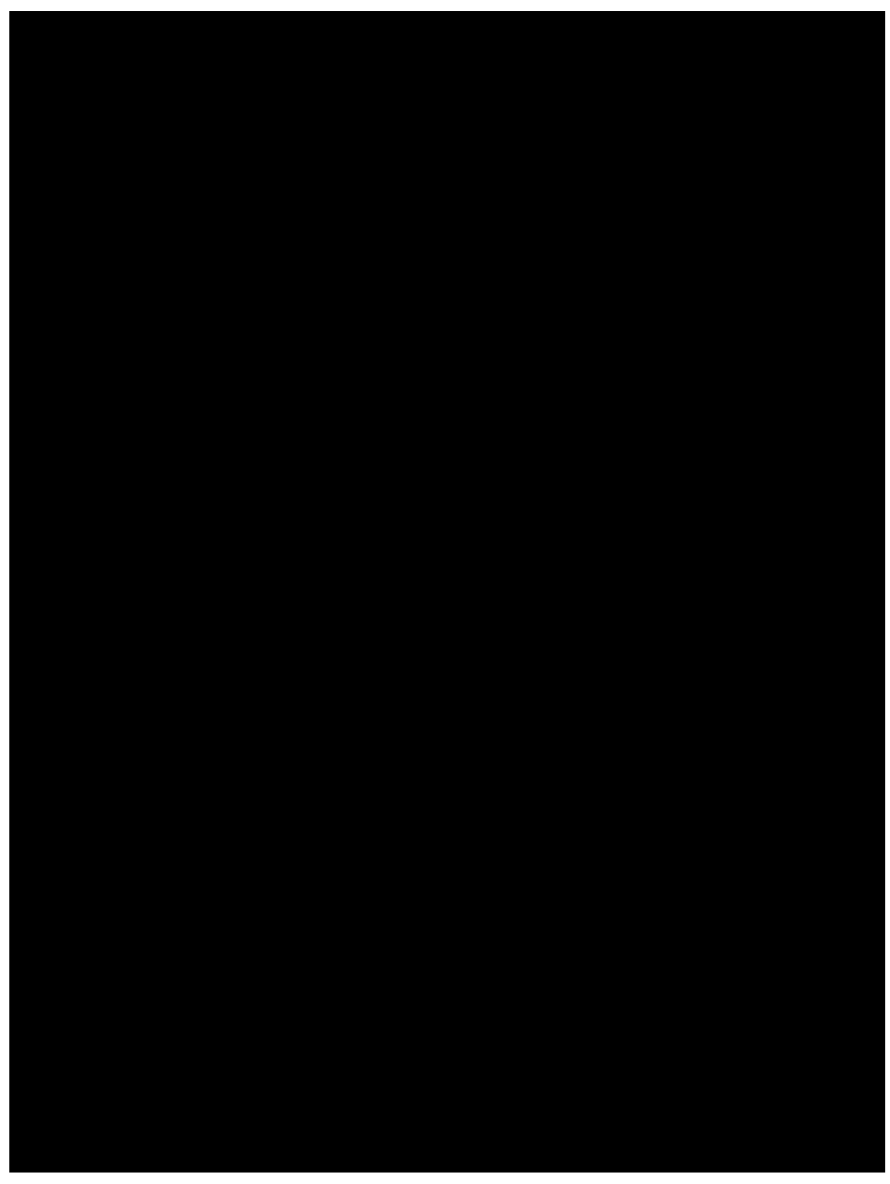


2. The Performance of Key Functions and Decision-Making Authority with respect to the Operation of the Proposed Air Services

The Agreement requires that Greyhound perform certain key airline functions and retain and exercise key decision-making authority with respect to the operation of the air services in question. Among other matters and, as described below, the Agreement requires and, in some instances, contemplates that Greyhound perform key operations and functions which an air carrier may reasonably be expected to perform.

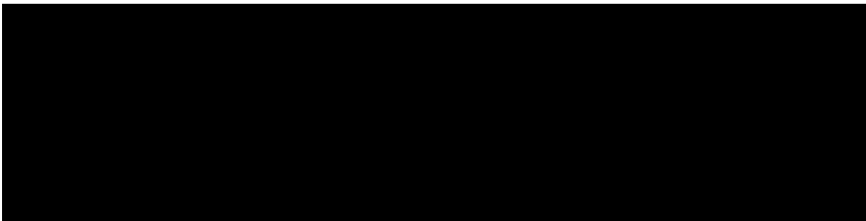


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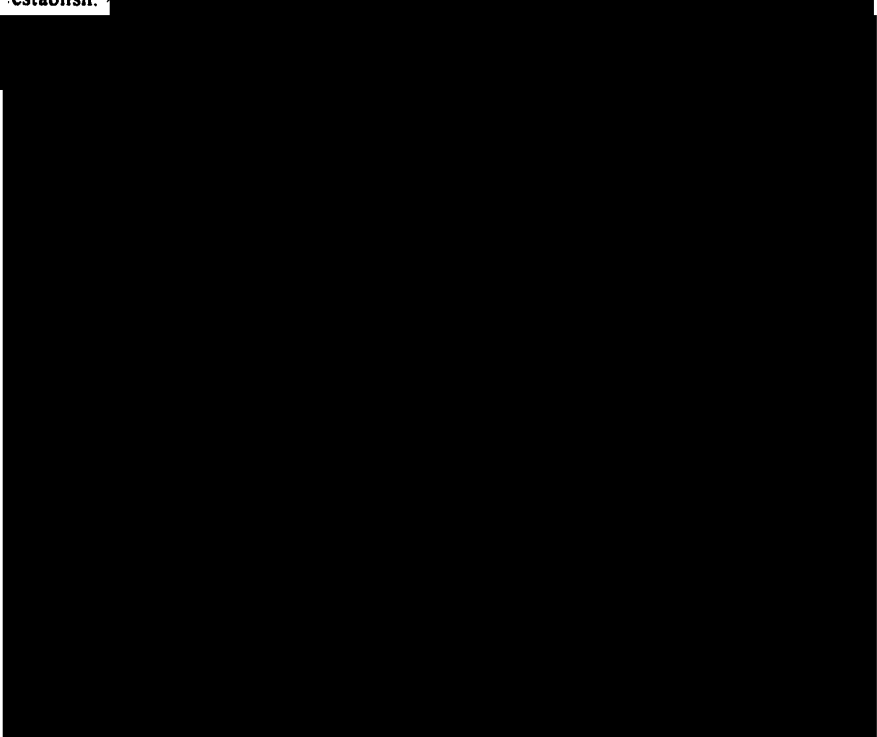
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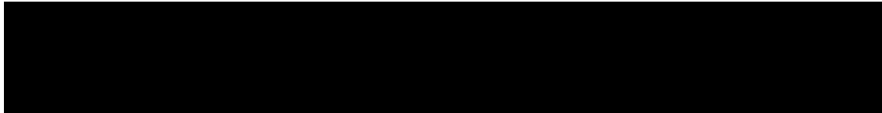


3. Exclusivity and Non-Competition

Kelowna and Greyhound have entered into certain provisions which restrict the way in which Kelowna is to operate the proposed air services for Greyhound. These provisions also restrict Kelowna in terms of what it can do if the Agreement is terminated. These provisions are not consistent with relationships that a charter air carrier which transports passengers would normally establish.

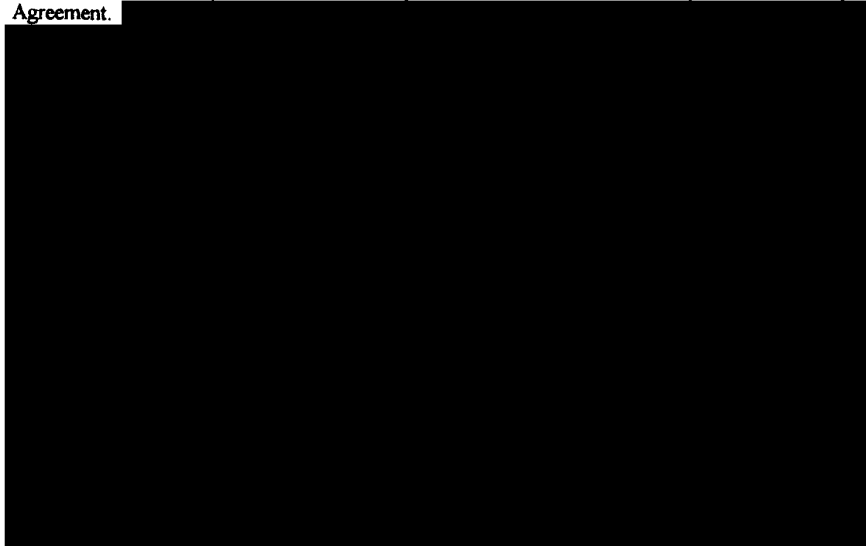


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4. Presentation to the Public as "Greyhound Air"

The Agreement requires that Kelowna operate the proposed publicly available air services under the firm name and style of "Greyhound Air" which indicates that Kelowna will be presenting itself to the public as "Greyhound Air" with respect to the air services to be operated under the Agreement.



Sincerely,

Original Signed by
Original signé par
Marie-Paule Scott, O.C./c.r.

Marie-Paule Scott, Q.C.
Secretary
National Transportation Agency
Ottawa, Ontario
K1A 0N9



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

[Home](#) / [Decisions](#) / [Air](#) / [2010](#) / Decision No. 222-A-2010

Decision No. 222-A-2010

May 27, 2010

APPLICATION by Duke Jets Ltd. requesting the Canadian Transportation Agency to determine whether a licence is required pursuant to Part II of the *Canada Transportation Act, S.C., 1996, c. 10, as amended.*

File No. M4210-4/D/10021

Duke Jets Ltd. (Duke Jets) applied to the Canadian Transportation Agency (Agency) for a determination as to whether its proposed plan to arrange charter flights on behalf of its clients, constitutes the provision of a publicly available air service for which a licence is required.

Agency licences are issued pursuant to Part II of the *Canada Transportation Act* (CTA) to those who propose to operate a publicly available air service in Canada.

Section 57 of the CTA provides in part that no person shall operate an air service unless, in respect of that service, the person holds a licence issued under Part II of the CTA.

Subsection 55(1) of the CTA defines an "air service" as "a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both."

Duke Jets proposes to act as an agent for its clients to arrange the most suitable charter flights for business travel. Duke Jets' stated contractual responsibility toward its clients is limited to retaining the air services on their behalf. It will contact a variety of charter companies requesting quotes on appropriate aircraft for a particular flight/itinerary. Should the client decide to proceed with booking the aircraft, Duke Jets would then enter into a charter agreement with the air carrier on behalf of the client.

The Agency has carefully considered the request and the information and material provided in support.

Duke Jets would be acting as an agent arranging charter flights on behalf of its clients. It would not be assuming the risks nor be entitled to the benefits associated with the operation of an air service nor would it be performing the key functions or have any decision-making authority in respect of the air service. The Agency therefore concludes that Duke Jets would not be operating a publicly available service for which it would require a licence issued by the Agency pursuant to Part II of the CTA.

Accordingly, the Agency has determined that, provided Duke Jets operates its business in the manner described in the application, Duke Jets would not require a licence issued under Part II of the CTA.

Duke Jets is reminded that only air carriers holding a valid Agency licence may enter into an agreement to provide an air service to, from or within Canada. In addition, the air carrier must satisfy the requirements of the *Air Transportation Regulations*, SOR/88-58, as amended, with respect to non-scheduled international entity type charter flights. As such, the charter agreement with the air carrier must clearly indicate that Duke Jets has entered into the agreement on behalf of the named client failing which other regulatory requirements may apply and need to be met.

Members

- Jean-Denis Pelletier, P. Eng.
- J. Mark MacKeigan

Rulings

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

Date modified:

2012-04-26

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

[Home](#) / [Decisions](#) / [Air](#) / [2016](#) / Decision No. 112-A-2016

Decision No. 112-A-2016

April 12, 2016

APPLICATION by Air Transat A. T. Inc. carrying on business as Air Transat (Air Transat), on behalf of itself and Flair Airlines Ltd. carrying on business as Flair Air (Flair), pursuant to section 60 of the *Canada Transportation Act*, S.C., 1996, c.10, as amended (CTA), and section 8.2 of the *Air Transportation Regulations*, SOR/88-58, as amended (ATR (Air Transportation Regulations)).

Case Number: 16-01516

Air Transat, on behalf of itself and Flair, has applied to the Canadian Transportation Agency (Agency) for an approval to permit Air Transat to provide its scheduled international service between Canada and Mexico using aircraft with flight crew provided by Flair, beginning on May 7 to October 30, 2016.

Air Transat is licensed to operate a scheduled international service, large aircraft, in accordance with the Agreement between the Government of Canada and the Government of the United Mexican States on Air Transport, signed on February 18, 2014.

Flair is licensed to operate a non-scheduled international service, large aircraft and has a Canadian Air Operator Certificate in effect.

The Agency has considered the application and the material in support and is satisfied that it meets the requirements of section 8.2 of the ATR (Air Transportation Regulations).

Accordingly, the Agency, pursuant to paragraph 60(1)(b) of the CTA and section 8.2 of the ATR (Air Transportation Regulations), approves the use by Air Transat of aircraft with flight crew provided by Flair, and the provision by Flair of such aircraft and flight crew to Air Transat, to permit Air Transat to provide its scheduled international service on licensed routes between Canada and Mexico using aircraft and flight crew provided by Flair, beginning on May 7 to October 30, 2016.

This approval is subject to the following conditions:

1. Air Transat shall continue to hold the valid licence authority.
2. Commercial control of the flights shall be maintained by Air Transat. Flair shall maintain operational control of the flights and shall receive payment based on the rental of aircraft and crew and not on the basis of the volume of traffic carried or other revenue-sharing formula.
3. Air Transat and Flair shall continue to comply with the insurance requirements set out in subsections 8.2(4), 8.2(5) and 8.2(6) of the ATR (Air Transportation Regulations).
4. Air Transat shall continue to comply with the public disclosure requirements set out in section 8.5 of the ATR (Air Transportation Regulations).
5. Air Transat and Flair shall advise the Agency in advance of any changes to the information provided in support of the application.

Member(s)

Stephen Campbell

Rulings

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

Date modified:

2016-04-13

Indexed as:
Fednav Ltd. v. Fortunair Canada Inc.

Between
Fednav Limited, plaintiff, and
Fortunair Canada Inc., defendant

[1994] F.C.J. No. 1969

[1994] A.C.F. no 1969

89 F.T.R. 153

59 C.P.R. (3d) 1

52 A.C.W.S. (3d) 888

Action No. T-1717-94

Federal Court of Canada - Trial Division
Ottawa, Ontario

Noël J.

Heard: December 19, 1994

Judgment: December 22, 1994

(10 pp.)

Trademarks, names and designs -- Trademarks -- Infringement -- Remedies, injunctions.

The plaintiff applied for an interlocutory injunction and related relief pursuant to the Trade Marks Act. The plaintiff was a privately owned company which shipped cargo and bulk materials by sea. The defendant was a company which transported passengers by air. The plaintiff had used its trade mark since September, 1967. The plaintiff alleged that the defendant had introduced a trade mark design which was confusing with the plaintiff's trade mark design.

HELD: An injunction would issue. The first issue was whether there was a serious question to be tried. The plaintiff had established that the defendant used the impugned trade mark design on its

wares, including its airplane, its office door and its advertising material. The defendant argued that its business was not the same type as that of the plaintiff, but the court accepted that there was some basis in fact for Fednav's assertions that the parties operated in the same area. Both companies were in the transport business. There was also a possibility that the consumer would think that the airline carrier and the cargo shipper were affiliated. Thus, the plaintiff had established some basis in fact of its assertions that the trade mark designs were confusing. Therefore, the plaintiff had established that its statement of claim raised a serious issue. The next question was whether, if the injunction were not granted, the plaintiff would suffer irreparable injury not compensable in damages. Even if the harm complained of by the plaintiff was compensable by way of damages, it would be irreparable due to Fortunair's status as a fledgling, financially unstable company which would not likely be in a position to pay a damage award against it. Further, the plaintiff, a large company with substantial resources, had undertaken to pay any damages should the defendant eventually succeed. This was also relevant to the balance of convenience test.

Statutes, Regulations and Rules Cited:

Trade Marks Act, R.S.C. 1985, c. T-13, s. 6(1), 6(2), 6(3), 6(4).

Bruce Caughhill, for the plaintiff.

Louis Lemire, for the defendant.

NOËL J. (Reasons for Order):--

I. INTRODUCTION

1 This is an application for an interlocutory injunction and related relief pursuant to the Trade Marks Act, R.S.C. 1985, c.T-13 (the "Trade Marks Act"), brought by the plaintiff against the defendant in an action commenced by statement of claim filed July 18, 1994. The plaintiff, Fednav Limited ("Fednav"), seeks an interlocutory injunction restraining the defendant Fortunair Canada Inc. ("Fortunair"), pending judgment at trial or other disposition of the action, from:

- (1) infringing the plaintiff's trade mark F & Design Registration No. TMA 199, 070;
- (2) selling, offering for sale or performing services in Canada in association with the trade marks F & Leaf and FORTUNAIR CANADA & Design or any other trade mark confusing with the plaintiff's F & Design trade mark;
- (3) directing public attention to its services in such a way as to cause or to be likely to cause, confusion between its services and the services of the plaintiff;
- (4) passing off its services as and for those of the plaintiff, and from enabling others

to do so.

II. FACTS

2 The plaintiff Fednav alleges that Fortunair has introduced a trade mark design that is confusing with its trade mark design. Fednav's trade mark is composed of geometric shapes, rectangles, forming a red-coloured "F" with a "square-ish" geometrically stylized quarter red-coloured maple leaf imposed behind the upper left side of the F (referred to as "F & Design"). Fortunair's trade mark is composed of an upper case italicized dark blue-coloured "F" with a half red-coloured classical maple leaf imposed behind the upper left side of the F (referred to as "F & Leaf"). Black and white hand-drawn facsimiles of the trade marks are shown below [Editor's note; The illustration could not be reproduced online.]:

Fednav's F & Design

Fortunair's F & Leaf

3 Fednav is a privately owned maritime shipping company. It operates several marine terminals around the world and charters dry bulk cargo vessels. It owns the F & Design trade mark, Registration No. 199, 070, and has used that trade mark since September 1967. Through its subsidiaries and affiliated companies (the "Fednav Group"), Fednav owns twelve vessels, charters and operates another five vessels, and is in the process of building eight new carriers, all of which prominently display the F & Design. Additionally, the Fednav Group maintains service offices in cities around the world, including London, Antwerp, Hamburg, Rio de Janeiro, Brisbane, and Tokyo, all of which prominently display the F & Design in association with Fednav's services. Moreover, Fednav operates marine terminals in Chicago, Hamilton, Toronto, Montréal, Sorel, Québec, Port Cartier, Saint John, N.B., and Eastport, Maine, all of which prominently display the F & Design in association with Fednav's services. Many familiar with the transportation industry, especially the shipping business, recognize the F & Design as identifying the plaintiff's services and business.

4 The plaintiff has also spent over \$415,000 US since 1987 marketing its services in association with the F & Design trade mark in promotional brochures, advertisements, trade publications, etc. Fednav also prominently displays the F & Design on all its company newsletters, internal documents, machinery, equipment, and invoices as well as the business cards of its employees.

5 In June 1994, Fednav became aware that the defendant was advertising, selling, and offering for sale in Canada airline services in association with the trade marks FORTUNAIR CANADA & Design and the F & Leaf. Fortunair prominently displays the F & Leaf on its airplane, at its tickets office in Mirabel Airport, on its baggage tickets, and in the advertising and promotion of its airline chartering services.

6 The airline business is shrinking. Since 1990, there has been a rising trend in bankruptcies among carriers authorized to provide scheduled and/or charter air flights. The defendant Fortunair is a new airline company with only one airplane. In a series of newspaper articles published on August 12, 1994, it was reported that Fortunair had ceased operations while stranding customers in various foreign destinations. Shortly thereafter, Fortunair removed its ticketing counter from Mirabel Airport.

7 Fortunair, however, continues to hold its license issued by the National Transportation Agency. In two newspaper articles published on November 2 and November 13, 1994, the President of Fortunair is reported as having announced the pending resumption of Fortunair flights to southern destinations for the 1994-5 winter season.

III. LEGAL REQUIREMENTS

8 Interlocutory injunctions are granted in circumstances of compelling urgency. An applicant must establish that:

- (A) there is a serious question to be tried;
- (B) the applicant will suffer irreparable injury not compensable in damages if the injunction is not granted;
- (C) where doubt exists as to the adequacy of these remedies in damages available to either party, regard should be had to where the balance of convenience lies.

IV. ANALYSIS

A. Is There a Serious Question to be Tried?

9 A trade mark is by definition confusing with another trade mark or trade name if: (1) it is used on wares, services or in connection with a business in the same area; (2) it is likely to lead to the inference that the wares or services, as the case may be, are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class (Trade marks Act, ss. 6(1), (2), (3), and (4)).

10 The burden rests on the plaintiff to demonstrate that its claim is neither frivolous nor vexatious. This is a low threshold test. If there is some basis in fact for each of the elements of the claim, then the claim is neither frivolous or vexatious, and a serious question has been raised.

1. Use on wares, services or in connection with a business in the same area

11 The plaintiff has established that the defendant uses the trade mark design on its airplane, office door (Farley Aff., Exhibits "A" & "B"), and in its advertising material (Robichon Aff., para.

15, Exhibit "G"). Thus, Fortunair is using its allegedly confusing trade mark on wares and services. The question as to whether Fortunair's trade mark is used in association with a business in the same area as the one Fednav operates in is open to discussion. Fednav asserts that "area" should mean the transportation industry, which includes air, sea, and surface (road and rail) transport. Fortunair argues that the airline business and the maritime cargo shipping business do not operate in the same area. Fednav ships cargo and bulk material by sea; Fortunair transports people by air. Therefore, the defendant asserts, Fortunair operates in a completely different area than that in which Fednav operates. Fednav offers no airline services and Fortunair offers no maritime services. The parties do not compete. This Court need not decide which argument shall prevail at this juncture. It is sufficient to say that Fednav's assertions that the parties operate in the same area have some basis in fact. Both companies are in the transport business.

2. Deception or Confusion Created

12 The plaintiff asserts that the defendant has created confusion between the trade marks in Canada and in the world market. Fednav's F & Design is a distinctive design with its geometric shape and bold red colour. It has also been in use since 1967. As a matter of first impression, the likelihood of confusion is high if one considers the two designs from the perspective of an average consumer having a vague or imperfect recollection of the first trade mark. The differences, the F & Design's geometric shape and total red colouring vis-à-vis the F & Leaf's dark italicized F and its red half maple leaf, do not appear significant. One cannot ignore that the principal offices of both companies are in Montréal. This increases the likelihood that a consumer would think that the airline carrier and the cargo shipper are affiliated. Thus, the plaintiff appears to have established some basis in fact for its assertions that the trade mark designs at issue are confusing.

13 Therefore, the claims of the plaintiff that the designs at issue are used in association with businesses in the same area and that there is a likelihood that consumers would be led to believe that both services were offered by the same person are not frivolous or vexatious. The plaintiff has established that its statement of claim raises a serious question.

B. Irreparable Injury not Compensable in Damages

Destruction of goodwill and loss of reputation

14 The destruction of goodwill can constitute irreparable harm (see 688863 Ontario Ltd. v. Landover, (1991) 35 C.P.R. (3d) 399, 405). Fednav alleges that the goodwill it has managed to foster over the years will be harmed by the inevitable confusion between its services and business and Fortunair's business and services. Fednav asserts that Fortunair's use of its confusing trade mark while it undergoes well publicised financial difficulties harms Fednav's reputation. While consumers confuse Fednav's business with Fortunair's ailing operation, Fortunair's problems will be attributed to Fednav. Many of Fednav's clients send representatives to its head office in Montréal. Most of the time they arrive at Mirabel. It is likely that some would see Fortunair's jet and mistake it for Fednav's and even go so far as to assume that Fednav, being one of North America's largest

shipping companies with a large array subsidiaries and sister companies, had decided to venture into the airline business. I also note that one of the articles detailing Fortunair's financial problems is accompanied by a picture of its jetliner prominently displaying the F & Leaf on its tail fin and fuselage. Thus any of the financial problems associated with Fortunair may impact negatively upon both the client's and the public's perception of Fednav's operations.

15 Fednav submits that the rising number of bankruptcies in the airline business and Fortunair's precarious financial position makes it likely that Fortunair would be unable to pay any damages awarded against it. In the same vein, Fednav points to the fact that Fortunair is a new airline with only one leased airplane and limited assets, if any.

16 Even if the harms complained of are compensable by way of damages, they would be irreparable by virtue of the fact that Fortunair is a fledgling, financially unstable company that would not likely be in a position to pay a damage award against it. Even where, theoretically, damages could furnish adequate compensation, if it appears to the Court that the defendant will not be able to meet a damage award, then the harm will in fact prove to be irreparable, although, in essence or in theory, it is capable of being repaired (see *Dyckerhoff & Widmann Aktiengesellschaft et al. v. Advanced Construction Enterprise Inc. et al.*, (1986) 11 C.P.R. (3d) 371, 383-386; *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 at 408).

17 While Fortunair has submitted evidence that it has negotiated some charter and carrier arrangements for December 1994, there is no evidence that it has the assets or will have the resources to satisfy a claim of damages should Fednav be successful at trial. Fortunair leases its only jet from an American company. Fortunair has not identified any of its partners for its December ventures, nor has it submitted evidence of the potential revenues of these ventures. There is no evidence that Fortunair has in fact begun flying again since suspending its operations due to financial difficulties in August 1994. Based on the evidence submitted, I can only conclude that it is unlikely that the defendant would be able to pay an award of damages should it be found liable to the plaintiff. Harm that goes uncompensated is, in this particular case, irreparable.

18 Furthermore, I take note of plaintiff's undertaking to pay any damages should the defendant eventually succeed. Fednav is a large company with substantial resources and its commitment to satisfy such an undertaking is not in issue. The defendant cannot provide such an undertaking. This, in addition to Fortunair's tenuous existence and minimal assets, warrants a finding that any harm suffered by the plaintiff will likely go uncompensated.

19 I am also mindful of the negative impact which the issuance of the injunction sought could have on the already fledgling state of the defendant's business. In this regard, while the evidence is scarce, it does suggest that the defendant is making an attempt to resume flight operations towards southern destinations during the winter season. While counsel for the defendant refrained himself from raising this argument, it seems relatively clear that the failure of this effort could put a definitive end to the defendant's business. That is the context in which the defendant has asked that

a delay of ninety days be granted in order to allow it to comply with the terms of the injunction if issued. The plaintiff has consented to this request.

C. Balance of Convenience

20 This leaves very little to say on the third prong of the test. The defendant has the benefit of a valid undertaking by the plaintiff to compensate any damages suffered, while the plaintiff is confronted with little or no prospect of recovery in the event that it should be successful. As well, the delay extended on consent for compliance with the order sought is such that it should not impede Fortunair's proposed winter schedule. In that context, the balance of convenience clearly militates in favour of the issuance of an injunction.

V. CONCLUSION

21 An injunction will therefore issue in conformity with the foregoing. The order shall embody plaintiff's indemnity in favour of the defendant and specify a delay of ninety (90) days from the date of this judgment in order to allow the defendant to fully comply with its terms. I will ask counsel for the plaintiff to provide the Court within the next fifteen (15) days with a draft order for execution after service on counsel for the defendant. If any issue arises as to its contents, the parties may move to have the order settled by the Court.

22 Costs to follow the event.

NOËL J.

qp/d/hbb/DRS/DRS

Case Name:

Lukács v. Canada (Transportation Agency)

Between

**Dr. Gábor Lukács, Appellant, and
Canadian Transportation Agency, Respondent**

[2014] F.C.J. No. 301

2014 FCA 76

456 N.R. 186

Docket: A-279-13

Federal Court of Appeal

Halifax, Nova Scotia

Dawson and Webb J.J.A. and Blanchard J.A. (ex officio)

Heard: January 29, 2014.

Judgment: March 19, 2014.

(63 paras.)

Administrative law -- Judicial review and statutory appeal -- Standard of review -- Reasonableness -- Appeal by Lukacs from Agency's decision to enact quorum rule dismissed -- Without approval of Governor in Council, Agency enacted rule that provided that in all proceedings before Agency, one members constituted quorum -- Agency's decision to enact quorum rule pursuant to rule-making power, which did not require approval of Governor in Council, was reasonable given contextual and purposive interpretation of Act -- Governor in Council's prior approval of rules did not mean approval of quorum rule was required as approval of rules was unnecessary step and quorum rule did not vary or rescind any rule that had been approved.

Administrative law -- Bodies under review -- Nature of body -- Types -- Regulatory agencies -- Powers or functions -- Types -- Appeal by Lukacs from Agency's decision to enact quorum rule dismissed -- Without approval of Governor in Council, Agency enacted rule that provided that in all proceedings before Agency, one members constituted quorum -- Agency's decision to enact quorum rule pursuant to rule-making power, which did not require approval of Governor in Council, was

reasonable given contextual and purposive interpretation of Act -- Governor in Council's prior approval of rules did not mean approval of quorum rule was required as approval of rules was unnecessary step and quorum rule did not vary or rescind any rule that had been approved.

Statutory interpretation -- Statutes -- Construction -- By context -- Legislative intent -- Appeal by Lukacs from Agency's decision to enact quorum rule dismissed -- Without approval of Governor in Council, Agency enacted rule that provided that in all proceedings before Agency, one members constituted quorum -- Agency's decision to enact quorum rule pursuant to rule-making power, which did not require approval of Governor in Council, was reasonable given contextual and purposive interpretation of Act -- Governor in Council's prior approval of rules did not mean approval of quorum rule was required as approval of rules was unnecessary step and quorum rule did not vary or rescind any rule that had been approved.

Appeal by Lukacs from the Canada Transportation Agency's decision to enact a rule (the "quorum rule") that provided that in all proceedings before the Agency, one member constituted a quorum. Prior to the enactment of the quorum rule, two members of the Agency constituted a quorum. The quorum rule was not made with the approval of the Governor in Council. The appellant took the position that the rules governing the conduct of the proceedings before the Agency were regulations within the meaning of s. 36(1) of the Canada Transportation Act and as such could only be made with the approval of the Governor in Council and that as the rules were originally approved by the Governor in Council, they could not be amended without the approval of the Governor in Council. The Agency argued that the quorum rule was a rule respecting the number of members that were required to hear any matter or perform any function of the Agency and, as such, it could be enacted by the Agency pursuant to the Agency's rule-making power in s. 17 of the Act.

HELD: Appeal dismissed. The appropriate standard of review was reasonableness as the issue was whether the Agency properly interpreted its rule-making power contained in its home statute. The Agency's decision to enact the quorum rule pursuant to its rule-making power, so that the approval of the Governor in Council was not required, was reasonable. A contextual analysis of the Canada Transportation Act suggested that rules held a subsidiary position to orders or regulations, which was consistent with the view that rules were created by the Agency on its own initiative, while order came at the end of an adjudicative process and regulations must be approved by the Governor in Council. Furthermore, the interpretation of "rules" as a subset of "regulation" violated the presumption against tautology. Moreover, whenever "rule" appeared in the Act, it was in the context of internal procedural or non-adjudicative administrative matters and wherever "regulation" appeared in the Act it referred to more than internal, procedural matters. In addition, since the Act specifically required Federal Court judges to receive approval from the Governor in Council when establishing rules of procedure but there was no express requirement for the Agency to do so, the application of the *expressio unius maxim* was consistent with the interpretation that the Agency's rules were not subject to that requirement. Furthermore, under the former Act, the predecessor of the Agency had the power to make rules with the approval of the Governor in Council. Interpreting

the Act so as to not include rules as a subset of regulations (so as to allow the Agency to enact rules without Governor in Council approval) was consistent with the purpose of the Agency as envisioned in the Act. The fact that the Governor in Council had approved the Rules in 2005 did not mean that the approval of the Governor in Council was required to amend the rules. Firstly, Governor in Council approval in 2005 was an unnecessary step. Secondly, the quorum rule was new and did not rescind or vary any provision of the rules that was previously approved by the Governor in Council.

Statutes, Regulations and Rules Cited:

Canada Transportation Act, S.C. 1996, c. 10, s. 4(1), s. 16(1), s. 17, s. 17(a), s. 17(b), s. 17(c), s. 25, s. 25.1(4), s. 29(1), ss. 34-36, s. 34(1), s. 34(2), s. 36(1), s. 36(2), s. 41, s. 54, s. 86(1), s. 86.1, s. 92(3), s. 109, s. 117(2), s. 128(1), s. 163(1), s. 169.36(1), s. 170

Canadian Transportation Agency General Rules, SOR/2005-35, Rule 2.1

Interpretation Act, R.S.C. 1985, c. I-21, s. 2(1), s. 3(3), s. 15(2)(b), s. 35(1)

National Transportation Act, 1987, c. 28 (3rd Supp.), s. 22, s. 22(1)

Statutory Instruments Act, R.S.C. 1985, c. S-22, s. 2(1)

Counsel:

Dr. Gábor Lukács, the Appellant (on his own behalf).

Simon-Pierre Lessard, for the Respondent.

The judgment of the Court was delivered by

1 DAWSON J.A.:-- This is an appeal on a question of law, brought with leave of this Court pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 (Act). The question concerns the validity of a rule amending the *Canadian Transportation Agency General Rules*, SOR/2005-35 (Rules). The amendment added a single section to the Rules: Rule 2.1 (Quorum Rule). The Quorum Rule is brief, and states 'In all proceedings before the Agency, one member constitutes a quorum'. The Quorum Rule was published in the Canada Gazette Part II as SOR/2013-133. Prior to the enactment of the Quorum Rule, two members of the Agency constituted a quorum.

2 The evidentiary basis for the appeal is simple and undisputed: the Quorum Rule was not made

with the approval of the Governor in Council.

3 The appellant argues that the rules governing the conduct of proceedings before the Agency, including the Quorum Rule, are regulations within the meaning of subsection 36(1) of the Act. As such, the Quorum Rule could only be made with the approval of the Governor in Council. Additionally, the appellant argues that the Rules were originally approved by the Governor in Council. It follows, the appellant argues, that the Rules could not be amended without the approval of the Governor in Council.

4 The Agency responds that the Quorum Rule is a rule respecting the number of members that are required to hear any matter or perform any of the functions of the Agency. Accordingly, the Agency could enact the Quorum Rule pursuant to its rule-making power found in section 17 of the Act.

5 Notwithstanding the appellant's able submissions, for the reasons that follow I have concluded that the Agency's decision to enact the Quorum Rule pursuant to its rule-making power (so that the approval of the Governor in Council was not required) was reasonable.

The Applicable Legislation

6 The Act contains a quorum provision that is expressly subjected to the Agency's rules:

16. (1) Subject to the Agency's rules, two members constitute a quorum.

* * *

16. (1) Sous réserve des règles de l'Office, le quorum est constitué de deux membres.

7 The Agency's rule-making power is as follows:

17. The Agency may make rules respecting

(a) the sittings of the Agency and the carrying on of its work;

(b) the manner of and procedures for dealing with matters and business before the Agency, including the circumstances in which hearings may be held in private; and

(c) the number of members that are required to hear any matter or perform any of the functions of the Agency under this Act or any other Act of Parliament. [Emphasis added.]

* * *

17. L'Office peut établir des règles concernant :

a) ses séances et l'exécution de ses travaux;

b) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos;

c) le nombre de membres qui doivent entendre les questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale. [Le souligné est de moi.]

8 The relevant provision of the Act dealing with regulations states:

36. (1) Every regulation made by the Agency under this Act must be made with the approval of the Governor in Council.
 (2) The Agency shall give the Minister notice of every regulation proposed to be made by the Agency under this Act.

* * *

36. (1) Tout règlement pris par l'Office en vertu de la présente loi est subordonné à l'agrément du gouverneur en conseil.
 (2) L'Office fait parvenir au ministre un avis relativement à tout règlement qu'il entend prendre en vertu de la présente loi.

The Standard of Review

9 The parties disagree about the standard of review to be applied.

10 The appellant argues that the issue of whether the Agency was authorized to enact the Quorum Rule without the approval of the Governor in Council is a true question of jurisdiction, or *vires*. As a result, he submits the applicable standard of review is correctness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 59). In oral argument, the appellant also argued that a quorum requirement is a question of law that is both of central importance to the legal system as a whole and outside the Agency's specialized area of expertise so that the validity of the Quorum Rule should be reviewed on the standard of correctness.

11 The respondent counters that in more recent jurisprudence the Supreme Court of Canada has held that true questions of jurisdiction are narrow and exceptional, and that an administrative

tribunal's interpretation of its own statute should be presumed to be reviewable on the standard of reasonableness (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at paragraphs 33 and 39).

12 I agree that what is at issue is whether the Agency properly interpreted its rule-making power contained in its home statute. Pursuant to *Alberta Teachers'*, the presumption of reasonableness review applies. In my view, the presumption of reasonableness review has not been rebutted.

13 As recently discussed by the Supreme Court in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, 452 N.R. 340, at paragraphs 32 and 33, legislatures do not always speak with clarity. As a result, applying the principles of statutory interpretation may not always provide a single, clear interpretation of a provision. The resolution of unclear language in an administrative agency's home statute is usually best left to the agency, because the choice between competing reasonable interpretations will often involve policy considerations the legislature presumably wanted the agency to decide.

14 For two reasons I reject the assertion that a quorum rule raises a general question of law of central importance to the legal system outside the expertise of the Agency.

15 First, while conceptually quorum requirements are of importance to the fair administration of justice, it does not follow that the Agency's choice between a quorum of one or two members is a question of central importance to the legal system as a whole. In my view, it is not. The Quorum Rule does not seek to define quorum requirements for any other body than the Agency itself.

16 Second, the Supreme Court has rejected such a narrow view of the expertise of an administrative agency or tribunal. It is now recognized that courts may not be as well-qualified as a given agency to provide an interpretation of the agency's home statute that makes sense in the broad policy context in which the agency operates (*McLean*, at paragraphs 30 and 31, citing, among other authorities, *Council of Canadians with Disabilities v. Via Rail, Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at paragraph 92 and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at paragraph 25).

17 It follows that the Agency's interpretation of its rule-making authority is a question reviewable on the standard of reasonableness.

18 Before leaving the issue of the standard of review I will deal with two authorities raised by the appellant in reply, which were, as a result, the subject of supplementary written submissions.

19 The two authorities are *Council of Independent Community Pharmacy Owners v. Newfoundland and Labrador*, 2013 NLCA 32, 360 D.L.R. (4th) 286, and *Yates v. Newfoundland and Labrador (Regional Appeal Board)*, 2013 NLTD(G) 173, 344 Nfld. & P.E.I.R. 317.

20 In my view both decisions are distinguishable. At issue in the first case was whether

regulations enacted by the Lieutenant-Governor in Council were *ultra vires*. In the second case, the Court's attention was not drawn to the decisions of the Supreme Court in *Alberta Teachers'* and *McLean*. I am not persuaded either case supports the appellant's position.

The Applicable Principles of Statutory Interpretation

21 Whether rules made under section 17 of the Act must be approved by the Governor in Council depends upon the interpretation to be given to the word "regulation" as used in subsection 36(1) of the Act.

22 The preferred approach to statutory interpretation has been expressed in the following terms by the Supreme Court:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

See: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at paragraph 21. See also: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 at paragraph 29.

23 The Supreme Court restated this principle in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 10:

It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see 65302 *British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

24 This formulation of the proper approach to statutory interpretation was repeated in *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3 at paragraph 21, and *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306 at paragraph 27.

25 Inherent in the contextual approach to statutory interpretation is the understanding that the grammatical and ordinary sense of a provision is not determinative of its meaning. A court must consider the total context of the provision to be interpreted "no matter how plain the disposition may seem upon initial reading" (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 at paragraph 48). From the text and this wider context the interpreting court aims to ascertain legislative intent, "[t]he most significant element of this analysis" (*R. v. Monney*, [1999] 1 S.C.R. 652 at paragraph 26).

Application of the Principles of Statutory Interpretation

26 I therefore turn to the required textual, contextual and purposive analysis required to answer this question.

(i) Textual Analysis

27 The appellant argues that the definitions of "regulation" found in the *Interpretation Act*, R.S.C. 1985, c. I-21 and the *Statutory Instruments Act*, R.S.C. 1985, c. S-22 decide the meaning of "rules" under the Act. The appellant's argument relies on paragraph 15(2)(b) of the *Interpretation Act*, which states:

15. (2) Where an enactment contains an interpretation section or provision, it shall be read and construed

[...]

(b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.

* * *

15. (2) Les dispositions définitoires ou interprétatives d'un texte :

...

b) s'appliquent, sauf indication contraire, aux autres textes portant sur un domaine identique.

28 Subsection 2(1) of the *Interpretation Act* provides that:

2. (1) In this Act,

"regulation" includes an order, regulation, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established

(a) in the execution of a power conferred by or under the authority of an Act, or

(b) by or under the authority of the Governor in Council. [Emphasis added.]

* * *

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

"règlement" Règlement proprement dit, décret, ordonnance, proclamation, arrêté, règle judiciaire ou autre, règlement administratif, formulaire, tarif de droits, de frais ou d'honoraires, lettres patentes, commission, mandat, résolution ou autre acte pris :

a) soit dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale;

b) soit par le gouverneur en conseil ou sous son autorité. [Le souligné est de moi.]

29 Similarly, subsection 2(1) of the *Statutory Instruments Act* provides:

2. (1) In this Act,

"regulation" means a statutory instrument

(a) made in the exercise of a legislative power conferred by or under an Act of Parliament, or

(b) for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament,

and includes a rule, order or regulation governing the practice or procedure in any proceedings before a judicial or quasi-judicial body established by or under an Act of Parliament, and any instrument described as a regulation in any other Act of Parliament. [Emphasis added.]

* * *

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

"règlement" Texte réglementaire :

a) soit pris dans l'exercice d'un pouvoir législatif conféré sous le régime d'une loi fédérale;

b) soit dont la violation est passible d'une pénalité, d'une amende ou d'une peine d'emprisonnement sous le régime d'une loi fédérale.

Sont en outre visés par la présente définition les règlements, décrets, ordonnances, arrêtés ou règles régissant la pratique ou la procédure dans les instances engagées devant un organisme judiciaire ou quasi judiciaire constitué sous le régime d'une loi fédérale, de même que tout autre texte désigné comme règlement par une autre loi fédérale. [Le souligné est de moi.]

30 In the alternative, even if the definitions of "regulation" do not formally apply to the Act, the appellant submits that they are declaratory of the usual and ordinary meaning of the word "regulation". It follows, the appellant argues, that the word "regulation" found in subsection 36(1) of the Act includes "rules" made under section 17, so that the Agency was required to obtain the Governor in Council's approval of the Quorum Rule.

31 There are, in my view, a number of difficulties with these submissions.

32 First, the definition of "regulation" in subsection 2(1) of the *Interpretation Act* is preceded by the phrase "In this Act". This is to be contrasted with subsection 35(1) of the *Interpretation Act* which contains definitions that are to be applied "[i]n every enactment". As the word "regulation" is not found in subsection 35(1), the logical inference is that the definition found in subsection 2(1) is not to be applied to other enactments.

33 Similarly, the word "regulation" is defined in the *Statutory Instruments Act* only for the

purpose of that Act.

34 Second, paragraph 15(2)(b) of the *Interpretation Act* is subject to the caveat "unless a contrary intention" is evidenced in the enactment under consideration. For reasons developed in the contextual analysis, I am of the view that the Act does demonstrate such a contrary intention.

35 Third, subsection 3(3) of the *Interpretation Act* states that "[n]othing in this Act excludes the application to an enactment of a rule of construction applicable to that enactment and not inconsistent with this Act." This further limits the application of paragraph 15(2)(b) of the *Interpretation Act*.

36 Notwithstanding these difficulties, I agree that there is some potential ambiguity in the plain meaning of the word "regulation" in that in some contexts it can include a "rule". Where the word "regulation" can support more than one ordinary meaning, the meaning of the word plays a lesser role in the interpretive process. I therefore turn to the contextual analysis to read the provisions of the Act as a harmonious whole.

(ii) Contextual Analysis

37 An electronic search of the Act discloses that the word "rule" is used in the order of 11 different provisions, while "regulation" is found in over 30 provisions. In no case are the words used interchangeably. For example, at subsection 4(1) of the Act, "orders and regulations" made under the Act relating to transportation matters take precedence over any "rule, order or regulation" made under any other Act of Parliament. Similarly, under section 25 of the Act, the Agency is granted all powers vested in superior courts to, among other things, enforce "orders and regulations" made under the Act. The absence of reference to "rules" in both provisions suggests rules hold a subsidiary position to orders or regulations. This interpretation is consistent with the view that rules are created by the Agency on its own initiative, while orders come at the end of an adjudicative process and regulations must be approved by the Governor in Council.

38 Other provisions relevant to the contextual analysis are sections 34 and 36 of the Act. Subsection 34(2) requires the Agency to give to the Minister notice of every rule proposed under subsection 34(1) (which deals with the fixing of license and permit fees). Subsection 36(2) similarly requires the Agency to give the Minister notice of every regulation proposed to be made under the Act. If rules are a subset of regulations, subsection 34(2) would be redundant, because the Minister must be notified of all proposed regulations. The interpretation of "rules" as a subset of "regulation" would violate the presumption against tautology, where Parliament is presumed to avoid speaking in vain (*Quebec (Attorney General) v. Carrières Ste. Thérèse Ltée*, [1985] 1 S.C.R. 831, at page 838).

39 Moreover, whenever "rule" appears in the Act it is in the context of internal procedural or non-adjudicative administrative matters. See:

- * subsection 16(1): dealing with the quorum requirement;
- * subsection 17(a): dealing with sittings of the Agency and the carrying on of its work;
- * subsection 17(b): concerning procedures and business before the Agency, including the circumstances in which hearings may be held in private;
- * subsection 17(c) dealing with a number of members required to hear any matter or perform any of the functions of the Agency;
- * subsection 25.1(4): dealing with the Agency's right to make rules specifying a scale under which costs are taxed;
- * subsection 34(1): dealing with fixing fees for, among other things, applications, licenses and permits;
- * section 109: dealing with the right of judges of the Federal Court to, with the approval of the Governor in Council, make general rules regarding the practice and procedure of the Court in relation to insolvent railways;
- * subsection 163(1): providing that in the absence of agreement to the contrary, the Agency's rules of procedure apply to arbitrations; and
- * subsection 169.36(1): dealing with the right of the Agency to make rules of procedure for an arbitration.

40 In contrast, the Act's use of the word "regulations" generally refers to more than merely internal, procedural matters. For example:

- * subsection 86(1): the Agency can make regulations relating to air services;
- * section 86.1: the Agency shall make regulations respecting advertising of prices for air services within or originating in Canada;
- * subsection 92(3): the Agency can make regulations concerning the adequacy of liability insurance for a railway;
- * subsection 117(2): the Agency may make regulations with respect to information to be contained in a railway tariff;
- * subsection 128(1): the Agency can make regulations relating to the interswitching of rail traffic; and
- * section 170: the Agency can make regulations for the purpose of eliminating undue obstacles in the transportation network to the mobility of persons with disabilities.

41 The dichotomy between internal/procedural matters on one hand and external/substantive on the other is reflected in section 54 of the Act, which provides that the appointment of receivers or managers does not relieve them from complying with the Act and with the "orders, regulations, and directions made or issued under this Act". The absence of "rules" from this listing is consistent with the interpretation that, in the context of the Act, rules only apply to procedural matters and not the substantive operations that a receiver or manager would be charged with. This interpretation also accords with the presumption of consistent expression, since it is generally inferred that "[w]hen an

Act uses different words in relation to the same subject such a choice by Parliament must be considered intentional and indicative of a change in meaning or a different meaning" (*Peach Hill Management Ltd. v. Canada*, [2000] F.C.J. No. 894, 257 N.R. 193, at paragraph 12 (F.C.A.)).

42 Another relevant provision is section 109, which requires Federal Court judges to seek approval from the Governor in Council when establishing rules of procedure for matters relating to insolvent railways. Two possible conclusions may be taken from this provision. First, it could imply that the Agency's rules are also subject to Governor in Council approval. Second, it could imply that since Federal Court judges are explicitly required to seek such approval, the absence of that same requirement under section 17 is indicative of Parliament's intent that the Agency is not required to seek such approval.

43 The latter interpretation is, in my view, the better view. It is in accordance with the maxim of statutory interpretation *expressio unius exclusio alterius*, which in essence states that consistent drafting requires that some legislative silences should be seen as deliberate. While this maxim should be approached with caution, the Supreme Court has relied on similar reasoning to find Parliament's inclusion of express limitations in some sections of an act as evidence Parliament did not intend those limitations to be included in other provisions where the exceptions are not explicitly stated (*Ulybel Enterprises* at paragraph 42).

44 In the present case, since the Act specifically requires Federal Court judges to receive approval from the Governor in Council when establishing rules of procedure, the application of the *exclusio unius* maxim is consistent with the interpretation that the Agency's rules are not subject to this requirement.

45 There is a further, final contextual aid, found in the legislative evolution of the Act. In *Ulybel Enterprises* at paragraph 33, the Supreme Court noted that prior enactments may throw light on Parliament's intent when amending or adding to a statute.

46 The predecessor to the Agency, the National Transportation Agency (NTA), was governed by the *National Transportation Act, 1987*, c. 28 (3rd Supp.) (former Act).

47 Pursuant to subsection 22(1) of the former Act, the NTA had the power to make rules with the approval of the Governor in Council:

22. (1) The Agency may, with the approval of the Governor in Council, make rules respecting

(a) the sittings of the Agency and the carrying on of its work;

(b) the manner of and procedures for dealing with matters and business

before the Agency, including the circumstances in which in camera hearings may be held; and

(c) the number of members of the Agency that are required to hear any matter or exercise any of the functions of the Agency under this Act or any other Act of Parliament.

- (2) Subject to the rules referred to in subsection (1), two members of the Agency constitute a quorum. [Emphasis added.]

* * *

22. (1) L'Office peut, avec l'approbation du gouverneur en conseil, établir des règles concernant:

a) ses séances et l'exécution de ses travaux;

b) la procédure relative aux questions dont il est saisi, notamment pour ce qui est des cas de huis clos;

c) le nombre de membres qui doivent connaître des questions ou remplir telles des fonctions de l'Office prévues par la présente loi ou une autre loi fédérale.

- (2) Sous réserve des règles visées au paragraphe (1), le quorum est constitué de deux membres. [Le souligné est de moi.]

48 In 1996, the former Act was replaced with the current regime. Section 22 of the former Act was replaced by nearly identical provisions contained in subsection 16(1) and section 17 of the current Act. There was one significant difference: the requirement to obtain Governor in Council approval for the rules was removed. In my view, this demonstrates that Parliament intended that the Agency not be required to obtain Governor in Council approval when making rules pursuant to section 17 of the Act.

49 Before leaving the contextual analysis, for completeness, I note that at the hearing of this appeal counsel for the Agency indicated that he no longer relied on the clause-by-cause analysis of section 17 of the Act as an aid to interpretation. As such, it has formed no part of my analysis.

(iii) Purposive Analysis

50 The Agency has a broad mandate in respect of all transportation matters under the legislative authority of Parliament. The Agency performs two key functions.

51 First, in its role as a quasi-judicial tribunal, it resolves commercial and consumer transportation-related disputes. Its mandate was increased to include resolving accessibility issues for persons with disabilities.

52 Second, the Agency functions as an economic regulator, making determinations and issuing licenses and permits to carriers which function within the ambit of Parliament's authority. In both roles the Agency may be called to deal with matters of significant complexity.

53 Subsection 29(1) of the Act requires the Agency to make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received (unless the parties agree otherwise or the Governor in Council shortens the time frame by regulation).

54 The mandate of the Agency when viewed through the lens that it must act with celerity requires an efficient decision-making process. Efficient processes are the result of a number of factors, not the least of which are rules of procedure that establish efficient procedures and that are flexible and able to react to changing circumstances.

55 In my view, interpreting subsection 36(1) of the Act to not include rules as a subset of regulations (so as to allow the Agency to enact rules without Governor in Council approval) is consistent with the purpose of the Agency as envisioned in the Act.

(iv) Conclusion of Statutory Interpretation Analysis

56 Having conducted the required textual, contextual and purposive analysis, I am satisfied the Agency's interpretation of the Act was reasonable. While there may be a measure of ambiguity in the text of the Act, the Act's context and purpose demonstrate that the Agency's interpretation fell within a range of acceptable outcomes.

57 There remains to consider the appellant's final argument.

What, if anything, is the Effect of Governor in Council Approval of the Rules in 2005?

58 As noted above, the appellant argues that because the Rules were approved by the Governor in Council, they could not be amended without Governor in Council approval.

59 In my view, there are two answers to this argument.

60 First, while the Regulatory Impact Analysis Statement which accompanied the Rules in 2005

stated that Governor in Council approval was required for the enactment of the Rules, such a statement does not bind this Court. Regulatory Impact Analysis Statements do not form part of the substantive enactment (*Astral Media Radio Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 16, [2011] 1 F.C.R. 347, at paragraph 23). As the Agency later reasonably concluded that Governor in Council approval was not required to enact the Quorum Rule, it follows that Governor in Council approval in 2005 was an unnecessary step that does not limit or bind the Agency now or in the future.

61 Second, the Quorum Rule is new. It does not vary or rescind any provision in the Rules that could be said to be previously approved by the Governor in Council.

Conclusion

62 For these reasons, I would dismiss the appeal. In the circumstances where the appeal was in the nature of public interest litigation and the issue raised by the appellant was not frivolous, I would award the appellant his disbursements in this Court.

63 In the event the parties are unable to reach agreement on the disbursements, they shall be assessed.

DAWSON J.A.

WEBB J.A.:-- I agree.

BLANCHARD J.A. (*ex officio*):-- I agree.

Indexed as:

RJR-MacDonald Inc. v. Canada (Attorney General)

RJR-MacDonald Inc., Applicant;

v.

**The Attorney General of Canada, Respondent, and
The Attorney General of Quebec, Mis-en-cause, and
The Heart and Stroke Foundation of Canada, Interveners on the
the Canadian Cancer Society, application for the Canadian
Council on Smoking and Health, and interlocutory relief
Physicians for a Smoke-Free Canada**

And between

Imperial Tobacco Ltd., Applicant;

v.

**The Attorney General of Canada, Respondent, and
The Attorney General of Quebec, Mis-en-cause, and
The Heart and Stroke Foundation of Canada, Interveners on the
the Canadian Cancer Society, application for the Canadian
Council on Smoking and Health, and interlocutory relief
Physicians for a Smoke-Free Canada**

[1994] 1 S.C.R. 311

[1994] 1 R.C.S. 311

[1994] S.C.J. No. 17

[1994] A.C.S. no 17

1994 CanLII 117

File Nos.: 23460, 23490.

Supreme Court of Canada

1993: October 4 / 1994: March 3.

**Present: Lamer C.J. and La Forest, L'Heureux-Dubé,
Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.**

APPLICATIONS FOR INTERLOCUTORY RELIEF

Practice -- Interlocutory motions to stay implementation of regulations pending final decision on appeals and to delay implementation if appeals dismissed -- Leave to appeal granted shortly after applications to stay heard -- Whether the applications for relief from compliance with regulations should be granted -- Tobacco Products Control Act, S.C. 1988, c. 20, ss. 3, 4 to 8, 9, 11 to 16, 17(f), 18. -- Tobacco Products Control Regulations, amendment, SOR/93-389 -- Canadian Charter of Rights and Freedoms, ss. 1, 2(b), 24(1) - - Rules of the Supreme Court of Canada, SOR/83-74, s. 27 -- Supreme Court Act, R.S.C., 1985, c. S-26, s. 65.1.

The Tobacco Products Control Act regulates the advertisement of tobacco products and the health warnings which must be placed upon those products. Both applicants successfully challenged the Act's constitutional validity in the Quebec Superior Court on the grounds that it was ultra vires Parliament and that it violates the right to freedom of expression in s. 2(b) of the Canadian Charter of Rights and Freedoms. The Court of Appeal ordered the suspension of enforcement until judgment was rendered on the Act's validity but declined to order a stay of the coming into effect of the Act until 60 days following a judgment validating the Act. The majority ultimately found the legislation constitutional.

The Tobacco Products Control Regulations, amendment, would cause the applicants to incur major expense in altering their packaging and these expenses would be irrecoverable should the legislation be found unconstitutional. Before a decision on applicants' leave applications to this Court in the main actions had been made, the applicants brought these motions for stay pursuant to s. 65.1 of the Supreme Court Act, or, in the event that leave was granted, pursuant to r. 27 of the Rules of the Supreme Court of Canada. In effect, the applicants sought to be released from any obligation to comply with the new packaging requirements until the disposition of the main actions. They also requested that the stays be granted for a period of 12 months from the dismissal of the leave applications or from a decision of this Court confirming the validity of Tobacco Products Control Act.

This Court heard applicants' motions on October 4 and granted leave to appeal the main action on October 14. At issue here was whether the applications for relief from compliance with the Tobacco Products Control Regulations, amendment should be granted. A preliminary question was raised as to this Court's jurisdiction to grant the relief requested by the applicants.

Held: The applications should be dismissed.

The powers of the Supreme Court of Canada to grant relief in this kind of proceeding are contained in s. 65.1 of the Supreme Court of Canada Act and r. 27 of the Rules of the Supreme Court of Canada.

The words "other relief" in r. 27 of the Supreme Court Rules are broad enough to permit the Court to defer enforcement of regulations that were not in existence when the appeal judgment was rendered. It can apply even though leave to appeal may not yet be granted. In interpreting the language of the rule, regard should be had to its purpose: to facilitate the "bringing of cases" before the Court "for the effectual execution and working of this Act". To achieve its purpose the rule can neither be limited to cases in which leave to appeal has already been granted nor be interpreted narrowly to apply only to an order stopping or arresting execution of the Court's process by a third party or freezing the judicial proceeding which is the subject matter of the judgment in appeal.

Section 65.1 of the Supreme Court Act was adopted not to limit the Court's powers under r. 27 but to enable a single judge to exercise the jurisdiction to grant stays in circumstances in which, before the amendment, a stay could be granted by the Court. It should be interpreted as conferring the same broad powers as are included in r. 27. The Court, pursuant to both s. 65.1 and r. 27, can not only grant a stay of execution and of proceedings in the traditional sense but also make any order that preserves matters between the parties in a state that will, as far as possible, prevent prejudice pending resolution by the Court of the controversy, so as to enable the Court to render a meaningful and effective judgment. The Court must be able to intervene not only against the direct dictates of the judgment but also against its effects. The Court therefore must have jurisdiction to enjoin conduct on the part of a party acting in reliance on the judgment which, if carried out, would tend to negate or diminish the effect of the judgment of this Court.

Jurisdiction to grant the relief requested by the applicants exists even if the applicants' requests for relief are for "suspension" of the regulation rather than "exemption" from it. To hold otherwise would be inconsistent with *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.* which established that the distinction between "suspension" and "exemption" cases is made only after jurisdiction has been otherwise established. If jurisdiction under s. 65.1 of the Act and r. 27 were wanting, jurisdiction would be found in s. 24(1) of the Canadian Charter of Rights and Freedoms. A Charter remedy should not be defeated because of a deficiency in the ancillary procedural powers of the Court to preserve the rights of the parties pending a final resolution of constitutional rights.

The three-part American Cyanamid test (adopted in Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*) should be applied to applications for interlocutory injunctions and as well for stays in both private law and Charter cases.

At the first stage, an applicant for interlocutory relief in a Charter case must demonstrate a serious question to be tried. Whether the test has been satisfied should be determined by a motions judge on the basis of common sense and an extremely limited review of the case on the merits. The fact that an appellate court has granted leave in the main action is, of course, a relevant and weighty consideration, as is any judgment on the merits which has been rendered, although neither is necessarily conclusive of the matter. A motions court should only go beyond a preliminary investigation into the merits when the result of the interlocutory motion will in effect amount to a final determination of the action, or when the constitutionality of a challenged statute can be

determined as a pure question of law. Instances of this sort will be exceedingly rare. Unless the case on the merits is frivolous or vexatious, or the constitutionality of the statute is a pure question of law, a judge on a motion for relief must, as a general rule, consider the second and third stages of the Metropolitan Stores test.

At the second stage the applicant is required to demonstrate that irreparable harm will result if the relief is not granted. 'Irreparable' refers to the nature of the harm rather than its magnitude. In Charter cases, even quantifiable financial loss relied upon by an applicant may be considered irreparable harm so long as it is unclear that such loss could be recovered at the time of a decision on the merits.

The third branch of the test, requiring an assessment of the balance of inconvenience to the parties, will normally determine the result in applications involving Charter rights. A consideration of the public interest must be taken into account in assessing the inconvenience which it is alleged will be suffered by both parties. These public interest considerations will carry less weight in exemption cases than in suspension cases. When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation has in fact this effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.

As a general rule, the same principles would apply when a government authority is the applicant in a motion for interlocutory relief. However, the issue of public interest, as an aspect of irreparable harm to the interests of the government, will be considered in the second stage. It will again be considered in the third stage when harm to the applicant is balanced with harm to the respondent including any harm to the public interest established by the latter.

Here, the application of these principles to the facts required that the applications for stay be dismissed.

The observation of the Quebec Court of Appeal that the case raised serious constitutional issues and this Court's decision to grant leave to appeal clearly indicated that these cases raise serious questions of law.

Although compliance with the regulations would require a significant expenditure and, in the event of their being found unconstitutional, reversion to the original packaging would require another significant outlay, monetary loss of this nature will not usually amount to irreparable harm in private law cases. However, where the government is the unsuccessful party in a constitutional claim, a plaintiff will face a much more difficult task in establishing constitutional liability and obtaining monetary redress. The expenditures which the new regulations require will therefore impose irreparable harm on the applicants if these motions are denied but the main actions are successful on appeal.

Among the factors which must be considered in order to determine whether the granting or withholding of interlocutory relief would occasion greater inconvenience are the nature of the relief sought and of the harm which the parties contend they will suffer, the nature of the legislation which is under attack, and where the public interest lies. Although the required expenditure would impose economic hardship on the companies, the economic loss or inconvenience can be avoided by passing it on to purchasers of tobacco products. Further, the applications, since they were brought by two of the three companies controlling the Canadian tobacco industry, were in actual fact for a suspension of the legislation, rather than for an exemption from its operation. The public interest normally carries greater weight in favour of compliance with existing legislation. The weight given is in part a function of the nature of the legislation and in part a function of the purposes of the legislation under attack. The government passed these regulations with the intention of protecting public health and furthering the public good. When the government declares that it is passing legislation in order to protect and promote public health and it is shown that the restraints which it seeks to place upon an industry are of the same nature as those which in the past have had positive public benefits, it is not for a court on an interlocutory motion to assess the actual benefits which will result from the specific terms of the legislation. The applicants, rather, must offset these public interest considerations by demonstrating a more compelling public interest in suspending the application of the legislation. The only possible public interest in the continued application of the current packaging requirements, however, was that the price of cigarettes for smokers would not increase. Any such increase would not be excessive and cannot carry much weight when balanced against the undeniable importance of the public interest in health and in the prevention of the widespread and serious medical problems directly attributable to smoking.

Cases Cited

Applied: *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110; considered: *Labatt Breweries of Canada Ltd. v. Attorney General of Canada*, [1980] 1 S.C.R. 594; *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396; referred to: *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 S.C.R. 401; *Keable v. Attorney General (Can.)*, [1978] 2 S.C.R. 135; *Battle Creek Toasted Corn Flake Co. v. Kellogg Toasted Corn Flake Co.* (1924), 55 O.L.R. 127; *Laboratoire Pentagone Ltée v. Parke, Davis & Co.*, [1968] S.C.R. 269; *Adrian Messenger Services v. The Jockey Club Ltd. (No. 2)* (1972), 2 O.R. 619; *Bear Island Foundation v. Ontario* (1989), 70 O.R. (2d) 574; *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294; *Trieger v. Canadian Broadcasting Corp.* (1988), 54 D.L.R. (4th) 143; *Tremblay v. Daigle*, [1989] 2 S.C.R. 530; *Dialadex Communications Inc. v. Crammond* (1987), 34 D.L.R. (4th) 392; *R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228; *MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577; *Hubbard v. Pitt*, [1976] Q.B. 142; *Mills v. The Queen*, [1986] 1 S.C.R. 863; *Nelles v. Ontario*, [1989] 2 S.C.R. 170; *Ainsley Financial Corp. v. Ontario Securities Commission* (1993), 14 O.R. (3d) 280; *Morgentaler v. Ackroyd* (1983), 150 D.L.R. (3d) 59; *Attorney General of Canada v. Fishing Vessel Owners' Association of B.C.*, [1985] 1 F.C. 791; *Esquimalt Anglers' Association v. Canada (Minister of Fisheries and Oceans)* (1988), 21 F.T.R. 304; *Island Telephone Co., Re* (1987), 67 Nfld. & P.E.I.R. 158; *Black v. Law Society of Alberta* (1983), 144 D.L.R. (3d) 439; *Vancouver General Hospital v.*

Stoffman (1985), 23 D.L.R. (4th) 146; *Rio Hotel Ltd. v. Commission des licences et permis d'alcool*, [1986] 2 S.C.R. ix; *Ontario Jockey Club v. Smith* (1922), 22 O.W.N. 373; *R. v. Oakes*, [1986] 1 S.C.R. 103.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, ss. 1, 2(b), 24(1).

Code of Civil Procedure of Québec, art. 523.

Constitution Act, 1867, s. 91.

Fisheries Act, R.S.C. 1970 c. F-14.

Rules of the Supreme Court of Canada, 1888, General Order No. 85(17).

Rules of the Supreme Court of Canada, SOR/83-74, s. 27.

Supreme Court Act, R.S.C., 1985, c. S-26, ss. 65.1 [ad. S.C. 1990, c. 8, s. 40], 97(1)(a).

Tobacco Products Control Act, R.S.C., 1985, c. 14 (4th Supp.), S.C. 1988, c. 20, ss. 3, 4 to 8, 9, 11 to 16, 17(f), 18.

Tobacco Products Control Regulations, amendment, SOR/93-389.

Authors Cited

Canada. Minister of National Health and Welfare. Regulatory Impact Analysis Statement. (Statement following Tobacco Products Control Regulations, amendment, SOR/93-389.) In *Canada Gazette*, Part II, Vol. 127, No. 16, p. 3284.

Cassels, Jamie. "An Inconvenient Balance: The Injunction as a Charter Remedy". In Jeffrey Berryman, ed. *Remedies: Issues and Perspectives*. Scarborough, Ont.: Carswell, 1991, 271.

Sharpe, Robert J. *Injunctions and Specific Performance*, 2nd ed. Aurora, Ont.: Canada Law Book, 1992 (loose-leaf).

APPLICATIONS for interlocutory relief ancillary to constitutional challenge of enabling legislation following judgment of the Quebec Court of Appeal, [1993] R.J.Q. 375, 53 Q.A.C. 79, 102 D.L.R. (4th) 289, 48 C.P.R. (3d) 417, allowing an appeal from a judgment of Chabot J., [1991] R.J.Q. 2260, 82 D.L.R. (4th) 449, 37 C.P.R. (3d) 193, granting the application. Applications dismissed.

Colin K. Irving, for the applicant RJR-MacDonald Inc. Simon V. Potter, for the applicant Imperial Tobacco Inc. Claude Joyal and Yves Leboeuf, for the respondent. W. Ian C. Binnie, Q.C., and Colin Baxter, for the Heart and Stroke Foundation of Canada, the Canadian Cancer Society, the Canadian Council on Smoking and Health, and Physicians for a Smoke-Free Canada.

Solicitors for the applicant RJR-MacDonald Inc.: Mackenzie, Gervais, Montreal. Solicitors for the applicant Imperial Tobacco Inc.: Ogilvy, Renault, Montreal. Solicitors for the respondent: Côté & Ouellet, Montreal. Solicitors for the interveners on the application for interlocutory relief Heart and Stroke Foundation of Canada, the Canadian Cancer Society, the Canadian Council on Smoking and

Health, and Physicians for a Smoke-Free Canada: McCarthy, Tétrault, Toronto.

The judgment of the Court on the applications for interlocutory relief was delivered by

SOPINKA AND CORY JJ.:--

I. Factual Background

1 These applications for relief from compliance with certain Tobacco Products Control Regulations, amendment, SOR/93-389 as interlocutory relief are ancillary to a larger challenge to regulatory legislation which will soon be heard by this Court.

2 The Tobacco Products Control Act, R.S.C., 1985, c. 14 (4th Supp.), S.C. 1988, c. 20, came into force on January 1, 1989. The purpose of the Act is to regulate the advertisement of tobacco products and the health warnings which must be placed upon tobacco products.

3 The first part of the Tobacco Products Control Act, particularly ss. 4 to 8, prohibits the advertisement of tobacco products and any other form of activity designed to encourage their sale. Section 9 regulates the labelling of tobacco products, and provides that health messages must be carried on all tobacco packages in accordance with the regulations passed pursuant to the Act.

4 Sections 11 to 16 of the Act deal with enforcement and provide for the designation of tobacco product inspectors who are granted search and seizure powers. Section 17 authorizes the Governor in Council to make regulations under the Act. Section 17(f) authorizes the Governor in Council to adopt regulations prescribing "the content, position, configuration, size and prominence" of the mandatory health messages. Section 18(1)(b) of the Act indicates that infringements may be prosecuted by indictment, and upon conviction provides for a penalty by way of a fine not to exceed \$100,000, imprisonment for up to one year, or both.

5 Each of the applicants challenged the constitutional validity of the Tobacco Products Control Act on the grounds that it is ultra vires the Parliament of Canada and invalid as it violates s. 2(b) of the Canadian Charter of Rights and Freedoms. The two cases were heard together and decided on common evidence.

6 On July 26, 1991, Chabot J. of the Quebec Superior Court granted the applicants' motions, [1991] R.J.Q. 2260, 82 D.L.R. (4th) 449, finding that the Act was ultra vires the Parliament of Canada and that it contravened the Charter. The respondent appealed to the Quebec Court of Appeal. Before the Court of Appeal rendered judgment, the applicants applied to this court for interlocutory relief in the form of an order that they would not have to comply with certain

provisions of the Act for a period of 60 days following judgment in the Court of Appeal.

7 Up to that point, the applicants had complied with all provisions in the Tobacco Products Control Act. However, under the Act, the complete prohibition on all point of sale advertising was not due to come into force until December 31, 1992. The applicants estimated that it would take them approximately 60 days to dismantle all of their advertising displays in stores. They argued that, with the benefit of a Superior Court judgment declaring the Act unconstitutional, they should not be required to take any steps to dismantle their displays until such time as the Court of Appeal might eventually hold the legislation to be valid. On the motion the Court of Appeal held that the penalties for non-compliance with the ban on point of sale advertising could not be enforced against the applicants until such time as the Court of Appeal had released its decision on the merits. The court refused, however, to stay the enforcement of the provisions for a period of 60 days following a judgment validating the Act.

8 On January 15, 1993, the Court of Appeal for Quebec, [1993] R.J.Q. 375, 102 D.L.R. (4th) 289, allowed the respondent's appeal, Brossard J.A. dissenting in part. The Court unanimously held that the Act was not ultra vires the government of Canada. The Court of Appeal accepted that the Act infringed s. 2(b) of the Charter but found, Brossard J.A. dissenting on this aspect, that it was justified under s. 1 of the Charter. Brossard J.A. agreed with the majority with respect to the requirement of unattributed package warnings (that is to say the warning was not to be attributed to the Federal Government) but found that the ban on advertising was not justified under s. 1 of the Charter. The applicants filed an application for leave to appeal the judgment of the Quebec Court of Appeal to this Court.

9 On August 11, 1993, the Governor in Council published amendments to the regulations dated July 21, 1993, under the Act: Tobacco Products Control Regulations, amendment, SOR/93-389. The amendments stipulate that larger, more prominent health warnings must be placed on all tobacco products packets, and that these warnings can no longer be attributed to Health and Welfare Canada. The packaging changes must be in effect within one year.

10 According to affidavits filed in support of the applicant's motion, compliance with the new regulations would require the tobacco industry to redesign all of its packaging and to purchase thousands of rotograve cylinders and embossing dies. These changes would take close to a year to effect, at a cost to the industry of about \$30,000,000.

11 Before a decision on their leave applications in the main actions had been made, the applicants brought these motions for a stay pursuant to s. 65.1 of the Supreme Court Act, R.S.C., 1985, c. S-26 (ad. by S.C. 1990, c. 8, s. 40) or, in the event that leave was granted, pursuant to r. 27 of the Rules of the Supreme Court of Canada, SOR/83-74. The applicants seek to stay "the judgment of the Quebec Court of Appeal delivered on January 15, 1993", but "only insofar as that judgment validates sections 3, 4, 5, 6, 7 and 10 of [the new regulations]". In effect, the applicants ask to be released from any obligation to comply with the new packaging requirements until the disposition

of the main actions. The applicants further request that the stays be granted for a period of 12 months from the dismissal of the leave applications or from a decision of this Court confirming the validity of Tobacco Products Control Act.

12 The applicants contend that the stays requested are necessary to prevent their being required to incur considerable irrecoverable expenses as a result of the new regulations even though this Court may eventually find the enabling legislation to be constitutionally invalid.

13 The applicants' motions were heard by this Court on October 4. Leave to appeal the main actions was granted on October 14.

II. Relevant Statutory Provisions

Tobacco Products Control Act, R.S.C., 1985, c. 14 (4th Supp.), S.C. 1988, c. 20, s. 3:

3. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,

- (a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;
- (b) to protect young persons and others, to the extent that is reasonable in a free and democratic society, from inducements to use tobacco products and consequent dependence on them; and
- (c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of pertinent information to consumers of tobacco products.

Supreme Court Act, R.S.C., 1985, c. S-26, s. 65.1 (ad. S.C. 1990, c. 8, s. 40):

65.1 The Court or a judge may, on the request of a party who has filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on such terms as to the Court or the judge seem just.

Rules of the Supreme Court of Canada, SOR/83-74, s. 27:

27. Any party against whom judgment has been given, or an order made, by the Court or any other court, may apply to the Court for a stay of execution or other relief against such a judgment or order, and the Court may give such relief upon such terms as may be just.

III. Courts Below

14 In order to place the applications for the stay in context it is necessary to review briefly the decisions of the courts below.

Superior Court, [1991] R.J.Q. 2260, 82 D.L.R. (4th) 449

15 Chabot J. concluded that the dominant characteristic of the Tobacco Products Control Act was the control of tobacco advertising and that the protection of public health was only an incidental objective of the Act. Chabot J. characterized the Tobacco Products Control Act as a law regulating advertising of a particular product, a matter within provincial legislative competence.

16 Chabot J. found that, with respect to s. 2(b) of the Charter, the activity prohibited by the Act was a protected activity, and that the notices required by the Regulations violated that Charter guarantee. He further held that the evidence demonstrated that the objective of reducing the level of consumption of tobacco products was of sufficient importance to warrant legislation restricting freedom of expression, and that the legislative objectives identified by Parliament to reduce tobacco use were a pressing and substantial concern in a free and democratic society.

17 However, in his view, the Act did not minimally impair freedom of expression, as it did not restrict itself to protecting young people from inducements to smoke, or limit itself to lifestyle advertising. Chabot J. found that the evidence submitted by the respondent in support of its contention that advertising bans decrease consumption was unreliable and without probative value because it failed to demonstrate that any ban of tobacco advertising would be likely to bring about a reduction of tobacco consumption. Therefore, the respondent had not demonstrated that an advertising ban restricted freedom of expression as little as possible. Chabot J. further concluded that the evidence of a rational connection between the ban of Canadian advertising and the objective of reducing overall consumption of tobacco was deficient, if not non-existent. He held that the Act was a form of censorship and social engineering which was incompatible with a free and democratic society and could not be justified.

Court of Appeal (on the application for a stay)

18 In deciding whether or not to exercise its broad power under art. 523 of the Code of Civil Procedure of Québec to "make any order necessary to safeguard the rights of the parties", the Court of Appeal made the following observation on the nature of the relief requested:

But what is at issue here (if the Act is found to be constitutionally valid) is the suspension of the legal effect of part of the Act and the legal duty to comply with it for 60 days, and the suspension, as well, of the power of the appropriate public authorities to enforce the Act. To suspend or delay the effect or the enforcement of a valid act of the legislature, particularly one purporting to relate to the protection of public health or safety is a serious matter. The courts should

not lightly limit or delay the implementation or enforcement of valid legislation where the legislature has brought that legislation into effect. To do so would be to intrude into the legislative and the executive spheres. [Emphasis in original.]

The Court made a partial grant of the relief sought as follows:

Since the letters of the Department of Health and Welfare and appellants' contestation both suggest the possibility that the applicants may be prosecuted under Sec. 5 after December 31, 1992 whether or not judgment has been rendered on these appeals by that date, it seems reasonable to order the suspension of enforcement under Sec. 5 of the Act until judgment has been rendered by this Court on the present appeals. There is, after all, a serious issue as to the validity of the Act, and it would be unfairly onerous to require the applicants to incur substantial expense in dismantling these point of sale displays until we have resolved that issue.

We see no basis, however, for ordering a stay of the coming into effect of the Act for 60 days following our judgment on the appeals.

...

Indeed, given the public interest aspect of the Act, which purports to be concerned with the protection of public health, if the Act were found to be valid, there is excellent reason why its effect and enforcement should not be suspended (*A.G. of Manitoba v. Metropolitan Stores (MTS) Ltd.* [1987] 1 S.C.R. 110, 127, 135). [Emphasis in original.]

Court of Appeal (on the validity of the legislation), [1993] R.J.Q. 375, 102 D.L.R. (4th) 289

1. LeBel J.A. (for the majority)

19 LeBel J.A. characterized the Tobacco Products Control Act as legislation relating to public health. He also found that it was valid as legislation enacted for the peace, order and good government of Canada.

20 LeBel J.A. applied the criteria set out in *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 S.C.R. 401, and concluded that the Act satisfied the "national concern" test and could properly rest on a purely theoretical, unproven link between tobacco advertising and the overall consumption of tobacco.

21 LeBel J.A. agreed with Brossard J.A. that the Act infringed freedom of expression pursuant to s. 2(b) of the Charter but found that it was justified under s. 1 of the Charter. LeBel J.A. concluded

that Chabot J. erred in his findings of fact in failing to recognize that the rational connection and minimal impairment branches of the Oakes test have been attenuated by later decisions of the Supreme Court of Canada. He found that the s. 1 test was satisfied since there was a possibility that prohibiting tobacco advertising might lead to a reduction in tobacco consumption, based on the mere existence of a [Translation] "body of opinion" favourable to the adoption of a ban. Further he found that the Act appeared to be consistent with minimal impairment as it did not prohibit consumption, did not prohibit foreign advertising and did not preclude the possibility of obtaining information about tobacco products.

2. Brossard J.A. (dissenting in part)

22 Brossard J.A. agreed with LeBel J.A. that the Tobacco Products Control Act should be characterized as public health legislation and that the Act satisfied the "national concern" branch of the peace, order and good government power.

23 However, he did not think that the violation of s. 2(b) of the Charter could be justified. He reviewed the evidence and found that it did not demonstrate the existence of a connection or even the possibility of a connection between an advertising ban and the use of tobacco. It was his opinion that it must be shown on a balance of probabilities that it was at least possible that the goals sought would be achieved. He also disagreed that the Act met the minimal impairment requirement since in his view the Act's objectives could be met by restricting advertising without the need for a total prohibition.

IV. Jurisdiction

24 A preliminary question was raised as to this Court's jurisdiction to grant the relief requested by the applicants. Both the Attorney General of Canada and the interveners on the stay (several health organizations, i.e., the Heart and Stroke Foundation of Canada, the Canadian Cancer Society, the Canadian Council on Smoking and Health, and Physicians for a Smoke-Free Canada) argued that this Court lacks jurisdiction to order a stay of execution or of the proceedings which would relieve the applicants of the obligation of complying with the new regulations. Several arguments were advanced in support of this position.

25 First, the Attorney General argued that neither the old nor the new regulations dealing with the health messages were in issue before the lower courts and, as such, the applicants' requests for a stay truly cloaks requests to have this Court exercise an original jurisdiction over the matter. Second, he contended that the judgment of the Quebec Court of Appeal is not subject to execution given that it only declared that the Act was *intra vires* s. 91 of the Constitution Act, 1867 and justified under s. 1 of the Charter. Because the lower court decision amounts to a declaration, there is, therefore, no "proceeding" that can be stayed. Finally, the Attorney General characterized the applicants' requests as being requests for a suspension by anticipation of the 12-month delay in which the new regulations will become effective so that the applicants can continue to sell tobacco products for an extended period in packages containing the health warnings required by the present

regulations. He claimed that this Court has no jurisdiction to suspend the operation of the new regulations.

26 The interveners supported and elaborated on these submissions. They also submitted that r. 27 could not apply because leave to appeal had not been granted. In any event, they argued that the words "or other relief" are not broad enough to permit this Court to defer enforcement of regulations that were not even in existence at the time the appeal judgment was rendered.

27 The powers of the Supreme Court of Canada to grant relief in this kind of proceeding are contained in s. 65.1 of the Supreme Court Act and r. 27 of the Rules of the Supreme Court of Canada.

Supreme Court Act

65.1 The Court or a judge may, on the request of a party who has filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on such terms as to the Court or the judge seem just.

Rules of the Supreme Court of Canada

27. Any party against whom judgment has been given, or an order made, by the Court or any other court, may apply to the Court for a stay of execution or other relief against such a judgment or order, and the Court may give such relief upon such terms as may be just.

28 Rule 27 and its predecessor have existed in substantially the same form since at least 1888 (see Rules of the Supreme Court of Canada, 1888, General Order No. 85(17)). Its broad language reflects the language of s. 97 of the Act whence the Court derives its rule-making power. Subsection (1)(a) of that section provides that the rules may be enacted:

97. ... (a) for regulating the procedure of and in the Court and the bringing of cases before it from courts appealed from or otherwise, and for the effectual execution and working of this Act and the attainment of the intention and objects thereof;

Although the point is now academic, leave to appeal having been granted, we would not read into the rule the limitations suggested by the interveners. Neither the words of the rule nor s. 97 contain such limitations. In our opinion, in interpreting the language of the rule, regard should be had to its purpose, which is best expressed in the terms of the empowering section: to facilitate the "bringing of cases" before the Court "for the effectual execution and working of this Act". To achieve its purpose the

rule can neither be

limited to cases in which leave to appeal has already been granted nor be interpreted narrowly to apply only to an order stopping or arresting execution of the Court's process by a third party or freezing the judicial proceeding which is the subject matter of the judgment in appeal. Examples of the former, traditionally described as stays of execution, are contained in the subsections of s. 65 of the Act which have been held to be limited to preventing the intervention of a third party such as a sheriff but not the enforcement of an order directed to a party. See *Keable v. Attorney General (Can.)*, [1978] 2 S.C.R. 135. The stopping or freezing of all proceedings is traditionally referred to as a stay of proceedings. See *Battle Creek Toasted Corn Flake Co. v. Kellogg Toasted Corn Flake Co.* (1924), 55 O.L.R. 127 (C.A.). Such relief can be granted pursuant to this Court's powers in r. 27 or s. 65.1 of the Act.

29 Moreover, we cannot agree that the adoption of s. 65.1 in 1992 (S.C. 1990, c. 8, s. 40) was intended to limit the Court's powers under r. 27. The purpose of that amendment was to enable a single judge to exercise the jurisdiction to grant stays in circumstances in which, before the amendment, a stay could be granted by the Court. Section 65.1 should, therefore, be interpreted to confer the same broad powers that are included in r. 27.

30 In light of the foregoing and bearing in mind in particular the language of s. 97 of the Act we cannot agree with the first two points raised by the Attorney General that this Court is unable to grant a stay as requested by the applicants. We are of the view that the Court is empowered, pursuant to both s. 65.1 and r. 27, not only to grant a stay of execution and of proceedings in the traditional sense, but also to make any order that preserves matters between the parties in a state that will prevent prejudice as far as possible pending resolution by the Court of the controversy, so as to enable the Court to render a meaningful and effective judgment. The Court must be able to intervene not only against the direct dictates of the judgment but also against its effects. This means that the Court must have jurisdiction to enjoin conduct on the part of a party in reliance on the judgment which, if carried out, would tend to negate or diminish the effect of the judgment of this Court. In this case, the new regulations constitute conduct under a law that has been declared constitutional by the lower courts.

31 This, in our opinion, is the view taken by this Court in *Labatt Breweries of Canada Ltd. v. Attorney General of Canada*, [1980] 1 S.C.R. 594. The appellant Labatt, in circumstances similar to those in this case, sought to suspend enforcement of regulations which were attacked by it in an action for a declaration that the regulations were inapplicable to Labatt's product. The Federal Court of Appeal reversed a lower court finding in favour of Labatt. Labatt applied for a stay pending an

appeal to this Court. Although the parties had apparently agreed to the terms of an order suspending further proceedings, Laskin C.J. dealt with the issue of jurisdiction, an issue that apparently was contested notwithstanding the agreement. The Chief Justice, speaking for the Court, determined that the Court was empowered to make an order suspending the enforcement of the impugned regulation by the Department of Consumer and Corporate Affairs. At page 600, Laskin C.J. responded as follows to arguments advanced on the traditional approach to the power to grant a stay:

It was contended that the Rule relates to judgments or orders of this Court and not to judgments or orders of the Court appealed from. Its formulation appears to me to be inconsistent with such a limitation. Nor do I think that the position of the respondent that there is no judgment against the appellant to be stayed is a tenable one. Even if it be so, there is certainly an order against the appellant. Moreover, I do not think that the words of Rule 126, authorizing this Court to grant relief against an adverse order, should be read so narrowly as to invite only intervention directly against the order and not against its effect while an appeal against it is pending in this Court. I am of the opinion, therefore, that the appellant is entitled to apply for interlocutory relief against the operation of the order dismissing its declaratory action, and that this Court may grant relief on such terms as may be just. [Emphasis added.]

32 While the above passage appears to answer the submission of the respondents on this motion that Labatt was distinguishable because the Court acted on a consent order, the matter was put beyond doubt by the following additional statement of Laskin C.J. at p. 601:

Although I am of the opinion that Rule 126 applies to support the making of an order of the kind here agreed to by counsel for the parties, I would not wish it to be taken that this Court is otherwise without power to prevent proceedings pending before it from being aborted by unilateral action by one of the parties pending final determination of an appeal.

Indeed, an examination of the factums filed by the parties to the motion in Labatt reveals that while it was agreed that the dispute would be resolved by an application for a declaration, it was not agreed that pending resolution of the dispute the enforcement of the regulations would be stayed.

33 In our view, this Court has jurisdiction to grant the relief requested by the applicants. This is the case even if the applicants' requests for relief are for "suspension" of the regulation rather than "exemption" from it. To hold otherwise would be inconsistent with this Court's finding in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110. In that case, the distinction between "suspension" and "exemption" cases is made only after jurisdiction has been otherwise established and the public interest is being weighed against the interests of the applicant seeking the stay of proceedings. While "suspension" is a power that, as is stressed below, must be exercised sparingly, this is achieved by applying the criteria in *Metropolitan Stores* strictly and not

by a restrictive interpretation of this Court's jurisdiction. Therefore, the final argument of the Attorney General on the issue of jurisdiction also fails.

34 Finally, if jurisdiction under s. 65.1 of the Act and r. 27 were wanting, we would be prepared to find jurisdiction in s. 24(1) of the Charter. A Charter remedy should not be defeated due to a deficiency in the ancillary procedural powers of the Court to preserve the rights of the parties pending a final resolution of constitutional rights.

V. Grounds for Stay of Proceedings

35 The applicants rely upon the following grounds:

1. The challenged Tobacco Products Control Regulations, amendment were promulgated pursuant to ss. 9 and 17 of the Tobacco Products Control Act, S.C. 1988, c. 20.
2. The applicants have applied to this Court for leave to appeal a judgment of the Quebec Court of Appeal dated January 15, 1993. The Court of Appeal overturned a decision of the Quebec Superior Court declaring certain sections of the Act to be beyond the powers of the Parliament of Canada and an unjustifiable violation of the Canadian Charter of Rights and Freedoms.
3. The effect of the new regulations is such that the applicants will be obliged to incur substantial unrecoverable expenses in carrying out a complete redesign of all its packaging before this Court will have ruled on the constitutional validity of the enabling legislation and, if this Court restores the judgment of the Superior Court, will incur the same expenses a second time should they wish to restore their packages to the present design.
4. The tests for granting of a stay are met in this case:
 - (i) There is a serious constitutional issue to be determined.
 - (ii) Compliance with the new regulations will cause irreparable harm.
 - (iii) The balance of convenience, taking into account the public interest, favours retaining the status quo until this court has disposed of the legal issues.

VI. Analysis

36 The primary issue to be decided on these motions is whether the applicants should be granted the interlocutory relief they seek. The applicants are only entitled to this relief if they can satisfy the test laid down in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, supra. If not, the applicants will have to comply with the new regulations, at least until such time as a decision is rendered in the main actions.

A. Interlocutory Injunctions, Stays of Proceedings and the Charter

37 The applicants ask this Court to delay the legal effect of regulations which have already been enacted and to prevent public authorities from enforcing them. They further seek to be protected from enforcement of the regulations for a 12-month period even if the enabling legislation is eventually found to be constitutionally valid. The relief sought is significant and its effects far reaching. A careful balancing process must be undertaken.

38 On one hand, courts must be sensitive to and cautious of making rulings which deprive legislation enacted by elected officials of its effect.

39 On the other hand, the Charter charges the courts with the responsibility of safeguarding fundamental rights. For the courts to insist rigidly that all legislation be enforced to the letter until the moment that it is struck down as unconstitutional might in some instances be to condone the most blatant violation of Charter rights. Such a practice would undermine the spirit and purpose of the Charter and might encourage a government to prolong unduly final resolution of the dispute.

40 Are there, then, special considerations or tests which must be applied by the courts when Charter violations are alleged and the interim relief which is sought involves the execution and enforceability of legislation?

41 Generally, the same principles should be applied by a court whether the remedy sought is an injunction or a stay. In *Metropolitan Stores*, at p. 127, Beetz J. expressed the position in these words:

A stay of proceedings and an interlocutory injunction are remedies of the same nature. In the absence of a different test prescribed by statute, they have sufficient characteristics in common to be governed by the same rules and the courts have rightly tended to apply to the granting of interlocutory stay the principles which they follow with respect to interlocutory injunctions.

42 We would add only that here the applicants are requesting both interlocutory (pending disposition of the appeal) and interim (for a period of one year following such disposition) relief. We will use the broader term "interlocutory relief" to describe the hybrid nature of the relief sought. The same principles apply to both forms of relief.

43 *Metropolitan Stores* adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits. It may be helpful to consider each aspect of the test and then apply it to the facts presented in these cases.

B. The Strength of the Plaintiff's Case

44 Prior to the decision of the House of Lords in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396, an applicant for interlocutory relief was required to demonstrate a "strong prima facie case" on the merits in order to satisfy the first test. In *American Cyanamid*, however, Lord Diplock stated that an applicant need no longer demonstrate a strong prima facie case. Rather it would suffice if he or she could satisfy the court that "the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried". The *American Cyanamid* standard is now generally accepted by the Canadian courts, subject to the occasional reversion to a stricter standard: see Robert J. Sharpe, *Injunctions and Specific Performance* (2nd ed. 1992), at pp. 2-13 to 2-20.

45 In *Metropolitan Stores*, Beetz J. advanced several reasons why the *American Cyanamid* test rather than any more stringent review of the merits is appropriate in Charter cases. These included the difficulties involved in deciding complex factual and legal issues based upon the limited evidence available in an interlocutory proceeding, the impracticality of undertaking a s. 1 analysis at that stage, and the risk that a tentative determination on the merits would be made in the absence of complete pleadings or prior to the notification of any Attorneys General.

46 The respondent here raised the possibility that the current status of the main action required the applicants to demonstrate something more than "a serious question to be tried." The respondent relied upon the following dicta of this Court in *Laboratoire Pentagone Ltée v. Parke, Davis & Co.*, [1968] S.C.R. 269, at p. 272:

The burden upon the appellant is much greater than it would be if the injunction were interlocutory. In such a case the Court must consider the balance of convenience as between the parties, because the matter has not yet come to trial. In the present case we are being asked to suspend the operation of a judgment of the Court of Appeal, delivered after full consideration of the merits. It is not sufficient to justify such an order being made to urge that the impact of the injunction upon the appellant would be greater than the impact of its suspension upon the respondent.

To the same effect were the comments of Kelly J.A. in *Adrian Messenger Services v. The Jockey Club Ltd. (No. 2)* (1972), 2 O.R. 619 (C.A.), at p. 620:

Unlike the situation prevailing before trial, where the competing allegations of the parties are unresolved, on an application for an interim injunction pending an appeal from the dismissal of the action the defendant has a judgment of the Court in its favour. Even conceding the ever-present possibility of the reversal of that judgment on appeal, it will in my view be in a comparatively rare case that the Court will interfere to confer upon a plaintiff, even on an interim basis, the very right to which the trial Court has held he is not entitled.

And, most recently, of Philp J. in *Bear Island Foundation v. Ontario* (1989), 70 O.R. (2d) 574 (H.C.), at p. 576:

While I accept that the issue of title to these lands is a serious issue, it has been resolved by trial and by appeal. The reason for the Supreme Court of Canada granting leave is unknown and will not be known until they hear the appeal and render judgment. There is not before me at this time, therefore, a serious or substantial issue to be tried. It has already been tried and appealed. No attempt to stop harvesting was made by the present plaintiffs before trial, nor before the appeal before the Court of Appeal of Ontario. The issue is no longer an issue at trial.

47 According to the respondent, such statements suggest that once a decision has been rendered on the merits at trial, either the burden upon an applicant for interlocutory relief increases, or the applicant can no longer obtain such relief. While it might be possible to distinguish the above authorities on the basis that in the present case the trial judge agreed with the applicant's position, it is not necessary to do so. Whether or not these statements reflect the state of the law in private applications for interlocutory relief, which may well be open to question, they have no application in Charter cases.

48 The Charter protects fundamental rights and freedoms. The importance of the interests which, the applicants allege, have been adversely affected require every court faced with an alleged Charter violation to review the matter carefully. This is so even when other courts have concluded that no Charter breach has occurred. Furthermore, the complex nature of most constitutional rights means that a motions court will rarely have the time to engage in the requisite extensive analysis of the merits of the applicant's claim. This is true of any application for interlocutory relief whether or not a trial has been conducted. It follows that we are in complete agreement with the conclusion of Beetz J. in *Metropolitan Stores*, at p. 128, that "the American Cyanamid 'serious question' formulation is sufficient in a constitutional case where, as indicated below in these reasons, the public interest is taken into consideration in the balance of convenience."

49 What then are the indicators of "a serious question to be tried"? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case. The decision of a lower court judge on the merits of the Charter claim is a relevant but not necessarily conclusive indication that the issues raised in an appeal are serious: see *Metropolitan Stores*, supra, at p. 150. Similarly, a decision by an appellate court to grant leave on the merits indicates that serious questions are raised, but a refusal of leave in a case which raises the same issues cannot automatically be taken as an indication of the lack of strength of the merits.

50 Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to

succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

51 Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial. Indeed Lord Diplock modified the American Cyanamid principle in such a situation in *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294, at p. 1307:

Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.

Cases in which the applicant seeks to restrain picketing may well fall within the scope of this exception. Several cases indicate that this exception is already applied to some extent in Canada.

52 In *Trieger v. Canadian Broadcasting Corp.* (1988), 54 D.L.R. (4th) 143 (Ont. H.C.), the leader of the Green Party applied for an interlocutory mandatory injunction allowing him to participate in a party leaders' debate to be televised within a few days of the hearing. The applicant's only real interest was in being permitted to participate in the debate, not in any subsequent declaration of his rights. Campbell J. refused the application, stating at p. 152:

This is not the sort of relief that should be granted on an interlocutory application of this kind. The legal issues involved are complex and I am not satisfied that the applicant has demonstrated there is a serious issue to be tried in the sense of a case with enough legal merit to justify the extraordinary intervention of this court in making the order sought without any trial at all. [Emphasis added.]

53 In *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, the appellant Daigle was appealing an interlocutory injunction granted by the Quebec Superior Court enjoining her from having an abortion. In view of the advanced state of the appellant's pregnancy, this Court went beyond the issue of whether or not the interlocutory injunction should be discharged and immediately rendered a decision on the merits of the case.

54 The circumstances in which this exception will apply are rare. When it does, a more extensive review of the merits of the case must be undertaken. Then when the second and third stages of the

test are considered and applied the anticipated result on the merits should be borne in mind.

55 The second exception to the American Cyanamid prohibition on an extensive review of the merits arises when the question of constitutionality presents itself as a simple question of law alone. This was recognized by Beetz J. in *Metropolitan Stores*, at p. 133:

There may be rare cases where the question of constitutionality will present itself as a simple question of law alone which can be finally settled by a motion judge. A theoretical example which comes to mind is one where Parliament or a legislature would purport to pass a law imposing the beliefs of a state religion. Such a law would violate s. 2(a) of the Canadian Charter of Rights and Freedoms, could not possibly be saved under s. 1 of the Charter and might perhaps be struck down right away; see *Attorney General of Quebec v. Quebec Association of Protestant School Boards*, [1984] 2 S.C.R. 66, at p. 88. It is trite to say that these cases are exceptional.

A judge faced with an application which falls within the extremely narrow confines of this second exception need not consider the second or third tests since the existence of irreparable harm or the location of the balance of convenience are irrelevant inasmuch as the constitutional issue is finally determined and a stay is unnecessary.

56 The suggestion has been made in the private law context that a third exception to the American Cyanamid "serious question to be tried" standard should be recognized in cases where the factual record is largely settled prior to the application being made. Thus in *Dialadex Communications Inc. v. Crammond* (1987), 34 D.L.R. (4th) 392 (Ont. H.C.), at p. 396, it was held that:

Where the facts are not substantially in dispute, the plaintiffs must be able to establish a strong prima facie case and must show that they will suffer irreparable harm if the injunction is not granted. If there are facts in dispute, a lesser standard must be met. In that case, the plaintiffs must show that their case is not a frivolous one and there is a substantial question to be tried, and that, on the balance of convenience, an injunction should be granted.

To the extent that this exception exists at all, it should not be applied in Charter cases. Even if the facts upon which the Charter breach is alleged are not in dispute, all of the evidence upon which the s. 1 issue must be decided may not be before the motions court. Furthermore, at this stage an appellate court will not normally have the time to consider even a complete factual record properly. It follows that a motions court should not attempt to undertake the careful analysis required for a consideration of s. 1 in an interlocutory proceeding.

C. Irreparable Harm

57 Beetz J. determined in *Metropolitan Stores*, at p. 128, that "[t]he second test consists in deciding whether the litigant who seeks the interlocutory injunction would, unless the injunction is granted, suffer irreparable harm". The harm which might be suffered by the respondent, should the relief sought be granted, has been considered by some courts at this stage. We are of the opinion that this is more appropriately dealt with in the third part of the analysis. Any alleged harm to the public interest should also be considered at that stage.

58 At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

59 "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, *supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

60 The assessment of irreparable harm in interlocutory applications involving Charter rights is a task which will often be more difficult than a comparable assessment in a private law application. One reason for this is that the notion of irreparable harm is closely tied to the remedy of damages, but damages are not the primary remedy in Charter cases.

61 This Court has on several occasions accepted the principle that damages may be awarded for a breach of Charter rights: (see, for example, *Mills v. The Queen*, [1986] 1 S.C.R. 863, at pp. 883, 886, 943 and 971; *Nelles v. Ontario*, [1989] 2 S.C.R. 170, at p. 196). However, no body of jurisprudence has yet developed in respect of the principles which might govern the award of damages under s. 24(1) of the Charter. In light of the uncertain state of the law regarding the award of damages for a Charter breach, it will in most cases be impossible for a judge on an interlocutory application to determine whether adequate compensation could ever be obtained at trial. Therefore, until the law in this area has developed further, it is appropriate to assume that the financial damage which will be suffered by an applicant following a refusal of relief, even though capable of quantification, constitutes irreparable harm.

D. The Balance of Inconvenience and Public Interest Considerations

62 The third test to be applied in an application for interlocutory relief was described by Beetz J. in *Metropolitan Stores* at p. 129 as: "a determination of which of the two parties will suffer the

greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits". In light of the relatively low threshold of the first test and the difficulties in applying the test of irreparable harm in Charter cases, many interlocutory proceedings will be determined at this stage.

63 The factors which must be considered in assessing the "balance of inconvenience" are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at p. 408, that:

[i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

He added, at p. 409, that "there may be many other special factors to be taken into consideration in the particular circumstances of individual cases."

64 The decision in *Metropolitan Stores*, at p. 149, made clear that in all constitutional cases the public interest is a 'special factor' which must be considered in assessing where the balance of convenience lies and which must be "given the weight it should carry." This was the approach properly followed by Blair J. of the General Division of the Ontario Court in *Ainsley Financial Corp. v. Ontario Securities Commission* (1993), 14 O.R. (3d) 280, at pp. 303-4:

Interlocutory injunctions involving a challenge to the constitutional validity of legislation or to the authority of a law enforcement agency stand on a different footing than ordinary cases involving claims for such relief as between private litigants. The interests of the public, which the agency is created to protect, must be taken into account and weighed in the balance, along with the interests of the private litigants.

1. The Public Interest

65 Some general guidelines as to the methods to be used in assessing the balance of inconvenience were elaborated by Beetz J. in *Metropolitan Stores*. A few additional points may be made. It is the "polycentric" nature of the Charter which requires a consideration of the public interest in determining the balance of convenience: see Jamie Cassels, "An Inconvenient Balance: The Injunction as a Charter Remedy", in J. Berryman, ed., *Remedies: Issues and Perspectives*, 1991, 271, at pp. 301-5. However, the government does not have a monopoly on the public interest. As Cassels points out at p. 303:

While it is of utmost importance to consider the public interest in the balance of convenience, the public interest in Charter litigation is not

unequivocal or asymmetrical in the way suggested in *Metropolitan Stores*. The Attorney General is not the exclusive representative of a monolithic "public" in Charter disputes, nor does the applicant always represent only an individualized claim. Most often, the applicant can also claim to represent one vision of the "public interest". Similarly, the public interest may not always gravitate in favour of enforcement of existing legislation.

66 It is, we think, appropriate that it be open to both parties in an interlocutory Charter proceeding to rely upon considerations of the public interest. Each party is entitled to make the court aware of the damage it might suffer prior to a decision on the merits. In addition, either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. "Public interest" includes both the concerns of society generally and the particular interests of identifiable groups.

67 We would therefore reject an approach which excludes consideration of any harm not directly suffered by a party to the application. Such was the position taken by the trial judge in *Morgentaler v. Ackroyd* (1983), 150 D.L.R. (3d) 59 (Ont. H.C.), per Linden J., at p. 66.

The applicants rested their argument mainly on the irreparable loss to their potential women patients, who would be unable to secure abortions if the clinic is not allowed to perform them. Even if it were established that these women would suffer irreparable harm, such evidence would not indicate any irreparable harm to these applicants, which would warrant this court issuing an injunction at their behest. [Emphasis in original.]

68 When a private applicant alleges that the public interest is at risk that harm must be demonstrated. This is since private applicants are normally presumed to be pursuing their own interests rather than those of the public at large. In considering the balance of convenience and the public interest, it does not assist an applicant to claim that a given government authority does not represent the public interest. Rather, the applicant must convince the court of the public interest benefits which will flow from the granting of the relief sought.

69 Courts have addressed the issue of the harm to the public interest which can be relied upon by a public authority in different ways. On the one hand is the view expressed by the Federal Court of Appeal in *Attorney General of Canada v. Fishing Vessel Owners' Association of B.C.*, [1985] 1 F.C. 791, which overturned the trial judge's issuance of an injunction restraining Fisheries Officers from implementing a fishing plan adopted under the Fisheries Act, R.S.C. 1970, c. F-14, for several reasons, including, at p. 795:

- (b) the Judge assumed that the grant of the injunction would not cause any damage to the appellants. This was wrong. When a public authority is prevented from exercising its statutory powers, it can be said, in a case like the present one, that the public interest, of which that authority is the guardian, suffers irreparable

harm.

This dictum received the guarded approval of Beetz J. in *Metropolitan Stores* at p. 139. It was applied by the Trial Division of the Federal Court in *Esquimalt Anglers' Association v. Canada (Minister of Fisheries and Oceans)* (1988), 21 F.T.R. 304.

70 A contrary view was expressed by McQuaid J.A. of the P.E.I. Court of Appeal in *Island Telephone Co. Re.*, (1987), 67 Nfld. & P.E.I.R. 158, who, in granting a stay of an order of the Public Utilities Commission pending appeal, stated at p. 164:

I can see no circumstances whatsoever under which the Commission itself could be inconvenienced by a stay pending appeal. As a regulatory body, it has no vested interest, as such, in the outcome of the appeal. In fact, it is not inconceivable that it should welcome any appeal which goes especially to its jurisdiction, for thereby it is provided with clear guidelines for the future, in situations where doubt may have therefore existed. The public interest is equally well served, in the same sense, by any appeal. . . .

71 In our view, the concept of inconvenience should be widely construed in Charter cases. In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

72 A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought. To do so would in effect require judicial inquiry into whether the government is governing well, since it implies the possibility that the government action does not have the effect of promoting the public interest and that the restraint of the action would therefore not harm the public interest. The Charter does not give the courts a licence to evaluate the effectiveness of government action, but only to restrain it where it encroaches upon fundamental rights.

73 Consideration of the public interest may also be influenced by other factors. In *Metropolitan Stores*, it was observed that public interest considerations will weigh more heavily in a "suspension" case than in an "exemption" case. The reason for this is that the public interest is much less likely to be detrimentally affected when a discrete and limited number of applicants are exempted from the application of certain provisions of a law than when the application of certain provisions of a law than when the application of the law is suspended entirely. See *Black v. Law Society of Alberta* (1983), 144 D.L.R. (3d) 439; *Vancouver General Hospital v. Stoffman* (1985), 23 D.L.R. (4th) 146;

Rio Hotel Ltd. v. Commission des licences et permis d'alcool, [1986] 2 S.C.R. ix.

74 Similarly, even in suspension cases, a court may be able to provide some relief if it can sufficiently limit the scope of the applicant's request for relief so that the general public interest in the continued application of the law is not affected. Thus in *Ontario Jockey Club v. Smith* (1922), 22 O.W.N. 373 (H.C.), the court restrained the enforcement of an impugned taxation statute against the applicant but ordered him to pay an amount equivalent to the tax into court pending the disposition of the main action.

2. The Status Quo

75 In the course of discussing the balance of convenience in *American Cyanamid*, Lord Diplock stated at p. 408 that when everything else is equal, "it is a counsel of prudence to ... preserve the status quo." This approach would seem to be of limited value in private law cases, and, although there may be exceptions, as a general rule it has no merit as such in the face of the alleged violation of fundamental rights. One of the functions of the Charter is to provide individuals with a tool to challenge the existing order of things or status quo. The issues have to be balanced in the manner described in these reasons.

E. Summary

76 It may be helpful at this stage to review the factors to be considered on an application for interlocutory relief in a Charter case.

77 As indicated in *Metropolitan Stores*, the three-part *American Cyanamid* test should be applied to applications for interlocutory injunctions and as well for stays in both private law and Charter cases.

78 At the first stage, an applicant for interlocutory relief in a Charter case must demonstrate a serious question to be tried. Whether the test has been satisfied should be determined by a motions judge on the basis of common sense and an extremely limited review of the case on the merits. The fact that an appellate court has granted leave in the main action is, of course, a relevant and weighty consideration, as is any judgment on the merits which has been rendered, although neither is necessarily conclusive of the matter. A motions court should only go beyond a preliminary investigation of the merits when the result of the interlocutory motion will in effect amount to a final determination of the action, or when the constitutionality of a challenged statute can be determined as a pure question of law. Instances of this sort will be exceedingly rare. Unless the case on the merits is frivolous or vexatious, or the constitutionality of the statute is a pure question of law, a judge on a motion for relief must, as a general rule, consider the second and third stages of the *Metropolitan Stores* test.

79 At the second stage the applicant must convince the court that it will suffer irreparable harm if the relief is not granted. 'Irreparable' refers to the nature of the harm rather than its magnitude. In

Charter cases, even quantifiable financial loss relied upon by an applicant may be considered irreparable harm so long as it is unclear that such loss could be recovered at the time of a decision on the merits.

80 The third branch of the test, requiring an assessment of the balance of inconvenience, will often determine the result in applications involving Charter rights. In addition to the damage each party alleges it will suffer, the interest of the public must be taken into account. The effect a decision on the application will have upon the public interest may be relied upon by either party. These public interest considerations will carry less weight in exemption cases than in suspension cases. When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation actually has such an effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.

81 We would add to this brief summary that, as a general rule, the same principles would apply when a government authority is the applicant in a motion for interlocutory relief. However, the issue of public interest, as an aspect of irreparable harm to the interests of the government, will be considered in the second stage. It will again be considered in the third stage when harm to the applicant is balanced with harm to the respondent including any harm to the public interest established by the latter.

VII. Application of the Principles to these Cases

A. A Serious Question to be Tried

82 The applicants contend that these cases raise several serious issues to be tried. Among these is the question of the application of the rational connection and the minimal impairment tests in order to justify the infringement upon freedom of expression occasioned by a blanket ban on tobacco advertising. On this issue, Chabot J. of the Quebec Superior Court and Brossard J.A. in dissent in the Court of Appeal held that the government had not satisfied these tests and that the ban could not be justified under s. 1 of the Charter. The majority of the Court of Appeal held that the ban was justified. The conflict in the reasons arises from different interpretations of the extent to which recent jurisprudence has relaxed the onus fixed upon the state in *R. v. Oakes*, [1986] 1 S.C.R. 103, to justify its action in public welfare initiatives. This Court has granted leave to hear the appeals on the merits. When faced with separate motions for interlocutory relief pertaining to these cases, the Quebec Court of Appeal stated that "[w]hatever the outcome of these appeals, they clearly raise serious constitutional issues." This observation of the Quebec Court of Appeal and the decision to grant leaves to appeal clearly indicate that these cases raise serious questions of law.

B. Irreparable Harm

83 The applicants allege that if they are not granted interlocutory relief they will be forced to spend very large sums of money immediately in order to comply with the regulations. In the event

that their appeals are allowed by this Court, the applicants contend that they will not be able either to recover their costs from the government or to revert to their current packaging practices without again incurring the same expense.

84 Monetary loss of this nature will not usually amount to irreparable harm in private law cases. Where the government is the unsuccessful party in a constitutional claim, however, a plaintiff will face a much more difficult task in establishing constitutional liability and obtaining monetary redress. The expenditures which the new regulations require will therefore impose irreparable harm on the applicants if these motions are denied but the main actions are successful on appeal.

C. Balance of Inconvenience

85 Among the factors which must be considered in order to determine whether the granting or withholding of interlocutory relief would occasion greater inconvenience are the nature of the relief sought and of the harm which the parties contend they will suffer, the nature of the legislation which is under attack, and where the public interest lies.

86 The losses which the applicants would suffer should relief be denied are strictly financial in nature. The required expenditure is significant and would undoubtedly impose considerable economic hardship on the two companies. Nonetheless, as pointed out by the respondent, the applicants are large and very successful corporations, each with annual earnings well in excess of \$50,000,000. They have a greater capacity to absorb any loss than would many smaller enterprises. Secondly, assuming that the demand for cigarettes is not solely a function of price, the companies may also be able to pass on some of their losses to their customers in the form of price increases. Therefore, although the harm suffered may be irreparable, it will not affect the long-term viability of the applicants.

87 Second, the applicants are two companies who seek to be exempted from compliance with the latest regulations published under the Tobacco Products Control Act. On the face of the matter, this case appears to be an "exemption case" as that phrase was used by Beetz J. in *Metropolitan Stores*. However, since there are only three tobacco producing companies operating in Canada, the application really is in the nature of a "suspension case". The applicants admitted in argument that they were in effect seeking to suspend the application of the new regulations to all tobacco producing companies in Canada for a period of one year following the judgment of this Court on the merits. The result of these motions will therefore affect the whole of the Canadian tobacco producing industry. Further, the impugned provisions are broad in nature. Thus it is appropriate to classify these applications as suspension cases and therefore ones in which "the public interest normally carries greater weight in favour of compliance with existing legislation".

88 The weight accorded to public interest concerns is partly a function of the nature of legislation generally, and partly a function of the purposes of the specific piece of legislation under attack. As Beetz J. explained, at p. 135, in *Metropolitan Stores*:

Whether or not they are ultimately held to be constitutional, the laws which litigants seek to suspend or from which they seek to be exempted by way of interlocutory injunctive relief have been enacted by democratically-elected legislatures and are generally passed for the common good, for instance: ... the protection of public health It seems axiomatic that the granting of interlocutory injunctive relief in most suspension cases and, up to a point, as will be seen later, in quite a few exemption cases, is susceptible temporarily to frustrate the pursuit of the common good. [Emphasis added.]

89 The regulations under attack were adopted pursuant to s. 3 of the Tobacco Products Control Act which states:

3. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,

- (a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;
- (b) to protect young persons and others, to the extent that is reasonable in a free and democratic society, from inducements to use tobacco products and consequent dependence on them; and
- (c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of pertinent information to consumers of tobacco products.

90 The Regulatory Impact Analysis Statement, in the Canada Gazette, Part II, Vol. 127, No. 16, p. 3284, at p. 3285, which accompanied the regulations stated:

The increased number and revised format of the health messages reflect the strong consensus of the public health community that the serious health hazards of using these products be more fully and effectively communicated to consumers. Support for these changes has been manifested by hundreds of letters and a number of submissions by public health groups highly critical of the initial regulatory requirements under this legislation as well as a number of Departmental studies indicating their need.

91 These are clear indications that the government passed the regulations with the intention of protecting public health and thereby furthering the public good. Further, both parties agree that past studies have shown that health warnings on tobacco product packages do have some effects in terms of increasing public awareness of the dangers of smoking and in reducing the overall incidence of smoking in our society. The applicants, however, argued strenuously that the government has not shown and cannot show that the specific requirements imposed by the impugned regulations have

any positive public benefits. We do not think that such an argument assists the applicants at this interlocutory stage.

92 When the government declares that it is passing legislation in order to protect and promote public health and it is shown that the restraints which it seeks to place upon an industry are of the same nature as those which in the past have had positive public benefits, it is not for a court on an interlocutory motion to assess the actual benefits which will result from the specific terms of the legislation. That is particularly so in this case, where this very matter is one of the main issues to be resolved in the appeal. Rather, it is for the applicants to offset these public interest considerations by demonstrating a more compelling public interest in suspending the application of the legislation.

93 The applicants in these cases made no attempt to argue any public interest in the continued application of current packaging requirements rather than the new requirements. The only possible public interest is that of smokers' not having the price of a package of cigarettes increase. Such an increase is not likely to be excessive and is purely economic in nature. Therefore, any public interest in maintaining the current price of tobacco products cannot carry much weight. This is particularly so when it is balanced against the undeniable importance of the public interest in health and in the prevention of the widespread and serious medical problems directly attributable to smoking.

94 The balance of inconvenience weighs strongly in favour of the respondent and is not offset by the irreparable harm that the applicants may suffer if relief is denied. The public interest in health is of such compelling importance that the applications for a stay must be dismissed with costs to the successful party on the appeal.