



July 18, 2016

The Judicial Administrator
Federal Court of Appeal
Thomas D'Arcy McGee Building
90 Spanks Street
Ottawa, ON
K1A 0H9

Dear Sir/Madam:

**RE: Motion for Extension of Time – Respondent's Motion to Strike
Canadian Transportation Agency ats. Lukacs
Court File No. : A-39-16**

This is further to the Applicant's letter dated July 17, 2016, in which he seeks an extension of time to respond to the Agency's motion to strike. The motion was filed on July 5, 2016, and the Applicant's response was due on July 15, 2016.

The Agency is opposing the motion for an extension of time. The Agency will suffer prejudice if the motion is granted. The Applicant has failed to provide a sufficient basis for the request. Moreover, the request is inconsistent with the Applicant's previous position that these proceedings should be expedited.

We inquired with the Applicant regarding his position with respect to the Application for Judicial Review in late June. It is our position that the Application is now moot given that the Applicant has since been granted leave to appeal the Agency's decision, which he also seeks to challenge in this Application. The Application was filed before the decision was released.

In response to our inquiry, the Applicant's initial position was that the preparation of the appeals in A-238-16 (an appeal of an unrelated decision involving British Airways) and A-242-16 (the related Appeal involving NewLeaf) had consumed all of his time and resources, and that he wished to postpone the question of the status of the Application until after the contents of the Appeal Book and the schedule for next steps had been settled in A-242-16.

We conveyed to the Applicant our concern with delaying the matter given that he had requested that the proceedings be expedited. We indicated our intention to file a motion. In response, the Applicant accused the Agency of attempting to interfere with his litigation in A-238-16 and A-242-16.

It was in this context that we again expressed concern with delaying this matter in light of the Applicant's request that these proceedings be expedited, to which the Agency consented. We indicated to the Applicant that if he felt he required additional time to respond to the motion or to consider his position that we were agreeable to consenting to "whatever reasonable extensions of

time" he may need (emphasis added). This was indicated when the Applicant's reason for seeking a postponement of the issue was solely on the basis that he was busy with other matters.

We also agreed to write to the Court in this regard if he wished for us to do so, as the Applicant suggests in his letter.

By email dated July 13, 2016, the Applicant sought the Agency's consent to an extension of time to August 31, 2016. The basis for this request was that he was occupied with the proceedings in A-242-16, and that he would be travelling throughout Europe during the weeks of July 25 and August 1, 2016, returning to Canada on August 23, 2016. In response, we suggested a 1-month extension to August 15, 2016, to accommodate the Applicant's travel schedule and his work in A-242-16. We indicated that we would want sufficient time to file a reply and for the Court to decide the motion before the hearing of the Application itself, and it was hoped that extending the time to August 15 would allow for this.

In an email dated July 14, 2016, the Applicant raised the issue of not having access to a physical Canadian law library. This was confusing because it had never been raised before and because the Applicant, as we understand, spends each summer in Europe and continues to litigate while out of the country. Specifically, the Applicant continues to file materials in other matters, including the related Appeal in A-242-16, without seeking extensions of time due to the fact that he is out of the country.

It would appear, therefore, that the Applicant's reasons for seeking an extension have changed over time.

The Agency's position, however, from the outset has remained unchanged. We would agree to a reasonable extension of time to accommodate the Applicant's schedule. We agreed to an extension of time of 1-month to August 15, 2016. This suggestion was made in the context of the timelines that were being discussed in relation to the Appeal in A-242-16. However, the Applicant has not yet agreed to the schedule being suggested by the Respondents in that matter, therefore, when the Appeal will be perfected and scheduled for hearing is unknown at this point.

What is most confusing is the Applicant's request for an extension of time of almost six (6) weeks to file a responding motion record when he previously asked that the proceedings be expedited. If the Applicant has changed his position regarding whether these proceedings should be expedited, then the Agency is agreeable to whatever schedule the Court may feel is reasonable to allow for the motion to be decided before the Appeal and the Application, if not struck, are heard. However, if the Applicant remains of the view that these matters should be expedited then he should file his response to the motion in a timely manner.

As the parties have still not agreed on a schedule in A-242-16, granting the requested extension may result in delays in the schedule. Again, if the Applicant has changed his position, and the Court is agreeable to revisiting the question of whether the proceedings should be expedited, then the schedule can be accordingly delayed. However, our position will be that the schedule should account for the extension being sought by the Applicant and for the motion to be decided before the matters proceed to hearing. It is difficult to see how the extension being sought can be accommodated in a schedule in a proceeding that the Court has ordered be expedited.

The Agency would be prejudiced, therefore, in that there would be a risk that the motion would not be decided before the hearing on the merits. While the Appellant contends that the hearing would

not be before late September, this is not clear because the schedule has not yet been agreed upon, and the Applicant may seek an earlier hearing date.

We would therefore oppose the extension being sought. It is unreasonable on its face. It is particularly problematic in light of the Applicant's request that the proceedings be expedited. The reasons given by the Applicant do not explain why he would need such a significant extension to respond to a motion but is otherwise able to pursue other matters diligently. While we have agreed to accommodate the Applicant's schedule, it is not reasonable to insist that the proceedings be expedited and then seek to extend the time to respond to a motion in writing from ten (10) days to fifty-one (51) days.

We had agreed to an extension of time to August 15, 2016. It was hoped that this would allow for sufficient time to file a reply and for the Court to render a decision before the matter(s) proceed to full hearing. The Court may or may not agree that such a significant extension is warranted. In fact, it is now unclear that the Applicant requires such a significant amount of time since the basis for the request seems to have changed over time.

The Agency requests that the Applicant's motion be denied and that a more reasonable extension be granted to allow the Applicant to file a responding motion record, taking into account that it is not yet known when the hearing on the merits will be scheduled.

Yours truly,



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