File No. M 4120-3/14-01414

CANADIAN TRANSPORTATION AGENCY

B E T W E E N :

GÁBOR LUKÁCS

Complainant

- and -

PORTER AIRLINES INC.

Respondent/Moving Party

NOTICE OF MOTION AND WRITTEN

SUBMISSIONS OF PORTER AIRLINES INC.

NOTICE OF MOTION

The Respondent Porter Airlines Inc. ("Porter") makes this motion in writing to the Canadian Transportation Agency (the "Agency") pursuant to Rule 14(3) of the *Canadian Transportation Agency General Rules* (the "*General Rules*") for the following relief:

(a) An order striking out as scandalous, vexatious and unduly prejudicial to Porter the Reply filed by the Complainant Gábor Lukács ("Mr. Lukács") in the within proceeding in its entirety, without leave to amend;

(b) In the alternative, an order striking out as scandalous, vexatious and unduly prejudicial such portions of the Reply as the Agency may deem appropriate;

(c) In addition to the foregoing, that the Agency direct Mr. Lukács to refrain from further scandalous, inflammatory and prejudicial statements (whether explicit or implied) in future filings before the Agency and communications in connection with matters within the Agency's jurisdiction;

(d) In the further alternative to paragraphs (a) and (b) above, leave pursuant to Rule 39(3) of the *General Rules* to deliver a Surreply to the Reply or such portion

thereof as may remain following the Agency's determination of this motion (including any amended Reply the Agency may permit Mr. Lukács to deliver); and

(e) Such further and other relief as the Agency may deem just.

THE RELEVANT FACTS AND GROUNDS FOR THE MOTION ARE SET FORTH IN THE WRITTEN SUBMISSIONS WHICH FOLLOW BELOW:

WRITTEN SUBMISSIONS

A. OVERVIEW

1. The Reply delivered by Mr. Lukács in these proceedings is replete with unfounded attacks on Porter, including bare allegations that Porter has acted illicitly with "deliberate and calculated" intent and has adopted improper and abusive tactics with the alleged aim of undermining and subverting the authority and procedures of the Agency. These inflammatory submissions are unsupported by the facts, are in any event irrelevant to the matters in issue, and their collective effect is extremely prejudicial to Porter and to the fair adjudication of these proceedings. The Reply should be struck in its entirety.

2. These proceedings concern a challenge to the clarity and reasonableness of Rule 18 of Porter's Domestic Tariff ("Rule 18"). With the delivery of his Reply, Mr. Lukács has improperly attempted to put in issue the alleged conduct and motives of Porter, such as Mr. Lukács has baselessly presumed them to be. Such submissions serve the sole purpose of attempting to cast Porter in a bad light, are irrelevant to the matters in issue, and Porter submits that they ought not to be accepted into the record or considered by the Agency in determining the within Complaint.

3. Moreover, Mr. Lukács's sharp allegations that Porter has engaged in an abuse of process by "withholding its proposed amendments to Rule 18" in supposed breach of the Agency's "rules, procedures, and explicit directions" is based on the invented premise that a respondent to a complaint is required to deliver draft amendments with its answer – despite the fact that Mr. Lukács has previously argued before the Agency that draft amendments do not properly form part of a respondent's answer.

4. Although not a lawyer, Mr. Lukács is an experienced litigant who, Porter submits, ought to be held to a standard of basic civility and courtesy which is consistent with the principles governing the fair and efficient administration of justice in Canada. That this motion has become necessary itself illustrates the manner in which incivility may hinder the fair, effective and timely determination of disputes.

5. The Reply is, in substance and effect, scandalous and highly prejudicial to Porter, and Porter asks that it be struck out in its entirety, without leave to amend.

B. FACTS

The Complaint in the Within Proceeding

6. On March 9, 2014, Mr. Lukács filed with the Agency the complaint giving rise to the within proceedings (the "Complaint"), with a copy to Porter. In his covering message, Mr. Lukács indicated that he had no interest in mediation "in light of Porter's past and present conduct", the clear implication being that Porter's conduct was improper or in bad faith.[1]

7. On March 11, 2014, the Agency formally opened pleadings in the within proceedings. The Complaint concerns the clarity and reasonableness of Rule 18 of Porter's Domestic Tariff dealing with denied boarding compensation.[2]

8. Generally speaking (though not without exception), the Complaint is measured and civil in its tone, and its contents are directed at the substantive matters in issue.[3]

Porter's Prior Voluntary Delivery of Draft Amendments with its Answer

9. Porter's tariffs have been the subject of several prior complaints by Mr. Lukács before the Agency. In recent proceedings, Porter has voluntarily taken various steps aimed at

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[1] Email of Gabor Lukács to Cathy Murphy dated March 9, 2014; Lukács's Complaint dated March 9, 2014 ("Complaint").

[2] Complaint.

[3] *Ibid.*

expediting their prompt resolution, including attempted mediation and submitting draft amendments to its impugned Rules together with its Answer.[4]

10. In the first such proceeding, which resulted in Agency Decision No. 16-C-A-2013, Porter in fact requested an extension of time from the Agency to deliver its Answer, for the express purpose of allowing it to prepare and deliver draft amendments to the tariff rules in issue. Porter's view was that that the concurrent delivery in that proceeding of draft amendments with its answer – although not required – would likely contribute to a more expeditious determination and resolution thereof. The Agency granted Porter an extension of 30 days.[5]

11. Notably, Mr. Lukács opposed Porter's motion for an extension of time, taking the position contrary to that reflected in his Reply herein: Lukács asserted in that matter that the draft amendments Porter sought additional time to deliver were not properly part of a respondent's answer to a complaint concerning the clarity and reasonableness of a tariff rule:

> While Porter Airlines intends to amend its tariffs, such amendments do not constitute an answer to the complaint, and have no bearing on whether International Tariff Rule 18 is just and reasonable.[6]

12. At that time, Porter was aware that the delivery by a respondent carrier of draft tariff amendments in complaint proceedings generally followed the Agency's initial determination regarding the contents of the existing rule(s) at issue. Recognizing also, however, that the Agency has the discretion to dispense with strict adherence to its *General Rules*, Porter took the view that the voluntary delivery of draft amendments earlier in the proceeding might obviate interim steps and "may facilitate settlement of the Lukács complaint to the extent that [the draft amendments] prove satisfactory to Mr. Lukács."[7]

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[4] *Lukács v. Porter Airlines Inc.*, 16-C-A-2013; *Lukács v. Porter Airlines Inc.*, 344-C-A-2013; *Lukács v. Porter Airlines Inc.*, 31-C-A-2014.

[5] Amended Letter Submissions of Porter Airlines dated May 29, 2012; Decision No. LET-C-A-29-2012.

[6] Answer of Gabor Lukács to Porter Airlines' motion for extension of time to file an answer, dated May 30, 2012 at s. II(b)1. at p. 3 (emphasis added).

[7] Agency *General Rules*, Rule 4; Letter - Porter Reply and Answer to Cross Motion requesting extension dated June 4, 2012.

13. In seeking the Agency's leave to follow this approach and procedure, Porter's assumption and expectation was that Mr. Lukács would likewise act reasonably and in good faith, and would see the value in adopting a practical approach to achieving an efficient resolution. In fact, Porter was surprised by Mr. Lukács's strong opposition to Porter's efforts to deliver proposed amendments, and was surprised further when Mr. Lukács brought a motion for review of the decision granting Porter an extension of time, and subsequently appealed the Agency's dismissal of that motion to the Federal Court of Appeal – several months after Porter had delivered its answer and proposed amendments. [8]

14. In Porter's view, it seemed inconsistent for Mr. Lukács to have opposed Porter's motion for an extension of time on the basis that it would unduly delay the final resolution of the complaint, only to engage in a months-long appeal that sought to have the extension motion referred back to the Agency for further review. (The Court dismissed Mr. Lukács's appeal from the bench on June 25, 2013.)[9]

15. As noted, the Agency granted Porter an extension of time in order to prepare its draft amendments, and Porter filed proposed amendments in good faith in order to expedite resolution.

Mr. Lukács's Adversarial Approach

16. Porter recognizes that cooperation between adverse parties where practicable may contribute to the prompt and just resolution of disputes without prejudicing either party's position – e.g., where one party may consent to a reasonable procedural variance sought by the other without requiring the time and expense of a motion. It was in this spirit that Porter voluntarily submitted draft amendments with its Answers in prior proceedings before the Agency.

17. However, Mr. Lukács's conduct since Porter's extension of time motion in 16-C-A-2013 has demonstrated a persistent and reflexive contentiousness appearing to border, at times, on hostility – including a proclivity to attribute improper motives to Porter without basis or provocation. In the context of this escalating lack of civility, Porter has elected to forego the voluntary expedited approach it has taken in the past in order to seek additional procedural

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[8] Notice of Appeal dated November 1, 2012; *Lukács v. Canadian Transportation Agency*, 2013 FCA 169.

[9] *Lukács v. Canadian Transportation Agency*, 2013 FCA 169 (CanLII).

protections in the within proceeding as may be available – including that it has sought leave to reply to any submissions Mr. Lukács may make concerning draft amendments Porter may deliver herein (should the Agency grant it leave to do so). Contrary to Mr. Lukács's suppositions, Porter did not make this decision for any improper purpose.[10]

18. Since 16-C-A-2013 (Mr. Lukács's first complaint against Porter), Mr. Lukács has repeatedly filed submissions with and engaged in communications with the Agency aggressively suggesting (or stating outright), without basis, that Porter was deliberately flouting the Agency's orders, engaged in attempts to deceive the Agency or otherwise animated by unsavoury motives.

19. Some examples of Mr. Lukács's unnecessarily antagonistic approach to its dealings with Porter include:

(a) A general proclivity to impute to Porter an intention to mislead, for example:

(i) In his 41-page Reply in 16-C-A-2013, Mr. Lukács characterized Porter's use of a bracketed ellipsis "[...]" when excerpting a tariff rule in its Answer as having "deliberately and mischievously omitted" the balance of the quoted rule in a manner that was "grossly misleading" – In fact, Porter was plainly dealing with the specifically excerpted portions, with the inclusion of "[...]" expressly indicating its partial omission.[11]

(ii) In his Reply in his complaint against Porter resulting in Decision No. 344-C-A-2013, Mr. Lukács alleged material misrepresentation by Porter due to its clearly inadvertent omission of a page from a tariff rule in an appendix to its Answer:

> "Appendix 'A' grossly misrepresents the provisions of Porter Airlines' Current Rule 16."[12]

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[10] Porter's Answer dated April 1, 2014.

[11] Reply of Gábor Lukács in 16-C-A-2013 dated August 14, 2012, s. I.b. at p. 4; Answer of Porter in 16-C-A-2013 at pp. 3-4.

[12] Reply of Gábor Lukács in 344-C-A-2013 dated May 31, 2013, s. I. at p. 3.

In circumstances where Porter's complete Rule had already been filed in the record with Mr. Lukács's complaint and was otherwise easily verifiable on Porter's website, it is telling that Mr. Lukács nonetheless concluded that Porter was acting recklessly and deceitfully, and that he included such accusations in his Reply without any attempt to first raise the omission informally with Porter.[13]

(iii) Following the issuance of the Agency's Decision in his most recent complaint against Porter (31-C-A-2014), Mr. Lukács wrote to the Agency describing a "deeply troubl[ing]" circumstance wherein Porter had indicated to him that the Agency had granted Porter additional time to publish the ordered tariff amendments while the Secretary had advised him that no formal Agency "decision" had issued granting an extension of time (and in fact no such decision was necessary). Again, not being privy to Porter's then ongoing cooperation with the Agency's officer to effect compliance with the latter Decision, Mr. Lukács's apparent (though erroneous) implication was that Porter was being untruthful, even referencing court proceedings he had initiated (since dismissed) alleging a reasonable apprehension of bias on the part of the Agency.[14]

(b) By 31-C-A-2014, the tone and contents of Mr. Lukács's submissions had become more openly pejorative, bordering on sarcastic:

> "For reasons known only to Porter, it chose to ignore the Notice to Industry..."[15]

> "The Applicant is further asking the Agency to not tolerate Porter Airlines treating the deadlines set by the Agency as mere recommendations, and

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[13] Porter promptly acknowledged its inadvertent error and filed a corrected version shortly thereafter; See Porter letter to the Agency dated June 4, 2013.

[14] Lukács email thread with Cathy Murphy ending March 11, 2014 re "Email inquiry of March 4, 2014".

[15] Lukács Complaint in 31-C-A-2014 at p. 8.

set out in its order concrete sanctions and consequence should Porter Airlines again fail to respect the deadline set by the Agency."[16]

(c) Mr. Lukács has repeatedly sought to insert himself into the Agency's enforcement and compliance process by erroneously alleging Porter's "failure to comply" with Agency orders, expressing his "profound disappointment" to the Agency in connection therewith and requesting that compliance be immediately effected. In fact, Porter has worked with and been responsive to the Agency's compliance officers in all instances and has never been admonished or cited by the Agency for any failure to comply with its orders.[17]

(d) In implementing Decision 31-C-A-2014, Porter published several successive updates to its tariff as the Agency's compliance officer refined its view concerning the necessary amendments. When Mr. Lukács requested that Porter advise him upon any further updates, as a courtesy, Porter obliged. Mr. Lukács's response was a brazen email by to the Agency, copying Porter's counsel and CEO, as follows:

> Mr. Sheahan and Mr. Deluce:
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> It appears that after four attempts and 4 weeks after deadline set by the Agency in Decision No. 31-C-A-2014, Porter Airlines may have succeeded at finally complying with the Decision.
>
> You and your colleagues at Porter Airlines are educated and intelligent people, who knew perfectly well what the Agency expected of you.
>
> Nevertheless, Porter Airlines kept filing and publishing tariffs that you and your colleagues knew perfectly well or should have known were not compliant.

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[16] Lukács Reply in 31-C-A-2014 at p. 3.

[17] Lukács email to Cathy Murphy dated October 9, 2013; Lukács email to Greg Sheahan dated March 3, 2014.

I invite you to take a moment to reflect upon the waste of valuable public and judicial resources that Porter Airlines' conduct has caused.

I urge you to reflect upon Porter Airlines' actions and to have Porter Airlines apologize to the Agency and its staff for having wasted their valuable time by not complying with the Agency's Decision in a timely manner.

Sincerely yours,

Dr. Gabor Lukacs

Besides being based on erroneous assumptions, Porter submits that this recent email message was grossly inappropriate, had the sole apparent purpose of embarrassing Porter, and is illustrative of the high-handed lack of civility that has unfortunately become characteristic of Mr. Lukács in his dealings with Porter.[18]

Porter's Answer in the Within Proceeding

20. It was in this environment of incivility that Porter elected not to volunteer draft amendments with its Answer in the within proceeding (which would potentially invite another 40+ page "Reply" from Mr. Lukács with no right of response), but instead to adhere to the Agency's regular procedure while requesting that the Agency grant it certain procedural protections in its discretion concerning the application of its rules.

21. Porter delivered its Answer herein on April 1, 2014. In the Answer, Porter responded to Mr. Lukács's arguments concerning the clarity and reasonableness of the impugned Rule 18, and requested (but did not expressly or implicitly demand) leave to deliver draft amendments to Rule 18 for the Agency's review and comment as to clarity and reasonableness, as well as leave to respond to any submissions Mr. Lukács might be permitted to make concerning any such proposed amendments.[19]

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[18] Lukács email to Cathy Murphy dated March 28, 2014.

[19] Answer of Porter Airlines dated April 1, 2014 ("Answer"), see paras. 7, 9 and 19.

22. Contrary to the allegations in the Reply (described below), nowhere in its Answer did Porter indicate or suggest that any future delivery of draft amendments to Rule 18 was conditional upon the Agency granting Porter leave to deliver additional responding submissions, or making any other order. Porter's prayers for relief were consistently framed as just that: requests submitted for consideration and determination by the Agency.[20]

Mr. Lukács's Reply in the Within Proceeding

23. On April 5, 2014, Mr. Lukács delivered his Reply in these proceedings. It contains numerous and repeated attributions of improper motives and misconduct to Porter which, besides being unsupported and untrue, are irrelevant to the subject matter of the complaint. A summary of these scandalous allegations follows, with Porter's comments as to their lack of foundation, irrelevance and/or other improper purpose and effect.[21]

24. More particularly, in the "Overview" of the Reply:

(a) Mr. Lukács states that Porter has made "dubious representations about its reasons for not having revised Rule 18 earlier";[22]

Porter comment: This allegation improperly suggests that Porter's submissions are worthy of doubt (i.e. dishonest), apparently on the basis (discussed in Part I below) that Mr. Lukács believes Porter ought to have updated its tariff while its DBC rules were under review by the Agency. While Porter believes it was not unreasonable to suspend far-reaching modifications to its policies while the very parameters of those policies were to the subject of forthcoming guidance by the Agency, Mr. Lukács's contrary conclusion is nonetheless no proper basis to allege deceptive intent on Porter's part. This baseless allegation is irrelevant and prejudicial in that it does not relate to the clarity and reasonableness of Rule 18, but serves only to cast Porter in a negative light.

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[20] *Ibid.*

[21] Lukács Reply dated April 5, 2014 ("Reply").

[22] Reply at p. 1.

(b) Mr. Lukács engages in outright sarcasm at Porter's expense: "While Porter Airlines' epiphany with respect to the need to revise Domestic Tariff Rule 18 is most welcome...";[23]

Porter comment: This statement is characterized by condescension and incivility; its tone is unnecessarily provocative and, it is submitted, inconsistent with the principles governing the mutually respectful resolution of contested disputes before Canadian tribunals.

(c) Mr. Lukács concludes by stating that "Porter Airlines' submissions are disingenuous, constitute an abuse of process, and serve the real purpose of delaying the inevitable revision of Rule 18."[24]

Porter comment: Again, Mr. Lukács pleads a baseless and prejudicial suggestion of dishonesty here, and further suggests that Porter's motive is to delay the resolution of the proceedings. There is no basis for any conclusion that any request by Porter, if granted, would preclude the timely resolution of this proceeding within the 120 days targeted by the Agency. Rather, it is Mr. Lukács's ubiquitous scandalous allegations in the Reply which may have the effect of doing so, should this motion be granted. In any event, there is nothing improper about a party acting with its rights, even if such conduct may have the result (as opposed to the intended purpose) of prolonging a proceeding.

25. In Part I of his Argument, Mr. Lukács contends that Porter has engaged in an abuse of process by failing to have immediately updated its domestic tariff rules concerning denied boarding compensation ("DBC") following the Agency's release of Decision No. 342-C-A-2013 concerning Air Canada's DBC rules; and failing to deliver draft amendments to its Rule 18 with its Answer. More particularly:

(a) Mr. Lukács states that Porter undertook "a deliberate and calculated decision to disobey the law" by declining to update its tariffs based on *Lukács v. Air Canada*,

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[23] *Ibid.*

[24] *Ibid.*

Decision No. 342-C-A-2013 despite pending challenges to its own DBC rules by Mr. Lukács;[25]

Porter comment: There is absolutely no basis to allege a "calculated decision to disobey the law" in the record or in fact, nor is any such allegation relevant to the determination of the Complaint. Mr. Lukács's bare suppositions about Porter deliberately having elected to shirk its legal obligations is included solely for colour, and is scandalous and prejudicial to Porter.

(b) Mr. Lukács states that by declining to deliver proposed amendments with its Answer Porter is not "complying with the Agency's rules, procedures, and explicit directions" and has engaged in "a disingenuous attempt to strong-arm the Agency into changing its procedure with respect to pleadings and/or to frustrate the Agency in carrying out its mandate and rendering a decision in the Complaint in a timely manner";[26]

Porter comment: Despite having previously taken the position against Porter that proposed amendments do not form a proper part of a respondent's answer to a tariff complaint, Mr. Lukács now states that the failure to deliver proposed amendments represents a breach of the Agency's rules and orders. Mr. Lukács does not actually identify any such "rules, procedures or explicit directions" in which Porter is alleged to be in breach; and in fact there is plainly no requirement that a carrier deliver draft amendments together with its answer prior to the Agency's determination as to the existing rules or any direction to file such draft amendments. Moreover, it is entirely unclear how Porter's request for permission to deliver draft amendments or make additional submissions could act to constrain the Agency's powers or authority in any way whatsoever. Mr. Lukács's suggestion that Porter is trying to "strong-arm" the Agency or use draft amendments as a "bargaining chip" makes no sense, as the Agency remains free to make any order within its jurisdiction irrespective of Porter's requests. These allegations are invented and irrelevant.

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[25] *Ibid.* at p. 3.

[26] *Ibid.* at p. 4.

(c) Mr. Lukács baselessly hypothesizes that Porter "would have done nothing [to update its tariff] even now, had the present Complaint not been filed with the Agency".[27]

Porter comment: This allegation is plainly and obviously speculative, without basis, inserted for colour and entirely unfair to Porter.

26. On April 7, 2014, Mr. Lukács published a "tweet" on the Internet Twitter account of his organization Air Passenger Rights, unequivocally stating: "The answer of #Porter to complaint re: compensation to bumped passengers is an abuse of process", notwithstanding that that very issue then remained before the Agency, which had (and has yet) made no such determination.[28]

27. In Part II of the Argument, Mr. Lukács characterizes Porter's request for leave to reply to any submissions by Lukács concerning Porter draft amendments as Porter's "disagreement" with the Agency's *General Rules* – suggestive of disrespect and disregard – and otherwise describes Porter's rationale for requesting this relief as "dubious".[29]

Porter comment: Mr. Lukács continues to impute imagined intentions and motivations upon Porter with the effect of portraying Porter as disrespectful of the Agency's procedures. Besides being irrelevant to the Complaint, this attribution of disrespect is without any basis. Porter expressly acknowledged in its Answer that it requires the Agency's leave to deliver any submissions following Mr. Lukács's Reply, and respectfully requested that the Agency exercise its discretion to grant Porter such leave. This is entirely consistent with and respectful of the General Rules, *including in particular Rule 39(3).*

28. In summary, the Reply, in substance and effect, seeks to raise questions about Porter's respect for and willingness to comply with the Agency's orders, processes and procedures, and argues that Porter is engaged in an attempt to deceive the Agency and somehow to usurp its ability to control its own processes. Taken collectively, the allegations in the Reply are without basis, highly prejudicial to Porter and irrelevant to the matters in issue herein.

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[27] *Ibid.* at p. 5.

[28] "Tweet" of @AirPassRightsCA of April 7, 2014 at 5:35 am (emphasis added).

[29] Reply at p. 5.

29. Porter would be pleased to support any of the above-stated facts stated by affidavit pursuant to Rule 33 of the Agency's *General Rules*.

C. ISSUES

30. Issue 1: Should the Reply be struck out, in whole or in part?

31. Issue 2: Should the Agency direct Mr. Lukács to refrain from further scandalous, inflammatory and prejudicial statements in connection with future proceedings and matters within the Agency's jurisdiction?

32. Issue 3: Should Porter be granted leave to deliver a Surreply to any portion of the Reply that is not struck out as a result of this motion?

D. SUBMISSIONS

Issue 1: Should the Reply be struck out, in whole or in part?

(a) Principles applicable in a motion to strike

33. The Agency's power to strike out documents derives from Rule 14(3)(b) of the *General Rules*, which provides:

> The Agency may, by order, strike out any document or part of it... that may prejudice, hinder or delay the fair conduct of the proceeding.
>
> (emphasis added)

34. While there appears to be limited Agency jurisprudence dealing with motions to strike out pleadings and submissions, Porter submits that guidance may be sought from the determination of similar matters in other Canadian courts and tribunals.

35. Rule 221 of the *Federal Courts Rules* enumerate a number of circumstances in which a pleading may be struck out:

> **221.** (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

(a) discloses no reasonable cause of action or defence, as the case may be,

(b) is immaterial or redundant,

(c) is scandalous, frivolous or vexatious,

(d) may prejudice or delay the fair trial of the action,

(e) constitutes a departure from a previous pleading, or

(f) is otherwise an abuse of the process of the Court,

and may order the action be dismissed or judgment entered accordingly.

(emphasis added)

36. Rule 25.11 of the Ontario *Rules of Civil Procedure* similarly provides as follows:

STRIKING OUT A PLEADING OR OTHER DOCUMENT

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court.

(emphasis added)

37. It is submitted that the listed grounds in the above rules are not mutually exclusive; i.e. scandalous, vexatious or irrelevant pleadings "may prejudice, hinder or delay the fair trial of the proceeding" and may be struck for that reason.

38. The case law in both federal and provincial courts demonstrates that courts will strike out pleadings, or allegations in a pleading, where they are irrelevant, prejudicial, unsupported by facts or are made for the apparent purpose of casting the opposing party in a bad light:

39. In *Knowledge House Inc. v. Stewart McKelvey Stirling Scales*, the Nova Scotia Court of Appeal affirmed that a scandalous pleading may be one which is aimed at embarrassing the other party or is irrelevant to the matters in issue:

> There are at least two schools of thought about what makes a pleading "scandalous". One is that scandalous allegations are those which serve little purpose other than to "disconcert or humiliate" the other party: see e.g. Paul Perell (now Perell, J.) "**The Essentials of Pleading**" (1995) 17 Adv.Q. 205 at 216 - 217. A second view is that whether an allegation is scandalous is a matter of relevance... For the purposes of this appeal I need not choose one view over another since the impugned allegations ought to be struck on both accounts.[30]

40. The Federal Court of Canada made similar findings in *Sivak v. Canada*, noting further that a party may not plead unsupported allegations, conclusions and opinions:

> Immaterial or redundant allegations in a claim result in useless expense and prejudice the trial by involving the parties in a dispute that is wholly apart from the issues. Similarly, portions of a pleading that are irrelevant or inserted for colour should also be struck as they are scandalous.[31]
>
> [...]
>
> [E]xamples of what constitutes a "scandalous," "frivolous" or "vexatious" document [include]:
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> i. A document that demonstrates a complete absence of material facts;
>
> ii. Portions of a pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations;
>
> iii. A document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation;
>
> iv. Documents that are replete with conclusions, expressions of opinion, provide no indication whether information is based on personal knowledge or information and belief, and contain many irrelevant matters.[32]

41. Ontario courts have similarly found that pleadings containing unsupported attacks on the integrity of the other party will be struck:

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[30], 2007 NSCA 113 (CanLII) at para. 40 (emphasis added).

[31] 2012 FC 272 (CanLII) at para. 77 (emphasis added).

[32] *Ibid.* at para. 89 (emphasis added).

> Bare allegations should be struck as scandalous. This is particularly so where allegations of intentional or malicious conduct are made.[33]

> [I]f the pleas are wholly immaterial and can have no effect on the result or if they are irrelevant, argumentative or inserted for colour, or if they include inflammatory attacks on the integrity of a party without pleading supporting facts they may be struck as scandalous and vexatious. Clearly if allegations are pleaded for the sole purpose of embarrassing a party or adding colour in order to prejudice a party in the eyes of the trier of fact they should be struck.[34]

42. As more particularly discussed in paragraphs 23-28 above, the Reply contains allegations that have no basis other than Mr. Lukács's speculative opinions, conclusions and erroneous assumptions as to Porter's motivation and forthrightness, and are in any event irrelevant to the Agency's determination as to the clarity and reasonableness of Rule 18.

43. Porter submits that the collective purpose and effect of the allegations in the Reply is to colour the proceedings to Porter's prejudice by attempting to cast it as disrespectful of the Agency's procedures and regulations and motivated by improper delay tactics.

44. In fact, Porter acknowledges the jurisdiction and powers of the Agency and its processes, and has every intention of complying with any orders the Agency may see fit to make. With respect, it is entirely inappropriate for any party to suggest otherwise of another party without a strong evidentiary basis. However objectionable Mr. Lukács may find Porter's requests for procedural relief, his distaste does not render such requests improper, nor does their existence constrain the Agency's ability to determine this matter as it sees fit.

45. For the foregoing reasons, Porter submits that the content of the Reply, besides being vexatious and prejudicial, is altogether unhelpful in determining this complaint, and should be struck in its entirety, without leave to amend. Since there are no facts to support the sweeping allegations of improper conduct, there is no amendment that can reasonably be made.[35]

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[33] *Fitzpatrick v. Durham Regional Police Services Board*, 2005 CanLII 63808 (ON SC) at para. 10.

[34] *Moore v. Bertuzzi*, 2008 CanLII 3228 (ON SC).

[35] *Supra, note 33* at para. 37.

Issue 2: Should the Agency direct Mr. Lukács to refrain from further scandalous, inflammatory and prejudicial statements in connection with future proceedings and matters within the Agency's jurisdiction?

Principles of civility in the administration of disputes in Canada

46. Porter acknowledges that Mr. Lukács is not a lawyer, and accordingly is not strictly bound by such rules of professional conduct as govern the conduct of members of the bar. However, as an experienced and frequent litigant, Porter submits that Mr. Lukács is fully capable of understanding and adhering to the norms and principles of civility governing the determination of adversarial proceedings in Canadian courts and tribunals, particularly given the enmity which, it is submitted, has manifested itself in his recent communications and filings with the Agency.

47. In short, it is fundamentally unfair that Porter has been put in the position of having to respond to baseless attacks on its integrity, which are wholly irrelevant to the determination of the Complaint. Given the level to which Mr. Lukács has taken his allusions and outright accusations of impropriety on Porter's part in the Reply – and as otherwise demonstrated in the record of this motion – Porter submits that it is appropriate that the Agency direct Mr. Lukács to refrain from similar conduct in future matters relating to the Agency and the matters within its jurisdiction.

48. Numerous Canadian authorities have recognized that courtesy and civility, rather than being anathema to an adversarial system of justice, are fundamentally important to the integrity and credibility thereof.

49. The Law Society of Upper Canada recently examined the purpose and effect of civility in legal proceedings in detail in *Law Society of Upper Canada v. Joseph Peter Paul Groia*, in which the Panel observed that:

> the rationale underlying the requirement of civility reflects a concern with the effect of incivility on the proper functioning of the administration of justice and public perception of the legal profession.
>
> Our system of justice is based on the premise that legal disputes should be resolved rationally in an environment of calm and measured deliberation, free from hostility, emotion, and other irrational or disruptive influences. Incivility and

discourteous conduct detracts from this environment, undermines public confidence and impedes the administration of justice and the application of the rule of law.[36]

50. The LSUC Panel in *Groia* cited the following additional authorities and propositions which, Porter submits, are germane to this motion:

(a) The *Principles of Civility for Advocates* published by The Advocates' Society in Ontario state:

> 27. Advocates should not attribute bad motives or improper conduct to opposing counsel, except when relevant to the issues of the case and well-founded...
>
> [...]
>
> 29. Advocates should not ascribe a position to opposing counsel that they have not taken, or otherwise seek to create an unjustified inference based on opposing counsel's statements or conduct.[37]

(b) And Kara Anne Nagorney's article, "A Noble Profession? A Discussion of Civility Among Lawyers" wherein she wrote:

> "Civility within the legal system not only holds the profession together, but also contributes to the continuation of a just society. Conduct that may be characterized as uncivil, abrasive, hostile, or obstructive necessarily impedes the goal of resolving conflicts rationally, peacefully, and efficiently, in turn delaying or even denying justice."[38]

(c) And finally, Michael Code, "Counsel's Duty of Civility: An Essential Component of Fair Trials and an Effective Justice System":

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[36] 2012 ONLSHP 94 (CanLII) at paras. 63, 65.

[37] Cited in *Ibid*, at para. 56.

[38] (1999), 12*Georgetown Journal of Legal Ethics* 815, at 816-17,cited in *Ibid.* at para. 60.

> On a more profound level, delays are caused when counsel are no longer communicating appropriately and, as a result, they become incapable of resolving the many non-contentious issues that arise in the course of a trial. The norms of rational and respectful discourse, which result in the out of court resolution of most cases and most issues, are no longer possible when the relationship between counsel has been fractured by serious incivility.[39]

51. It is respectfully suggested that there is no place in the civil administration of even the most highly adversarial proceedings for the sort of enmity on display in the Reply (among other communications and documents authored by Mr. Lukács).

52. While Mr. Lukács purports to demand the prompt and fair resolution of the Complaint, the contents of his Reply are counterproductive and incompatible with that goal.

53. While Porter recognizes that this motion may have the ultimate effect of delaying the final resolution of this proceeding, it believes Mr. Lukács's prejudicial allegations have reached a point where Porter must seek relief from the Agency to ensure the fair and proper conduct of this complaint.

Issue 3: Should Porter be granted leave to deliver a Surreply to any portion of the Reply that is not struck out as a result of this motion?

54. Distinct from Porter's request in its Answer for leave to deliver a response to any forthcoming submissions from Mr. Lukács concerning Porter's draft amendments, if any, Porter additionally requests leave in this motion to deliver a Surreply responding to any portion of the Reply which the Agency may decline to strike out, or to any amended Reply Mr. Lukács may be permitted to deliver.

55. To the extent that Mr. Lukács has taken issue in his Reply with (a) Porter's request for permission to deliver draft amendments following the Agency's determination of the complaint concerning existing Rule 18, and (b) leave to deliver a surreply to Mr. Lukács's submissions responding thereto, both such requests were advanced for the first time in Porter's Answer such that they are in substance and effect, an "originating process" to the extent Porter's prayers for

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[39] (2007), 11 Can. Crim. L.R. 97 cited in *Ibid.* at para. 68 (emphasis added).

relief arise for the first time therein. Accordingly, Mr. Lukács's submissions responding thereto are in effect an "answer" or "response" to Porter's request for such leave. It is submitted that it is therefore appropriate that Porter be provided with the opportunity to respond to the arguments raised.

ORDER REQUESTED

56. For the foregoing reasons, Porter requests an order for the relief as stated in paragraph 1 hereof.

All of which is respectfully submitted,

April 21, 2014

Gregory Sheahan
General Counsel
Porter Airlines Inc.

Respondent

List of Exhibits:

1. Email of Gabor Lukács to Cathy Murphy dated March 9, 2014
2. Amended Letter Submissions of Porter Airlines dated May 29, 2012
3. Decision No. LET-C-A-29-2012
4. Answer of Gabor Lukács to Porter Airlines' motion for extension of time to file an answer, dated May 30, 2012
5. Letter - Porter Reply and Answer to Cross Motion requesting extension dated June 4, 2012
6. Notice of Appeal dated November 1, 2012
7. Reply of Gábor Lukács in 16-C-A-2013 dated August 14, 2012 (excerpt pp. 1-5)
8. Answer of Porter in 16-C-A-2013 (excerpt pp. 1-4)
9. Reply of Gábor Lukács in 344-C-A-2013 dated May 31, 2013 (excerpt pp. 1-3)
10. Letter of Porter Airlines to the CTA Secretary dated June 4, 2013
11. Lukács email thread with Cathy Murphy ending March 11, 2014 re "Email inquiry of March 4, 2014"
12. Email of Gábor Lukács to Cathy Murphy dated October 9, 2013
13. Email of Gábor Lukács to Greg Sheahan dated March 3, 2014
14. "Tweet" of @AirPassRightsCA of April 7, 2014 at 5:35 am

List of Authorities

1. Canadian Transportation Agency General Rules, SOR/2005-35
2. *Lukács v. Porter Airlines Inc.*, 16-C-A-2013
3. *Lukács v. Porter Airlines Inc.*, 344-C-A-2013
4. *Lukács v. Porter Airlines Inc.*, 31-C-A-2014
5. Federal Courts Rules, SOR/98-106
6. *Rules of Civil Procedure*, R.R.O. 1990, Reg 194
7. *Knowledge House Inc. v. Stewart McKelvey Stirling Scales*, 2007 NSCA 113 (CanLII)
8. *Sivak v. Canada*, 2012 FC 272 (CanLII)
9. *Fitzpatrick v. Durham Regional Police Services Board*, 2005 CanLII 63808 (ON SC)
10. *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2012 ONLSHP 94 (CanLII) ("Groia")
11. *Principles of Civility for Advocates* published by The Advocates' Society, as cited in Groia
12. Kara Anne Nagorney, "A Noble Profession? A Discussion of Civility Among Lawyers", (1999), 12 *Georgetown Journal of Legal Ethics* 815, as cited in Groia
13. Michael Code, "Counsel's Duty of Civility: An Essential Component of Fair Trials and an Effective Justice System", (2007), 11 Can. Crim. L.R. 97, as cited in Groia

EXHIBIT 1

2

Greg Sheahan

From: Gabor Lukacs
Sent: Sunday, March 09, 2014 10:45 PM
To: secretaire-secretary@otc-cta.gc.ca; Cathy Murphy
Cc: Robert Deluce; Greg Sheahan
Subject: Complaint concerning Porter Airlines' Domestic Tariff Rule 18 (Denied Boarding Compensation)
Attachments: 2014-03-09--complaint-POE-04.pdf

Dear Madam Secretary,

Enclosed please find a formal complaint concerning Porter Airlines' Domestic Tariff Rule 18 (Denied Boarding Compensation).

In light of Porter's past and present conduct (including its ongoing failure to comply with Decision No. 31-C-A-2014), there is no point in mediation. Thus, I am asking that the Agency open pleadings in the present matter without delay, and render a decision within 120 days.

Kindly please confirm the receipt of this message and its attachment.

Best wishes,
Dr. Gabor Lukacs

EXHIBIT 2

porter
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Porter Airlines Inc
Billy Bishop Toronto City Airpor
Toronto, Ontario
Canada M5V 1A1

Tel (416) 203 8100
Fax (416) 203 8150
www.flyporter.com

May 29, 2012

VIA EMAIL

Mike Redmond
Chief, Tariff Investigation
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

Dear Mr. Redmond,

RE: Complaint by Gábor Lukács concerning Porter Airlines Inc.'s International Tariff Rule 18, File No. M 4120-3/12-02317

I am in-house counsel at Porter Airlines Inc. ("Porter"), and write in respect of the above-referenced complaint (the "Lukács Complaint").

By this letter, Porter requests an extension of sixty (60) days, *i.e.* until July 30, 2012, in which to file its answer to the Lukács Complaint.

Porter relies on the factors set out below in support of its request:

1. The Lukács Complaint is legally and factually complex. It raises matters including the manner in which various laws, regulations, international conventions and industry standards interact to collectively effect a liability regime relating to passenger and baggage delays. In addition, it engages, and its determination would affect, many facets of Porter's operations including flight operations, finances and business plan, legal and insurance regimes and customer service operations.

2. Porter submits that the requested delay would have a minimal impact on the proceedings, including on Mr. Lukács in particular, who has advised Porter that he is overseas through the end of July and would thus not have occasion to travel with Porter during the extension period. Further, the requested extension of time would not cause undue delay in the adjudication of the Lukács Complaint in comparison with the timelines in which the Canadian Transportation Agency has dealt with similar complaints, including in particular those regarding the reasonableness of a carrier's conditions of carriage.

3. As indicated in prior correspondence from Mr. Deluce to you and Mr. Lukács, Porter has determined that its International Tariff does require revisions, and Porter accordingly intends to submit proposed amendments thereto as part of its answer. However, Porter requires additional time to draft its proposed amendments, including to confer with the

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various departments in its organization which would be affected thereby. It is submitted that the concurrent delivery of proposed amendments to the International Tariff with Porter's answer would facilitate the efficient determination of the Lukács Complaint.

4. Porter's response will require investigations as to the effect any amendments would have on its business, including as assessment of the impact of changes on its business, historical and prospective information on baggage/delay claims and other information, all of which will require additional time to compile and assess.

5. Porter has made diligent efforts to respond to the Lukács Complaint, but due to the recent reorganization of its internal legal and regulatory team required time for its counsel to become conversant in these particular matters and issues, including Porter's relevant policies and the legal regime governing conditions of carriage.

[Deleted per direction of the Agency, LET-C-A-92-2012]

7. This is Porter's first request for an extension of time.

8. The extension, if granted, will not preclude Mr. Lukács from providing his comments in reply.

Please do not hesitate to contact me should you require any additional information, or otherwise wish to discuss this request further.

Yours very truly,

G SL

Greg Sheahan
Counsel
Greg.Sheahan@flyporter.com
Tel: 647-826-7258

cc. Dr. Gábor Lukács, at dr.gabor.lukacs@gmail.com
Robert Deluce, Porter Airlines Inc., at robert.deluce@flyporter.com

EXHIBIT 3

Office des transports du Canada

Canadian Transportation Agency

LET-C-A-92-2012

June 22, 2012

File No. M 4120-3/12-02317

BY FACSIMILE: 416-203-8150

BY E-MAIL: dr.gabor.lukacs@gmail.com

Porter Airlines Inc.
Billy Bishop Toronto City Airport
Toronto, Ontario
M5V 1A1

Gábor Lukács
6507 Roslyn Road
Halifax, Nova Scotia
B3L 2M8

Attention: Greg Sheahan, Counsel

Dear Sirs:

Re: Complaint concerning Porter Airlines Inc.'s International Tariff Rule 18

This refers to the complaint filed by Gábor Lukács against Porter Airlines Inc. (Porter) concerning the above-noted matter. In its Decision No. LET-C-A-75-2012 dated April 30, 2012, the Canadian Transportation Agency (Agency) opened pleadings respecting this matter. On May 29, 2012, Porter requested an extension of 60 days, i.e. until July 30, 2012, to file an answer to the complaint for the reasons set out in Porter's letter. Mr. Lukács, on May 30, 2012, filed his answer to Porter's request. In that answer, Mr. Lukács requests the Agency to:

(i) dismiss Porter's request for an extension to file an answer to his complaint, and in the absence of that answer, dispose of the complaint without further notice to Porter, pursuant to subsection 42(3) of the *Canadian Transportation Agency General Rules* (General Rules), or alternatively, direct Porter to file its answer to the complaint forthwith, or
(ii) should the Agency grant the requested extension, suspend Rule 18 pursuant to paragraph 113(*a*) of the *Air Transportation Regulations*.

Mr. Lukács also requests that paragraph 6 of Porter's letter dated May 29, 2012 be expunged pursuant to paragraph 14(3)(*b*) of the General Rules as being inappropriate and prejudicial to him. On June 4, 2012, Porter filed its reply, and on June 5, 2012, Mr. Lukács submitted a response.

The Agency has considered Porter's request for a 60-day extension to file an answer and the parties' submissions on this issue, and finds it appropriate to grant an extension of 30 days from the date of receipt of the present letter to file that answer with the Agency, copied concurrently to Mr. Lukács. Mr. Lukács will have 10 days from receipt of Porter's answer to file a reply with the Agency, copied at the same time to Porter.

LET-C-A-92-2012

The Agency has determined that it would not be appropriate to suspend Rule 18 of Porter's International Tariff pending receipt of Porter's answer. Once a provision has come into effect, the Agency has suspended tariff provisions only in special and clear circumstances. The Agency, while noting that Rule 18 has been in effect since January 31, 2008, is of the opinion that special and clear circumstances do not exist to warrant suspension of that Rule.

The Agency has considered Mr. Lukács' claim that the contents of paragraph 6 of Porter's submission dated May 29, 2012 are misleading, irrelevant and prejudicial, and should be expunged from the record. The Agency has determined that the paragraph is not relevant to the Agency's consideration of this matter. Accordingly, the Agency has determined that paragraph 6 of Porter's submission will not form part of the record. Porter is required, therefore, within 3 business days of this decision, to refile with the Agency, copied to Mr. Lukács, Porter's submission dated May 29, 2012, with paragraph 6 deleted.

Should you have any questions regarding the complaint, you may contact Mike Redmond at telephone at (819) 997-1219, by facsimile at (819) 953-7910, or by e-mail at Mike.Redmond@otc-cta.gc.ca.

Sincerely,

Cathy Murphy
Secretary

BY THE AGENCY:

Geoffrey C. Hare
Member

EXHIBIT 4

Gábor Lukács
6507 Roslyn Road
Halifax, Nova Scotia, B3L 2M8

dr.gabor.lukacs@gmail.com

May 30, 2012

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Mr. Mike Redmond, Chief, Tariff Investigation

Dear Madam Secretary:

Re: Gábor Lukács v. Porter Airlines
Complaint concerning Porter Airlines' International Tariff Rule 18
File No.: M 4120-3/12-02317
Answer to Porter Airlines' motion for extension of time to file an answer

Please accept the following submissions in relation to the above-noted matter as an answer, pursuant to Rule 32(4), to Porter Airlines' motion for an extension of sixty (60) days to file its answer.

BACKGROUND

1. The Applicant has been communicating with Porter Airlines since December 10, 2011 about various issues related to Porter Airlines' tariff, and revisions that would be necessary in order to comply with the law and the jurisprudence developed by the Agency.

2. On or around February 15, 2012, the Applicant alerted Mr. Robert Deluce, President and CEO of Porter Airlines, among other things, about the issues related to International Tariff Rule 18 that are the subject matter of the present complaint.

3. On April 20, 2012, the present complaint was filed.

4. On April 20, 2012, Mr. Deluce wrote to the Mr. Redmond of the Agency (with carbon copy to the Applicant) that:

> No need for mediation or adjudication. We do not essentially disagree with the position taken. Frankly we are in the process of re-organizing our in-house legal and regulatory affairs group and just need a bit more time to respond with necessary amendments. We appreciate your patience and understanding.

5. On April 20, 2012, the Applicant wrote to Mr. Redmond of the Agency (with carbon copy to Mr. Deluce) that:

> Prior to bringing a formal complaint, I have brought these concerns to the attention of Mr. Deluce on or around February 15, 2012. While we did have a pleasant meeting in Halifax in early March 2012, there was no change in the language of Rule 18, and I received no response to repeated follow-up messages.
>
> Therefore, I feel that there is no much point in mediation, and I would like to proceed to a formal adjudication as soon as possible.

6. The Agency opened pleadings on April 30, 2012, and directed that Porter Airlines file its answer within 30 days.

7. On May 24, 2012, Mr. Deluce proposed to talk to the Applicant on the phone and/or meet with the Applicant in person.

8. On May 24, 2012, the Applicant proposed to postpone talking and/or meeting in person with Mr. Deluce until August 2012, by which time the Applicant expected that pleadings in the present proceeding would be closed. No response was received from Mr. Deluce to this date.

ARGUMENT

I. Misleading, irrelevant, and prejudicial statements in Porter Airlines' motion

Paragraph 6 of Porter Airlines' motion of May 29, 2012 purports to make representations concerning settlement and/or mediation talks between the parties. These representations are misleading and irrelevant to the motion for extension. The Applicant's position on mediation and/or settlement talks are summarized in the aforementioned letter to Mr. Redmond dated April 20, 2012. It is submitted that Porter Airlines' representations in paragraph 6 of its May 29, 2012 motion are inappropriate, and aimed at creating prejudice against the Applicant.

Therefore, the Applicant requests that the Agency expunge paragraph 6 of Porter Airlines' motion of May 29, 2012 pursuant to s. 14(3)(b) of the *Canadian Transportation Agency General Rules*, S.O.R./2005.

II. Should the Agency exercise its discretion to extend the deadline for Porter Airlines?

(a) Applicable law: the Agency's practices and the *Grewal*-test

The relief sought by Porter Airlines, namely, extension of time to file its answer, is a discretionary one. While the Applicant is aware of the Agency's practices regarding such requests, it is submitted that they ought to be augmented with the four-part test established by the Federal Court of Appeal in *Grewal v. Canada (Minister of Employment & Immigration)*, [1985] 2 F.C. 263 (F.C.A.), and cited with approval in *Stanfield v. Canada*, 2005 FCA 107. The four factors to be considered are:

(1) whether the party seeking the extension has a continuing intention to pursue the matter;
(2) whether the position taken by the party seeking the extension of time has some merit;
(3) whether the other party is prejudiced by the delay;
(4) whether there is a reasonable explanation for the delay.

(b) Application of the law to the present case

1. ***No continuing intention to pursue the matter.*** The present complaint is asking the Agency to disallow Porter Airlines' International Tariff Rule 18. On April 20, 2012, Porter Airlines conceded that it agrees with the position taken in the complaint. Thus, Porter Airlines has demonstrated that it had no interest in presenting a defense to the complaint.

   While Porter Airlines intends to amend its tariffs, such amendments do not constitute an answer to the complaint, and have no bearing on whether International Tariff Rule 18 is just and reasonable. Therefore, it is plain and clear that Porter Airlines has no intention to defend the complaint.

2. ***Porter Airlines has no position with some merit that constitutes a defence.*** On April 20, 2012, Porter Airlines conceded that it agrees with the position taken in the complaint. Thus, Porter Airlines admitted that it is unable to present a position that has some merit, which may constitute a defence for the complaint, and may persuade the Agency that International Tariff Rule 18 is just and reasonable.

3. ***The complaint is a question of law.*** The Applicant respectfully disagrees with Porter Airlines' submission at paragraph 1 of its motion of May 29, 2012 that there are any questions of fact involved in the complaint. It is submitted that the complaint relates only to questions of law, namely, the compliance of International Tariff Rule 18 with the legal principles of the *Montreal Convention* and the clarity of Rule 18(e).

4. ***The questions of law involved are straightforward.*** The Applicant respectfully disagrees with Porter Airlines' submission at paragraph 1 of its motion of May 29, 2012 that the complaint raises complex questions of law. On the contrary, the complaint concerns the simple and straightforward application of the jurisprudence and the *Montreal Convention*.

As the wealth of precedents cited in the complaint demonstrates, the complaint does not raise any novel point of law, but rather seeks to secure Porter Airlines' compliance with the law.

Compliance with the *Montreal Convention* is not optional for Porter Airlines; it is a firm legal obligation, which does not depend on any factors special to Porter Airlines. Thus, considerations such as Porter Airlines' operations, finances and business plan are irrelevant to the disposition of the present complaint.

5. ***Prejudice to the travelling public.*** The purpose of complaints such as the present one is not to protect the rights of an individual traveller (as Porter Airlines suggests at paragraph 2 of its motion dated May 29, 2012), but rather to protect the entire travelling public from being subjected to unreasonable and/or unjust terms and conditions.

   In the present case, Porter Airlines does not dispute the Applicant's position that its International Tariff Rule 18 fails to be just and reasonable, and clear. The effect of granting the extension sought would be to cause substantial prejudice to the travelling public, which would continue to be subjected to terms and conditions that are unreasonable and/or unjust and/or unclear for an additional two months.

   It is submitted that this prejudice could only be removed by the Agency exercising its discretion under s. 113(a) of the *Air Transportation Regulations*, S.O.R./88-58 (the "*ATR*") to suspend International Tariff Rule 18.

6. ***No further information is necessary for answering the complaint.*** At paragraph 4 of its motion dated May 29, 2012, Porter Airlines proposes to investigate and compile a wealth of information concerning its operations, baggage claim/delay history, etc. It is submitted that this information is entirely unnecessary for determining the present complaint, which is governed by the *Montreal Convention*.

   To put it differently, Porter Airlines' obligation to comply with the *Montreal Convention* is independent of the impact of such compliance upon Porter Airlines. Even in the unlikely even that Porter Airlines demonstrated that compliance with the *Montreal Convention* would drive it into bankruptcy, the Agency would not be able to release or exempt Porter Airlines from the legal obligation to comply with the *Montreal Convention*.

7. ***Porter Airlines failed to make diligent efforts to respond to the complaint.*** The Applicant respectfully disagrees with Porter Airlines' submissions at paragraph 5 of its motion dated May 29, 2012. Porter Airlines has been aware of the Applicant's concerns about International Tariff Rule 18 since February 15, 2012. Thus, Porter Airlines had 3.5 months (104 days) to articulate a response and to propose tariff amendments to address these concerns.

   It is submitted that such a long time ought to have been sufficient to address such simple and straightforward matters as compliance with the *Montreal Convention*.

8. ***Extension sought is excessive and unreasonable.*** Section 29 of the *Canada Transportation Act*, S.C. 1996, c. 10 provides that:

> 29. (1) The Agency shall make its decision in any proceedings before it as expeditiously as possible, but no later than one hundred and twenty days after the originating documents are received, unless the parties agree to an extension or this Act or a regulation made under subsection (2) provides otherwise.
>
> (2) The Governor in Council may, by regulation, prescribe periods of less than one hundred and twenty days within which the Agency shall make its decision in respect of such classes of proceedings as are specified in the regulation.

Thus, Parliament intended to see all proceedings before the Agency concluded within 120 days or even less. Porter Airlines is seeking an extension of sixty (60) days, which is equal to one-half of the statutory timeline available for adjudicating the complaint, including pleadings. Therefore, it is submitted that Porter Airlines' request is excessive and unreasonable.

(c) Conclusions

The present complaint is seeking that the Agency disallow Porter Airlines' International Tariff Rule 18. Porter Airlines conceded that the complaint is justified, and has no intention to oppose the complaint. Thus, it is submitted that Porter Airlines' motion for an extension of time serves the sole purpose of delaying the inevitable, namely, the disallowance of International Tariff Rule 18.

Therefore, it is submitted that Porter Airlines' motion is an abuse of process, and ought to be dismissed.

III. Should the Agency suspend Rule 18?

Section 113(a) of the *ATR* states that:

> 113. The Agency may
> (a) suspend any tariff or portion of a tariff that appears not to conform with subsections 110(3) to (5) or section 111 or 112, or disallow any tariff or portion of a tariff that does not conform with any of those provisions;
>
> [Emphasis added.]

There is a substantial distinction between the conditions for suspending a tariff provision and disallowing it. For suspension, it is sufficient to demonstrate that a tariff provision "appears not to conform" with certain requirements, while for disallowance, one has to demonstrate that it "does not conform" with the requirements. Thus, the threshold for suspending a tariff provision is significantly lower than for disallowing the same.

On April 20, 2012, Porter Airlines conceded that it agrees with the position taken by the Applicant in the complaint. Subsequently, on May 29, 2012, in a motion for an extension, Porter Airlines confirmed that its tariff required revisions.

It is submitted that these admissions of Porter Airlines constitute *prima facie* evidence that Porter Airlines' International Tariff Rule 18 fails to be just and/or reasonable and/or clear for the reasons articulated in the Applicant's complaint of April 20, 2012.

Thus, it is submitted that International Tariff Rule 18 "appears not to conform" with s. 111 of the *ATR* within the meaning of s. 113(a), and the Agency may suspend International Tariff Rule 18 accordingly.

In the circumstances of the case, it is submitted that suspending International Tariff Rule 18 may be an appropriate and just resolution of Porter Airlines' motion, because it would remove the immediate prejudice for the travelling public caused by International Tariff Rule 18, and at the same time, would allow Porter Airlines sufficient time to propose amendments to its tariff.

Therefore, it is submitted that should the Agency grant Porter Airlines' motion for an extension, it ought to suspend International Tariff Rule 18 until the conclusion of the present proceeding. Doing so would not prejudice Porter Airlines in any way, because it would continue to benefit from the liability limits and exclusions of the *Montreal Convention*.

RELIEF SOUGHT

For the aforesaid reasons, the Applicant prays the Agency that the Agency dismiss Porter Airlines' motion for extension of time to file its answer, and adjudicate the application pursuant to Rule 42(3), or alternatively, direct Porter Airlines to file its answer forthwith.

Alternatively, should the Agency grant the extension sought by Porter Airlines, the Applicant prays the Agency that the Agency suspend Porter Airlines' International Tariff Rule 18 pursuant to s. 113(a) of the *ATR*.

All of which is most respectfully submitted.

Gábor Lukács
Applicant

Cc: Mr. Robert Deluce, President and CEO, Porter Airlines
Mr. Greg Sheahan, Counsel, Porter Airlines

EXHIBIT 5

porter
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Porter Airlines Inc.
Billy Bishop Toronto City Airport
Toronto, Ontario
Canada M5V 1A1

Tel: (416) 203-8100
Fax: (416) 203-8150
www.flyporter.com

June 4, 2012

VIA EMAIL

Mike Redmond
Chief, Tariff Investigation
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

Dear Mr. Redmond,

RE: Lukács v. Porter Airlines Inc.
File No. M 4120-3/12-02317
Reply re: Porter Airlines Inc.'s request for an extension of time and Answer re: Gábor Lukács's cross-motion seeking suspension of Porter's International Tariff Rule 18

Pursuant to sections 32(4) and (5) of the *Canadian Transportation Agency General Rules*, SOR/2005-35 (the "General Rules"), Porter Airlines Inc. ("Porter") hereby provides its reply to the answer of Mr. Lukács dated May 30, 2012 with respect to Porter's request for an extension of time and its answer to Mr. Lukács's cross-motion requesting that Rule 18 of Porter's International Tariff ("Rule 18") be suspended.

Overview of Submissions

On April 30, 2012, Porter was served with Mr. Lukács's complaint concerning Rule 18 (the "Lukács Complaint"). At all times since its receipt of the Lukács Complaint, Porter has maintained the intention to deliver an answer thereto. Contrary to Mr. Lukács's assertions, Porter has not admitted or otherwise conceded that its current Rule 18 is not reasonable, and in fact Porter denies the substance of Mr. Lukács's complaints.

However, at the time Porter was served with the Lukács Complaint, it had already initiated an internal review of its tariffs. In the context of these proceedings, Porter has confirmed its intention to amend Rule 18, and requested an extension of time in large part to permit it to deliver its proposed amendments with its answer.

In these circumstances, Porter submits that the allowance of the requested extension would in fact expedite the timely and efficient resolution of Mr. Lukács's complaints. In particular, it would obviate wasteful proceedings aimed at evaluating a rule which is to be replaced in any event, and would permit the parties and the Canadian Transportation Agency (the "Agency") to move more promptly to a consideration of Porter's proposed amendments to Rule 18. In

addition, the delivery of Porter's proposed amendments may facilitate settlement of the Lukács complaint to the extent that they prove satisfactory to Mr. Lukács.

Because Porter's delivery of proposed amendments with its answer would render unnecessary numerous interlocutory steps typically involved in complaints of this nature, Porter submits that the requested 60-day extension is more likely to accelerate, rather than delay, a final determination as to the sufficiency of Rule 18. In that regard, any prejudice to the travelling public which may flow from the current Rule 18 (the existence of which is not admitted) would be mitigated by granting Porter the requested extension of time.

With respect to Mr. Lukács's cross-motion seeking suspension of Rule 18, Porter submits that this request is not properly the subject of an interlocutory cross-motion. Rather, the purported cross-motion effectively seeks an interim determination of the Lukács Complaint, and its determination would thus frustrate the purpose of Porter's request for an extension of time to respond to the Lukács Complaint on the merits.

Argument

The Agency has the Discretion to Extend Time for Delivery of Porter's Answer

As expressly indicated in the Agency's letter to the parties of April 30, 2012, the Agency has the discretion to extend the time for, *inter alia*, the delivery of pleadings. Furthermore, it is apparent that parties and the Agency depart from the 120-day timeline where, as here, the proceedings are complex or interim steps are available which may facilitate the ultimate resolution of proceedings in a just and efficient manner.

The Agency's discretion to vary its procedures is confirmed by the provisions of its General Rules. The Rules provide, in part, as follows:

> 3. (1) When the Agency is given a discretion under these Rules, it shall exercise the discretion in a fair and expeditious manner.
>
> 4. In any proceeding, the Agency may dispense with or vary any of the provisions of these Rules.
>
> 5. In any proceeding, the Agency may extend or abridge the time limits set by these Rules, or otherwise set by the Agency, either before or after the expiry of the time limits.
>
> [...]

> 7. Failing to follow a requirement of these Rules does not, of itself, make a proceeding invalid, and the Agency may make all necessary amendments or grant other relief on any terms that will secure the just determination of the real matters in dispute or dispense with compliance with any rule at any time.

If Porter is permitted an extension of time to July 30, 2012 to deliver its answer, sufficient time will remain for the Agency to determine the Lukács Complaint within the 120-day period prescribed in the *Canada Transportation Act*, *i.e.* on or before August 28, 2012.

Further, even if the Agency determines that granting the extension may delay the adjudication of the Lukács Complaint regarding the current Rule 18, it is submitted that any short-term delay would be mitigated by the practical benefit of receiving Porter's proposed amendments to Rule 18 into the record. This would allow the parties to forego certain interlocutory steps typical to complaints of this nature (discussed further below), with the likely result that the ultimate object of Lukács Complaint – namely, a determination of the reasonableness of Porter's tariff as of the time of adjudication – would be achieved sooner than if Porter were compelled to respond to the complaints regarding its current Rule 18.

It is also apparent that it is not uncommon for complex cases, including in particular complaints regarding tariff provisions dealing with an airline's scope of liability, to take more than 120 days to resolve. For example:

- *Lukács v. WestJet*, Agency File No. M4120-3/09-14027, involved a complaint by Mr. Lukács as to the reasonableness of WestJet's tariff provisions dealing with liability for damage to or loss or delay of baggage. That proceeding was initiated by Mr. Lukács on July 6, 2009. WestJet's Answer was delivered 78 days later, on September 22, 2009 (see LET-C-A-2010). The proceedings were eventually concluded by Decision issued on November 30, 2011 (418-C-A-2011), more than 2 years and 4 months (877 days) after the originating complaint.

- *Lukács v. Air Canada*, Agency File No. M4120-3/09-07287, involved a complaint by Mr. Lukács as to the reasonableness of Air Canada's tariff provisions dealing with liability for damage to or loss or delay of baggage. While the published decisions do not indicate the date the complaint was initiated, it is observed that Mr. Lukács delivered his Reply on January 10, 2010 (see LET-C-A-29-2011 at para. 5), and the proceeding was ultimately concluded by Decision issued on August 2, 2011 (291-C-A-2011), more than 1 year and 7 months (578 days) after the delivery of the Reply.

- *Lukács v. Air Canada*, Agency File No. M4120-3/09-03560, involved complaints by Mr. Lukács challenging various of Air Canada's tariff provisions. That proceeding was initiated by Mr. Lukács on June 8, 2009 (see LET-C-A-129-2011 at para. 6). Air Canada's Answer was delivered 99 days later, on September 15, 2009 (see LET-C-A-129-2011 at para. 8). As of the

date of these submissions, just under 3 years have passed (1,092 days) since the originating complaint, and to Porter's knowledge no final decision has been rendered.

In this case, Porter submits that the allowance of the requested extension would, in any event, promote the achievement of a just and efficient resolution.

Early Delivery of Proposed Amendments would Obviate Interlocutory Steps

A review of prior Agency proceedings involving contested tariff complaints, including those referenced above, demonstrates that the Agency typically follows a procedure involving numerous interlocutory steps, each effecting a delay, before an airline will be required to propose revisions to its tariffs (where the impugned provisions are found to be unreasonable). If Porter is compelled to respond to the Lukács Complaint forthwith and is thus denied the opportunity to deliver proposed amendments, the likely result would be a substantially greater delay than any which may result from the requested extension.

Both *Lukács v. WestJet*, File No. M4120-3/09-14027 and *Lukács v. Air Canada*, File No. M4120-3/09-07287 involved complaints similar to those advanced in the instant case, *i.e.* they challenged the reasonableness of tariff provisions dealing with liability for baggage delays or damage. In those cases, the Agency:

1. first delivered a preliminary decision declaring the impugned provisions unreasonable (see LET-C-A-51-2010 and LET-C-A-29-2011) and inviting the airlines to make further submissions to show cause why they ought not to be disallowed. (In the former case, the Agency expressly stated that this step was appropriate "[g]iven the possible wider ramifications" of disallowing the impugned provisions.);

2. subsequently rendered Decisions disallowing the provisions and, in the WestJet proceeding, inviting WestJet to propose revisions thereto; and

3. ultimately rendered final Decisions and Orders with respect to the parties' proposed amendments to their respective tariffs.

Thus, even if Mr. Lukács's complaint were meritorious (which is not admitted), his insistence on strict adherence to the prescribed timelines would compel Porter to answer his complaint without a sufficient opportunity to propose amendments, and would likely result in additional interlocutory steps with many months of further delays. Whereas, if Porter is permitted time to submit proposed amendments, a ruling on the current Rule 18 and the associated interlocutory steps may be avoided and the final determination of the substance of the Lukács Complaint significantly advanced.

Given Porter's stated intention to amend its tariff in the coming months, Porter submits that it would be an enormous waste of the Agency's and the parties' time and resources to engage in this prolonged procedure rather than directing their attention and efforts to the sufficiency of Porter's amendments, once completed and submitted to the Agency.

Alleged Prejudice resulting from the Requested Extension

As discussed above, the allowance of the requested extension would permit the Agency and the parties to proceed to a determination of the sufficiency of amendments to its tariffs Porter intends to make in any event, and would thus likely expedite the determination of the substance of the Lukács Complaint. It would also avoid the wasteful exercise of a contested proceeding in relation to tariff provisions which would otherwise have been replaced in any event. Thus, the extension would, if anything, allay the prejudice to the travelling public, if any, which may arise from the current Rule 18.

Porter Has Diligently Responded to Issues Raised by Mr. Lukács

Porter denies that the four-part test for an extension of time in *Grewal v. Canada (Minister of Employment & Immigration)*, [1985] 2 F.C. 263, applies to Porter's request for an extension of time to deliver its pleading in this case. The *Grewal* case involved an extension sought to commence judicial review proceedings in the context of the *Federal Courts Act*, circumstances which are plainly distinguishable from Porter's request. Indeed, the Agency has set out the specific factors it may consider where extensions of time are sought in Agency proceedings which, as indicated in the Agency's April 30, 2012 letter to the parties, are set out at http://www.cta-otc.gc.ca/eng/extensions. It was these factors which informed Porter's request, and Porter repeats and relies on the relevant factors set out in its letter submissions of May 29, 2012.

In any event, Porter submits that it satisfies the requirements of the *Grewal* test:

1. It has maintained a continuing intention to respond to the Lukács Complaint – as discussed immediately below;
2. Its request for an extension has merit – Porter relies on its initial submissions of May 29, 2012 and its further submissions herein in that regard;
3. The other party will not be prejudiced – as discussed herein, the extension would expedite the ultimate determination of Mr. Lukács's substantive complaints; and
4. There is a reasonable explanation for the delay – Porter has been undertaking an ongoing assessment of its tariffs, including Rule 18, throughout the course of its discussions with Mr. Lukács, as described below.

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At no time has Porter waived its right to respond to the Lukács Complaint, including to dispute it in whole or in part, nor indicated that it does not intend to respond thereto.

Porter strenuously disputes Mr. Lukács's characterization of comments made by Porter's Robert Deluce as an admission "that it agrees with the position taken in the complaint." While it is acknowledged that Mr. Deluce did indicate that Porter "[does] not essentially disagree with the position taken", this cannot fairly be taken as anything more than a general acknowledgment of Porter's intention to update its tariffs, in light of the parties' prior discussions.

Further, Porter has been diligent in responding to Mr. Lukács's expressed concerns. More particularly:

- Mr. Lukács initially contacted Porter to advise of his view that the liability limits in its domestic tariff regarding baggage damage or delays.

- Porter assessed the provisions identified by Mr. Lukács, and subsequently updated them on February 14, 2012. Mr. Lukács confirmed his satisfaction with those amendments in his email to Mr. Deluce on February 15, 2012.

- In the same February 15th email, Mr. Lukács listed a number of additional provisions in both Porter's domestic and international tariffs, including some of the provisions at issue in the Lukács Complaint, and stated in general terms his view that they did not comply with applicable requirements.

- Porter has been engaged in a comprehensive review of its tariffs, including the provisions identified by Mr. Lukács in his email, with a view to updating them for consistency and clarity, as may be necessary.

Thus, any suggestion that Porter has been aware of the substance or particulars of the Lukács Complaint since February 15th or that it has failed to respond diligently is factually incorrect and misleading. The various provisions cited by Mr. Lukács in his emails and in the Lukács Complaint are part of Porter's ongoing internal review, and in some cases its intended amendments. Porter's failure to have made further amendments does not evidence a lack of diligence, but rather illustrates the complexity and scope of the effects that the broader amendments will have on its business.

Indeed, as stated above, in *Lukács v. WestJet*, LET-C-A-51-2010, the Agency expressly acknowledged the "wider ramifications" that may result from changes to an airline's tariffs. While the comparison of tariff provisions to the *Montreal Convention* may be characterized

(as it is by Mr. Lukács) as a strictly legal exercise, it is clear that the Agency is attentive to the practical, factual effects that result from its decisions. In Porter's submission, Mr. Lukács's opposition to its request for an extension demonstrates an overly restrictive adherence to technical positions which is inconsistent with the Agency's approach to matters of this nature.

Mr. Lukács's Cross-Motion to Suspend Rule 18

Porter submits that Mr. Lukács's proposal to suspend Rule 18 is not properly the subject of an interlocutory cross-motion, and further is an improper attempt to obtain an interim determination of the Lukács Complaint prior to the delivery of Porter's answer. Porter respectfully submits that the Agency ought not to deny Porter the opportunity to respond fully upon its determination of Porter's request for an extension of time, and not in the context of its reply in an interlocutory motion.

Again, Porter observes that in complaints similar to the Lukács Complaint, including as cited above, the Agency has afforded airlines the opportunity to make submissions not only in response to allegations that tariff provisions are unreasonable, but also as to whether there is cause to suspend or disallow impugned provisions, even after the Agency has determined that they are unreasonable. Porter submits that the suspension of Rule 18 requested by Mr. Lukács would not be fair, reasonable or consistent with the Agency's practices with respect to tariff provisions of the kind in issue.

Conclusion

Mr. Lukács states in his May 30th submissions that the aim of his Complaint is "to secure Porter Airlines' compliance with the law". For all of the foregoing reasons, Porter submits that that aim would not be advanced by denying Porter's request for an extension of time. Rather, Porter ought to be allowed an extension to submit its proposed amendments with its answer in order to ensure that compliant amendments are effected in a just and timely manner.

To the extent that the Agency may deem it advisable, Porter would be pleased to participate in a teleconference pursuant to s. 35(1) of the *Air Transport Regulations* to discuss an appropriate timetable for the next steps in the proceedings.

Yours very truly,

Greg Sheahan
Counsel
Greg.Sheahan@flyporter.com
Tel: 647-826-7258

cc. Dr. Gábor Lukács, at dr.gabor.lukacs@gmail.com
Robert Deluce, Porter Airlines Inc., at robert.deluce@flyporter.com

EXHIBIT 6

Court File No.: A-460-12

FEDERAL COURT OF APPEAL

BETWEEN:

GÁBOR LUKÁCS

Appellant

– and –

CANADIAN TRANSPORTATION AGENCY and PORTER AIRLINES 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.

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

Date: November 1, 2012

Issued by: 

Address of local office: Federal Court of Appeal
1801 Hollis Street, Suite 1720
Halifax, Nova Scotia, B3J 3N4

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Ms. Cathy Murphy, Secretary
Tel: 819-997-0099
Fax: 819-953-5253

AND TO: **PORTER AIRLINES INC.**
1 Billy Bishop Toronto City Airport
Toronto, Ontario M5V 1A1

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from a decision made by the Canadian Transportation Agency (the "Agency"), dated August 9, 2012 and bearing decision no. LET-C-A-126-2012, by which the Agency dismissed the Appellant's motion, dated August 2, 2012, seeking:

(a) to challenge the validity of Decision No. LET-C-A-92-2012 of the Agency on the ground that it was made without a quorum of at least two Members of the Agency; and

(b) that the motion in question be considered and determined by a panel consisting of at least two Members of the Agency, as required by subsection 16(1) of the *Canada Transportation Act*, S.C. 1996, c. 10.

THE APPELLANT ASKS that:

(i) the decision of the Agency, dated August 9, 2012 and bearing decision no. LET-C-A-126-2012, be set aside in its entirety;

(ii) the Appellant's motion, dated August 2, 2012, be referred back to the Agency for redetermination by a panel of the Agency, consisting of at least two Members of the Agency, and not including Chairperson Hare;

(iii) the Appellant be awarded costs and/or reasonable out-of-pocket expenses incurred in relation to the appeal; and

(iv) this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. The Agency exceeded its jurisdiction and/or erred in law by making its decision without a quorum of at least two Members, as required by subsection 16(1) of the *Canada Transportation Act*, S.C. 1996, c. 10.

2. Subsections 16(1), 17(c), 36(1), and 41(1) of the *Canada Transportation Act*, S.C. 1996, c. 10, section 2 of the *Interpretation Act*, R.S.C., 1985, c. I-21, and subsection 2(1) of the *Statutory Instruments Act*.

3. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

November 1, 2012

GÁBOR LUKÁCS
6507 Roslyn Road
Halifax, Nova Scotia B3L 2M8

lukacs@AirPassengerRights.ca

Appellant

EXHIBIT 7

53

Gábor Lukács
6507 Roslyn Road
Halifax, Nova Scotia, B3L 2M8

dr.gabor.lukacs@gmail.com

August 14, 2012

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Mr. Mike Redmond, Chief, Tariff Investigation

Dear Madam Secretary:

Re: Gábor Lukács v. Porter Airlines
Complaint concerning Porter Airlines' International Tariff Rule 18
File No.: M 4120-3/12-02317
Reply

Please accept the following submissions in relation to the above-noted complaint as a reply to Porter Airlines' answer dated July 23, 2012.

According to paragraph 21 of Porter Airlines' submissions of July 23, 2012, Porter Airlines agrees that Current Rules 18(c) and 18(e) need to be revised. Thus, it is submitted that these rules ought to be disallowed.

In response to the Applicant's complaint of April 20, 2012, Porter Airlines has put forward a Proposed Rule 18, and claims that it remedies all concerns raised by the Applicant in relation to the Current Rule 18.

While the Applicant welcomes Porter Airlines' acknowledgment that Current Rules 18(c) and 18(e) need to be revised, the Applicant respectfully disagrees with Porter Airlines concerning the reasonableness of the Proposed Rule 18.

In the circumstances of the case, the Applicant will focus a substantial portion of these submissions on Proposed Rule 18.

ISSUES

I. Misleading statements in Porter Airlines' submissions

(a) *Lukács v. WestJet*, 252-C-A-2012

At paragraph 2 of its answer of July 23, 2012, Porter Airlines claims that the Applicant "contests the reasonableness of various provisions the contents of which the Agency has expressly found reasonable in prior proceedings."

First, the present complaint was commenced on April 20, 2012, while the Agency's decision that Porter Airlines keeps referring to in its submissions was made only on June 28, 2012. In the absence of any "insider's information" about the content of the Agency's Decision to be released on June 28, 2012, the Applicant could not have known on April 20, 2012 how the Agency would rule on a later date.

Second, as the Applicant explains below, the *Lukács v. WestJet*, 252-C-A-2012 case can be easily distinguished from the present case for a number of reasons.

Third, as shown in *Lukács v. WestJet*, 252-C-A-2012 at para. 104, the Agency misapprehended the Applicant's, admittedly very brief, submissions on this issue. As noted by the Agency in *Lukács v. Air Canada*, 251-C-A-2012 (at para. 101), the Agency is not bound by the principle of *stare decisis*, and thus the Agency is at liberty to come to a different conclusion in the present case after reviewing the Applicant's detailed submissions on this issue.

(b) Prejudicial omissions from Current Rule 18 (page 4)

On page 4 of its answer of July 23, 2012, below paragraph 9, Porter Airlines purports to quote from its Current Rule 18. The quote, however, is grossly misleading in that it contains substantial omissions.

First, Porter Airlines omitted a number of important and incriminating provisions from Current Rule 18(c), and conveniently replaced them with "[...]". The provisions in question are exclusions of liability that are blatant contraventions of the *Montreal Convention*:

> The carrier is not responsible or liable for failure to make connections, or for failure to operate any flight according to schedule, or for a change to the schedule of any flight. The Carrier is not liable for any special, incidental or consequential damages arising from the foregoing (including the carriage of baggage) whether or not the Carrier had knowledge that such damages might be incurred.

These provisions, which Porter Airlines has deliberately and mischievously omitted, constitute a substantial difference from the provisions that the Agency considered in *Lukács v. WestJet*, 252-C-A-2012 (see, in particular, para. 103). Furthermore, as opposed to *Lukács v. WestJet*, the entire context of the Current Rule 18 strongly suggests that Porter Airlines will never be liable for delay, or at least leaves such an impression.

Second, Porter Airlines entirely omitted Current Rule 18(e), which reads as follows:

> Subject to the Warsaw Convention, or the Montreal Convention, as the case may be, the carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights.

According to the answers provided by Porter Airlines on July 23, 2012 (Part V), it operates international itineraries only between countries that are parties to the *Montreal Convention*. Thus, this provision (which did not appear in WestJet's tariffs either) is also of the nature that leaves the impression that Porter Airlines is never or almost never liable for delay.

Third, although Porter Airlines claims that Current Rules 18(a), 18(b), and 18(d) are identical in substance to Rules 12.10, 12.11, and 12.12 considered in *Lukács v. WestJet*, 252-C-A-2012, the context of the two rules is entirely different. In the latter case, the Agency reached its conclusion based on considering the entirety of Rule 12, and not just Rules 12.10, 12.11, and 12.12 in isolation (see para. 103).

(c) Conclusion

In addition to the Applicant's submissions in his application of April 20, 2012, based on the Agency's recent findings in *Lukács v. Air Canada*, 249-C-A-2012 (paras. 97 and 103), it is submitted that Current Rules 18(c) and 18(e) ought to be disallowed for failing to be reasonable.

EXHIBIT 8

File No. M 4120-3/12-02317

CANADIAN TRANSPORTATION AGENCY

BETWEEN:

GÁBOR LUKÁCS

Complainant

- and -

PORTER AIRLINES INC.

Respondent

ANSWER OF PORTER AIRLINES INC.

PART I - OVERVIEW

1. In these proceedings, the complainant Gábor Lúkacs seeks to have Rule 18 of Porter Airlines Inc.'s International Tariff ("Current Rule 18", copy attached hereto as Appendix "A") disallowed in its entirety.

2. While Porter Airlines Inc. ("Porter") acknowledges that certain provisions of the Current Rule 18 require revisions to reflect the standards of clarity and reasonableness established by the jurisprudence of the Canadian Transportation Agency (the "Agency"), Mr. Lukács's sweeping complaint goes much further. In seeking to have the entire Rule disallowed, Mr. Lukács:

(a) contests the reasonableness of various provisions the contents of which the Agency has expressly found reasonable in prior proceedings; and

(b) requests the disallowance of a provision which he acknowledges "has not been challenged in the present complaint" and which he does not suggest is unclear or unreasonable.

3. Porter accordingly denies that the Current Rule 18 must be disallowed in its entirety.

4. Rather, Porter proposes to retain certain portions of the Current Rule 18 which are not unreasonable as alleged, while amending the rule to (a) delete those portions acknowledged by Porter to require revisions, and (b) add additional provisions which clearly set out the relief available to passengers under the tariff and the manner in which such claims may be advanced. As such, Porter has delivered with this Answer a proposed amended Rule 18 ("Proposed Rule 18", copy attached hereto as Appendix "B") for the Agency's consideration in connection with the within complaint.

5. Thus, Porter asks that the Agency:

(a) dismiss Mr. Lukács's complaint with respect to sub-rules 18(a), 18(b) and 18(e) of Current Rule 18; and

(b) confirm that the Proposed Rule 18 remedies any deficiencies in reasonableness of Current Sub-rule 18(c) and any deficiencies in clarity of Current Sub-rule 18(e), or, alternatively, provide directions as to further revisions which may be required prior to the filing of Porter's proposed amended Rule 18 with the Agency.

PART II - PORTER'S CURRENT RULE 18

6. Porter's Current Rule 18 reads as follows:

> **RULE 18. RESPONSIBILITY FOR SCHEDULES AND OPERATIONS**
>
> (a) The carrier will endeavor to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.
>
> (b) The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.
>
> (c) Schedules are subject to change without notice. The carrier is not responsible or liable for failure to make connections, or for failure to operate any flight according to schedule, or for a change to the schedule of any flight. The Carrier is not liable for any special, incidental or consequential damages arising from the foregoing (including the carriage of baggage) whether or not the Carrier had knowledge that such damages might be incurred.
>
> (d) Without limiting the generality of the foregoing, the carrier cannot guarantee that the passenger's baggage will be carried on the flight if sufficient space is not available as determined by the carrier.
>
> (e) Subject to the Warsaw Convention, or the Montreal Convention, as the case may be, the carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights.

7. Mr. Lukács asserts that the entire Current Rule 18 should be disallowed, alleging that certain of its component sub-rules suffer from deficiencies as follows:

(a) Each of sub-rules 18(a), 18(c) and 18(d) is alleged to be unreasonable on the basis that they are said to limit Porter's liability in a manner which is inconsistent with the *Convention for the Unification of Certain Rules of*

International Carriage by Air, signed at Montreal, May 28, 1999 (the "*Montreal Convention*"), which has the force of law in Canada;

(b) Sub-rule 18(e) is alleged to lack the clarity required in carrier's tariffs under Section 122 of the *Air Transport Regulations*, SOR/88-58 (the "*ATR*"); and

(c) Sub-rule 18(b) is alleged to be "part and parcel" of the Current Rule 18 (though not stated to be unreasonable or unclear).

A. Porter Denies that any of Sub-rules 18(a), 18(b) and 18(d) is Unreasonable

8. Contrary to Mr. Lukács's allegations, none of Current Sub-rules 18(a), 18(b), 18(d) nor the first sentence of 18(c) purport to exempt the carrier from liability for delays in flights or in the delivery of baggage. Rather, they simply provide passengers with notice of the potential for variances in scheduled operations, which schedules are said not to be guaranteed. None of these amounts to a statement that the carrier will never be liable for passengers' losses resulting from delays.

9. In *Lukács v. WestJet*, CTA File No. M4120/10-07796, the Agency had occasion to consider tariff provisions proposed by WestJet which were identical in substance to sub-rules 18(a), 18(b) and 18(d) of Porter's Current Rule 18, and did not find any of them to be unreasonable:

Porter's Current Sub-Rules:

> 18(a) The carrier will endeavor to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.
>
> 18(b) The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.
>
> 18(c) Schedules are subject to change without notice. [...]
>
> 18(d) Without limiting the generality of the foregoing, the carrier cannot guarantee that the passenger's baggage will be carried on the flight if sufficient space is not available as determined by the carrier.

WestJet's Proposed Sub-Rules in *Lukács v. WestJet, supra*, (See 252-C-A-2012 at Appendix A)

> 12.10: The carrier will endeavour to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract. Schedules are subject to change without notice.
>
> 12.11: The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.
>
> 12.12: Without limiting the generality of the foregoing, the carrier cannot guarantee that the passenger's baggage will be carried on the flight if sufficient space is not available as determined by the carrier.

10. In *Lukács v. WestJet,* File No. M4120/10-07796, Mr. Lukács advanced similar arguments as to the supposed unreasonableness of these provisions, and relied on the same decisions of the Québec Small Claims Court and the 1998 decisions of the Chester County Court and the U.S. District Court of California in support of those arguments (See 252-C-A-2012 at paras. 92-94). Based on its analysis of these arguments and this jurisprudence, the Agency rejected the proposition that these provisions purported to relieve the carrier from liability.

11. The substantive issues before the Agency in the instant complaint, as concerns these particular provisions, are identical to those in *Lukács v. WestJet, supra*. The Agency declined to find any of the proposed provisions unreasonable, and in the case of WestJet's proposed rules 12.10 and 12.12, expressly found that they would be reasonable if filed with the Agency (252-C-A-2012 at paras. 106 and 110).

12. In light of the Agency's prior determinations of these arguments and the law relied on by Mr. Lukács in support thereof with respect to WestJet's identical provisions, Porter states that its tariff provisions are necessarily also reasonable.

13. Further, or in the alternative, Mr. Lukács overstates or misstates the effect of the case law on which he relies.

EXHIBIT 9

6507 Roslyn Road
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lukacs@AirPassengerRights.ca

AIR PASSENGER RIGHTS

May 31, 2013

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Ms. Sylvie Giroux, Analyst

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Porter Airlines
Complaint about Porter Airlines' Domestic Tariff Rule 16
File No. M 4120-3/13-01412
Reply

On March 6, 2013, the Applicant filed a complaint with the Agency concerning the unreasonableness of a number of provisions contained in Porter Airlines' Domestic Tariff Rule 16, including a 2-page long unnumbered provision (the "Current force majeure clause") starting with "Notwithstanding any other terms or conditions contained herein..." on 3rd Revised Page 31 and ending with the words "No refund will be available" on Original Page 33 of Porter Airlines' Domestic Tariff.

On May 24, 2013, Porter Airlines filed its answer, in which it conceded that its Current Rules 16(c), 16(e), 16(g), and force majeure clause are inconsistent with the principles of the *Montreal Convention*. It also conceded that Current Rule 16(f) duplicated Current Rule 16(d), and agreed to eliminate it. At the same time, Porter Airlines proposed a wealth of amendments to Rule 16 and an addition to Rule 1 (the "Proposed Rules 16 and 1").

Please accept the following submissions in related to the above-noted matter as a reply to Porter Airlines' answer of May 24, 2013.

ISSUES

I. Material misrepresentations by Porter Airlines about its Current Rule 16

Appendix "A" to the May 24, 2013 answer of Porter Airlines purports to be the Current Rule 16 of Porter Airlines' Domestic Tariff.

This is clearly not the case, and Appendix "A" grossly misrepresents the provisions of Porter Airlines' Current Rule 16 in that it omits the contents of 1st Revised Page 32 and Original Page 33 of Porter Airlines' Domestic Tariff. Copies of these pages are part of Exhibit "A" to the Applicant's March 6, 2013 complaint.

The Applicant submits that this is a material omission and misrepresentation, especially because Rule 16 ends with the following blatant blanket exclusion of liability:

> Upon the happening of any of the foregoing events, the Carrier may without notice cancel, terminate, divert, postpone or delay any flight whether before departure or enroute. If the flight, having commenced is terminated, the carrier shall refund the unused portion of the fare and shall use its best effort to provide alternate transportation to the destination for the passengers and baggage at the expense and risk of the passenger or shipper. If the flight has not commenced prior to termination, the carrier will provide a credit equal to the paid fare which will be available for use in the purchase of a new ticket on the same terns for a period of one year from the date of termination. No refund will be available.

The Applicant is asking the Agency to expunge Appendix "A" to the May 24, 2013 answer of Porter Airlines for being incomplete, and thus misleading.

II. Clarification of the scope of the present complaint

In paragraph 5(a) of its May 24, 2013 answer, Porter Airlines is asking that the Agency:

> dismiss Mr. Lukács's Complaint with respect to sub-rules 16(a), 16(b) and 16(d) of the Current Rule 18;
>
> [Emphasis added.]

The Applicant would like to clarify that Current Rule 18 was not challenged in the Applicant's March 6, 2013 complaint, and thus its reasonableness is not before the Agency in the present proceeding. The Applicant strongly suspects that the aforementioned paragraph contains a typo and "18" should read "16".

The Applicant would like to further clarify that, as Porter Airlines correctly noted, the Applicant presented no arguments to challenge the reasonableness of Current sub-rules 16(a), 16(b), or 16(d), and indeed, he did not challenge these provisions.

EXHIBIT 10

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Porter Airlines Inc.
Billy Bishop Toronto City Airport
Toronto, Ontario
Canada M5V 1A1

Tel: (416) 203-8100
Fax: (416) 203-8150
www.flyporter.com

June 4, 2013

VIA EMAIL

Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

Dear Madam Secretary:

RE: Lukács v. Porter Airlines Inc., File No. M4120-3/13-01412

We write in connection with the above referenced complaint pending before the Canadian Transportation Agency (the "Agency"), in which Porter Airlines Inc. ("Porter") delivered its Answer on May 24, 2013 and the complainant Mr. Lukács delivered his Reply on Friday May 31, 2013.

In Section I of Mr. Lukács's Reply, he correctly notes that Appendix "A" to Porter's Answer, stated to contain Rule 16 of Porter's current domestic tariff, is incomplete, as it does not include that portion of Rule 16 following sub-paragraph (xii) of the force majeure provision. Porter regrets this omission, which was the result of an inadvertent clerical error on our part. Porter confirms that the complete version of its current Rule 16 is as reflected in Exhibit "A" to Mr. Lukács initial Complaint.

Although pleadings are now closed, Porter thought it advisable to acknowledge this error in order to obviate the consideration and determination by the Agency of matters which are not, in fact, in dispute.

To the extent the Agency deems it necessary or advisable and subject to any objection by Mr. Lukács, Porter would be pleased to file an amended Appendix "A" to its Answer, to have this letter included in the record of the proceedings, or to take any other steps as the Agency may consider appropriate.

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Yours very truly,

Greg Sheahan
General Counsel

EXHIBIT 11

Greg Sheahan

From: Gabor Lukacs
Sent: Tuesday, March 11, 2014 7:55 PM
To: Cathy Murphy
Cc: greg.sheahan@flyporter.com
Subject: Re: E-mail inquiry of March 4, 2014
Attachments: 2014-03-07--21-02--Lukacs-to-Sheahan--continued_non-compliance.pdf

Dear Madam Secretary:

1. Subsection 7(2) of the Canada Transportation Act states that:

> The Agency shall consist of not more than five members appointed by the Governor in Council, and such temporary members as are appointed under subsection 9(1) [...]

The "Code of Conduct for Members of the Agency" states that:

> (29) Adjudicative responsibility shall not be delegated.

Thus, I am still struggling to reconcile Mr. Sheahan's statement that of March 4, 2014 that "The Agency has granted us an extension." with your statement that "an extension was not granted by an Agency panel."

If no Agency panel granted an extension to Porter Airlines, then who did?

This issue remains of a particular concern to me given that there is currently a motion for leave to appeal before the Federal Court of Appeal, and one of the grounds of proposed appeal is reasonable apprehension of bias.

In order to remove any doubt in relation to the statement made by Mr. Sheahan on March 4, 2014, I am requesting that the Agency urgently provide me with all communications between Porter Airlines and the Agency in relation to compliance with Decision No. 31-C-A-2014.

2. I am attaching a copy of my email, dated March 7, 2014, to Mr. Sheahan, which identifies three areas where Porter Airlines has failed to comply with Decision No. 31-C-A-2014. Unfortunately, this is not the first time that Agency's tariff staff and/or enforcement officers incorrectly confirm compliance of a tariff with a decision of the Agency.

This is one of the many reasons that the Agency's current highly questionable attempts to exclude parties to proceedings from enforcement matters is so misguided.

3. With respect to the "Policy and Procedure," which was made under the purported authority of the Chairman, I reiterate that I am seeking a certified copy of same.

Kindly please confirm that the Agency will be providing me with a certified copy.

Yours very truly,

Dr. Gabor Lukacs

On Tue, 11 Mar 2014, Cathy Murphy wrote:

> I will respond to your questions in point form as set out in your
> enquiry:
>
> 1. A point of clarification, while an extension was not granted by an
> Agency panel, Porter worked with the compliance officer to effect
> compliance. As set out in the Policy and Procedure, the compliance
> officer can work with the carrier for up to 10 days to effect
> compliance; this is what occurred in this case and therefore a formal
> extension was not required.
>
> 2. With respect to the discrepancies that you contend exist in the
> amended tariff, please advise what those discrepancies are and I will
> follow up with Agency tariff staff.
>
> 3. We will provide you with a copy of the Policy and Procedure by mail.
> The Policy and Procedure was made under the Chairman's authority as
> Chief Executive Officer of the Agency.
>
> Sincerely,
>
>
>
> Cathy Murphy
> 819-997-0099 | télécopieur/facsimile 819-953-5253 | ATS/TTY
> 800-669-5575
> cathy.murphy@cta-otc.gc.ca
> Secrétaire de l'Office des Transports du Canada/ Secretary of the
> Canadian Transportation Agency
> 15, rue Eddy, Hull QC K1A 0N9/
> 15 Eddy St., Hull QC K1A 0N9
> Gouvernement du Canada | Government of Canada
>
>
>
>>>> Gabor Lukacs <lukacs@AirPassengerRights.ca> 10/03/2014 7:54 PM >>>
> Dear Ms. Murphy,
>
>
> 1. On March 4, 2014, Mr. Sheahan, counsel for Porter Airlines, informed
> me
> that the Agency granted Porter Airlines an extension (see email
> attached).
> Your message below, however, confirms that no such extension was
> granted.
> I am deeply troubled by this state of affairs, and I would be much
> obliged

> for further assistance in this matter.
>
>
> 2. Although Porter Airlines did post a new tariff on March 7, 2014, it
>
> fails to comply with Decision No. 31-C-A-2014. I have already informed
> Mr. Sheahan about the discrepancies between the Decision and Porter
> Airlines' new tariff; however, I have not received any response from
> Mr. Sheahan. Kindly please advise me whether I am required to bring a
> further complaint about Porter Airlines' non-compliance or if there is
> a
> more straightforward procedure to address my concerns. After all, the
> Agency has already decided the matter.
>
>
> 3. I am requesting that you provide me with a certified copy of the
> "Policy and Procedure on Compliance with Agency Decisions and Orders"
> and
> inform me who made this document and under what authority.
>
>
> Sincerely yours,
> Dr. Gabor Lukacs
>
>
>
> On Mon, 10 Mar 2014, Cathy Murphy wrote:
>
>> I note that you refer to ex parte communications between Porter and
> the
>> Agency. This is absolutely incorrect. You refer to an Agency
> decision
>> that granted an extension to Porter to comply with the Agency's
> order.
>> No such Agency decision ever issued.
>>
>> As you are aware, pursuant to the Agency's "Policy and Procedure on
>> Compliance with Agency Decisions and Orders", a compliance officer
>> (Agency staff member) first tries to effect compliance with a
> carrier. I
>> provided you with a copy of the Policy and Procedure on April 16,
> 2013.
>>
>> In this case, the compliance officer worked with Porter to effect
>> compliance. While this was not completed by the date set out in the
>> Decision, compliance was effected on March 7, 2014. This is
> consistent
>> with the Policy and Procedure. Porter filed the new tariff provision
> and
>> it is now posted on its Web site.
>>
>> It is important to note that even if a request had been received

> from
>> Porter for an extension to comply with the Decision, as set out in
> the
>> Policy and Procedure, "the original complainant/applicant is not a
> party
>> to this type of request and therefore no comments should be
> requested."
>> Therefore, you would not have been consulted in this matter.
>>
>> Sincerely,
>>
>>
>>
>> Cathy Murphy
>> 819-997-0099 | télécopieur/facsimile 819-953-5253 | ATS/TTY
>> 800-669-5575
>> cathy.murphy@cta-otc.gc.ca
>> Secrétaire de l'Office des Transports du Canada/ Secretary of the
>> Canadian Transportation Agency
>> 15, rue Eddy, Hull QC K1A 0N9/
>> 15 Eddy St., Hull QC K1A 0N9
>> Gouvernement du Canada | Government of Canada
>>
>>
>>
>

EXHIBIT 12

77

Greg Sheahan

From: Gabor Lukacs
Sent: Wednesday, October 09, 2013 11:26 AM
To: secretaire-secretary@otc-cta.gc.ca
Cc: greg.sheahan@flyporter.com
Subject: Failure of Porter Airlines to comply with Decision No. 344-C-A-2013 / display of atariff provisions that were disallowed

Dear Madam Secretary,

In Decision No. 344-C-A-2013, the Agency disallowed certain tariff provisions of Porter's Domestic Tariff.

> [121] The Agency orders Porter, by September 30, 2013, to amend its Tariff to conform to this Order and the Agency's findings set out in this Decision.

I am writing to advise and alert the Agency that Porter Airlines has failed to comply with Decision No. 344-C-A-2013, and continues to display tariff provisions on its website that were disallowed on said decision:

http://s3.amazonaws.com/porterweb/Content/Documents/Domestic_Tariff_2013_10_03_EN.pdf

I am requesting that Porter Airlines comply with the Agency's order without delay.

I am also requesting that the Agency send me a certified copy of Decision No. 344-C-A-2013, sealed with the Agency's seal.

Kindly please confirm the receipt of this message.

Best wishes,
Dr. Gabor Lukacs

EXHIBIT 13

Greg Sheahan

From: Gabor Lukacs
Sent: Monday, March 03, 2014 9:00 PM
To: Greg Sheahan
Subject: Failure of Porter Airlines to comply with Decision No. 31-C-A-2014

Mr. Sheahan,

In Decision No. 31-C-A-2014, the Canadian Transportation Agency disallowed

the definition of "Event of Force Majeure" in Existing Tariff Rule 1.1;
Existing Tariff Rules 3.4 and 15;
Existing Tariff Rule 18(c); and,
Existing Tariff Rule 20.

The Agency also ordered Porter Airlines to amend its tariff by February 28, 2014.

I am writing to express profound concern and disappointment over the failure of Porter Airlines to comply with the decision and to amend its International Tariff as ordered.

Indeed, as of today, Porter's International Tariff continues to contain the disallowed provisions:

https://s3.amazonaws.com/porterweb/Content/Documents/International_Tariff_2014_03_03_EN.pdf

I am requesting that Porter Airlines comply with the Agency's Decision without delay, and amend its tariff on its website accordingly.

Yours very truly,
Dr. Gabor Lukacs

EXHIBIT 14

8

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5:35 AM - 7 Apr 2014