

CANADIAN TRANSPORTATION AGENCY

B E T W E E N :

GÁBOR LUKÁCS

Applicant

- and -

PORTER AIRLINES INC.

Respondent

RESPONSE TO APPLICANT'S NOTICE OF WRITTEN QUESTIONS

September 18, 2015

Respondent:

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CANADIAN TRANSPORTATION AGENCY

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A. Introduction

1. This Reply is made by Porter Airlines Inc. (**Porter**) to the Applicant's Notice of Written Questions and Production of Documents, dated September 10, 2015 (the **Notice**).
2. The Notice is clearly excessive and disproportionate. It seeks disclosure of information that will not assist the Agency's determination of the issues raised by the Application and thus has no relevance to this proceeding. It is also unnecessary given the remedial steps taken by Porter to respond to the Applicant's concerns.
3. Porter's substantive response to the Notice is set out below, organized by category. Porter has answered the few questions that are relevant. The balance of the questions are irrelevant, and Porter has detailed the basis of their irrelevance.

B. Category I: Questions related to Porter's records (Q1-6)

4. Porter does not have a written document retention policy and therefore no policy can be produced.
5. Furthermore, Porter has already disclosed all relevant information in its possession regarding compensation paid to passengers for delayed baggage between February 19,

2013 and August 6, 2015.¹ As a result, it is irrelevant whether Porter has complied with its obligations under the *Income Tax Act*, which it has.

6. Porter does not have in its possession any record which shows the precise amount of compensation paid to passengers for delayed baggage expenses under the Policy in 2013. Porter's 2013 financial records aggregate all of Porter's costs arising from baggage irregularities, which include amounts paid to passengers as compensation as well as other costs arising from lost and damaged bags, including delivery and bag repair fees paid to third party providers. Because the amounts for passenger delay expenses cannot be separately extracted, Porter's 2013 financial records will be of no value to the Agency.
7. Porter's evidence establishes that the Baggage Delay Compensation Policy (the **Policy**) was applied in the normal course in 2013 and that passengers would have therefore received compensation.² The absence of specific delayed baggage compensation information for 2013 does not justify the Applicant's assertion that Porter "paid no compensation at all in 2013."³

C. Category II: Request for particulars related to compensation paid between 2013 and the present (Q7)

8. At Q7, the Applicant requests broad disclosure of particulars relating to baggage delay expense claims and compensation between 2013 and the present, on the basis that such disclosure is "capable of demonstrating that a large portion of passengers were dissuaded from making claims by Porter Airlines' unlawful conduct..."⁴
9. However, the disclosure sought by the Applicant is not capable of demonstrating the effect of the webpage on passengers' behaviour. At best, the information may show that not all incidents of baggage delay led to claims for compensation. This is not unusual: baggage incidents are often resolved before passengers incur any expenses, passengers may incur none or *de minimis* expenses, or they may otherwise decide that making a claim is not worthwhile. Ultimately, the information sought by the Applicant

¹ Affidavit of Luis Gonzalez, sworn September 3, 2015 at para 11 [Gonzalez Affidavit].

² Gonzalez Affidavit at para 12.

³ Notice of Written Questions and Production of Documents, dated September 10, 2015 at p 2 [Notice of Questions].

⁴ Notice of Questions at p 3.

does not, in itself, support a conclusion as to why a passenger may not have made a claim, including if they were dissuaded because of unclear information they received about the Policy.

10. Only the evidence of individual passengers could assist the Agency in determining why they may not have made a claim, and neither party has such evidence in its possession. Without this evidence, there is no suggestion that the statement on Porter's website had any effect on passenger behaviour, much less the sweeping effect suggested by the Applicant.
11. The Applicant should not be permitted to go on a fishing expedition through Porter's private records without reasonable and sound justification for doing so. Porter has provided information on the amount of compensation paid in 2014 and 2015.⁵ All other information sought by the Applicant would not be determinative with respect to the issues raised in the Application and, as such, is irrelevant.

D. Category III: Porter Airlines' Website (Q8)

12. The Applicant's request for various "admissions" about Google search results at Q8 are clearly irrelevant to the Application.
13. Contrary to the Applicant's assertions, the extent of the visibility of Porter's webpage on Google will not establish the "significance of the false and/or misleading information on the web page"⁶ for two reasons:
 - (a) the Applicant's assertion is based on an unsupported assumption about the use of Google among Porter passengers; and
 - (b) the information would, at the very most, show that the public can access the Delayed Baggage webpage, but not for what specific purpose or how that webpage affects their behaviour, including whether passengers were dissuaded from bringing claims because of the webpage.

⁵ Answer of Porter Airlines, dated September 3, 2015 at para 12 [Answer]. See also, Gonzalez Affidavit at para 11.

⁶ Notice of Questions at p 3.

E. Category IV: Questions related to Ms. Natalie Bambury's file (Q9-12)

14. The Applicant has requested additional information in connection with the file of a Porter passenger named Ms. Natalie Bambury.
15. The Applicant's requests are irrelevant and inappropriate. Ms. Bambury is not a named party in the Application, and there is no suggestion that she has appointed the Applicant as her agent or authorized him to make any inquiries about her file in these proceedings.
16. Moreover, Ms. Bambury's matter was resolved: her bag was found, she received correct information about the Policy⁷ and she was compensated for her delayed baggage expenses in accordance with the Policy.⁸ There is no apparent reason for Porter to answer further questions about Ms. Bambury.
17. In any event, Porter does not dispute the authenticity of the Baggage Irregularity Report (**BIR**) included with the Notice of Written Questions and Production of Documents.⁹ Porter also acknowledges that Ms. Bambury's BIR contained the contact information for Porter's Halifax outstation, and that Ms. Bambury was contacted by "YHZ Leads",¹⁰ an email used by the Halifax Customer Service team to communicate with passengers.
18. However, all of the above is consistent with Porter's protocol for handling baggage delay complaints. As stated by Mr. Gonzalez in his affidavit, "...Customer Service Representatives at outstations may assist passengers in filing initial reports of lost or delayed luggage and, in some cases, may provide updates on efforts by station personnel to locate the bag."¹¹
19. Ms. Bambury knew to contact the Call Centre and Baggage Department for assistance with her lost bag and baggage delay related expenses.¹² Before Ms. Bambury was contacted by YHZ Leads, she had already called the Call Centre and was directed to email the Baggage Department in Toronto to submit her receipts for baggage delay

⁷ Answer at para 47-48.

⁸ Gonzalez Affidavit at para 20.

⁹ Notice of Questions at Document No 12, p 9.

¹⁰ Application of Dr. Gábor Lukács against Porter Airlines before the Canada Transportation Agency (10 August 2015) at Doc 11, p 49 [Application].

¹¹ Gonzalez Affidavit at para 4.

¹² Answer at paras 41-48.

related expenses.¹³ The handling of Ms. Bambury's baggage delay file is evidence of Porter following the protocol described in Mr. Gonzalez's affidavit and nothing else.

F. Category V: Questions about the Policy (Q13-15)

20. In response to Q13, the Policy has formally been in effect since February 2013 when it was incorporated into Porter's international tariff.¹⁴ As a matter of practice, Porter has compensated passengers for reasonable expenses incurred as a result of delayed baggage since Porter commenced operations in 2006.¹⁵
21. In addition to the channels of communication outlined in Mr. Gonzalez's affidavit, since December 2014 passengers with delayed baggage have also been provided with a physical copy of the Policy as part of a receipt they receive when an electronic BIR is filed on their behalf. A sample BIR receipt is attached as **Tab A**.
22. Electronic BIRs were adopted as part of Porter's deployment of NetTracer in December 2014. NetTracer is an IT system which facilitates Porter's management of baggage-related issues. All Porter employees were trained and instructed to use NetTracer prior to its deployment. Any instances of employees continuing to use legacy paper BIRs (including the use of a paper BIR for Ms. Bambury's delayed baggage) are anomalous and not consistent with the training Porter employees have received. Attached as **Tab B** is a Porter Airport Operations Bulletin dated December 11, 2014, which directs employees to utilize NetTracer to process all baggage irregularities.
23. In response to Q14, attached as **Tab C** is an excerpt from Porter's training manual (the **Manual**), which has been in place since mid-2013. The Manual is one part of the training provided to Baggage Department staff, and it was created in 2013 as a codification of the carrier's general practices which were already in place. This document confirms that Porter employees are instructed that Porter will compensate reasonable expenses incurred as a result of delayed baggage, up to \$1,800 for domestic flights and 1,131 Special Drawing Rights for international flights.

¹³ Answer at paras 47-48.

¹⁴ Gonzalez Affidavit at para 6.

¹⁵ Gonzalez Affidavit at para 12.

24. For clarification, the Manual contains a heading which references steps to be taken once a bag has not been located for 24 hours. This 24 hour reference only applies to the \$25 travel voucher which Porter issues to passengers as a customer service gesture. Consistent with employee training, passengers are regularly reimbursed for expenses incurred at any time after a bag is lost, including within the first 24 hours.
25. Q15 is irrelevant. The email from YHZ Leads dated August 1, 2015¹⁶ only addresses the protocol for lost baggage; Ms. Bambury had already received correct information regarding delayed baggage compensation from her previous call with the Call Centre on July 30, 2015.¹⁷

G. Category VI: Questions about Porter agents Darryl and Britney (Q16-19)

26. The Applicant has made requests about Porter agents Darryl and Britney (Q16-17 and Q19) for the purpose of obtaining more information about their understanding of the Policy.
27. The Applicant has made sweeping allegations of systemic non-compliance against Porter. The statements of Darryl and Britney, two individual agents, do not establish Porter's general practices.
28. Rather, Mr. Gonzalez is the Director of YTZ Airport Operations and Customer Service and his evidence reflects Porter's practices as a whole. His affidavit speaks to the aggregate amount of compensation paid and the training Porter agents have received.¹⁸ To the extent that the statements of individual Porter agents are inconsistent with Porter's general practices as described by Mr. Gonzalez, this would represent an anomaly and certainly not Porter's policy.
29. There is no negative inference to be drawn from the fact that Porter relies on Mr. Gonzalez, as opposed to manufactured evidence based on the Applicant's manipulation of individual agents.

¹⁶ Application at Document No 11, p 49.

¹⁷ Answer at para 47. See also, Gonzalez Affidavit at Exhibit K.

¹⁸ Gonzalez Affidavit at paras 8, 11.

30. Moreover, and in any event, Porter has explained in detail in its Answer why the call transcripts provided by the Applicant must be scrutinized carefully, especially given that they were obtained through manufactured circumstances and with a hidden agenda.¹⁹

H. Category VII: Questions about Porter's e-mail initiative (Q20-24)

31. In response to Q20, Porter undertook the following steps to identify passengers who may have received incorrect information on the Policy during the relevant period:

(a) Porter obtained from its outstations hard copies of BIRs completed between 2013 and December 2014. These reports contain passenger and flight information, which was used to identify the contact information associated with the reservation; and

(b) Porter contacted its outstations who maintain separate lists of baggage irregularities to obtain additional relevant passenger information.

32. In response to Q21, Porter has sent the e-mail referenced at paragraph 15(c) of Mr. Gonzalez's affidavit to 2,485 recipients, who were identified through the steps described above.

33. Porter is also continuing to identify additionally potentially affected passengers through making data queries on NetTracer, as well as individual assessments of additional BIRs. Porter currently expects to finalize a list of additional recipients and contact those passengers by September 25, 2015.

34. In response to Q22, see the response to Q20.

35. In response to Q23, Porter confirms that the email message was sent to passengers on September 3, 2015 after Mr. Gonzalez swore his affidavit.

36. In response to Q24, attached as **Tab D** is a copy of the email message Porter sent to its passengers, to which it copied itself as the final recipient and which it received at 4:08 p.m. on Thursday, September 3, 2015.

¹⁹ Answer at paras 38-40, 54.

I. Category VIII: Request for recordings of phone conversations with Ms. Natalie Bambury (Q25)

37. Porter is not in possession of recordings of any further conversations between Ms. Bambury and any Porter agents. While Porter records calls between Call Centre agents and callers for the purposes of quality assurance, calls with other departments, including the Baggage Department, are not recorded.

J. Category IX: Necessity of the Application (Q26-31)

38. At Q26-28, the Applicant asks questions about the Applicant's communications with Porter. The questions are clearly unnecessary given that the Applicant was also a party to those communications. He is fully at liberty to adduce his own evidence about those communications.

39. In any event, Mr. Gonzalez's affidavit contains all of the evidence in Porter's possession related to Q26-28.

40. In response to Q29, the reason why Porter sent the email to passengers on September 3, 2015 is irrelevant to this Application. To date, Porter has facilitated access to delayed baggage compensation for passengers who may have received unclear information from the carrier and as a result, the relief sought by the Applicant is not necessary.

41. At Q30-31, the Applicant seeks admissions in respect of Porter's liability for damaged baggage. This was not an issue raised in the Application, which only concerned liability for delayed baggage expenses, and as such, these questions are irrelevant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of September, 2015.

Norton Rose Fulbright.
NORTON ROSE FULBRIGHT CANADA LLP
Lawyers for the Respondent

SUPPORTING DOCUMENTS

- A Porter Baggage Irregularity Receipt
- B Porter Airport Operations Bulletin #AOB-14-036, dated December 11, 2014
- C Excerpt, Porter Baggage Department Training Manual
- D Excerpt, email message from Porter dated September 3, 2015

TAB A

Baggage Irregularity Receipt

porter

We apologize for the inconvenience caused by the mishandling of your baggage. We have logged your baggage claim with the Incident Number below and we are working to make this better for you.

Porter Airlines is not responsible for damage to oversized, overweight or over packed baggage, including damage, delay, unsuitably or inadequately packed items, to the extent that the destruction, loss or damage resulted from the inherent defect, quality or vice of the baggage. Reimbursement for loss or damaged property will be determined by Porter on a case-by-case basis in its reasonable discretion, in accordance with its tariffs.

To track your baggage, log onto <https://live.nettracer.aero/porter-paxview/search.htm> under the "Baggage Claim" heading with your Incident Number and your Record Locator (indicated below).

Incident Number: _____ Record Locator: _____ Date: _____
Station: _____ Bag Tag: _____
Passenger Name: _____ Phone: _____
Address: _____
City: _____ Province/State: _____ Postal/ZIP: _____
Country: _____ Passenger Signature: _____
Agent Signature: _____ Employee Number: _____

If Porter cannot locate your baggage, complete a Passenger Property Form and return it to Porter Airlines via email or mail. The form can be found under the "Baggage Claim" heading at flyporter.com

For missing, delayed or lost baggage, a claim must be initiated in writing to Porter Airlines within 21 days of the arrival of the flight on which you travelled. For damaged baggage, a claim must be initiated in person or in writing to Porter Airlines within 7 days of arrival of the flight on which you travelled. Note that different rules and regulations apply to domestic and international claims. All claims for compensation are subject to proof of amount of loss. Passenger must provide, in writing to Porter Airlines, particulars of the loss and/ or expenses for which reimbursement is sought and receipts or other documents establishing to the reasonable satisfaction of Porter Airlines that the expenses were incurred.

Please direct questions concerning your baggage to: Porter Airlines Baggage Department, Billy Bishop Toronto City Airport, Toronto ON M5V1A1 Canada email: ytz.baggage@flyporter.com telephone: 416-619-8584

Domestic Baggage- Limitation of Liability

For domestic travel Porter's maximum liability for lost baggage and lost contents from damage is \$1800.00 per person, per incident. Porter will require proof of loss. Reimbursement for loss or damaged property will be determined by Porter on a case-by-case basis in its reasonable discretion, in accordance with its tariffs. The carrier will not accept a claim for fragile, valuable or perishable articles including money, jewelry, cameras, video and electronic equipment etc. Please visit flyporter.com for a complete list.

International Baggage- Limitation of Liability

For international travel, including round trips, Porter's liability will be subject to the provisions of the Montreal Convention, which prescribes a maximum compensation per passenger of 1131 Special Drawing Rights (SDR). Porter will require proof of loss. Reimbursement for loss or damaged property will be determined by Porter on a case-by-case basis in its reasonable discretion, in accordance with its tariffs. Porter will not accept a claim for fragile, valuable or perishable articles including money, jewelry, cameras, video and electronic equipment etc. Please visit flyporter.com for a complete list.

Delayed Baggage

Most delayed baggage will be recovered and delivered to you within hours. If your baggage has not been returned to you after 24 hours, you will be issued an electronic voucher worth \$25.00 per day for up to 5 days. Porter Airlines allows reasonable interim expenses for delayed baggage. Reimbursement for interim expenses must be sent to the Porter Baggage Department at Billy Bishop Toronto City Airport; original receipts must be provided. Forward all documentation including expense receipts and a copy of this Baggage Irregularity Receipt to Porter Baggage Department.

Lost Baggage

If the bag has not been located after 5 days, your baggage file will be forwarded to our Baggage Department in Toronto. Compensation will be determined in accordance with our Tariff and Conditions of Carriage.

Missing Contents

Porter Airlines assumes no liability for contents missing from your baggage. We encourage you to file a police report in your arrival city and contact your travel insurance agent for further assistance, if applicable.

Damaged Baggage or Contents

When baggage damage is reported and approved for repair by Porter, you will be offered settlement with travel vouchers equal to the cost of repair, or Porter will arrange to have your baggage repaired at our local approved repair centre at Porter's cost up to a maximum of \$1800.00.

flyporter.com

TAB B

porter

AIRPORT OPERATIONS BULLETIN #AOB-14-036 Date: 11-DEC-14

SUBJECT: NetTracer

To improve our baggage handling we are introducing the baggage management system, NetTracer, effective Dec 12th2014.

NetTracer works by tracking passenger baggage claims and matching them to on-hand baggage files. The system will then track the bags movement until it is reunited with the passenger.

An on-hand bag is any bag in your airport that belongs somewhere else. It may have a baggage tag or it may be without a baggage tag.

Every on-hand bag and passenger claim (Delayed, Lost or Damaged) must be entered into NetTracer. Ramp attendants must ensure they advise the CSR handling baggage or the baggage agent of any on-hand bag.

Each station must identify the best method of communication between their ramp and baggage agents.

TAB C

Baggage Training Manual

YTZ Baggage

Compensation

Pg 26

Baggage not located after 24 hrs and less than 5 days:

- \$25 travel voucher will be issued after the first 24 hours of the baggage delay for up to **5 days**.
- Porter Airlines will compensate reasonable interim expenses to purchase items necessary for immediate use.
- Passenger must submit all receipts for reimbursement
- any claim of loss will be reviewed on a case by case basis at Porter's sole discretion. Appropriate compensation, if any, will be determined by Porter
- Any compensation issued to passengers will be handled by the Baggage Lead or Supervisor / Manager

Baggage not located after 5 days and less than 30 days:

- \$125 travel voucher (\$25 voucher per day / 5 days)
- list of contents and receipts will be turned over to YTZ Baggage for evaluation.
- Maximum compensation for Domestic flights is \$1800 per person, per incident. Porter requires proof of loss
- For International flights originating in Canada, including round trips is subject to the provisions of the Montreal Convention, which prescribes a maximum compensation per passenger of 1131 Special Drawing Rights (SDR). Porter requires proof of loss
- Any compensation for complete loss will be handled by the Baggage Lead or Supervisor.
- Compensation for complete loss will be administered after 30 days (Domestic) / 21 days (U.S) has elapsed.

TAB D

----- Forwarded message -----

From: **Porter Airlines** <baggage2015@flyporter.com>

Date: Thu, Sep 3, 2015 at 4:08 PM

Subject: An important message from Porter Airlines / Un message important de Porter

Dear Porter Customer,

You are receiving this email because our records indicate that you traveled with Porter and a checked bag was mishandled - i.e. the bag did not arrive with you on your flight.

While most cases of mishandled bags are resolved within 24 hours, Porter recognizes that in some cases passengers may need to incur expenses due to the delay of their bags - e.g. for toiletries or other necessary items - while they await the location and return of their bags. In these circumstances, the affected passengers are entitled to reimbursement for such reasonable expenses from Porter, as stated in Porter's tariffs published on our website at <https://www.flyporter.com/Travel/Conditions-Of-Carriage>.

Porter's policy regarding delayed bags is also summarized at <https://www.flyporter.com/Travel/Baggage-Claim-Delayed>. Porter recently became aware that the summary on the latter web page contained incorrect information about passengers' eligibility for reimbursement of such expenses from Porter. The web page has since been corrected, and we are taking this opportunity to reach out to our customers who may have relied on the incorrect web page to advise you of our policy to reimburse passengers for reasonable expenses resulting from the delayed delivery of their bags.

If you incurred expenses as a result of the delayed delivery of your baggage on your Porter flight between February 1, 2013 and August 6, 2015 and have not previously submitted a claim, you may submit a request for compensation to baggage2015@flyporter.com by February 29, 2016 which includes the following information:

1. Passenger first and last name (as indicated on the reservation)
2. Date of travel
3. Route traveled (origin and destination)
4. List of items purchased and the amount paid for each, attaching receipts or other supporting evidence

Should you submit any such claims, please allow time for review and processing, following which our Baggage team will respond to you at the email address from which the claim is submitted.

As always, we thank you for choosing Porter and look forward to welcoming you on board in the future.

Porter Customer Care

Cher client,
Chère cliente,

Vous recevez ce courriel parce que, lors d'un vol à bord de Porter, votre bagage enregistré n'est pas arrivé sur le même vol que vous.

Bien que la plupart des cas de bagages mal acheminés soient résolus dans les 24 heures, Porter reconnaît

que certains passagers doivent engager des dépenses pendant qu'ils attendent leur bagage livré en retard : achat d'articles de toilette ou autres. Ces passagers ont droit au remboursement de frais raisonnables selon les tarifs publiés sur notre site à <https://www.flyporter.com/Travel/Conditions-Of-Carriage>.

La politique de Porter sur les bagages en retard est résumée à <https://www.flyporter.com/Travel/Baggage-Claim-Delayed>. Porter a récemment pris connaissance que ce résumé contenait des renseignements inexacts au sujet de l'admissibilité des passagers au remboursement de leurs dépenses. Cette page a été corrigée. Nous en profitons pour communiquer avec nos clients qui auraient pu se fier à cette page Web inexacte afin de les informer de notre politique de remboursement en cas de retard dans la livraison de bagages.

Si vous avez engagé des dépenses à la suite d'un retard dans la livraison de bagages lors d'un vol Porter entre le 1er février 2013 et le 6 août 2015 et que vous n'avez pas encore présenté de réclamation, vous pouvez soumettre une demande d'indemnisation à baggage2015@flyporter.com d'ici le 29 février 2016. Vous devez fournir les renseignements suivants :

1. Prénom et nom du passager (sur la réservation)
2. Date du voyage
3. Itinéraire (origine et destination)
4. Articles achetés et montants avec pièces justificatives.

Nous vous prions de nous accorder le temps de bien traiter votre demande. Notre équipe responsable des bagages vous répondra à l'adresse courriel de votre demande.

Nous vous remercions d'avoir choisi Porter et espérons avoir le plaisir de vous accueillir de nouveau à bord.

Service à la clientèle de Porter



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This e-mail may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone (collect if necessary), delete this e-mail and destroy any copies.