

Federal Court



Cour fédérale

**Date: 20100611**

**Dockets: T-488-10  
T-692-10**

**Citation: 2010 FC 635**

**Toronto, Ontario, June 11, 2010**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**AIR CANADA**

**Applicant**

**and**

**TORONTO PORT AUTHORITY and  
PORTER AIRLINES INC.**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] I have read the materials filed by each of the parties here on this motion concerning the filing of additional evidence, and I have heard representations from counsel.

[2] Each case of this kind has to be dealt with separately and on its individual circumstances.

Therefore, the case law is helpful but it is not imperative that I follow it one way or the other.

[3] In looking at this material, I am satisfied it is best for the hearing that will take place next month in Vancouver that I have all the evidence before me. At that time I can weigh it and consider it. I can weigh its probability, its relevance, and even its admissibility if there is a strong reason why it shouldn't be admissible at that time. Although I am not going to tempt the parties to fill the books and argument time with that again.

[4] Given that the parties have indicated to me that the June 2nd affidavits of Deluce and Ware, the May 27th affidavit of Wilson and the affidavit of Forget, sworn June 7th bring to an end any affidavit material that they intend to submit in this proceeding, I am prepared to allow all of that evidence to form part of the record including any cross-examination it has or will take place in respect of that material.

**ORDER**

**THIS COURT ORDERS that:**

1. Each of the affidavits of Deluce, sworn June 2nd, 2010, Ware, sworn June 2nd, 2010, Wilson, sworn May 27th, 2010, and Forget, sworn June 7th, 2010 shall be filed and be of record in each of these two proceedings;
2. Each of the parties shall be allowed to file a memorandum of fact and law not to exceed 40 pages in length. Those memoranda shall address the two applications;
3. The costs of this current motion shall be costs in the cause.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** T-488-10, T-692-10

**STYLE OF CAUSE:** AIR CANADA v.  
TORONTO PORT AUTHORITY AND PORTER  
AIRLINES INC.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 10, 2010

**REASONS FOR ORDER  
AND ORDER:** HUGHES J.

**DATED:** JUNE 11, 2010

**APPEARANCES:**

Neil Finkelstein FOR THE APPLICANT  
Sarit Batner  
Byron Shaw

Peter Doody FOR THE RESPONDENT TORONTO  
Colleen Shannon PORT AUTHORITY

Robert Armstrong FOR THE RESPONDENT PORTER  
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Greg Sheahan

**SOLICITORS OF RECORD:**

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