

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL  
LOCALITY OF MONTRÉAL

SUPERIOR COURT  
(Class Actions Chamber)

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No: 500-06-001039-201

**WALTER EDWARD DAVIES**

Petitioner

v.

**AIR CANADA**

Respondent

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**APPLICATION FOR AUTHORIZATION TO EXAMINE THE PETITIONER  
(ART. 574 CCP)**

TO THE HONOURABLE JUSTICE THOMAS M. DAVIS , S.C.J., THE RESPONDENT  
AIR CANADA RESPECTFULLY SUBMITS AS FOLLOWS:

1. The Respondent Air Canada (the “**Respondent**”) seeks the authorization of this Honourable Court to examine the Petitioner Walter Edward Davies (the “**Petitioner**”) pursuant to article 574 of the *Code of Civil Procedure* (“**CCP**”).
  - I. **The Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Petitioner**
2. On January 22, 2020, the Petitioner filed an *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Petitioner*, which was later amended on February 26, 2020 (the “**Amended Authorization Application**”), against the Respondent Air Canada on behalf of the following proposed class:

“All retired employees of the Respondent.”
3. The proposed class action concerns the travel privileges administered by the Respondent for its unionized and non-unionized employees and retirees through a system of flight passes, referred to in the Amended Authorization Application as the Free and Reduced-Rate Transportation Plan flight passes (“**FRT Privileges**”).
4. It is alleged that the FRT Privileges each carry a priority that, together with an employee’s or retiree’s length of service and other factors, determines whether an employee or retiree will be allocated space on a given flight and in what order.

5. More specifically, the proposed class action concerns the personal travel privileges giving employees and retirees and certain of their family members access to C2 FRT Privileges.
6. In brief, the Petitioner alleges that the Respondent has diminished the usefulness of C2 FRT Privileges by awarding to its active employees, from time to time, special personal travel passes carrying a higher priority, thereby eroding the seniority priority of the proposed class members.
7. As admitted by the Petitioner, these flight passes are not mentioned in any labour agreements and have never been negotiated with any union (para. 10 of the Amended Authorization Application).
8. The Petitioner contends that the Respondent has breached an alleged implied contractual obligation towards its retired employees with respect to FRT privileges.
9. The Petitioner further alleges that by awarding to its active employees special personal FRT Privileges of higher priority than the C2 FRT Privileges, the Respondent is targeting senior citizens in violation of their right to the safeguard of their dignity, and discriminates against the proposed class members on the basis of age.
10. As a result, the Petitioner claims that he and the proposed class members are entitled to injunctive orders, and compensatory and punitive damages described at paragraph 45 d) of the Amended Authorization Application as follows:
  - “i. a monetary amount estimated to be \$5000 plus taxes per year per Class Member which represents the value of the yearly savings to a Class Member if they had been able to avail themselves of the FRT flight passes since July 2017 in an efficient and effective manner; and*
  - ii.1 the amount of \$5000 per Class Member for the moral damages of the degradation, stress, troubles and inconvenience of using the FRT flight passes; and*
  - ii.2 the additional amount of \$1000 for the moral damages when actually being displaced at the last minute at the loading gate; and*
  - ii.3 the additional amount of \$2000 for the moral damages when actually being displaced at the last minute at the loading gate when returning from a trip and having to deal with the last minute, urgent ground and air transportation arrangements and hotel accommodations; and*
  - iii. the amount of \$4000 in punitive damages per Class Member for being unjustly targeted as retired senior citizens whose dignity and self esteem have been seriously prejudiced by now being reduced to an inferior category far below even the most junior C1 and B1 FRT pass holders [...]*

11. With regard to his own individual cause of action, which the Court must analyze to determine if the proposed class action should be authorized, the Petitioner alleges that:
  - a) He is a retired employee of Air Canada and had been an employee for 35 years prior thereto, having started in 1952 and taken his retirement in 1987 (paras. 2 and 62 *b*) of the Amended Authorization Application);
  - b) He considered the FRT Privileges as an important liberality of his career in the airline industry and of his eventual retirement (paras. 11 and 54 of the Amended Authorization Application);
  - c) It was his understanding that his boarding priority would increase with time and as he got older and worked longer it would become easier for him to board and travel (para. 14 of the Amended Authorization Application);
  - d) He and his wife have used the FRT Privileges on countless occasions (Exhibit P-1 in support of the Amended Authorization Application);
  - e) In the summer of 2017, he realized that the C2 FRT Privileges no longer fulfill the requisites to permit a retiree to reasonably enjoy the use of the FRT flight passes because the Respondent had issued to its active employees an exceedingly large number of priority FRT Privileges carrying a higher priority such as B1s and C1s (para. 12 of the Amended Authorization Application);
  - f) He is now suffering the consequences of the Respondent's acts due to the obstacles and complications of trying to book standby flights now that active employees and their family members have priority over the Retirees (para. 62 *b*) of the Amended Authorization Application). The situation has also caused him intangible loss which cannot be adequately compensated for by compensatory damages alone (para. 54 of the Amended Authorization Application);
  - g) When the Petitioner does use FRT Privileges, there is a \$5 service fee per flight and/or per segment of flights added to the fees which is not applicable when an employee uses one of his flight passes (para. 59 of the Amended Authorization Application).
12. The Petitioner specifies that his wife, Carole Davies, is fully aware of the problems and the need for the application and "stands ready" to assist in any manner should the need arise (para. 24 of the Amended Authorization Application).
13. Similarly, the Petitioner specifies that the preparation of his application is supported by the Air Canada Save Our Seniority ("**ACSOS**"), an organization of retired employees of Air Canada (para. 26 of the Amended Authorization

Application) and produces a copy of a letter from ACSOS signed by Joseph E. Dennie (Exhibit P-6 in support of the Amended Authorization Application).

## **II. The Relevance and Scope of the Examination of the Petitioner**

14. The Amended Authorization Application only presents a partial description of the factual context surrounding the proposed class action, and offers only general, vague and unsubstantiated assertions with regard to the Petitioner's individual cause of action.
15. In this context, the examination of the Petitioner before the hearing of the Amended Authorization Application is useful and necessary to provide this Honourable Court with facts relating to:
  - a) The elements giving rise to the Petitioner's own personal cause of action as against the Respondent including the circumstances surrounding:
    - i) the source and content of the alleged implied contractual obligation regarding the use of FRT Privileges and any representations the Petitioner would have himself relied upon regarding the FRT Privileges (paras. 45 a), b), 47, 55, 61 c) of the Amended Authorization Application);
    - ii) the Petitioner's actual use of the FRT Privileges (para. 24 of the Amended Authorization Application and Exhibit P-1);
    - iii) the Petitioner's alleged prejudice, including frustrated travel plans, missed flights and connections directly due to the situation he alleges (para. 16 of the Amended Authorization Application);
    - iv) the Petitioner's discovery that the C2 FRT Privileges no longer fulfill the requisites to permit a retiree to reasonably enjoy their use (para. 12 of the Amended Authorization Application),
    - v) the Petitioner's damages, if any, which are only generally described in the Amended Authorization Application as a result of the situation, including the obstacles and complications of trying to book standby flights (paras. 45 d), 54, 58, and 62 b) of the Amended Authorization Application); and
  - b) the Petitioner's ability to properly represent the members of the proposed class, including the circumstances surrounding:
    - i) the manner in which he was called upon to act as a Petitioner;
    - ii) the representativeness of his personal cause of action in relation to the proposed class members; and

- iii) his personal ability to represent the proposed class and his affiliation with ACSOS and the role of ACSOS in the instant case (paras. 24, 26 and 62 *i*) and Exhibit P-6 in support of the Amended Authorization Application).
16. The Petitioner's examination regarding these subjects is limited to what is relevant and useful to this Honourable Court's analysis of the criteria for authorization of the class action pursuant to article 575 CCP, more particularly with regard to the appearance of right requirement (article 575 (2) CCP) and the Petitioner's ability to properly represent the members of the proposed class (article 575 (4) CCP).
  17. The examination, which will not exceed two hours, is proportionate to the nature and to the importance of this proposed national class action.
  18. The Respondent suggests that this examination be held out of court and before the hearing of the Amended Authorization Application and that due to measures in place to curtail the COVID-19 Pandemic, could be held by videoconference .
  19. It is in the interest of justice and the parties that the Respondent be authorized to examine the Petitioner.
  20. The present Application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:**

**GRANT** the present motion;

**AUTHORIZE** the Respondent Air Canada to examine the Petitioner Walter Edward Davies out of court and before the hearing of the Amended Authorization Application for a maximum of two hours regarding the following subjects:

- a) The elements giving rise to the Petitioner's own personal cause of action as against the Respondent including the circumstances surrounding:
  - i) the source and content of the alleged implied contractual obligation regarding the use of FRT Privileges and any representations the Petitioner would have himself relied upon regarding the FRT Privileges (paras. 45 *a*), *b*), 47, 55, 61 *c*) of the Amended Authorization Application);
  - ii) the Petitioner's actual use of the FRT Privileges (para. 24 of the Amended Authorization Application and Exhibit P-1);
  - iii) the Petitioner's alleged prejudice, including frustrated travel plans, missed flights and connections directly due to the situation he alleges (para. 16 of the Amended Authorization Application);

- iv) the Petitioner's discovery that the C2 FRT Privileges no longer fulfill the requisites to permit a retiree to reasonably enjoy their use (para. 12 of the Amended Authorization Application),
  - v) the Petitioner's damages, if any, which are only generally described in the Amended Authorization Application as a result of the situation, including the obstacles and complications of trying to book standby flights (paras. 45 d), 54, 58, and 62 b) of the Amended Authorization Application); and
- b) the Petitioner's ability to properly represent the members of the proposed class, including the circumstances surrounding:
- i) the manner in which he was called upon to act as a Petitioner;
  - ii) the representativeness of his personal cause of action in relation to the proposed class members; and
  - iii) his personal ability to represent the proposed class and his affiliation with ACSOS and the role of ACSOS in the instant case (paras. 24, 26 and 62 i) and Exhibit P-6 in support of the Amended Authorization Application).

**THE WHOLE** with legal costs.

Montréal, this July 30, 2020

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**NOTICE OF PRESENTATION**

**ADDRESSEE(S):**

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**TAKE NOTICE** that the present *Application for Authorization to Examine the Petitioner* will be presented for adjudication before the honourable justice Thomas M. Davis S.C.J. of the Superior Court, sitting in civil practice division for the district of Montréal on August 11, 2020 at a time to be determined at the Montréal courthouse, located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6, in a room to be determined or by videoconference in a virtual room to be determined.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, this July 30, 2020

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(Class action)

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