COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No.: 500-09-029675-212
(500-06-001039-201)

DATE: November 17, 2022

CORAM: THE HONOURABLE GUY GAGNON, J.A.
PATRICK HEALY, J.A.
FRÉDÉRIC BACHAND, J.A.

CAROLE DAVIES
APPELLANT – Plaintiff

v.

AIR CANADA
RESPONDENT – Defendant

JUDGMENT

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[1] On appeal from a judgment of the Superior Court, district of Montreal (the Honourable Mr. Justice Thomas M. Davis),[1] dismissing an application for authorization to institute a class action;

[2] For the reasons of Bachand, J.A., with which Gagnon and Healy, JJ.A. agree, **THE COURT:**

[3] **ALLOWS** the appeal and **SETS ASIDE** the judgment of the Superior Court;

[4] **GRANTS** the appellant's application for authorization to institute a class action;

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[1] *Davies v. Air Canada*, 2021 QCCS 3119 [judgment under appeal].

[5] **ASCRIBES** to the appellant the status of representative for the purpose of exercising a class action on behalf of the following class:

> All retired employees of the defendant eligible for free and reduced travel ("FRT") flight passes in retirement.

[6] **IDENTIFIES** the following as the main issues to be dealt with collectively:

- Is the defendant under an obligation to provide class members with FRT passes?
- If so:
    - what are the contents and/or modalities of the defendant's obligation?
    - did the defendant breach its obligation by issuing higher-priority (B1 and C1) FRT passes to current employees?
- Are class members each entitled to the following remedies:
    - $5,000 plus taxes per year representing the value of the yearly savings they make while benefitting from FRT passes based on seniority priority;
    - $5,000 in moral damages for the stress, trouble and inconvenience caused by the defendant's breach of its obligation;
    - $1,000 in moral damages caused by being displaced at the last minute at the loading gate;
    - $2,000 in moral damages for being displaced at the last minute at the loading gate when returning from a trip and having to deal with last-minute, urgent ground and air transportation arrangements and hotel accommodations;
    - mandatory orders directing the defendant to ensure that current employees holding higher-priority passes will cease having priority over retirees when travelling for personal or leisure purposes and/or directing the defendant to immediately issue to each of the class members three B1 and three C1 flight passes per year;
    - interest as well as the additional indemnity provided for in article 1619 of the *Civil Code of Québec* on the abovementioned amounts;

[7] **IDENTIFIES** the following as the main conclusions sought in relation to the aforementioned questions:

- **ALLOW** the class action against the defendant;

- **CONDEMN** the defendant to pay to each class member the following amounts, with interest as well as the additional indemnity provided for in article 1619 of the *Civil Code of Québec*:

    - $5,000 plus taxes per year representing the value of the yearly savings they make while benefitting from FRT passes based on seniority priority;

    - $5,000 in moral damages for the stress, trouble and inconvenience caused by the defendant's breach of its obligation;

    - $1,000 for moral damages caused by being displaced at the last minute at the loading gate;

    - $2,000 for the moral damages for being displaced at the last minute at the loading gate when returning from a trip and having to deal with last-minute, urgent ground and air transportation arrangements and hotel accommodations;

- **ORDER** the collective recovery of all amounts owed to the class members;

- **ORDER** that current employees' FRT passes will henceforth not have priority over those of retirees when employees are travelling for personal or leisure purposes and/or **ORDER** the defendant to immediately issue to each of the class members three B1 and three C1 flight passes per year;

- **THE WHOLE** with costs, including the cost of all exhibits, experts, expertise reports and notices;

[8] **REMANDS** the file to the Chief Justice of the Superior Court for determination of the judicial district in which the class action will proceed and for appointment of the judge charged with hearing and managing the case;

[9] **REFERS** the issues related to the publication of the notice to class members, the manner in which such notice is to be given and the time limit for requesting exclusion from the class to the judge of the Superior Court charged with hearing and managing the case;

[10] **THE WHOLE** with legal costs.

GUY GAGNON, J.A.

PATRICK HEALY, J.A.

FRÉDÉRIC BACHAND, J.A.

Mtre Michael Earl Heller
HELLER AND ASSOCIATES
For the appellant

Mtre Sébastien Richemont
Mtre Mirna Kaddis
FASKEN MARTINEAU DUMOULIN
For the respondent

Date of hearing: August 31, 2022

REASONS OF BACHAND, J.A.

[11] At issue in this appeal is whether the motion judge made a reviewable error when he found that the facts alleged in the appellant's application for authorization to institute a class action did not appear to justify the conclusions sought (article 575(2) *C.C.P.*).

* * *

[12] The relevant alleged facts — which must be assumed to be true at the authorization stage[2] — are essentially to the effect that, over the past several decades, Air Canada: (*i*) consistently undertook to grant and continue to make available, including upon retirement, free and reduced travel ("FRT") passes to all employees with at least six months' experience; (*ii*) also undertook, throughout that period, to ensure that priority for the use of those passes would be determined by seniority (i.e. length of service as an Air Canada employee); (*iii*) breached those undertakings by issuing FRT passes with higher priority to tens of thousands of current Air Canada employees; and (*iv*) in doing so, caused an injury to its retirees — of which there are approximately 30,000 —, primarily by substantially reducing the usefulness of their travel benefits.[3]

[13] As for the conclusions sought, the appellant, who wishes to act on behalf of Air Canada retirees who are eligible for FTR in retirement, is claiming pecuniary, non-pecuniary as well as punitive damages on behalf of all class members. She is also seeking a number of mandatory orders.

* * *

[14] The judge concluded that the legal syllogism proposed by the appellant is fundamentally flawed in that it rests on the manifestly erroneous proposition that Air Canada is legally obliged to continue providing to retired employees FRT passes with seniority-based priority. The judge found that such an obligation cannot possibly arise from the relevant collective agreements, which — as admitted by the appellant — make no mention of FTR passes. The judge further found that the retirees' alleged rights cannot arise out of distinct individual employment contracts, as collective agreements leave no room for such supplemental contracts. To the judge, it was clear from the record that FRT

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2 See e.g. *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, para. 59.

3 The appellant also filed evidence showing that in at least some handouts provided to its retiring employees, Air Canada used language — "[t]ravel privileges for employees and eligible family members will continue to apply into retirement in accordance with the Company's retirement regulations", "[y]ou will have the same priority as in active service", "boarding will be based on your length of continuous service" (exhibit P-4 [emphasis added]) — tending to demonstrate that it intended to make binding commitments in relation to those benefits.

passes held by current retirees give them no rights as such, as they merely amount to privileges that have been discretionarily granted and that Air Canada can unilaterally modify as it sees fit.

[15] The judge also concluded that, because the appellant has not alleged that she was unable to board a flight as a result of an Air Canada employee's use of a higher priority pass, her pleadings are fatally flawed on the issue of prejudice.

* * *

[16] As the Supreme Court made clear in *L'Oratoire Saint-Joseph du Mont-Royal* and *Asselin*, the role of a motion judge on an application for authorization to institute a class action is very limited. His or her task is not to "make [...] determination[s] as to the merits in law of the conclusions in light of the facts being alleged",[4] but rather to "filter out frivolous claims, and nothing more".[5] This explains why, in order to clear the hurdle set by article 575(2) *C.C.P.*, "[t]he applicant need establish only a mere 'possibility' of succeeding on the merits, as *not even* a 'realistic' or 'reasonable' possibility is required".[6]

[17] Moreover, while the Court must generally adopt a deferential stance on appeals from judgments on applications for authorization to institute a class action, it is settled law that it can intervene if the motion judge erred in law or made a clear error while applying the criteria set out in article 575 *C.C.P.*[7]

* * *

[18] In my opinion, the motion judge made errors of law when he found that Air Canada could not possibly be under any obligation to continue providing to retired employees FRT passes with seniority-based priority.

[19] The judge considered two possible legal bases — or sources — of Air Canada's alleged obligations.

[20] He first sought to determine whether Air Canada's alleged obligations could arise out of the collective agreements as implicit obligations within the meaning of article 1434 *C.C.Q.* He began by quoting the following excerpt from a leading employment law textbook that was cited approvingly by the Court in 2017:[8]

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4 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, para. 58.

5 *Desjardins Financial Services Firm Inc. v. Asselin*, 2020 SCC 30, para. 27 [emphasis added]. See also *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, para. 56.

6 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, para. 58 [italics in original].

7 *Id.*, para. 10.

8 Judgment under appeal, para. 32. The quoted passage — found in Robert P. Gagnon, *Le droit du travail du Québec*, 7th ed. (updated by Langlois Langlois Kronström Desjardins, under the direction of Yann Bernard, André Sasseville, Bernard Cliche and Jean-Guy Villeneuve), Cowansville, Yvon Blais, 2013,

> Le contenu implicite de la convention collective rejoint également les droits et obligations qui découlent naturellement du contrat de travail sous-jacent. Pour l'employé, sont ici en cause prioritairement ses obligations de loyauté envers l'employeur et d'exécution prudente de son travail. Du côté de l'employeur, c'est son pouvoir de direction et les conséquences qui en découlent qui seront au premier chef réputés faire partie du contenu implicite de la convention collective.
>
> [Emphasis added]

He then identified two propositions which, to him, flowed from that excerpt and categorically excluded any possibility that Air Canada's alleged obligations arose out of the collective agreements:

> [33] [...] Firstly, it cannot be reasonably argued that the alleged permanent right of a retiree to the same seniority priority as all future employees flows from the collective agreement, when that agreement does not contain any stipulations related to flight passes, privileges or acquired rights.
>
> [34] Secondly, the unfettered management rights of Air Canada would include the right to issue new categories of flight passes, as there is no prohibition to doing so in the collective agreement.

[21] Second, the judge considered the possibility that Air Canada's alleged obligations arose out of individual or collective contracts that were distinct and thus legally independent from the collective agreements. Relying on precedent from the Supreme Court as well as from this court, he stated that "[i]n a unionized situation '[t]here is no room left for private negotiation between employer and employee'", before adding that "[h]ence, there cannot be any individual or group agreements relating to benefits outside of the collective agreement that governed the working conditions of Mrs. Davies".[9]

[22] In my respectful view, the judge's analysis is erroneous in the following respects.

[23] Firstly, while he was right that it is possible to consider the FRT programs as resulting from Air Canada's exercise of its management rights,[10] the judge erred in assuming that such rights were so unfettered that they surely allowed Air Canada to unilaterally modify, without prior notice, aspects of the program it had previously

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p. 672-673, no. 705 — was cited approvingly in *Syndicat de la fonction publique et parapublique du Québec (SFPQ) c. Procureure générale du Québec*, 2017 QCCA 1682, para. 31.

9 Judgment under appeal, para. 35.

10 On such rights, see: Guylaine Vallée and Julie Bourgault, "Droits de direction", in Patrice Jalette, Mélanie Laroche and Gilles Trudeau (eds.), *La convention collective au Québec,* 3rd ed., Montreal, Chenelière Éducation, 2018, 91, p. 92-95; Guylaine Vallée and Isabelle Martin, "Fourniture du travail convenu : détermination, modification et suspension de la prestation de travail pour des motifs exogènes, disciplinaires ou administratifs", in Guylaine Vallée and Katherine Lippel (eds.), *JurisClasseur Québec*, coll. "Droit du travail", vol. "Rapports individuels et collectifs de travail", fasc. 22, Montreal, LexisNexis, 2009, nos. 3-3.1 (loose-leaf, updated September 2022).

undertaken to maintain. Employers' management rights are subject to articles 6, 7 and 1375 *C.C.Q.*,[11] and it is well established that a contracting party's general obligation to refrain from acting excessively or unreasonably — which derives from the broader duty to act in good faith — includes an obligation not to create false expectations in the mind of their counterparty.[12] Consequently, the proposition that Air Canada's assumed-to-be-true failure to act consistently with its past representations amounts to an excessive and unreasonable[13] — and thus wrongful — conduct cannot be discarded as frivolous or surely devoid of any merit.

[24] Secondly, the judge erred in dismissing out of hand the possibility that Air Canada's alleged obligations arose out of distinct contracts legally independent from the collective agreements. While, in principle, a collective agreement leaves no room for separate contracts concerning the conditions of employment,[14] there is authority recognizing the possibility that independent agreements addressing matters not mentioned in the collective agreement may exist and be legally effective.[15] For this reason, one cannot exclude the possibility that Air Canada's longstanding practice regarding FRT passes gave rise to one or several tacit contracts constituting the source of its alleged obligations. Again, the issue at this stage is not whether the appellant is likely to succeed, but rather whether her argument is frivolous or obviously ill-founded. I find that it is not.

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[11] See e.g.: *Syndicat de l'enseignement de la région de Québec c. Ménard*, 2005 QCCA 440, paras. 44-49; *Syndicat de la fonction publique et parapublique du Québec (SFPQ) c. Procureure générale du Québec*, 2017 QCCA 1682, para. 30; Guylaine Vallée and Isabelle Martin, "Fourniture du travail convenu : détermination, modification et suspension de la prestation de travail pour des motifs exogènes, disciplinaires ou administratifs", in Guylaine Vallée and Katherine Lippel (eds.), *JurisClasseur Québec*, coll. "Droit du travail", vol. "Rapports individuels et collectifs de travail", fasc. 22, Montreal, LexisNexis, 2009, nos. 9-10 (loose-leaf, updated September 2022); Guylaine Vallée and Julie Bourgault, "Droits de direction", in Patrice Jalette, Mélanie Laroche and Gilles Trudeau (eds.), *La convention collective au Québec,* 3rd ed., Montreal, Chenelière Éducation, 2018, 91, p. 96.

[12] See in particular: Didier Lluelles and Benoît Moore, *Droit des obligations*, 3rd ed., Montreal, Thémis, 2018, pp. 1143-1146, nos. 1991-1993.

[13] It is worth noting that the appellant's application for authorization to institute a class action contains specific allegations to the effect that Air Canada's conduct was excessive, unreasonable and abusive: see e.g. paras. 17, 30 and 57.

[14] See Michel Coutu *et al.* with the collab. of Florence Laporte-Murdock, *Droit des rapports collectifs du travail au Québec,* 3rd ed., vol. 1 "Le régime général", Cowansville, Éditions Yvon Blais, 2019, pp. 7-6, no. 5.

[15] See e.g.: Robert P. Gagnon, *Le droit du travail du Québec*, 8th ed. (updated by Langlois Kronström Desjardins, under the direction of Yann Bernard and André Sasseville), Cowansville, Yvon Blais, 2022, p. 733, no. 710, emphasizing that the Supreme Court's jurisprudence "*n'exclut pas que des ententes individuelles ponctuelles et périphériques se juxtaposent à la convention collective sur des questions que cette dernière ne traite pas* "; Fernand Morin, "Être et ne pas être à la fois salarié! ou Les arrêts Garon/Fillion et le Code civil du Québec — Suites et poursuites", (2006) 245 *Développements récents en droit du travail*, 21, p. 27 ("*[i]l est [...] possible que les parties à la convention collective fassent exception ou que le salarié obtienne un avantage nullement traité à la convention collective et ce faisant, il ne contrevient pas à la convention collective*"). See also: *Banque Laurentienne c. Werve*, 2008 QCCA 702; *Larivière c. Ville de Montréal (Service de police de la Ville de Montréal)*, 2017 QCCA 957, para. 72.

[25] Thirdly, the judge overlooked the possibility that the syllogism asserted by the appellant could find support in the theory of estoppel or peremptory exceptions (*fins de non-recevoir*), which — as the Court noted in 2006 — is often resorted to in the employment context.[16]

[26] To understand that theory's potential application here, it is instructive to briefly consider *Emerson Electric Canada ltée*,[17] where the Court confirmed a judgment rendered by Justice Clément Gascon,[18] then of the Superior Court. In that case, the employer had — for more than 10 years — extended to Quebec employees certain benefits to which their colleagues in Ontario were entitled as a matter of law. The dispute arose after the employer ceased to continue providing those benefits in certain situations. Emphasizing the fact that its decision to extend the benefits to Quebec employees was purely discretionary as it was not legally required to do so, the employer had argued that the benefits amounted to nothing more than privileges that it could modify as it saw fit.

[27] The arbitrator seized of the matter at first instance ruled against the employer and, in doing so, he relied on the theory of estoppel. The following excerpt from the judgment of Gascon J.'s dismissing the application for judicial review of the arbitrator's award is worth quoting at length:[19]

> [106] L'arbitre estime que dans l'exercice de son droit de gérance et de ce droit discrétionnaire prévu à l'article 6.1.2 du régime de retraite, l'employeur a ainsi fait le choix depuis plusieurs années d'appliquer la Règle du 55 aux employés québécois que représente le Syndicat.
>
> [107] Dans ces circonstances, il considère que, durant la vie de la convention collective applicable, il serait inéquitable que l'employeur successeur Astec exerce autrement ses droits par ailleurs stricts de l'article 6.1.2 du régime de retraite.
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> [108] Le Tribunal ne voit pas en quoi cette analyse et ces motifs peuvent être qualifiés de déraisonnables face à la preuve faite. Il s'agit plutôt d'explications défendables et de motifs qui soutiennent sans ambages l'assise de la sentence.
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> [...]
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> [110] À l'audience sur la requête en révision judiciaire, Astec a ajouté ceci sur ce point. En agissant comme il l'a fait, l'arbitre aurait ni plus ni moins appliqué la théorie de l'*estoppel* au soutien d'une réclamation du Syndicat, alors que l'*estoppel* n'est pas en soi générateur de droit. À ce chapitre, Astec soulève l'adage voulant que l'*estoppel* ne puisse être utilisé qu'« *as a shield and not as a sword* ». Ici, dit

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[16] *Bell solutions techniques inc. c. Syndicat canadien des communications, de l'énergie et du papier (SCEP)*, 2006 QCCA 1375, para. 31 ("*[le] concept d'*estoppel *[est] très utilisé en droit du travail*").

[17] *Emerson Electric Canada ltée c. Foisy*, 2006 QCCA 12.

[18] *Emerson Électric Canada Ltée c. Foisy*, J.E. 2005-1053, 2005 CanLII 14392 (S.C.).

[19] *Ibid.*

> Astec, le raisonnement de l'arbitre conduit à essentiellement utiliser l'*estoppel* « *as a sword* », ce que ne reconnaîtrait pas la jurisprudence.
>
> [111] Soit dit avec égards, le Tribunal estime cet argument peu convaincant pour deux raisons.
>
> [112] En premier lieu, dans les circonstances, le Tribunal est loin d'être convaincu que le Syndicat utilise ici la théorie de l'*estoppel* « *as a sword* » plutôt qu'« *as a shield* ».
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> [113] En effet, le grief de principe du Syndicat du 28 juillet 2002 se veut une contestation de la décision d'Astec de ne pas appliquer la Règle du 55 aux situations visées par l'article 15 de la convention. Ainsi, même si le grief est celui du Syndicat, il s'agit par contre d'une réaction à une prise de position d'Astec quant à cette Règle du 55.
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> [114] En somme, par sa contestation, le Syndicat oppose à la position d'Astec (certains diront « as a shield ») la pratique passée qu'il invoque par le biais de la théorie de l'*estoppel.*
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> [115] Pour tout dire, quoique le Syndicat soit celui qui dépose le grief, il est en quelque sorte en « défense » dans le cas sous étude, puisque l'initiative d'une modification de la situation provient d'Astec. C'est de fait pour parer à cette prise de position que le Syndicat dépose le grief de principe et, partant, invoque le moyen de fin de non-recevoir qu'il plaide.
>
> [116] En second lieu, contrairement aux prétentions d'Astec, il est loin d'être acquis qu'en matière d'arbitrage dans le domaine des relations de travail, l'adage suivant lequel l'*estoppel* « *is a shield and not a sword* » a toujours cours. Le moins que l'on puisse dire, c'est que la jurisprudence arbitrale, loin de faire l'unanimité sur le sujet, comporte plutôt un courant solide et continu de décisions qui établissent que l'*estoppel* peut être invoqué autrement que comme seul moyen de défense. Dans sa sentence, l'arbitre réfère à au moins une décision qui va dans ce sens, à laquelle on peut ajouter au moins cinq autres décisions arbitrales fouillées rendues au cours des dix dernières années au même effet.
>
> [117] Somme toute, tout comme l'arbitre Foisy l'a fait en l'espèce, de nombreuses décisions reconnaissent qu'un syndicat peut invoquer avec succès la théorie de l'*estoppel* en matière de relations de travail, même dans des situations où le grief découle de son initiative.
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> [References omitted; emphasis added]

[28] It also bears emphasizing that, in its brief decision confirming Gascon J.'s judgment, the Court did not merely find that the arbitrator's application of the theory of estoppel to the facts of that case was reasonable, it went further by holding that the arbitrator's decision was correct: "*l'arbitre a eu raison d'appliquer à l'espèce la théorie*

juridique des fins de non-recevoir ou de l'« estoppel », puisque depuis plusieurs années l'employeur (Northern et par la suite Astec) avait fait le choix, dans l'exercice d'une discrétion qui était la sienne, de faire bénéficier les employés de la règle 55".[20]

[29] In sum, I find that it is at the very least possible that Air Canada will be found to have committed a fault on the basis of the theory of estoppel or peremptory exceptions.

[30] In light of these considerations, I am of the view that a number of legal bases arguably support the appellant's proposed syllogism regarding Air Canada's alleged breaches of undertakings benefitting its retirees. Given the Supreme Court's holding in *L'Oratoire Saint-Joseph du Mont-Royal* that "[t]he applicant need establish only a mere 'possibility' of succeeding on the merits, as *not even* a 'realistic' or 'reasonable' possibility is required",[21] I further find that the appellant's allegations regarding Air Canada's wrongful conduct meet the standard set out in article 575(2) *C.C.P.*

* * *

[31] I am also of the view that, based on the record as it currently stands, it is possible that the appellant will succeed in proving that she and other Air Canada retirees were injured by the extensive issuance of higher priority FRT passes. Common sense and logic suggest that the issuance by Air Canada of such passes to tens of thousands of current employees is not without significant consequences on the value and usefulness of the retirees' travel benefits. That, along with the frustration and anxiety the appellant allegedly suffered as a result of the issuance of higher priority passes, constitute actionable injuries. The judge made a reviewable error by assuming that a retiree in circumstances similar to the appellant's who has yet to be prevented from using their FRT pass as a result of a current employee's use of their higher priority pass cannot possibly have sustained an actionable injury.

[32] That said, there is no basis to allow the appellant to bring a claim for punitive damages. That claim, which rested on alleged breaches to Quebec's *Charter of Human Rights and Freedoms*,[22] is not being pursued on appeal. What remains are alleged breaches of civil obligations that cannot give rise to punitive damages.[23]

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[20] *Emerson Electric Canada ltée c. Foisy*, 2006 QCCA 12, para. 6 [emphasis added]. See also, on the possibility that the theory of estoppel can be used as a sword and not only as a shield: Marc Mancini, Frédéric Poirier and Stéphanie Lalande, *La preuve et la procédure en arbitrage de griefs — Les aspects juridiques*, 2nd ed., Montreal, Wilson & Lafleur, 2021, pp. 301-302, nos. 5.116-5.121. It also bears noting that there is authority supporting the proposition that the theory of estoppel can be invoked in respect of a representation or practice relating to a matter not specifically addressed in the collective agreement: see e.g. Donald J.M. Brown and David Beatty, *Canadian Labour Arbitration*, 5th ed., vol. 1, Toronto, Thomson Reuters, 2019 (loose-leaf, release no. 5, July 2022), p. 2-149 to 2-158, nos. 2:50-2:53.

[21] *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, para. 58 [emphasis in original]. See above, para. 16.

[22] CQLR c. C-12.

[23] Article 1621 *C.C.Q.*; *Cinar Corporation v. Robinson*, 2013 SCC 73, para. 113.

* * *

[33] Air Canada having conceded that the other criteria set out in article 575 *C.C.P.* are met, I conclude that the appeal must be allowed and the class action authorized, except in respect of the claim for punitive damages.

[34] In closing, I note that Air Canada has not raised any objection to the Superior Court's subject-matter jurisdiction over the appellant's claims. I further note that, given the Court's 2020 decision in *Regroupement des cols bleus retraités et préretraités de Montréal*,[24] there may be an issue as to whether those claims fall within the exclusive jurisdiction of a grievance arbitrator. However, I believe that this issue is better left to the Superior Court if and when a jurisdictional objection is raised by Air Canada.

[35] For these reasons, I propose that the appeal be allowed so as to authorize the appellant to institute a class action against Air Canada, except in relation to the claim for punitive damages.

FRÉDÉRIC BACHAND, J.A.

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[24] *Regroupement des cols bleus retraités et préretraités de Montréal c. Ville de Montréal*, 2020 QCCA 399, paras. 29 *et seq.*