

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

(Class Action)
SUPERIOR COURT

No : 200-06-000112-089

PAUL ARSENAULT, in his capacity
as guardian to his brother Normand
Arsenault,

Plaintiff

vs .

AIR CANADA

Defendant

NOTICE TO MEMBERS

(FULL TEXT)

DECEMBER 13, 2011

(YOUR RIGHTS COULD BE AFFECTED BY THE CONTENT OF THIS NOTICE)

(Article 1006 C.C.P.)

1. TAKE NOTICE that the bringing of a class action has been authorized on October 3, 2011 by judgment of the Honourable Justice of the Superior Court of Québec against Air Canada (the "Respondent"), for the benefit of the natural persons forming part of the group hereinafter described, namely:

"All persons domiciled in Canada who are disabled or recognized as having a functional disability by reason of their obesity who had to pay additional fees to Air Canada for the seat of an Attendant* and/or for a seat adapted to their condition on a domestic flight operated by Air Canada or by another carrier on its behalf between December 5, 2005 and December 5, 2008."

-and-

"All natural persons in Canada who, between December 5, 2005 and December 5, 2008, had to pay fees to Air Canada for a seat on a domestic flight when they were acting as the Attendant* of a person with a disability"

(*) An Attendant is: A person 16 years of age or older who is physically capable of assisting a non self-reliant passenger with a disability to an exit in the event of an emergency, and who will attend to the personal needs of that passenger during the flight, where such is required.

2. The Senior Associate Chief Justice has determined that the present class action is to be brought in the judicial District of Quebec.
3. Paul Arsenault in his capacity as guardian to his brother Normand Arsenault has been ascribed the status of Representative of the Groups.
4. The identical, similar or related questions of law or fact affecting each member of the groups with respect to the Defendant and that the Representative intends to have determined collectively are:
 - a) Is Air Canada's tariffs discriminatory towards persons with disabilities including persons that are disabled by reason of their obesity and that require an attendant?
 - b) is the provisions of Air Canada's tariffs constitute undue obstacles to the mobility of persons with disabilities within the Federal transportation network?
 - c) In the affirmative, has the Plaintiff or the members suffered damages by reason of Air Canada's tariffs?
 - d) Can Air Canada be held to compensate or refund the Plaintiff or the members on the basis of the decision rendered by the Canadian Transportation Agency or the provisions of the *Canada Transportation Act*, the *Canadian Human Rights Act* or other applicable laws?
 - e) Is the Plaintiff Paul Arsenault, in his capacity as guardian to Normand Arsenault for purposes of this class action and the class members entitled to punitive or exemplary damages?
5. The following conclusions relating to the above mentioned questions will be sought :
 - (a) **ORDER** Air Canada to pay to Paul Arsenault, in his capacity as guardian to Normand Arsenault, an amount representing the cost paid for transportation of an Attendant and/or for an extra seat adapted to the condition of Normand Arsenault on board Air Canada aircraft, with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion;
 - (b) **ORDER** Air Canada to pay to Paul Arsenault, in his capacity as guardian to Normand Arsenault, the sum of \$1,000.00 as damages for pain, suffering, or inconvenience with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion;

- (c) **ORDER** Air Canada to pay to Paul Arsenault, in his capacity as guardian to Normand Arsenault, the sum of \$500.00 as punitive and exemplary damages with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion ;
 - (d) **ORDER** Air Canada to pay to each member of the Group an amount representing the cost paid for transportation of an Attendant and/or for an extra seat adapted to the member's condition on board Air Canada aircraft, with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion;
 - (e) **ORDER** Air Canada to pay to each member of the Group an amount representing the cost paid by them as they were acting as the Attendant of a person with a disability on board a domestic flight in Canada, with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion;
 - (f) **ORDER** Air Canada to pay to each member, the sum of \$1,000.00 as damages for pain, suffering, or inconvenience with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion;
 - (g) **ORDER** Air Canada to pay to each member the sum of \$500.00 as punitive and exemplary damages with interest at the legal rate and the additional indemnity provided in Article 1619 of the *Civil Code of Québec*, calculated from the date of service of the motion ;
 - (h) **ALL OF WHICH WITH COSTS**, including costs for exhibits, experts, expert reports and the publication of notices..
6. Any member who is part of one of the above described groups and who did not request to be excluded from the group according to the procedure set out below will be bound by any judgment to be rendered.
7. The time limit for a member to request his or her exclusion from the group was set as the 30th day following the publication of the present notice.
8. A member who has not commenced personal proceedings may request his or her exclusion from the group by notifying the clerk of his or her decision, by registered or certified mail, before the expiry of the time limit for exclusion.

9. A member who has brought a claim that would be adjudicated by the final judgment on the merit of the class action will be deemed to have requested his or her exclusion from his or her claim if he or she does not file a withdrawal on his or her claim before the expiry of the delay for exclusion.
10. A member who is not a representative or an intervener cannot be called upon to pay the costs of the class action.
11. A member may apply to the Court to be granted intervener status if the Court deems this to be useful to the Group. A member other than a representative or an intervener may not, before the final judgment, be submitted before to an examination on discovery or a medical examination unless the court considers the examination on discovery or medical examination useful to the adjudication of the questions of law or fact dealt with collectively.
12. For any additional information, you may contact counsel for the Class Representative as follows :

David Bourgoïn, Esq.

BGA AVOCATS S.E.N.C.R.L.
67 Sainte-Ursule Street
Quebec (Quebec) G1R 4E7
Telephone : 418 692-5137
Fax : 418 692-5695
E-mail: dbourgoïn@bga-law.com
Website : www.bga-law.com



BARRISTERS
SOLICITORS L.L.P.