

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No : 500-06-001039-201

WALTER EDWARD DAVIES,
Petitioner

v.

AIR CANADA,
Respondent

**APPLICATION FOR AUTHORIZATION TO MODIFY THE APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT THE
STATUS OF REPRESENTATIVE PETITIONER AND TO SUBSTITUTE THE
PETITIONER**

(art. 25, 206,207,585 and 589 C.p.c.)

I. CONTEXT

1. The Petitioner addresses the Court for the purpose of seeking to be substituted as the Petitioner by his wife, Carole Davies for reasons as detailed in the following paragraphs;
2. The Petitioner is presently 93 years old and, although at the time of instituting the present proceeding he felt well and able to represent the interests of all of the estimated to be 30,000 Retirees who are Members of the Class, the stress and threat to his health as being most vulnerable to the extreme medical dangers of the Covid 19 pandemic has given him serious cause to reconsider his capacity to properly fulfill the mandate to do so;
3. The Petitioner states that the emotional stress and anxiety experienced during the past 10 months has diminished his ability to recall important events and report them in a convincing manner for the purposes of the present proceeding and in this weakened capacity he would be doing a disservice to his fellow Retirees as opposed to the service which he had been hoping for;
4. This decision is not one that he takes lightly and has been arrived at only after much deliberation with his wife and the very real concern for the detrimental effects to his health now being caused by the stress of the responsibility to represent the hopes and rights of all of the Members;

II. CAROLE DAVIES SUBSTITUTION

5. The Petitioner's wife, Carole Davies has already been introduced at paragraph 24 of the Application as being fully aware of the facts of this action, is in very good health and has worked closely with the Petitioner's attorneys in the preparation of the application and has been in contact with many of the Retirees over the years and to the present date;
6. Most importantly for the carriage of this Application, Carole Davies, retired in 1991 after a 29 year career at Air Canada, always travelled on the FRT flight passes and most often with her husband and made all of the flight arrangements for them;

7. Accordingly, for the purposes of this application, the facts as to the severe reduction of the use and value of the Retirees' FRT flight passes over the last couple of years will not vary other than for a change of the identity of the petitioner and the number of her years of employment and as a retiree; the obstacles and degradation, the frustration, stress and inability to plan trips, the last minute change of plans are all the same;
8. The production of the Collective Agreement and the examination of the Petitioner which the Court has permitted would naturally now be extended to that which applied to Carole Davies for the 1991 period and the examination to be arranged as soon as possible and consent is hereby given;
9. The re-amended Application for authorization to institute a class action details the interest, competence and capacity of Carole Davies to be ascribed the status of representative of the Class Members;
10. In these present circumstances Walter Edward Davies requests the authorization of the court to immediately retire as the Petitioner in this present file and to be substituted in such capacity by Carole Davies;

WHEREFORE THE PETITIONER PRAYS THAT BY JUDGEMENT TO BE RENDERED HEREIN, THE COURT:


GRANTS the present application;

SUBSTITUTES Carole Davies for Walter Edward Davies as the Petitioner for the Application for authorization to institute a class action and to ascribe to her the status as representative of the Class Members;

AUTHORIZES the modifications to the amended Application for authorization to institute a class action as formulated in the annexed exhibit P-1;

THE WHOLE without costs.

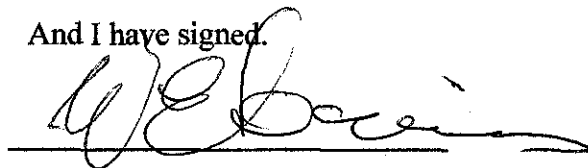
Montréal, this 28th day of January, 2021


Heller and Associates - Petitioner (Applicant)
425 Saint Sulpice, Montréal, QC, H2Y 2V7

I, the undersigned, Walter Edward Davies, domiciled and residing at 85 Brookside Ave., in the City of Beaconsfield, Province of Québec, H9W 5C5, do solemnly declare the following:

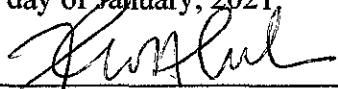
1. I am presently the Petitioner in this Application for Authorization to institute a Class Action and to ascribe the status of Petitioner and representative of the Class and to substitute Carole Davies in my place as the petitioner;
2. All the facts alleged in the Application attached to this Affidavit are true.
3. I reiterate in the first person all of the allegations of the present Application as if I had recited them at length.

And I have signed.



PA Drivers licence
D1209-0608 27-01
Medicare Card
DAVW 27080614
Exp 2023/08

Solemnly declared before me in the City and District of Montréal,
this 28 day of January, 2021,



François Gottlieb - avocat

CANADA

SUPERIOR COURT OF QUEBEC
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO:500-06-001039-201

WALTER EDWARD DAVIES, a person
residing at 85 Brookside Ave., in the City of
Beaconsfield, Province of Quebec, Canada,
H9W 5C5

Petitioner

v.

AIR CANADA, an airline incorporated
pursuant to the laws of Canada with a
registered office at 7373 De La Côte Vertu
Blvd West in the City of Montreal, Province of
Quebec, Canada, H4S 1Z3

Respondent

NOTICE OF PRESENTATION

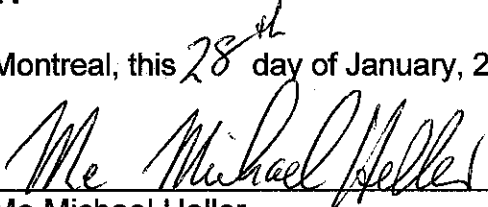
To: FASKEN MARTINEAU

800 Victoria Square, Suite 3500
P.O. Box 242
Montreal, Québec, H4Z 1E9

TAKE NOTICE that the present Application for the Substitution of the Petitioner will be presented for adjudication before the honorable justice Thomas M. Davis S.C.J of the Superior Court sitting in civil practice division for the district of Montreal at a time to be determined at the Montreal Courthouse located at 1, Rue Notre-Dame E, Montreal, Quebec, H2Y 1B6, in a room to be determined or by videoconference in a virtual room to be determined.

PLEASE GOVERN YOURSELF ACCORDINGLY:

Montreal, this 28th day of January, 2021


Me Michael Heller
Attorney for the Petitioner

CANADA

SUPERIOR COURT OF QUÉBEC
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No : 500-06-001039-201

CAROLE (..) DAVIES, a person residing at
85 Brookside Ave., in the City of
Beaconsfield, Province of Québec, Canada,
H9W 5C5

Petitioner

v.

AIR CANADA, a corporation duly
incorporated pursuant to the laws of Canada
with its head office located at 7373 De La Côte
Vertu Blvd West in the City of Montréal,
Province of Québec, Canada, H4S 1Z3

Respondent

**AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PETITIONER
(ARTICLE 574 C.C.P. AND FOLLOWING)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONER
STATES THE FOLLOWING:**

I. GENERAL PRESENTATION

1. The Petitioner addresses the Court for the purpose of obtaining authorization to institute a class action for and on behalf of the members of the Class (as hereinafter defined) against the Respondent based on the laws of the Province of Québec or, in the alternative, the laws of any Canadian province or territory of similar application, and the Respondent's failure to fairly perform obligations flowing from an agreement with each member of the Class to grant them Free and Reduced-Rate Transportation Plan flight passes (hereinafter the "FRT") during their employment and then during their retirement;

II. THE PARTIES

2. The Petitioner, Carole (..) Davies, is a resident of the Province of Québec and is a retired employee of the Respondent and had been an employee for 29 years prior thereto, having started in 1961 and taken her retirement in 1991; Her employment history is produced as **Exhibit P-1A**;
3. The Petitioner wishes to institute a class action on behalf of the following Class of which the Petitioner is a member, namely:

All retired employees of the Respondent eligible for FRT flight passes in retirement;

(hereinafter referred to as the "Petitioner", the "Class Member(s)", the "Class", or "Retiree");

4. The Respondent is a corporation continued under the Canada Business Corporations Act. Its registered office is located at 7373 Boulevard de la Côte-Vertu, in Ville Saint-Laurent, in the Province of Québec; A copy of the Industry Canada corporate registry extract is produced as **Exhibit P-2**;
5. The Respondent carries on business and has its headquarters in the Province of Québec, and more specifically, the department which manages the use and availability of the FRT flight passes for both employees and Retirees is located here; A copy of the corporate registry extract from the Registraire des entreprises Québec is produced as **Exhibit P-3**;
6. The Respondent derives revenue as a result of its presence in the Province of Québec and providing airline services throughout Canada and elsewhere;
7. The Respondent offers various flight pass products for air travel on routes serviced by the Respondent and/or its affiliates;

III. FACTS GIVING RISE TO THE PETITIONER'S CLAIM

8. The employment, retirement and benefits agreements entered into with each Class Member shall be deemed to have been made in the Province of Québec, and shall be governed in all respects by the laws of the Province of Québec, and should the Court determine otherwise, the Federal laws applicable and the *Common Law* of the other Provinces and Territories;
9. The Respondent had promised to give and/or make available, and in fact gave and made available the right to their unilaterally adopted FRT flight passes to its employees which automatically vested after the first 6 months and which were honoured throughout the many years while working for Air Canada and were then continued after retirement up until the recent changes referred to in the following paragraphs. The Respondent has been doing this since at least 1952;
10. These FRT flight passes are not mentioned in any of the labour agreements over the years and had never been negotiated with any union. However these passes and the fact that they are permanently available both before and after retirement are referred to in the Respondent's job postings and pre-retirement handbook and seminars. They are now available to all Retirees of the Respondent in the form of C2 passes; An extract of a retirement handout is produced as **Exhibit P-4**;
11. This FRT flight pass benefit was always considered by employees as an important liberality of their career in the airline industry and of their eventual retirement, as it was most certainly to the Petitioner. It was a "fact of life"; if you worked at Air Canada, you then had the benefit of free travel both before and after retirement. And in fact, Air Canada still uses this advantage in its marketing for its recruitment purposes as indicated in a recent January 2020 insert in the Montreal Gazette which is produced as **Exhibit P-5**;
12. The Respondent now wrongfully takes the position that these flight passes are simply a privilege at the absolute discretion of the Respondent, and therefore, not a continuing

obligation owed to the employees. Based on this erroneous premise, the Respondent has unilaterally and without any consideration for the hardship caused to the Class Members, effectively diminished their usefulness by causing to be issued to its active employees an exceedingly large number of priority flight passes such as B1s and C1s to the point that the Petitioner realized in the summer of 2017 that the C2 passes no longer fulfill the requisites to permit a Retiree to reasonably enjoy the use of the FRT flight passes;

13. Historically, priority for the use of these FRT flight passes was determined by the length of service as an employee of the Respondent. In other words, an employee's or a retiree's years of service with the Respondent determined their priority to be seated in an economy or business class cabin when availing themselves of these flight passes (hereinafter the "seniority priority");
14. It was the Petitioner's understanding and that of her co-workers that her boarding priority would increase with time and as she got older and worked longer it would be easier for her to board and travel with the FRT flight passes and especially after 25 years of service when she had received the then coveted "credit-card" for unlimited travel as prior to that only four FRT flight passes were allotted each year;
15. The Respondent has now significantly eroded seniority priority by granting higher priority passes to certain categories of its active employees. For example, in bargaining with the pilots' association, the Respondent granted pilots B1 passes, with higher priority than that enjoyed by the Retirees. Access to seats has now been drastically reduced or for all practical purposes is now unavailable, including the ability to be upgraded to business class;
16. Currently, all employees including those with very little seniority consistently "bump" the Retirees with considerably greater seniority and leave the Retirees with frustrated travel plans, missed flights and connections and the distinct possibility of having to return home or be stranded in a foreign city. As an illustration of this unjust situation, an employee with as little as 7 months service can, and has, bumped a Retiree with 37 years of service;
17. All consulted Members are extremely dissatisfied with this state of affairs and are of the view that the rights to the FRT flight passes which had been granted and had vested at the beginning of their career with the seniority priority were not subject to the pure discretion of the Respondent who has now taken away the seniority priority by granting higher priority B1 and C1 passes to its pilots and to other groups of its active employees and in so doing, has acted in an excessive and unreasonable manner;
18. For purposes of illustration and using approximate estimates, the creation of these numerous priority passes can be presented as follows:
 - a. Based on informal information, it is estimated that there are in excess of thirty thousand Retirees and as far as the Retirees were concerned, the use of FRT flight passes when initially granted to them was always based strictly on years of service – the seniority priority. As a result of the unfettered and unfair creation by the Respondent of very many annual C1 and B1 priority passes there are now:

Employees	Group	Passes
4,800	ACPA - Pilots with 3 B1 +2*	24,000
8,500	CUPE - Flight attendants with 3 C1 +2*	42,500
6,000	UNIFOR - CSSA with 3 C1 +2*	30,000
10,827	IAMAW - ramp 3 C1 +2*	54,135
<u>7,700</u>	Non unionized 5 B1	<u>38,500</u>
37,827	Total	189,135

* all unionized employees receive 2 additional priority flight passes for Christmas and New Years in their respective categories.

- b. Approximately 37,827 employees now have greater seniority priority over the Class of Retirees and they are holding 189,135 passes. Each pass entitles the holder to travel with 4 other family members or friends, so the potential of people who can “bump” a Retiree holding a C2 pass without warning at the departure gate, is an astronomical figure of 945,675. It is no wonder that the Retirees’ enjoyment and use of the passes have been drastically reduced to the point that they are now considered of very limited use;
 - c. As bad as this situation is at present the Retirees have even more reason to be concerned as the Respondent has recently acquired Air Transat with 5000 employees and Aimia Canada Inc, the operator of the Aeroplan business with 550 employees. This will bring more employees into the picture who will likely also be offered similar priority passes;
 - d. The previously established seniority priority has been so much eviscerated that all of the unionized employees’ partners now have the right to receive B1 or C1 flight passes which also gives them the right to independently travel with 4 other family members and friends which would potentially increase the number of persons who could bump a Retiree to an even more unbelievable number of over 1,500,000;
19. To make the situation even more frustrating and untenable, the employees may exercise their B1 and C1 priority passes at any time up to and including the boarding of the plane. Previously there had been a 24 hour restriction so that at least a Retiree could better evaluate their chances of getting on the flight based on the number and seniority priority of other pass holders seeking the same flight after checking at the FRT booking site 24 hours prior to departure;
 20. Under the present system it is often the case that the Retiree only discovers that he has been bumped by an employee having far less seniority priority when he has actually checked his baggage, passed through security, and is waiting at the gate. He is then unceremoniously advised that he and his travelling companion will not be able to board and he has to chase around to find alternate connections at the last moment and still face the same risk of again being bumped just prior to departure;
 21. It bears noting that the likelihood of a Retiree's checked baggage being lost or delayed increases significantly each time a Retiree is bumped from flight to flight which just adds another layer of anxiety to the already very challenging and troublesome process of trying to use their C2 FRT flight passes;

22. This frustrating and exasperating exercise of trying to board the flight which in the past had been far more predictable and successful has resulted in a lot of stress and worry when trying to travel with the FRT flight passes. This is in addition to the costs and extreme disruptions when the problem arises upon the return trip when hotel and transportation charges are compounding an already stressful and degrading experience;
23. This situation of being reduced to a lower priority than new employees with as little as 6 months length of service who can now frustrate and add anxiety to their travel/vacation plans by showing up at the gate without any prior warning is truly a humiliating insult to the proud dignity and self esteem of the thousands of Retirees who have dedicated their entire working career as loyal ambassadors for "Canada's national" airline. This runs contrary to the provisions of articles 4 and 10 of the Québec *Charter of Human Rights and Freedoms*, articles 2, 3 and 5 of the *Canadian Charter of Rights and Freedoms* and the similar other Provincial and Territories charters of rights, (hereinafter "*Charter Statutes*");
24. As is the case of the Petitioner and her husband Walter, who she met in 1963 when he was an 11 year employee and retired in 1987 as a 35 year employee, most, if not all the employees were attracted to the airline industry and to this employer because they loved to travel. The FRT flight passes were used very often, many in excess of 20 times per year. All employees looked forward to being able to enjoy the same travel benefits in retirement based on the same seniority priority. Many of the employees, like the Petitioner, took an early retirement package, which meant forfeiting their full pension with the plan of traveling while they still had the energy and good health to do so (..);
25. The Petitioner has spoken to many of the Retirees, both during active employment and retirement and it is not just her personal appreciation that the availability of the FRT flight passes for life:
- a. was an important factor in choosing a career with the Respondent, separate and apart from the basic conditions of employment such as salary, vacations, insurance coverage, medical benefits and pensions which were regularly the subject of negotiations in the labour agreements;
 - b. was granted to them as a right from the beginning of their career and was not an item to be discussed or negotiated and therefore never appeared, nor needed to appear in any labour agreement;
 - c. are not reasonably accessible and extremely problematic to use under the present system;
26. The preparation of this application is supported by the Air Canada Save Our Seniority (ACSOS) organization of retired employees of Air Canada who have been instrumental in gathering the complaints of its more than six thousand Canada wide members which is increasing daily, who are pressing the need for remedies. A copy of a letter from ACSOS is produced as **Exhibit P-6**;

IV. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS

27. Every Class Member received when joining Air Canada the same right to the Air Canada Retirees pass benefits and the seniority priority was applied among all C2 flight pass users;
28. Every Class Member has enjoyed their same rights to the FRT flight passes during their entire employment career with the Respondent which in most cases was 40 years and as well during their retirement until recently given the widespread use of the ubiquitous B1 and C1 flight passes;
29. Every Class Member's use of their C2 flight passes is directly and seriously compromised by the existence and use by the active employees, their families and/or companions of their B1 and C1 passes which have priority over them;
30. All of the damages to the Class Members are a direct and proximate result of the Respondent's abusive and wrongful unilateral conduct in having issued these priority B1s and C1s;
31. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class;
32. In taking the foregoing into account, all members of the Class are justified in claiming compensatory, moral and punitive damages;

V. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

33. The composition of the Class makes the application of the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings impractical or impossible in this case for the reasons detailed below;
34. The number of persons included in the Class is estimated to be in the thousands if not tens of thousands;
35. The names and addresses of all persons included in the Class are not known to the Petitioner and are in the possession or control of the Respondent;
36. The precise size of the Class and identity of the individual members in the Class are within the exclusive knowledge of the Respondent;
37. Considering that numerous Class Members domiciled in the Province of Québec and across Canada have already agreed to submit their claims to the exclusive jurisdiction of the courts in the Province of Québec, it is appropriate that the Class Members may only litigate in the Province of Québec;
38. It is also impractical for each Class Member to travel to Québec to individually file and participate in court proceedings;
39. In addition, given the costs and risks inherent in an action before the Courts, many Class Members will hesitate to institute an individual action against the Respondent;

40. Even if the Class Members could afford such individual litigation, the Court system could not as it would be overloaded;
41. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would result in increased delays and expenses to all parties and to the Court system and would be contrary to the principles of proportionality;
42. Moreover, a multitude of actions instituted would risk the distinct possibility of contradictory judgments on questions of fact and law that are similar or related to all Class Members and would be contrary to the reasonable administration of the justice system;
43. These facts demonstrate that only the Respondent possesses all the information about the composition of the Class and it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
44. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice;
45. The claims of the Members raise identical, similar, or related questions of fact or law, namely:
 - a. Did the Respondent contravene articles 6, 7, 1375, and 1434 of the Civil Code of the Province of Québec and if the Court deems it necessary, the analogous provisions of the *Common Law* legal principles of the other Provinces and Territories?
 - b. Does the Respondent's conduct as described herein, of issuing thousands of priority travel passes to the employees contravene its representation made to the Class Members when they were initially granted the rights to the FRT flight passes?
 - c. Did the Respondent fail to perform its obligations relating to the FRT flight passes for the Retirees?
 - d. Are the Class Members entitled to damages from the Respondent, consisting of:
 - 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 being contrary to articles 4 and 10 of the *Québec Charter of Human Rights and Freedoms* and the similar provisions of the other *Charter Statutes*; and
- iv. the interest and additional indemnity set out in the Civil Code of Québec on the above amounts;

46. Most, if not all, of the issues to be dealt with are issues common to every Class Member;

47. The damages sustained by the Class Members flow, in each instance, from a common statement of operative facts, namely the Respondent's refusal to continue to respect and perform its contractual obligations, being the unilateral and illegal, excessive and unreasonable removal of the seniority priority criteria for the granting of the FRT flight passes to the Class Members, by creating and issuing an exceedingly large number of priority B1 and C1 flight passes to active employees;

48. All Class Members have been prejudiced by the Respondent's acts and/or conduct;

49. Each Class Member's damages from the Respondent's acts and/or conduct are identical or very similar and would not require individual recovery of claims under Articles 599-601 of the C.C.P.;

50. The Class Members' damages can be determined with sufficient precision without individual inquiry, such that collective recovery of claims under Article 595-598 of the C.C.P. would be appropriate;

51. The interests of justice favor that this application be granted in accordance with its conclusions;

VI. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

52. The action that the Petitioner wishes to institute on behalf of the Class Members is an action for damages;

53. The Respondent's conduct is intentional, discriminatory, high-handed and shows a wanton disregard for the legal rights and interests of the Petitioner and the other Retirees such that an award of punitive damages is appropriate;

54. The rights to the FRT flight passes previously enjoyed by the Class Members formed a critical component of their retirement plans and goals, and were of great value to them. The denial of these same rights is most grievous to the Petitioner and Class Members, and has caused them

an intangible loss. This loss cannot be adequately compensated for by compensatory damages alone. The nature of the Petitioner's and the Class Members' loss and the Respondent's conduct is such that additional damages and remedies are warranted;

55. The rights to the FRT flight passes are of unique value to the Petitioner and Class Members. The nature of the Petitioner's loss and the Respondent's contractual obligations are such that an order for specific performance is also warranted in this case;
56. The Respondent unilaterally and drastically changed the conditions of the use of the C2 flight passes of the Retirees in a high-handed and arrogant manner. The harsh and malicious manner of the change and the bad faith, unilateral modifications affecting the enjoyment of their lives as Retirees warrant the imposition of punitive damages to punish the Respondent, and deter the Respondent from engaging in similar behavior;
57. The Respondent unilaterally took something away from the Petitioner which the Respondent had given to them and which the Retirees had used, valued and relied on for years. When the Petitioner retired she did so with the knowledge that she would be free to travel the world for pleasure and to visit friends and family as she had been promised. The Respondent acted in an abusive and disrespectful manner and failed in their obligation to act in good faith in their dealings with the Retirees;
58. The Respondent's removal of the Petitioner's ability to realize her dreams after she had retired has caused the Petitioner damages above and beyond that which can be compensated for by ordinary damages. By adding the priority in favour of the class of active employees, the Respondent has clearly targeted the class of senior citizen Retirees to pay the cost. There was no charge to the Respondent for the benefit it shifted to the active employees as the cost, being the loss of a critical component of the use of the FRT flight passes, was borne solely by the Class Members. The Petitioner pleads that moral and punitive damages are appropriate in the present circumstances;
59. As a further indication of the bad faith, lack of respect which the Respondent has shown to the Retirees, there is a \$5 service fee per flight and/or per segment of flights added to the fees when the Petitioner does use a FRT flight pass which is not applicable when an employee uses one of his, although logically, it is the Retiree who has less disposable income at this stage of his life to have to suffer added expenses;
60. The conclusions that the Petitioner wishes to introduce by way of an application to institute proceedings are:

DECLARE the Respondent liable for the damages suffered by the Petitioner and each of the Class Members;

DECLARE that the rights to the FRT flight passes were granted to the Retirees many years ago upon joining Air Canada and have been used and enjoyed by them ever since and as such cannot be unilaterally, substantially modified to the detriment of the Class Members;

CONDEMN the Respondent to pay to the Petitioner, for the benefit of the Class the aggregate amount in compensatory damages, in an amount to be determined by the Court, plus interest as well as the additional indemnity, under Article 1619 of the CCQ, since June 15, 2017;

CONDEMN the Respondent to pay the Petitioner, for the benefit of the Class the aggregate amount in punitive damages, in an amount to be determined by the Court, with interest as well as the additional indemnity, under Article 1619 of the CCQ;

CONDEMN the Respondent to bear the costs of the present action including expert, expertise, and notice fees;

ORDER that the above three condemnations be subject to collective recovery;

ORDER that employee flight passes henceforth will not have priority over those of Retirees when employees are traveling for personal or leisure purposes;

ORDER the Respondent to immediately issue to each of the Class Members 3 B1 and 3 C1 flight passes per year;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Class Members;

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 60 days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 579 C.C.P.;

THE WHOLE with interest and the additional indemnity provided for in the Civil Code of Québec and with full costs and expenses including publication fees to advise Class Members and expert fees, if any, including those required to establish the amount of the orders for collective recovery;

61. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montréal for the following reasons:

- a. The initial formation and the subsequent modifications to the seniority priority as described in the preceding paragraphs for the use of the FRT flight pass program and how they apply to the employees and Retirees were concluded in the Province of Québec and to the best of the Petitioner's knowledge, thousands of members of the Class are domiciled in the Province of Québec;
- b. The contract between the Respondent and each of the Class Members has a "real and substantial connection" to the Province of Québec;

- c. The nature of the action on behalf of Class Members will be of two orders; for the ones who are domiciled in the Province of Québec it is an action in contractual responsibility for compensatory and moral damages as well as an action for punitive damages and injunctive orders against the Respondent; and as for those Retirees who are domiciled in the other provinces or elsewhere, it may be an action in Canadian Common Law responsibility for compensatory damages and punitive damages and injunctive orders as the Québec Civil Code principles of articles 6, 7 and 1375 and others, have similar applications generally referred to as "...an organizing principle of good faith that parties generally must perform their contractual duties honestly and reasonably and not capriciously and arbitrarily.";
 - d. The Respondent conducts business in the District of Montréal and the Province of Québec;
 - e. The Respondent has headquarters in the Province of Québec;
 - f. The Petitioner and her undersigned attorneys are domiciled in the District of Montréal and the Province of Québec;
62. The Petitioner, who is requesting to be ascribed the status of representative, will fairly and adequately protect and represent the interests of the Class Members, since the Petitioner:
- a. is typical of the Class Members who have all been subjected to the same changes to their FRT flight passes and was fully aware of the prior conditions based on the seniority priority which they had previously enjoyed;
 - b. had enjoyed the benefits of the FRT passes for 29 years while a full time employee and for most of the 29 years after her retirement; is now suffering the consequences of the unreasonable acts of the Respondent due to the obstacles and complications of trying to book standby flights now that all of the employees and their partners and their guests including their children, have priority over all of the Retirees;
 - c. is well informed and understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members and has communicated on numerous occasions, and will continue to communicate with the manager of the ACSOS association of Retirees;
 - d. is available to dedicate the time necessary for the present proceedings and to collaborate with the undersigned attorneys in this regard;
 - e. is in good faith and is ready and available to manage and direct the present action in the interest of the Class Members and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
 - f. has met and communicated with and given the mandate to the undersigned attorneys for the present action and to obtain all relevant information and intends to keep being informed of all developments in the proceedings;

- g. has given the mandate to the undersigned attorneys to prepare and maintain a website and post the present matter thereon in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by them;
- h. has given the mandate to the undersigned attorneys to investigate the size of the Class and whether any Class Members have instituted similar actions in other jurisdictions;
- i. has given the mandate to the undersigned attorneys to inquire into whether this proposed class action satisfies the criteria for assistance by the Fonds D'aide Aux Actions Collectifs;
- j. has given the mandate to the undersigned attorneys to retain a Québec attorney to assist and supervise the proceedings of this proposed class action if deemed necessary;
- k. has communicated with the undersigned attorneys in the context of this action, including answering diligently and intelligently to their questions, and there is every reason to believe that she will continue to do so;
- l. does not have interests that are antagonistic to those of other members of the Class;

63. The present application is well-founded in fact and in law;

WHEREFORE THE PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN, MAY IT PLEASE THE HONOURABLE COURT TO:

GRANT the present application;

AUTHORIZE the institution of this class action;

ASCRIBE the status of representative to the Petitioner, Carole (..) Davies, of the persons included in the Class herein described as:

“All retired employees of the Respondent eligible for FRT flight passes in retirement”

or any other group to be determined by the Court;

IDENTIFY THE PRINCIPLE QUESTIONS of fact and law to be treated collectively as the following:

- a. Did the Respondent contravene articles 6, 7, 1375 and 1434 of the Civil Code of the Province of Québec and if the Court determines it necessary, the analogous *Common Law* legal principles of the other Provinces and Territories?
- b. Does the Respondent's conduct as described herein of issuing thousands of priority passes to its employees, contravene its representation made to the Class Members when they were initially granted the rights to the FRT flight passes?
- c. Are the Class Members entitled to damages from the Respondent, consisting of:

- 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 being contrary to articles 4 and 10 of the *Québec Charter of Human Rights and Freedoms* and the similar provisions of the other *Charter Statutes*; and
- iv. the interest and additional indemnity set out in the Civil Code of Québec on the above amounts;

IDENTIFY THE CONCLUSIONS sought by the class action to be instituted as being the following:

- a. **GRANT** the class action of the Petitioner and each of the Class Members;
- b. **DECLARE** that the flight passes are a benefit of employment and retirement and as such cannot be unilaterally substantially modified to the detriment of the Class Members;
- c. **DECLARE** the Respondent liable for the damages suffered by the Petitioner and each of the Class Members;
- d. **CONDEMN** the Respondent to pay to the Petitioner, for the benefit of the Class the aggregate amount in compensatory damages, in an amount to be determined by the Court, plus interest as well as the additional indemnity, under Article 1619 of the CCQ;
- e. **CONDEMN** the Respondent to pay to the Petitioner, for the benefit of the Class the aggregate amount in punitive and/or exemplary damages to each of the Class Members, in an amount to be determined by the Court, with interest as well as the additional indemnity, under Article 1619 of the CCQ;

- f. **CONDEMN** the Respondent to bear the costs of the present action including expert, expertise, and notice fees;
- g. **ORDER** that the above three condemnations be subject to collective recovery;
- h. **ORDER** that employee flight passes henceforth will not have priority over those of Retirees when employees are travelling for personal or leisure purposes;
- i. **ORDER** the Respondent to immediately issue to each of the Class Members three B1 and three C1 flight passes per year;
- j. **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Class Members;

DECLARE that all members of the Class who have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted in accordance with the law;


FIX the delay of exclusion at 60 days from the date of the publication of the notice to the Class Members, and at the expiry of such delay, the Class Members who have not requested exclusion to be bound by any such judgment;

ORDER the publication of a notice to the Class Members drafted in accordance with Article 579 C.C.P. and in particular that such notice appear on the first page of the Air Canada retiree employee travel internet site <https://travel.aircanada.com/ews/login.jsp> under the heading of "What's New" and be titled "Avis aux membres d'un action collective - FRT passes de vols, Notice to all class action members – FRT flight passes" and to be maintained there until the court orders publication of another notice to the Class Members;

ORDER the Respondent to provide Class counsel, in electronic form, a list containing the names and last known coordinates of the Class Members including their email addresses;

THE WHOLE with interest and the additional indemnity provided for in the Civil Code of Québec and with full costs and expenses including publication and notification fees to advise members and expert fees, if any, including those required to establish the amount of the orders for collective recovery.

Montréal, this 28th day of January, 2021


Heller and Associates - Petitioner (Applicant)
425 Saint Sulpice, Montréal, QC, H2Y 2V7

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No : 500-06-001039-201

SUPERIOR COURT OF QUEBEC
(Class Action)

WALTER EDWARD DAVIES, a person
residing at 85 Brookside Ave., in the City of
Beaconsfield, Province of Quebec, Canada,
H9W-5C5
Petitioner

v.

AIR CANADA, an airline incorporated
pursuant to the laws of Canada with a
registered office at 7373 De La Côte Vertu
Blvd West, in the City of Montreal, Province
of Québec, Canada, H4S 1Z3
Respondent

AMENDED LIST OF EXHIBITS

EXHIBIT P-1: Copy of the Petitioner's Employment History;

EXHIBIT P-1A: Copy of the Petitioner, Carole Davies' Employment History;

EXHIBIT P-2: Copy of the Industry Canada Extract of Air Canada

EXHIBIT P-3: Copy of the Registraire des Entreprises Québec Extract; of Air Canada

EXHIBIT P-4: Copy of the Retirement Handout Extract.

EXHIBIT P-5: Air Canada Recruitment advertising – January 2020

EXHIBIT P-6: Letter from Air Canada Save Our Seniority - ACSOS

Montreal, this 28th day of January 2021



Me Michael Heller
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Carole Davies - Employment History with Air Canada

Joined Trans Canada Airlines in March 1961 until in May 1963. I worked in the Vice President's office for D. W. Benson, Manager, Aircraft Contract Liaison as his secretary.

Temporarily hired in November/December 1963 by TCA – (becoming Air Canada around this time). I worked in the Director of Passenger Service Department.

Opportunity for permanent job in January 1964 as Personnel Assistant/Secretary at KLM Royal Ditch Airlines, until Air Canada rehired me as Stewardess, training starting 24 May 1964.

When integration of men/women was made possible, I became a Purser with Air Canada around 1971.

I took early retirement effective February 1, 1991, with the one year "package deal".

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO. : 500-06-001039-201

SUPERIOR COURT OF QUEBEC
(Class Action)

WALTER EDWARD DAVIES, a person residing at 85
Brookside Ave., in the City of Beaconsfield, Province of
Quebec, Canada, H9W 5C5

Petitioner
v.

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laws of Canada with a registered office at 7373 De La
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of Québec, Canada, H4S 1Z3

Respondent

**APPLICATION TO SUBSTITUTE THE
PETITIONER**

ORIGINAL

BH-0214

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