

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

NO: 500-06-001147-210

(Class Action)
SUPERIOR COURT

ROBERT ITZKOVITZ, domiciled at [REDACTED]
[REDACTED]

Applicant

-VS-

AIR CANADA, legal person having its head office at 7373 boulevard Côte Vertu West, Ville Saint-Laurent, District of Montreal, Province of Quebec, H4S 1Z3

Defendant

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS
FOLLOWS:**

I. INTRODUCTION

1. The Applicant wishes to institute a class action on behalf of the following class, of which he is a member, namely:

Class:

All persons worldwide who travelled to or from the United Kingdom with Air Canada and who were charged the Air Passenger Duty on a ticket for a child under 16 years old on the date of the flight, for travel as of March 1, 2016.

(hereinafter referred to as the “**Class**”)

2. The purpose of this class action is for the Court to condemn Air Canada to reimburse the aggregate amounts of the Air Passenger Duty that it unlawfully collected from Class Members for flights to and from the United Kingdom,

specifically for passengers under 16 years of age who travelled from March 1, 2016 onwards, as well as to order Air Canada to cease the prohibited practice;

3. Air Canada, prides itself as “*Canada's largest domestic and international airline serving more than 210 airports on six continents*”. Its head office is the district of Montreal, province of Quebec, as it appears from an extract of the enterprise’s information statement from the Quebec enterprise register for Air Canada disclosed as **Exhibit P-1**;
4. Air Canada does business in the province of Quebec and manages websites and call centers where people can purchase flight tickets and vacation packages. Air Canada is a merchant within the meaning of Quebec’s *Consumer Protection* (the “**C.P.A.**”) and its activities are governed by this legislation, among others;
5. One way that Air Canada makes money is by collecting a tax known as the “Air Passenger Duty” from consumers who travel to and from the U.K., and by keeping this “tax” in its coffers (i.e. by never remitting it to the U.K. authorities);
6. The reason that Air Canada never remits the the “Air Passenger Duty” it collects on youth fares (for children 12 to 16 years old) is because since March 1, 2016, children are exempt from the Air Passenger Duty;
7. According to the Department for Transport of the United Kingdom, the Air Passenger Duty is described as follows, Applicant disclosing **Exhibit P-2** (page 6):
 - 1.1 Air Passenger Duty (APD) is a tax paid by airlines on each chargeable passenger aboard a chargeable aircraft that takes off from a UK airport. The cost of the tax is typically passed on by airlines to consumers in advance of the flight through contracted air fare prices.
8. The rates for the Air Passenger Duty vary, but will generally cost either 82 or 180 British Pounds (approx. \$139.33 or \$291.01 Canadian), as it appears from the UK government’s “Rates for Air Passenger Duty” webpage disclosed as **Exhibit P-3**;
9. For travel as of March 1, 2016, tickets purchased for children under 16 years of age travelling in economy are exempt from the Air Passenger Duty, as it appears from the U.K. government’s webpage titled “Exemptions from Air Passenger Duty”, disclosed as **Exhibit P-4**:

Children under 16 years old on the date of the flight, and in the lowest class of travel, are exempt. If children under 16 years old are travelling in any other class or in business jets, they are not exempt.
10. Nonetheless, Air Canada is the only Canadian airline to continue unlawfully collecting an amount on account of the Air Passenger Duty for children under 16 years old, travelling in economy, up until the present day;

11. Screen captures taken on May 10, 2021 of the purchase process for an economy youth ticket on Air Canada’s website proves that Air Canada still charges and collects payment for the Air Passenger Duty, as it appears from captures of the purchase process disclosed *en liasse* as **Exhibit P-5**:

The screenshot shows a 'Price breakdown' window with a close button (X) in the top right corner. The window lists various taxes and charges. The 'Air Passenger Duty-United Kingdom (139.33 x2)' is highlighted in blue and has a value of \$278.66. The 'GRAND TOTAL - Canadian dollars' is \$1463.40.

Taxes, fees and charges	
Quebec Sales Tax - Canada - 1000043172 TQ1991	\$6.98
Air Passenger Duty-United Kingdom (139.33 x2)	\$278.66
Goods and Services Tax - Canada - 100092287 RT0001	\$3.50
Exceptional Regulatory Charge - United Kingdom (15.12 x2)	\$30.24
Passenger Service Charge - United Kingdom (30.19 x2)	\$60.38
Harmonized Sales Tax - Canada - 100092287 RT0001	\$1.56
GRAND TOTAL - Canadian dollars	\$1463.40

12. As it appears from “Step 6” of the purchase process (Exhibit P-5), Air Canada is aware of the age of their passengers prior to selling them a ticket, but still imposes the Air Passenger Duty of **\$139.33** (i.e. 82 British Pounds) for both the youth and adult fares:

The screenshot shows the 'Youth' step of the booking process. It includes a warning: 'Each passenger's name must match the name on the identification that they will be required to provide at the airport when they check in for their flight.' Below this are fields for 'First name' (Adult), 'Middle name', and 'Last name' (Fare). There are also dropdown menus for 'Day of birth' (08), 'Month' (MAY), 'Year' (2007), and 'Gender' (Male). A 'Loyalty program*' dropdown is also present. At the bottom, there are links for 'Traveller numbers and redress number' and 'Accessibility services'.

13. Consumers who purchased their Air Canada tickets through travel agents such as Expedia, or with “points” via loyalty programs, are also included in this class action as Air Canada would have deceitfully and unlawfully imposed the Air Passenger Duty on youth fares that should have otherwise been exempt;
14. It is worth emphasizing that both Air Transat and WestJet, Air Canada’s competitors, do not collect the Air Passenger Duty for the youth fares they sell for travel to/from the UK;
15. Screen captures taken on May 10, 2021 of the purchase process on Air Transat’s website prove that Air Transat does not collect the Air Passenger Duty on youth fares, as it appears from the screen captures disclosed *en liasse* as **Exhibit P-6**:

1 Adult	
Flight	1 x \$79.00
Other ATC	1 x \$400.00
^ Taxes, fees & charges	1 x \$245.17
United Kingdom - Passenger service charge	1 x \$26.06
Canada - Quebec sales tax	1 x \$3.49
Canada - Goods & Services Tax	1 x \$1.75
Canada - Harmonized sales tax	1 x \$1.56
United Kingdom - Air Passenger duty	1 x \$139.40
Canada - Air Travellers security charge	1 x \$25.91
Canada - Airport improvement fee	1 x \$47.00
Total	1 x \$724.17
1 Youth	
Flight	1 x \$79.00
Other ATC	1 x \$400.00
^ Taxes, fees & charges	1 x \$105.77
United Kingdom - Passenger service charge	1 x \$26.06
Canada - Quebec sales tax	1 x \$3.49
Canada - Goods & Services Tax	1 x \$1.75
Canada - Harmonized sales tax	1 x \$1.56
Canada - Air Travellers security charge	1 x \$25.91
Canada - Airport improvement fee	1 x \$47.00
Total	1 x \$584.77

16. For its part, WestJet indicates on its website that youth fares are “exempt from the United Kingdom’s Air Passenger Duty”, as it appears from **Exhibit P-7**:

! Youth between 12 and 15 years old (at the time of departure) are exempt from the United Kingdom’s Air Passenger Duty when booked on a Basic, Econo or EconoFlex fare. Please call 1-888-WESTJET (1-888-937-8538) to book their flight without this tax.

17. In the circumstances, the Applicant is entitled to ask the Court to condemn Air Canada to both compensatory and punitive damages, in amounts to be determined on the merits, as well as for injunctive relief ordering Air Canada to cease the practice;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

18. The Applicant is a consumer within the meaning of the C.P.A.;
19. On November 11, 2019, the Applicant purchased 3 tickets in economy to fly from Montreal to London (Heathrow), as it appears from his booking confirmation receipt disclosed as **Exhibit P-8**;

20. On December 28, 2019, the Applicant travelled to the United Kingdom with his child who was 14 years old at the time of travel. They returned from the United Kingdom on January 3, 2020;
21. As it appears from Exhibit P-8, Air Canada charged the Air Passenger Duty in the amount of \$291.01 (i.e. 180 British Pounds) for both the 2 adult fares, as well as for the 1 youth fare, even though children under 16 years of age are exempt from this tax;
22. As such, not only did Air Canada collect and receive money it was not entitled to, but it also made – and continuous to make – false and misleading representations concerning the existence, charge, amount and rate of a duty, which is contrary to section 227.1 C.P.A.
23. In the circumstance, the Applicant is entitled to claim compensatory damages in the amount of \$291.01;
24. The Applicant also claims, on his behalf and on behalf of all class members, punitive damages in the amount of \$500 each for what can only be qualified as an intentional breach and egregious misconduct on the part of Air Canada (none of its competitors collect the Air Passenger Duty and Air Canada does not remit it to the UK authorities);
25. A condemnation in punitive damages is appropriate given that both WestJet and Air Transat inform consumers that youth fares are exempt from the Air Passenger Duty, while Air Canada continues to fail to mention this important fact to its customers;
26. The Applicant also seeks injunctive relief ordering Air Canada to cease charging the Air Passenger Duty on youth fares (children under 16) travelling to/from the U.K. in economy;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

27. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:
 - a) Did Air Canada unlawfully collect the Air Passenger Duty for youth fares and, if so, are Class members entitled to a reimbursement of the amount paid?
 - b) By charging the Air Passenger Duty, did Air Canada violate s. 227.1 C.P.A., and, if so, are Class members entitled to punitive damages pursuant to s. 272 C.P.A.?
 - c) Should an injunctive remedy be ordered to prohibit Air Canada from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?

- d) When does prescription start for Class members and what is the effect of Air Canada's perpetuation of the misrepresentation on the starting point of prescription?

C) THE COMPOSITION OF THE CLASS

28. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
29. The Applicant presumes that Air Canada has an important number of customers who purchased youth fares and who were unlawfully charged the Air Passenger Duty. While he is unaware of the total number of Class Members who are included in the Class, he estimates that it is likely in the thousands, if not more;
30. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Air Canada;
31. Class members are numerous and are dispersed across the province;
32. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
33. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS

34. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
- a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
- b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
- c) His interests are not antagonistic to those of other Class members;
35. The Applicant adds that he participated in the filing of the present application and has a good understanding of the legal issue;
36. He is taking this action so that he and all Class members can be compensated, to hold Air Canada accountable and so that Air Canada modifies its practice;

III. DAMAGES

37. Air Canada has breached several obligations imposed on it by legislation in Quebec, notably:
- a) Quebec's C.P.A., including sections 215, 219, 227.1 and 228, thus rendering section 272 applicable;
 - b) Article 1492 C.C.Q.
38. In light of the foregoing, the following damages may be claimed against Air Canada:
- a) compensatory damages in the aggregate of the Air Passenger Duty unlawfully charged; and
 - b) punitive damages of \$500 per Class member for the breach of obligations imposed pursuant to s. 272 C.P.A.;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

39. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;
40. The conclusions that the Applicant wishes to introduce by way of an originating application are:
1. **GRANT** the Plaintiff's action against Defendant;
 2. **ORDER** the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts;
 3. **CONDEMN** the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;
 4. **CONDEMN** the Defendant to pay to the members of the Class \$500 each in punitive damages, and **ORDER** collective recovery of these sums;
 5. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
 6. **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
 7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

8. **CONDEMN** the Defendant to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

V. PRESCRIPTION

41. In the present case, Air Canada should not be entitled to claim the benefit of prescription because they misled – and continue to mislead – Class Members about the existence of the Air Passenger Duty on youth fares (see Exhibit P-5 for an example as recent as May 10, 2021);
42. These misrepresentations have been ongoing for bookings for travel to/from the U.K. dating back to March 1, 2016, when the exemptions came into effect;
43. Air Canada is the nation's largest airline and where a professional reassures the client, the Court of Appeal has stated that the prescription starts at the moment when the confidence breaks. Applying this reasoning by analogy to the present case, most Class Members are still unaware of the ongoing false representations and it is respectfully submitted that prescription should only start running once Air Canada ceases the unlawful practice;

VI. JURISDICTION

44. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal, on behalf of an international class, because Air Canada has its head office in Quebec and article 3148(1) C.C.Q. provides for this.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present Application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All persons worldwide who travelled to or from the United Kingdom with Air Canada and who were charged the Air Passenger Duty on a ticket for a child under 16 years old on the date of the flight, for travel as of March 1, 2016.

or any other class to be determined by the Court.

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did Air Canada unlawfully collect the Air Passenger Duty for youth fares and, if so, are Class members entitled to a reimbursement of the amount paid?
 - b) By charging the Air Passenger Duty, did Air Canada violate s. 227.1 C.P.A., and, if so, are Class members entitled to punitive damages pursuant to s. 272 C.P.A.?
 - c) Should an injunctive remedy be ordered to prohibit Air Canada from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
 - d) When does prescription start for Class members and what is the effect of Air Canada's perpetuation of the misrepresentation on the starting point of prescription?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
1. **GRANT** the Plaintiff's action against Defendant;
 2. **ORDER** the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts;
 3. **CONDEMN** the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;
 4. **CONDEMN** the Defendant to pay to the members of the Class \$500 each in punitive damages, and **ORDER** collective recovery of these sums;
 5. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
 6. **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
 7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 8. **CONDEMN** the Defendant to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

6. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;
7. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notices to Class members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
8. **ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";
9. **THE WHOLE** with costs including publication fees.

Montreal, May 11, 2021

Montreal, May 11, 2021

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

Mtre Michael E. Vathilakis

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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the applicant.

If the application pertains to an employment contract, consumer contract or insurance

contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of the enterprise's information statement from the Quebec enterprise register for Air Canada;
- Exhibit P-2:** Copy of a document from the Department for Transport of the United Kingdom titled "Displaying Air Passenger Duty in air travel pricing: Call for evidence";
- Exhibit P-3:** UK government's "Rates for Air Passenger Duty" webpage;
- Exhibit P-4:** U.K. government's "Exemptions from Air Passenger Duty" webpage;
- Exhibit P-5:** *En liasse*, screen captures of the purchase process for a youth ticket on Air Canada's website taken on May 10, 2021;
- Exhibit P-6:** *En liasse*, screen captures of the purchase process for a youth ticket on Air Transat's website taken on May 10, 2021;
- Exhibit P-7:** Screen capture of WesJet website taken on May 10, 2021;
- Exhibit P-8:** Copy of the Applicant's Air Canada Booking Confirmation.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, May 11, 2021

Montreal, May 11, 2021

(s) Renno Vathilakis Inc.

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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: AIR CANADA
7373 Côte Vertu West Boulevard
Ville Saint-Laurent, Quebec, H4S 1Z3

Defendant

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, May 11, 2021

Montreal, May 11, 2021

(s) Renno Vathilakis Inc.

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(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

ROBERT ITZKOVITZ

Applicant

v.

AIR CANADA

Defendant

APPLICATION TO AUTHORIZE THE BRINGING OF
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OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)

COPY

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BL 6059

N/D: JZ-228
