



No. S217110  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Paul Gauthier and Christopher Reaume**

Plaintiffs

and

**Air Canada and WestJet**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, RSBC 1996, C. 50

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**NOTICE OF APPLICATION  
CONTESTED CERTIFICATION**

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**Name of Applicants:** Paul Gauthier and Christopher Reaume

**TO:** the Defendants

**AND TO:** their solicitors

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, B.C. V6Z 2E1 on March 11 to 15, 2024, at 10:00 am for the order(s) set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

1. The plaintiffs seek orders:
  - (a) certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 ("***Class Proceedings Act***");
  - (b) defining the **Classes** as:

**Air Canada Domestic Class**

- (i) every resident of Canada with a Disability (defined below) who paid Additional Fare (defined below) for a domestic flight operated by Air Canada or an agent for Air Canada between December 5, 2005, and December 5, 2008, except those people who paid Additional Fare in Quebec;
- (ii) every resident of Canada who paid Additional Fare to be an Attendant on a domestic flight operated by Air Canada or an agent for Air Canada, between December 5, 2005, and December 5, 2008, except those people who paid Additional Fare in Quebec;

**Air Canada Cross Border/International Class**

- (iii) every resident of Canada with a Disability who paid Additional Fare for an international flight (including a flight to the United States) operated by Air Canada or an agent for Air Canada from December 5, 2005 onwards;
- (iv) every resident of Canada who paid Additional Fare to be an Attendant on an international flight (including a flight to the United States) operated by Air Canada or an agent for Air Canada from December 5, 2005 onwards;

**WestJet Cross Border/International Class**

- (v) every resident of Canada with a Disability who paid Additional Fare for an international flight (including a flight to the United States) operated by WestJet or an agent for WestJet from December 5, 2005 onwards, except those people who reside in Quebec;
- (vi) every resident of Canada who paid Additional Fare to be an Attendant on an international flight (including a flight to the United

States) operated by WestJet or an agent for WestJet from December 5, 2005 onwards, except those people who reside in Quebec;

- (c) appointing Paul Gauthier and Christopher Reaume as representative plaintiffs on behalf of the Classes;
- (d) stating the nature of the claims asserted on behalf of the Classes to be:
  - (i) the defendants' have been unjustly enriched and contracts for Additional Fares are void and unenforceable because they are unconscionable or, with respect to the Additional Fares paid by the Air Canada Domestic Class, they are contrary to the doctrines of statutory illegality or public policy;
  - (ii) with respect to the Quebec residents of the Air Canada International Flight Class, a declaration that Air Canada's pricing policy is discriminatory and/or abusive, giving rise to damages;
  - (iii) in the alternative, the Defendants' "per seat" fare policies amount to unconscionable, unfair, excessive, unreasonable, harsh, disproportionate, discriminatory and/or abusive acts or practices pursuant to ss. 8, 9, 10, 171 and 172 of the *British Columbia Business Practices and Consumer Protection Act*, SBC 2004, c 2 ("**BPCPA**"); ss. 6 and 13 of the *Alberta Consumer Protection Act*, RSA 2000, c. C-26.3 ("**Alberta CPA**"); ss. 6, 7 and 93 of the *Saskatchewan Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 and equivalent provisions under *The Consumer Protection Act*, SS 1996, c C-30.1 (collectively, "**Saskatchewan CPBPA**") ss. 2, 3, and 23 of the *Manitoba Business Practices Act*, CCSM, c B120 ("**Manitoba BPA**") ss. 15, 17 and 18 of the *Ontario Consumer Protection Act, 2002*, SO 2002, c 30, Sch A ("**Ontario CPA**"); art. 1437 of the *Civil Code of Québec* and s. 8 of the *Quebec Consumer Protection Act*, CQLR c P-40.1 ("**Quebec CPA**"); ss. 2

and 4 of the *P.E.I. Business Practices Act*, RSPEI 1988, c B-7 (“**PEI BPA**”); and ss. 8 and 10 of the *Newfoundland and Labrador Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (“**NL CPBPA**”);

- (e) stating the relief sought to be:
  - (i) a declaration that the defendants have been unjustly enriched in the amount of the Additional Fares at the expense of the plaintiffs and class;
  - (ii) a declaration that the plaintiffs are entitled to restitution in the aggregate in the amount of the Additional Fares;
  - (iii) an order directing the defendants to disgorge the amount of the Additional Fares;
  - (iv) restoration and damages pursuant to ss. 171, 172 of the BC BPCPA; s. 13(2) or s. 142.1 of the Alberta CPA; s. 93(1) of the Saskatchewan CPBPA; s. 23(2) of the Manitoba BPA; s. 18 of the Ontario CPA; articles 1437, 1590 and 1607 of the *Civil Code of Québec* and s. 272 of the Quebec CPA; s. 4 of the PEI BPA; and s. 10 of the NL CPBPA;
  - (v) a permanent injunction restraining the Defendants from charging the Additional Fares pursuant to ss. 171, 172 of the BC BPCPA; s. 13(2) or s. 142.1 of the Alberta CPA; s. 93(1) of the Saskatchewan CPBPA; s. 23(2) of the Manitoba BPA; s. 18 of the Ontario CPA; s. 4 of the PEI CPA; and s. 10 of the NL CPBPA;
  - (vi) an order directing the Defendants to advertise any adverse findings against them pursuant to s. 172(3)(c) of the BC BPCPA; s. 19 of the Alberta CPA; s. 93(1)(f) of the Saskatchewan CPBPA; s. 23(2)(f) of the Manitoba BPA; s. 18(11) of the Ontario CPA; s. 4(1) of the PEI BPA; and s. 10(2)(f) of the NL CPBPA;

- (vii) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128;
  - (viii) punitive damages;
  - (ix) interest pursuant to the Court Order Interest Act and similar provisions under the *Judgment Interest Act*, RSA 2000, c J-1, *Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2, *The Court of Queen's Bench Act*, CCSM c C280, *Courts of Justice Act*, R.S.O. 1990, c. C.43, *Civil Code of Québec*, CQLR c CCQ-1991 (including the additional indemnity provided for in article 1619), *Judicature Act*, RSNB 1973, c J-2, *Judicature Act*, RSNS 1989, c 240, *Judicature Act*, R.S.P.E.I. 1988 c. J-2.1, *Judgment Interest Act*, RSNL 1990, c. J-2, *Judicature Act*, R.S.Y. 2002, c. 128, *Judicature Act*, R.S.N.W.T., 1988 c. J-1, *Rules of the Supreme Court of the Northwest Territories*, NWT Reg (Nu) 010-96;
  - (x) costs for the administration of the plan of distribution for relief obtained in this action, including an aggregate damage award; and
  - (xi) such further and other relief as to this Honourable Court may seem just;
- (f) certifying the proceeding on the basis of the Common Issues set out in **Schedule "A"** to this Notice of Application;
  - (g) approving the proposed litigation plan set out in **Schedule "B"** to this Notice of Application as sufficient at this time; and
  - (h) any such further and other relief and directions as a class counsel may request and as this honourable court may deem just.

## PART 2: FACTUAL BASIS

### Overview

2. This is a proposed class proceeding on behalf of people who have had to pay for an additional seat on a flight to accommodate their Disability<sup>1</sup> (“**Additional Fare**”).
3. At all relevant times, the defendants’ tariffs imposed “per seat” pricing policies, meaning a ticket must be purchased for every seat.<sup>2</sup> This means that people who require an additional seat due to a Disability have to pay more than others to travel by air.
4. The Classes (defined in para. 1(b) above, members of which are referred to as “**Class Members**”) consist of people who are severely disabled: they are non-self-reliant and require assistance to meet personal care needs or have such significant mobility or communication impairments that they would require extraordinary assistance in the event of an emergency evacuation or decompression.<sup>3</sup>
5. These individuals require an attendant who can provide disability-related care in-flight and/or safety-related services (“**Attendant**”), both from a practical perspective but also pursuant to the defendants’ tariffs. The defendants require people with severe disabilities to fly with an Attendant and can refuse boarding if they attempt to fly alone.<sup>4</sup> At all material times the defendants have required these individuals to pay for their Attendant’s airfare.

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<sup>1</sup> Disability is defined in para. 29 below as: (i) a disability such that a defendant requires them to be accompanied by an Attendant on flights; or (ii) obesity such that the individual cannot lower the arm rest of a coach or economy class seat; or any other disability that requires additional seating to accommodate that disability on flights.

<sup>2</sup> Air Canada’s Response to Amended Notice of Civil Claim at paras. 15, 17; WestJet’s Response to Civil Claim Part 1 Division 1 at para. 1, Part 1 Division 2 at para. 2.

<sup>3</sup> Canadian Transportation Agency Decision No. 6-AT-A-2008, rendered January 10, 2008 (“**Norman Decision**”) at para. 290, Affidavit #1 of S. Majidi, made March 21, 2023 (“**Majidi Affidavit**”) Exhibit A at p. 89

<sup>4</sup> WestJet Tariff No. WS1 (“**WJ International Tariff**”) Rule 30(B)(3)(a), Majidi Affidavit at Exhibit J pp. 515 Air Canada Tariff ATPCO AC-2 (“**AC International Tariff**”) Rule 75(A)(6) Majidi Affidavit at Exhibit I pp. 453

Air Canada Tariff CTA(A) No. 3 (“**AC Domestic Tariff**”) Rule 75(A)(6), Majidi Affidavit at Exhibit H pp. 337

6. The Classes also consist of individuals with severe obesity who cannot lower the armrest in an economy seat due to their body size, anyone else who requires extra space on flights due to a Disability, and Attendants who paid on behalf of a person with a Disability for their seat.<sup>5</sup>
7. The plaintiffs submit the defendants have been unjustly enriched by requiring people with such Disabilities to pay Additional Fares. The contracts for Additional Fares are void and unenforceable pursuant to the doctrine of unconscionability or, with respect to Additional Fares paid by the Air Canada Domestic Class, they are contrary to the doctrines of statutory illegality or public policy because these fares are both discriminatory and unjustified, as found by the Canadian Transportation Agency. In the alternative, the plaintiffs submit these contracts are contrary to consumer protection legislation because they are unconscionable acts or practices and/or unfair acts or practices, as defined in those statutes. With respect to the Quebec residents of the Air Canada Cross Border/International Class, Air Canada committed a contractual fault, as its pricing policies and practices are unconscionable, excessive, unreasonable, discriminatory and/or abusive.

### ***Background to this Action***

#### **Canadian Transportation Agency Proceedings**

8. Prior to 2008, the defendants charged “per seat” for both domestic and international (including cross-border) flights. In 2008, the Canadian Transportation Agency (“**Agency**”) found this was an undue obstacle to the mobility of people with disabilities, contrary to s. 172 of the *Canada Transportation Act*.<sup>6</sup> The Agency ordered the defendants to stop charging Additional Fares for domestic flights and to implement what is referred to as “one person one fare” (or “**1P1F**”) pricing policies for domestic flights (“**Norman Decision**”).<sup>7</sup> The Federal Court of Appeal refused leave to appeal, as did the Supreme Court of Canada.<sup>8</sup>

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<sup>5</sup> Second Amended Notice of Civil Claim, filed March 17, 2023, at para. 9

<sup>6</sup> *Canada Transportation Act*, SC 1996, c 10 (“**Canada Transportation Act**”)

<sup>7</sup> *Supra* footnote 3

<sup>8</sup> *Air Canada, Jazz Air LP v. Canada*, 2008 CarswellNat 4286 (FCA), leave to appeal ref’d 2008 CanLII 60665 (SCC)

9. In the proceedings before the Agency, the defendants insisted 1P1F would be cost-prohibitive and heavily abused. The defendants put forward 16 witnesses but failed to prove either allegation. The Agency noted the defendants control both the disability criteria used to qualify for a second seat and the screening process, which enables them to limit abuse.<sup>9</sup> In terms of cost, the Agency found that implementing 1P1F would result in approximately 41¢ and 16¢ in foregone revenue per domestic trip for Air Canada and WestJet, respectively.<sup>10</sup> These lost revenues represented a 0.09% annual decrease for Air Canada and 0.16% for WestJet.<sup>11</sup>
10. In other words, the Agency found it would cost almost nothing for the defendants to stop charging the severely disabled and the severely obese a premium to travel by air.
11. In its assessment, the Agency categorically rejected the defendants' cost estimates. The Agency concluded Air Canada's losses were approximately \$7.1 million, whereas Air Canada had argued its losses would be more than eight times that amount, between \$49.6 to \$59.1 million.<sup>12</sup> Similarly with WestJet, the Agency found its losses would be approximately \$1.5 million where WestJet had argued its losses would be more than ten times that amount, between \$12.9 to \$21.7 million.<sup>13</sup>
12. The Agency further determined that average domestic ticket prices would increase by 77¢ for an Air Canada flight and 44¢ for a WestJet flight.<sup>14</sup>
13. The Agency also found the defendants' position regarding the cost and logistical difficulties of implementing 1P1F to be completely overstated. The Agency found the defendants:

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<sup>9</sup> Norman Decision at paras. 320-330, Majidi Affidavit Exhibit A at p.96 - 98

<sup>10</sup> Norman Decision at para. 712, Majidi Affidavit Exhibit A at p. 179

<sup>11</sup> Norman Decision at para. 817, Majidi Affidavit Exhibit A at p. 203

<sup>12</sup> Norman Decision Table 21 and paras. 702-703

<sup>13</sup> *Ibid*

<sup>14</sup> Norman Decision at paras. 701, 712, Majidi Affidavit Exhibit A at p. 176, 179



- (a) failed to demonstrate that they would be unable to financially sustain a 1P1F policy or that the cost would be in any way harmful to them;<sup>15</sup>
  - (b) failed to identify any additional operating costs they would incur or to demonstrate any impact of those costs;<sup>16</sup>
  - (c) failed to provide any evidence to support their claims that implementing 1P1F would be heavily abused let alone abused at all;<sup>17</sup> and
  - (d) failed to show any operational constraints that would prevent the defendants from operationalizing/implementing a 1P1F policy.<sup>18</sup>
14. Following the Norman decision in 2008, the defendants stopped charging Additional Fares for domestic flights but have continued to charge Additional Fares for international and cross-border flights, despite the blatant unfairness of such contracts.
15. The plaintiffs are aware of four attempts to have the Agency expand 1P1F pricing to cross-border and international flights. In each instance the Agency refused to decide the applications:
- (a) In response to two of the four applications, the Agency held (*inter alia*) that “a single complainant is not the most appropriate means of addressing the systemic question of whether the one-person one-fare principle should be expanded to international air services”.<sup>19</sup>
  - (b) The Council of Canadians with Disabilities (“**CCD**”) brought an application that was intended to be a systemic case similar to the type of proceeding

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<sup>15</sup> Norman Decision at paras. 775, 827, Majidi Affidavit Exhibit A at p. 194, 205

<sup>16</sup> Norman Decision at para. 746, Majidi Affidavit Exhibit A at p. 187

<sup>17</sup> Norman Decision at para. 329, Majidi Affidavit Exhibit A at p. 98

<sup>18</sup> Norman Decision at paras. 877-881, Majidi Affidavit Exhibit A at p. 216 - 217

<sup>19</sup> CTA Decision 1-AT-C-A-2019 at para. 64, Majidi Affidavit Exhibit C at p. 249

Similar language is found in CTA Decision No. 324-AT-A-2015 at para. 67, Majidi Affidavit Exhibit B at p. 240

that resulted in the Norman Decision.<sup>20</sup> On June 10, 2016, the Agency stayed the CCD's application, apparently indefinitely. The CCD has since withdrawn its application in favour of these proceedings.<sup>21</sup>

- (c) The last application the plaintiffs are aware of was brought by an individual who is blind and travels with a guide dog. The Agency again refused to determine the application or decide whether charging Additional Fares for international flights is contrary to the *Canada Transportation Act*.<sup>22</sup> In its decision (released on July 21, 2022), the Agency explained that it was unsure whether it could impose 1P1F pricing on foreign airlines and did not want to create a competitive disadvantage by imposing it on Canadian airlines.<sup>23</sup> In coming to this decision, the Agency did not point to any evidence as to how extending 1P1F to international/cross-border flights would impact the defendants. It does not appear the defendants were ever required to provide such evidence. The Agency's decision is not a determination on the merits of whether the defendants' tariffs are contrary to the *Canada Transportation Act*, but an express refusal to consider the application. In the words of the Agency:

[3] ... the Agency declines to determine the application, pursuant to section 37 of the CTA. As such, the Agency is not issuing a decision on the merits of the application and closes the file. [Emphasis added]

### Quebec Proceedings

16. Following the Norman Decision, two class actions were authorized in Quebec (collectively, the "**Quebec Proceedings**") seeking compensation from Air Canada and WestJet for Additional Fares.

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<sup>20</sup> Agency Case No. 16-00664, Majidi Affidavit Exhibit E at p. 258. The CCD was an applicant in the Norman Decision.

<sup>21</sup> Majidi Affidavit Exhibits F and G at pp. 269, 273

<sup>22</sup> CTA Decision No. 95-AT-A-2022 ("**Yale CTA Decision**") at paras. 3, 4, Majidi Affidavit Exhibit D at p. 251

<sup>23</sup> Yale CTA Decision at para. 27, Majidi Affidavit Exhibit D at p. 255

17. The first case was *PA c. Air Canada*, which was authorized against Air Canada but limited to domestic fares only.<sup>24</sup>
18. *PA c. Air Canada* went to trial and the plaintiff was successful.<sup>25</sup> The Quebec Superior Court has ordered Air Canada to compensate the following classes of people:

All persons with a deficiency (disabled) or recognized as having a functional disability due to their obesity residing in Canada who, on a domestic flight operated by Air Canada or one of its authorized agents, had to pay Air Canada, in Quebec, additional fees for the seat of an attendant and/or for a location adapted to their condition between December 5, 2005 and December 5, 2008.

And

"All natural persons in Canada who, between December 5, 2005 and December 5, 2008, paid Air Canada, in Quebec, fees for a seat on a domestic flight operated by Air Canada while acting as the attendant of a person with a disability. »<sup>26</sup>

19. The decision was upheld by the Quebec Court of Appeal and the Supreme Court of Canada denied leave.<sup>27</sup>
20. The Quebec Superior Court held that, by charging Additional Fares through a discriminatory pricing policy, Air Canada committed a fault contrary to article 1458 of the *Civil Code of Québec*. Article 1458 states that "Every person has a duty to honour his contractual undertakings [and] [w]here he fails in this duty, he is liable for any bodily, moral or material injury he causes to the other contracting party and is bound to make reparation for the injury." The court found that committing a discriminatory act in the contractual process contravened the implicit content of the contract and was thus a breach of this provision.<sup>28</sup>

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<sup>24</sup> *Picard v. Air Canada*, 2011 QCCS 5186 ("PA Certification Decision")

<sup>25</sup> *PA c. Air Canada*, 2019 QCCS 606 ("PA Merits Decision")

<sup>26</sup> PA Merits Decision at para. 153

<sup>27</sup> *Air Canada v. PA*, 2021 QCCA 873, leave to appeal ref'd 2022 CanLII 16716 (SCC)

<sup>28</sup> PA Merits Decision at paras. 63-83

21. In the course of the *PA c. Air Canada* proceedings, Air Canada unsuccessfully argued that the Canadian Human Rights Tribunal (“CHRT”) had exclusive jurisdiction over the question of whether it committed a discriminatory act.<sup>29</sup> The Quebec Superior Court found it had concurrent jurisdiction: there is no exclusive jurisdiction clause in the *Canadian Human Rights Act*<sup>30</sup> and the CHRT can refer complaints of discrimination to other forums.<sup>31</sup> The Court held that these provisions show “the current legislative policy militates ... in favor of concurrent jurisdiction”,<sup>32</sup> and to find otherwise would “risk losing the rights of litigants” and “restrict the remedies available to litigants”.<sup>33</sup> Air Canada did not appeal this decision.
22. *PA c. Air Canada* was initially authorized on behalf of a national class. Following the merits trial, the class was narrowed to exclude contracts entered into outside of Quebec. The Quebec Superior Court held that the plaintiff did not provide evidence of the legal basis for the common law claims, therefore the Court could not decide them.<sup>34</sup> Rather than dismiss the claims, the Court modified the class to include only those who contracted with Air Canada in Quebec in its liability findings.<sup>35</sup> This decision was upheld on appeal and the Supreme Court of Canada denied leave.<sup>36</sup>
23. This proposed proceeding seeks to advance the claims of the people with Disabilities who were excluded from *PA c. Air Canada* (i.e. the Air Canada Domestic Class). Article 2908 of the *Civil Code of Québec* tolled the limitation period for the Air Canada Domestic Class until the end of the appeal period for the PA Certification Decision.<sup>37</sup>

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<sup>29</sup> PA Certification Decision at paras. 50-74

<sup>30</sup> *Canadian Human Rights Act*, RSC 1985 c H-6 (“**Canadian Human Rights Act**”)

<sup>31</sup> PA Certification Decision at paras. 69-72

<sup>32</sup> PA Certification Decision at para. 69

<sup>33</sup> PA Certification Decision at paras. 70, 72

<sup>34</sup> PA Merits Decision at paras. 39-50

<sup>35</sup> PA Merits Decision at para. 50

<sup>36</sup> *Supra* footnote 27

<sup>37</sup> The limitation period would be the same in BC per s. 38.1 of the *Class Proceedings Act*. The appeal period for the PA Certification Decision ended on August 24, 2021, and this claim was initiated on August 3, 2021.

24. The second of the Quebec Proceedings is *Chabot c. WestJet*, which was brought against WestJet.<sup>38</sup> This case is limited to contracts purchased in Quebec but it advances claims for domestic as well as cross-border/international flights (unlike *PA c. Air Canada*, which was limited to domestic flights only). The case was successfully authorized as a class proceeding in 2013 on behalf of the following classes:

All persons with a disability or who are recognized as functionally disabled by obesity, who reside in Quebec, and who, on a flight operated by WestJet or one of its agents, have paid additional charges to WestJet or one of its agents for the seat of an attendant and/or for a place adapted to their condition since December 5, 2005.

and

All natural persons in Quebec who, since December 5, 2005, have paid charges to WestJet or one of its agents for a seat operated by WestJet or one of its agents while they were acting as attendant for a person with a disability.<sup>39</sup>

25. WestJet unsuccessfully sought to have *Chabot c. WestJet* dismissed on the basis that the Agency has exclusive jurisdiction over issues regarding its tariffs.<sup>40</sup> The Quebec Superior Court held the *Canada Transportation Act* did not oust its jurisdiction to decide entitlement to damages in these circumstances.<sup>41</sup> The Quebec Court of Appeal agreed, finding that the proposed class action was not an attempt to regulate WestJet (which fell within the Agency's exclusive jurisdiction) but an action for damages to address alleged wrongs.<sup>42</sup> The Supreme Court of Canada denied leave to appeal.<sup>43</sup>
26. *Chabot c. WestJet* is heading towards trial on the merits.

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<sup>38</sup> *Chabot c. WestJet*, 2013 QCCS 5297

<sup>39</sup> *Chabot c. WestJet*, 2016 QCCA 584 ("**Chabot Jurisdictional Appeal**") at para. 15

<sup>40</sup> *Chabot c. WestJet*, 2015 QCCS 2288 ("**Chabot Jurisdictional Challenge**")

<sup>41</sup> *Chabot Jurisdictional Challenge* at paras. 45-53

<sup>42</sup> *Chabot Jurisdictional Appeal* at paras. 20-33

<sup>43</sup> *WestJet v. Nicole Chabot, in her quality of tutor to her minor child N.C., et al.*, 2016 CanLII 72704 (SCC)

27. The plaintiffs advance the same theory of liability on behalf of the Quebec members of the Air Canada Cross Border/International Class as what is being advanced in *Chabot c. WestJet*. The plaintiffs allege that Additional Fares paid by Quebec Class Members violate articles 1437 and 1458 of the *Civil Code of Québec* because they are unconscionable, excessive, unreasonable, discriminatory and/or abusive in contravention of the *Quebec Charter of Human Rights and Freedoms*, CQLR c C-12, the *Canadian Human Rights Act* and the *Canada Transportation Act*.
28. For the common law Class Members, the plaintiffs acknowledge there are differences between Quebec civil law and the common law. As the Quebec Courts have held in *PA c. Air Canada* and *Chabot c. WestJet*, a contravention of a statute – including the *Canadian Human Rights Act* or the *Canada Transportation Act* – may be a civil fault giving rise to damages under the *Civil Code of Québec*. While the common law is different, the plaintiffs submit that non-Quebec Class Members are nonetheless entitled to recover. As discussed in greater detail below, the legal basis for the common law Class Members' claims are in contract law and the doctrines of unconscionability, illegality and public policy or, in the alternative, consumer protection legislation.

### ***The Proposed Class Action***

29. The plaintiffs bring this action on their own behalves and on behalf of others who:
- (a) have a disability requiring them, under a defendant's tariff, to be accompanied by an Attendant; or
  - (b) due to obesity, they cannot lower the arm rest of a coach or economy class seat; or
  - (c) have a disability that requires additional seating to accommodate that disability
- (collectively, "**Disabilities**" or individually, "**Disability**")

and have paid Additional Fares (or their Attendant has paid Additional Fares) to a defendant or their authorized agent, but are not class members in the Quebec Proceedings (see definition of the Classes in para. 1(b) above).

30. The above definition of Disabilities is consistent with the definition used in the Norman Decision<sup>44</sup> and the Quebec Proceedings.<sup>45</sup>
31. The plaintiff Mr. Gauthier has cerebral palsy and the plaintiff Mr. Reaume has quadriplegia. Both rely on motorized wheelchairs for their mobility. Both require assistance with personal care and would require assistance in the event of an emergency or decompression. The defendants require the plaintiffs to fly with an Attendant. At all material times, the defendants charged Additional Fares for the plaintiffs' Attendants.
32. The defendants are the two largest air carriers in Canada.
33. The defendants are required by law to publish tariffs containing their terms and conditions of carriage, which form the contractual terms between the defendants and Class Members.<sup>46</sup> At all material times, the defendants' tariffs have required people with severe disabilities to travel with an Attendant.
34. For Air Canada, an Attendant is required if a "passenger's mental or physical condition is such as to render him/her incapable of caring for himself/herself without assistance or medical treatment enroute".<sup>47</sup>
35. WestJet's international tariff requires passengers to fly with if a passenger's "mental, cognitive, or physical condition is such as to render them incapable of caring for themselves without assistance or medical treatment enroute".<sup>48</sup>

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<sup>44</sup> Norman Decision at paras. 916, 128, Majidi Affidavit Exhibit A at pp. 225, 56

<sup>45</sup> See paras. 18 and 24 above

<sup>46</sup> *Canada Transportation Act* s. 67; *Air Transportation Regulations*, SOR/88-58 s. 110

<sup>47</sup> AC International Tariff Rule 75(A)(6), Majidi Affidavit Exhibit I at p. 453

AC Domestic Tariff Rule 75(A)(6), Majidi Affidavit Exhibit H at p. 337

<sup>48</sup> WJ International Tariff Rule 30(B)(3)(a), Majidi Affidavit Exhibit J at p. 515

36. At all material times, the defendants' tariffs have imposed "per seat" pricing policies, meaning a ticket must be purchased for every seat. People who require an additional seat on airplanes to accommodate a Disability (either for their Attendant or due to their body size) have had to pay Additional Fares.
37. The plaintiffs submit the defendants have been unjustly enriched by the Additional Fares. There is no juristic reason for the enrichment because any contract for Additional Fare is void and unenforceable because it is unconscionable. Additionally, for the Air Canada Domestic Class, the contracts for Additional Fares paid by this Class are void based on the doctrine of statutory illegality (they are contrary to the *Canada Transportation Act*, as the Agency found in the Norman Decision) or the doctrine of public policy (they are discriminatory and unjustified, as the Agency found in the Norman Decision).
38. In the alternative, to the extent the Classes paid Additional Fares for flights that were primarily for personal, family or household purposes, those contracts amount to unconscionable acts or practices and/or unfair acts or practices, entitling the Classes to refunds and other recovery pursuant to: ss. 8, 9, 10, 171 and 172 of the *BPCPA*; ss. 6, 13 and 142.1 of the *Alberta CPA*; ss. 6, 7 and 93 of the *Saskatchewan CPBPA*; ss. 2, 3, and 23 of the *Manitoba BPA*; ss. 15, 17, and 18 of the *Ontario CPA*; ss. 8 and 272 of the *Quebec CPA*; ss. 2 and 4 of the *PEI BPA*; and ss. 8 and 10 of the *NL CPBPA* (these statutes are collectively referred to as the "**Consumer Protection Statutes**").
39. The plaintiffs also seek punitive damages on behalf the Classes both at common law and under the Consumer Protection Statutes (where applicable). The plaintiffs seek moral and punitive damages on behalf of the Quebec members of the Air Canada Cross Border/International Class.



### **PART 3: LEGAL BASIS**

#### ***Certification of the Action***

40. The *Class Proceedings Act* is to be interpreted in a broad and purposive manner consistent with its objects and purposes: judicial economy, access to justice, and behaviour modification. Certification is a “fluid, flexible procedural process” so that these statutory purposes can be met.<sup>49</sup>
41. The test for certification is set out in s. 4(1) of the *Class Proceedings Act*. The Court must certify a class proceeding if:
- (a) the pleadings disclose a cause of action;
  - (b) there is an identifiable class of two or more persons;
  - (c) the Class Members’ claims raise common issues, whether or not those common issues predominate over issues affecting only individual members;
  - (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
  - (e) there is a representative plaintiff who
    - (i) would fairly and adequately represent the interests of the class,
    - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying Class Members of the proceeding, and
    - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other Class Members.

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<sup>49</sup> *Halvorson v. British Columbia*, 2010 BCCA 267, para. 23

42. The plaintiffs must show “some basis in fact” for each of the certification requirements, other than the cause of action requirement, which is decided based on the pleadings alone.<sup>50</sup>
43. The question at certification is whether the action can properly proceed as a class proceeding. Certification does not involve an assessment of the merits and is not intended to be a pronouncement on the viability or strength of the action. The court should not attempt to resolve conflicting facts and evidence at this stage.<sup>51</sup>

***Section 4(1)(a): Cause of Action Criterion***

44. The first stage of the certification test is similar to an application to strike pleadings for failing to disclose a cause of action. The court should only refuse to certify the action if it is plain and obvious that the claim is bound to fail, assuming the pleaded facts are true.<sup>52</sup>
45. The claim must be read generously to allow for drafting frailties and the plaintiffs’ lack of access to documents and discovery information. The court should consider the claim as it is or as it may be amended.<sup>53</sup>
46. The certification stage does not involve an assessment of the merits of the claim and is not intended to be a pronouncement on the viability or strength of the action, “rather, it focuses on the form of the action in order to determine whether the action can appropriately go forward as a class proceeding”.<sup>54</sup>
47. The plaintiffs claims satisfy the s. 4(1)(a) criteria.
48. Firstly, the plaintiffs advance claims based in contract law and unjust enrichment. The Court has subject-matter jurisdiction over such claims.<sup>55</sup>

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<sup>50</sup> *Krishnan v. Jamieson Laboratories*, 2021 BCSC 1396 (“*Krishnan*”) at para. 40, aff’d 2023 BCCA 72

<sup>51</sup> *Krishnan*, para. 43

<sup>52</sup> *Krishnan*, para. 44

<sup>53</sup> *Krishnan*, para. 45

<sup>54</sup> *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 102, recently reaffirmed by the BC Court of Appeal in *WN Pharmaceuticals Ltd. v. Krishnan*, 2023 BCCA 72 at para. 91

<sup>55</sup> *Lewis v. WestJet Airlines Ltd.*, 2019 BCCA 63; see also the Chabot Jurisdictional Challenge

49. Class Members paid Additional Fares to the defendants pursuant to their tariffs, which establishes the enrichment and corresponding deprivation between the Classes and defendants.
50. While Class Members paid Additional Fares pursuant to contracts, those contracts cannot be a juristic reason justifying the enrichment because they are void and unenforceable pursuant to the doctrines of unconscionability, illegality or public policy.
51. Unconscionability is an equitable doctrine used to set aside unfair agreements that were formed due to an inequality in bargaining power.<sup>56</sup> To set aside a bargain for unconscionability, the plaintiffs must establish:
- (a) inequality of bargaining power between the parties; and
  - (b) proof of substantial unfairness in the bargain.<sup>57</sup>
52. The plaintiffs submit both criteria will be met in this instance.
53. The contracts for Additional Fares are contracts of adhesion, which are contracts “in which the parties are so imbalanced in bargaining power that one party simply has no ability to negotiate terms”.<sup>58</sup> As the Supreme Court of Canada noted in *Uber*, there are “many ways in which standard form contracts can impair a party’s ability to protect their interests in the contracting process and make them more vulnerable”.<sup>59</sup>
54. In addition to the nature of the contracts, the plaintiffs submit that the Classes’ vulnerability is relevant. Class Members are not sophisticated commercial parties. As a group, they suffer from persistent socio-economic disadvantages and poverty. As described by the Agency in the Norman Decision:

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<sup>56</sup> *Pearce v. 4 Pillars Consulting Group Inc.*, 2021 BCCA 198 (“**4 Pillars**”), para. 197

<sup>57</sup> *Uber Technologies Inc. v. Heller*, 2020 SCC 16 (“**Uber**”) at para. 62-65;

*4 Pillars* at para. 200

<sup>58</sup> *Bergen v WestJet Airlines Ltd.*, 2021 BCSC 12 (“**Bergen**”) at para. 75, aff’d 2022 BCCA 22

<sup>59</sup> *Uber* at para. 89

[162] Persons with disabilities are a minority group, generally recognized as being disadvantaged in society as a result of their disabilities. As a subpopulation, they generally face higher levels of unemployment and underemployment, have lower incomes and achieve lower levels of education than do members of the non-disabled population...

55. People who require an Attendant are severely disabled. They are less likely to be employed or, when they are employed, they earn less than the average Canadian. In addition to having lower personal and family incomes, this group has a higher cost of living due to the additional expenses associated with having a disability.
56. People who are severely obese also tend to have lower personal and household incomes, significantly higher comorbidities and severe mobility impairments.
57. In short, the defendants impose Additional Fares on people who are least able to pay and least able to advocate for their rights.
58. With respect to the second criteria for unconscionability, the plaintiffs submit the unfairness of the bargain is apparent on the face of it: people with Disabilities pay more for air travel than other passengers.
59. If the defendants disagree with the plaintiffs' characterization of these bargains – if the defendants want to establish the collection of Additional Fares is not substantially unfair due to the financial or logistical impact expanding 1P1F would have on them – they can do so with evidence at a common issues trial. However, it would be an abuse of process to relitigate the Agency's findings in the Norman Decision regarding domestic fares, which is relevant for the Air Canada Domestic Class.
60. The plaintiffs advance two additional arguments on behalf of the Air Canada Domestic Class to establish the contracts for Additional Fares paid by these Class Members are void and unenforceable.

61. First, these contracts are void pursuant to the doctrine of illegality because they breach the *Canada Transportation Act*, as the Agency found in the Norman Decision.
62. To set aside a bargain for statutory illegality, the plaintiffs must establish:
- (a) Whether the contract or the term of the contract in question breaches a statute;
  - (b) If the answer to (a) is “no”, whether the contract or term of the contract violates the scheme of the legislation (is it contrary to the legislated intent of the statute);
  - (c) Whether the contract or term should be held to be void or unenforceable for public policy reasons apparent from the legislation.<sup>60</sup>
63. The plaintiffs submit the Norman Decision establishes these criteria. The Agency found the defendants acted contrary to s. 172 of the *Canada Transportation Act* by imposing a discriminatory policy that could not be justified based on expense, safety or operational logistics.<sup>61</sup>
64. Second, the contracts for Additional Fares paid by the Air Canada Domestic Class are void based on the doctrine of public policy. This doctrine recognizes that there are some contracts the courts will not enforce because there is a “paramount consideration of public policy which over-rides the interest [in enforcing the contract] and what otherwise would be the rights and powers of the individual”.<sup>62</sup> The doctrine of public policy has been relied upon to find that discriminatory contracts are unenforceable.<sup>63</sup>
65. Again, given the Agency’s findings that Air Canada’s practice of charging Additional Fares for domestic flights is both discriminatory and completely

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<sup>60</sup> See, for example: *Jordan v. CIBC Mortgages Inc.*, 2019 ONSC 1178 at para. 108

<sup>61</sup> Norman Decision at paras. 894-912, Majidi Affidavit Exhibit A at p. 220 - 224

<sup>62</sup> *Uber* at para. 108

<sup>63</sup> *4 Pillars* at para. 215

unjustified in terms of cost, safety or logistics, the plaintiffs submit it would be contrary to the doctrine of public policy for the court to enforce these contracts.

66. In the alternative, the plaintiffs rely on the Consumer Protection Statutes and take the position that Additional Fares paid for personal, family or household purposes, are unconscionable acts or practices and/or unfair acts or practices, as defined in those statutes.
67. The Consumer Protection Statutes are entitled to a broad and purposeful interpretation given the statutes' objectives.<sup>64</sup>
68. While the Consumer Protection Statutes differ, all have one or more provisions prohibiting:
  - (a) taking advantage of consumers based on their incapacity to reasonably protect their interests due to a physical or mental infirmity;
  - (b) charging prices that grossly exceeded prices at which similar services were readily obtainable by similar consumers; and
  - (c) terms or conditions that are so harsh or adverse to the consumer as to be inequitable.
69. The plaintiffs submit that imposing Additional Fares on the Classes is contrary to these provisions. To the extent the defendants wish to justify the fairness of their contracts, they can do so with evidence at a common issues trial.
70. The Consumer Protection Statutes are laws of general application and apply to the defendants.<sup>65</sup> The doctrines of paramountcy or interjurisdictional immunity do not relieve the defendants from scrutiny under these statutes. Holding the defendants accountable for unconscionable or unfair acts or practices does not conflict (in operation or effect) or trench on federal power or legislation.

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<sup>64</sup> *Cantlie v. Canadian Heating Products Inc.*, 2017 BCSC 286 at para. 228

<sup>65</sup> *Unlu v. Air Canada*, 2013 BCCA 112 at para. 14

**Section 4(1)(b): Two or more Class Members**

71. The *Class Proceedings Act* requires there to be an identifiable class of two or more persons. The plaintiffs do not believe this criteria is at issue.
72. The Classes must also be capable of clear definition using objective criteria so that individuals know if they are Class Members.<sup>66</sup>
73. The proposed class definition satisfies this test: individuals will know if they paid Additional Fares and they will be able to self identify.<sup>67</sup>

**Section 4(1)(c): One or More Common Issues**

74. The plaintiffs must demonstrate that there are one or more common issues that will avoid duplication of fact-finding or legal analysis. The court should apply the following principles when assessing the proposed common issues:
  - (a) The commonality question should be approached purposively;
  - (b) An issue will be “common” only where its resolution is necessary to the resolution of each Class Member’s claim.
  - (c) It is not essential that Class Members be identically situated *vis-à-vis* the opposing party.
  - (d) It is not necessary that common issues predominate over non-common issues. However, Class Members’ claims must share a substantial common ingredient to justify a class action. The court will examine the significance of the common issues in relation to individual issues.
  - (e) Success for one Class Members on a common issue need not necessarily mean success for all, but it must not mean failure for another.<sup>68</sup>

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<sup>66</sup> *Krishnan*, para. 100

<sup>67</sup> *Jiang v. Peoples Trust Company*, 2017 BCCA 119 at para. 90

<sup>68</sup> *Krishnan*, para. 113-114

75. Common issues do not need to determine liability, but the answer must advance the ultimate determination of outcome.<sup>69</sup>
76. The proposed common issues set out in Schedule A meet these criteria.
77. The common issues include the determination of background facts that are necessary for each Class Member to establish liability against one or more defendants, such as whether Class Members had contracts with the defendants, the terms of those contracts and whether Class Members paid Additional Fares to the defendants.
78. This case deals with standard form contracts of adhesion, which lend themselves to analysis on a class wide basis.<sup>70</sup> As the Ontario Court of Appeal has aptly stated:

[33] The importance of the factual matrix is far less significant, if at all, in the context of a standard form contract or contract of adhesion where the parties do not negotiate terms and the contract is put to the receiving party as a take-it-or-leave-it proposition. Any search for the intention of the parties in the surrounding circumstances of these contracts "is merely a legal fiction": *Ledcor*, at para. 14. [Emphasis added]<sup>71</sup>

79. The common issues also ask whether the criteria for unconscionability – either under the common law or the Consumer Protection Statutes – are met in these circumstances.
80. Other class actions alleging unconscionable contracts have been certified, showing that these are questions that can be dealt with in common.<sup>72</sup>
81. The plaintiffs allege that the contracts for Additional Fares are *per se* unconscionable regardless of the individual circumstances of the Class Members.

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<sup>69</sup> *Watson v. Bank of America Corporation*, 2015 BCCA 362 at para. 147-152; *676083 B.C. Ltd. v. Revolution Resource Recovery Inc.*, 2021 BCCA 85 at paras. 123-126

<sup>70</sup> *4 Pillars* at para. 82; *Bergen* at para. 83

<sup>71</sup> *MacDonald v. Chicago Title Insurance Company of Canada*, 2015 ONCA 842 citing *Ledcor Construction Limited v Northbridge Indemnity Insurance Company*, 2015 ABCA 121

<sup>72</sup> *Pearce v 4 Pillars Consulting Group Inc.*, 2019 BCSC 1851; *Haghdust v. British Columbia Lottery Corporation*, 2013 BCSC 16 ("**Haghdust**"); *Kilroy v. A OK Payday Loans Inc.*, 2007 BCCA 231; *Sherry v. CIBC Mortgages Inc.*, 2016 BCCA 240; *Gomel v Live Nation Entertainment, Inc.*, 2021 BCSC 699



If the plaintiffs succeed on this argument, then the issue of unconscionability will be resolved for all Class Members. If the defendants succeed in showing that charging Additional Fares was not *per se* unconscionable, then the plaintiffs' common claims of unconscionability will fail. Either result advances the litigation.<sup>73</sup>

82. Similarly, the claims based on public policy and illegality advanced on behalf of the Air Canada Domestic Class raise issues that can be determined in common and would advance the claims of that Class. The common issues essentially ask whether the Agency's findings in the Norman Decision are sufficient to prevent the defendants from relying on their contracts as a juristic reason for their enrichment of Additional Fares paid by these Class Members.
83. The plaintiffs have put forward a methodology to establish loss on a common basis.<sup>74</sup> Resolving this question would be a significant benefit to the Classes.
84. Whether aggregate damages are available and appropriate are also common issues that, if resolved, would benefit the Classes.
85. Similarly, it is a common question as to whether the defendants' conduct gives rise to aggravated or punitive damages. The court has described it as being an open question as to whether "conduct that is alleged to be, or that can be characterized as, discriminatory is precluded from also being treated as an independent actionable contractual wrong for the purposes of pleading punitive damage".<sup>75</sup>
86. Each of these common issues would have to be resolved in individual cases if they are not resolved as common issues. Given the plaintiffs expect the defendants will seek to justify their collection of Additional Fares, the answers to these questions will require extensive discovery and expert reports to determine whether the contracts at issue were in fact unconscionable. Their resolution will significantly advance the cases for each Class Members.

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<sup>73</sup> *Haghdust* at para. 130

<sup>74</sup> Affidavit #1 of A. Furrie; Affidavit #1 of D. Gillen

<sup>75</sup> *Deol v Dreyer Davison LLP*, 2020 BCSC 771 para. 168

**Section 4(1)(d): Preferable Procedure**

87. Statutory criteria for determining preferable procedure are set out in s. 4(2) of the *Class Proceedings Act*:
- (a) whether questions of fact or law common to the Classes predominate over any questions affecting only individual members;
  - (b) whether a significant number of the Class Members have a valid interest in individually controlling the prosecution of separate actions;
  - (c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;
  - (d) whether other means of resolving the claims are less practical or less efficient;
  - (e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.
88. The three primary goals of class proceedings – access to justice, judicial economy, and behaviour modification – should be kept in mind when assessing preferability. Class proceedings are preferable where the damages in individual claims may not be large enough to support individual actions.<sup>76</sup>
89. The proposed class action is the preferable procedure because:
- (a) The common issues predominate over individual issues;
  - (b) There is no evidence of any Class Members having an interest in individually controlling separate actions;
  - (c) There is no alternative venue that will resolve the issues raised in this case. The Agency has refused to consider whether to expand 1P1F to

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<sup>76</sup> *AIC Limited v. Fischer*, 2013 SCC 69, paras. 22-23, 50

international or cross-border flights based on a perceived limitation in its jurisdiction.<sup>77</sup> A proceeding before the CHRT is not a viable alternative to a class proceeding.<sup>78</sup>

90. Other means of resolving these claims, such as requiring all Class Members to establish liability on an individual basis, would cost more in terms of judicial resources and counsel time. The most likely outcome is that, if this case is not certified, Class Members would have no economically feasible procedure to access justice.

**Section 4(1)(e): Representative Plaintiffs**

91. The requirements for a representative plaintiff are set out in s. 4(1)(e) of the *Class Proceedings Act*. The representative plaintiff must be someone who:

- (a) would fairly and adequately represent the interests of the class;
- (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding and notifying Class Members;
- (c) does not have, on the common issues, an interest in conflict with the interests of other Class Members.

92. Mr. Gauthier and Mr. Reaume clearly meet the requirements to be representative plaintiffs. They have engaged with the issues and assisted counsel with the preparation of materials for the action. Neither plaintiff has conflicts with other Class Members.

93. The litigation plan is to be assessed as follows:

The purpose of the plan for proceeding at the certification stage is to aid the court by providing a framework within which the case may proceed and to demonstrate that the representative plaintiff and class counsel have a clear grasp of the complexities involved in the case which are apparent at the time of certification and a plan to address them. The court does not

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<sup>77</sup> Yale CTA Decision at para. 27, Majidi Affidavit Exhibit D at p. 255

<sup>78</sup> *Lewis v. WestJet Airlines Ltd.*, 2022 BCCA 145 at paras. 112-145

scrutinize the plan at the certification hearing to ensure that it will be capable of carrying the case through trial and resolution of the common issues without amendment. It is anticipated that plans will require amendments as the case proceeds and the nature of the individual issues are demonstrated by the class members.<sup>79</sup>

94. The proposed litigation plan meets this test. It includes a preliminary notice plan, a plan for the litigation steps leading to the common issues trial, and procedures to deal with individual issues both before and after common issues have been resolved.

**PART 4: MATERIAL TO BE RELIED ON**

95. The plaintiffs rely on the following:
- (a) Affidavit #1 of Christopher Reaume, made March 20, 2023;
  - (b) Affidavit #1 of Sahar Majidi, made March 21, 2023;
  - (c) Affidavit #1 of Paul Gauthier, made March 23, 2023;
  - (d) Affidavit #1 of Dr. David Gillen, made March 23, 2023;
  - (e) Affidavit #1 of Adele Furrie; and
  - (f) Such other evidence as they may advise.

The applicant estimates that the application will take [time estimate].

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of

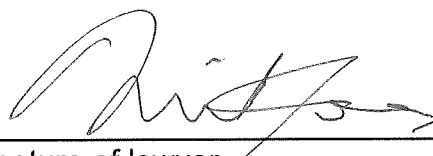
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<sup>79</sup> *Fakhri et al v. Alfalfa's Canada Inc cba Capers*, 2003 BCSC 1717, para. 77, aff'd at 2004 BCCA 549

this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (g) file an application response in Form 33,
- (h) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (i) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: May 11, 2023



Signature of lawyer  
for applicant

David G. A. Jones

*To be completed by the court only:*

Order made

in the terms requested in paragraphs ..... of Part 1 of this notice of application

with the following variations and additional terms:

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.....

.....

Date: .....

Signature of  Judge  Master

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**APPENDIX**

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**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts