

## SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-001039-201

DATE: July 22, 2021

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**PRESIDING THE HONOURABLE THOMAS M. DAVIS, J.S.C.**

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**CAROLE DAVIES**  
Petitioner

v.

**AIR CANADA**  
Respondent

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### JUDGMENT

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#### OVERVIEW

[1] Carole Davies (**Mrs. Davies**) is a retired employee of Air Canada, having worked there for some 29 years<sup>1</sup>. One of the benefits offered to Air Canada employees is flight passes, which allow Air Canada employees and retirees to benefit from free or reduced rate flights on the airline (**FRT Passes** or **Privileges**). Upon joining the company, all employees benefit from what is known as a C-2 pass in the Air Canada jargon. They continue to benefit from the pass upon retirement.

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<sup>1</sup> The authorization application was initially filed by her husband, Walter Edward Davies, who declined to continue the pursuit of the application, principally given his age. He is a retired Air Canada employee with 35 years of service.

[2] She seeks authorization to institute a class action on behalf of all retired Air Canada employees, essentially stating that Air Canada's fairly recent unilateral issuance of B-1 and C-1 flight passes to some active employees, has modified the FRT Pass benefits heretofore enjoyed by retired employees by virtue of their C-2 passes.

[3] In addition to other arguments, Mrs. Davies takes the position that the new passes allow active employees with little seniority to travel before long-term retired ones, thereby diminishing the value of the flight passes of retired employees. As a result of the issuance of these new passes, Mrs. Davies alleges that it is next to impossible for a retired employee to travel using his or her C-2 pass.

[4] The essential allegations of the authorization application are that Air Canada is in breach of its contractual obligations to its retired employees, stemming from the undertakings that it made to them at the time they were hired. In addition, Mrs. Davies alleges that the change to flight pass priority is discriminatory and was made in bad faith.

## **1. CONTEXT**

[5] Mrs. Davies became an employee of Air Canada in 1961 and retired in 1991 with 29 years of service. During the time of her employment, Mrs. Davies was a unionized employee, as was her husband Walter. She and Walter have been travelling extensively since then, often using their FRT Pass.

[6] She alleges that the FRT Pass was granted to her at the time she accepted employment with Air Canada and, further, that Air Canada represented that these passes would continue to be available to her to use in the same way as a retired employee. In the analysis of her personal action, is not without relevance to reproduce her factual allegations in this regard:

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;

[7] For Mrs. Davies, it is this boarding priority based on seniority that has been adversely affected by the issuance of new flight passes to existing employees. These B-1 and C-1 flight passes will always trump the flight pass of Mrs. Davies and other class members who possess a C-2 travel pass. Mrs. Davies alleges that during the summer of 2017, she realized that her and her husband's passes were no longer offering the same privilege that she and her husband had heretofore enjoyed. With the issuance of the B-1 and C-1 flight passes, active employees with far less seniority are able to bump retired employees, making their travel plans very unpredictable. Of course, this unpredictability is perhaps more problematic as Mr. and Mrs. Davies become older.

[8] This said, Mrs. Davies acknowledges that the seniority priority, remains applicable between all C-2 pass holders, regardless of active or retired status.

[9] Mrs. Davies filed an extract of a handbook given to Air Canada employees at the time of a pre-retirement workshop.<sup>2</sup> The Court cannot determine the precise year of the handbook in question, other than to say that it seems to date from 1984 and that the version presented to the Court contains the latest revisions up to January 2000. Hence, the Court cannot be certain that document is the version of the handbook that existed at the time of Mrs. Davies' retirement.

[10] In any event, the handbook acknowledges that travel privileges will continue into retirement and specifically refers to flight passes as allowing the retired employees to benefit from the same boarding priority that they had during active service. This seniority priority, as Mrs. Davies refers to it, apparently means that the most senior current or retired Air Canada employee will have priority to board a flight.

[11] The handbook cautions employees to call the employee travel centre to verify any travel restrictions.

[12] Air Canada confirms that as regards to C-2 pass holders, this priority remains unchanged.<sup>3</sup> When an employee and a retiree are both seeking an available seat on an Air Canada flight using this pass, the more senior of the two will have priority. In her sworn statement, Leslie-Ann Vezina (**Ms. Vezina**) notes that the C-2 pass is the base pass for all employees and retirees.

[13] Mrs. Davies alleges that Air Canada is still using the benefit of free travel as a tool for recruitment, referring to an insert published in the Montréal Gazette referring to Air Canada as one of the top employers.<sup>4</sup> That insert specifically referred to the allure of free travel offered to Air Canada employees. However, it also set out that there are indeed some limits on the free travel. More specifically, travel on any given flight is not guaranteed, as paying passengers will be prioritized. While there is an online booking

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<sup>2</sup> Exhibit P-4.

<sup>3</sup> Sworn statement of Leslie-Ann Vezina, para.16.

<sup>4</sup> Exhibit P-5.

system, an employee may not be fully certain of whether his or her travel plans will go smoothly prior to arriving at the airport.

[14] Air Canada does not dispute that certain employees have indeed been granted flight passes with a higher priority than the C-2 passes. It has not really contested Mrs. Davies' allegation that there are in excess 37,000 Air Canada employees who now have enhanced flight privileges when compared to the retired employees with C-2 passes.

[15] For Mrs. Davies, the situation is all the more galling in that she took early retirement, thereby forfeiting some pension benefits, with the plan to travel extensively with her husband.

[16] She adds that the travel benefit was an important factor in choosing a career with Air Canada, 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 negotiation during collective bargaining leading to labour agreements. This said, Mrs. Davies acknowledges that the C-2 travel pass and the benefits there of did not form part of any collective bargaining agreement governing the working conditions of her bargaining unit during her employment.

[17] This also is on all fours with Air Canada's position. Its representative, Anthony Bursey, Director, Crew Scheduling, in his sworn statement states that Air Canada has always avoided including any reference to the FRT Passes in its collective agreements.

## **2. THE RESPECTIVE POSITIONS**

### **2.1 Mrs. Davies**

[18] Perhaps, the best way to summarize Mrs. Davies' position is to state that, for her, the travel pass was a benefit that Air Canada promised its employees that they would be able to continue to enjoy during retirement. The issuance of new passes with higher priority has made this impossible, or at least very difficult, such that travelling with the FRT Pass is no longer easy or enjoyable.

[19] Mrs. Davies opines that the Court must consider as true that for at least the last 62 years, the practice at Air Canada has been to grant travel privileges in accordance with this seniority priority. Air Canada's removal of the seniority priority 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 charters of rights in effect in other provinces and territories.

[20] Air Canada has also contravened articles 6, 7, 1375, and 1434 of the Civil Code.

## 2.2 Air Canada

[21] Mrs. Davies has not demonstrated an arguable case that Air Canada has breached an “implied obligation” to its retirees employees, since FRT Privileges do not stem from any contract or agreement between the retirees and Air Canada (or between Air Canada and its employees).

## 3. ANALYSIS

[22] For the reasons that follow, the Court concludes that Mrs. Davies’ proposed class action does not meet the criteria of article 575 C.C.P.

### 3.1 Article 575(1)

[23] The criteria of this paragraph are satisfied. The question of whether or not Air Canada has breached the rights of its retirees by issuing passes with a higher priority than the C-2 pass is common to all retirees and can be appropriately resolved by way of a class action. It is trite law to state that there only needs to be one common question for a proposed class action to be authorized.<sup>5</sup>

### 3.2 Article 575(2)

[24] The majority in *L’Oratoire Saint-Joseph du Mont-Royal v. J.J.* states:

[56] Article 575(2) C.C.P. provides that the facts alleged in the application must “appear to justify” the conclusions being sought. This condition, which was not included in the original bill on class actions, was added in response to pressure from certain companies [translation] “that feared it would give rise to a significant volume of frivolous actions”: V. Aimar, “L’autorisation de l’action collective: raisons d’être, application et changements à venir”, in C. Piché, ed., *The Class Action Effect* (2018), 149, at p. 156 (emphasis added); P.-C. Lafond, “Le recours collectif: entre la commodité procédurale et la justice sociale” (1998-99), 29 R.D.U.S. 4, at p. 24. It is now well established that at the authorization stage, the role of the judge is to screen out only those applications which are “frivolous”, “clearly unfounded” or “untenable”: Sibiga, at paras. 34 (“the judge’s function at the authorization stage is only one of filtering out untenable claims” (emphasis added)), 52 (“A motion judge should only weed out class actions that are frivolous or have no prospect of success” (emphasis added)) and 78 (“it was enough to show that the appellant’s claim was not a frivolous one and that, at trial, she would have an arguable case to make on behalf of the class” (emphasis added)); see also Charles, at para. 70; Lafond (2006), at pp. 112 ([translation] “[t]he purpose of [art. 575(2) C.C.P.] is . . . first, ‘to immediately eliminate actions that are prima facie frivolous’ and, second, to ‘dispose in the same way of actions that, although not frivolous, are clearly unfounded’”) and 116 (“the authorization stage exists solely to screen out

<sup>5</sup> *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, para. 72.

applications that are frivolous or clearly unfounded in fact or in law, as the legislature originally intended”); see also Fortier, at para. 70; *Oubliés du viaduc de la Montée Monette v. Consultants SM inc.*, 2015 QCCS 3308, at para. 42. As this Court explained in *Infineon*, “the court’s role is merely to filter out frivolous motions”, which it does “to ensure that parties are not being subjected unnecessarily to litigation in which they must defend against untenable claims”: para. 61 (emphasis added); see also paras. 125 (“a judge hearing a motion for authorization is responsible for weeding out frivolous cases”) and 150 (“the purpose of the authorization stage is merely to screen out frivolous claims”).<sup>6</sup>

[25] Therefore, the question for the Court is whether or not the proposed syllogism of Mrs. Davies is frivolous, clearly unfounded or untenable.

### 3.2.1 The Alleged Breach of Contract

[26] Beginning with the articles 6, 7 and 1375 C.C.Q., which are essentially articles which require parties to deal with one another in good faith, for Mrs. Davies to be successful in demonstrating an arguable case that Air Canada has acted in bad faith, there must be some factual allegations in her application to support such a conclusion. These allegations are absent.

[27] Moreover, good faith is presumed.<sup>7</sup> To demonstrate bad faith in the execution of a contract it is not sufficient to merely say that the issuance of new flight passes has adversely affected retirees. The words of the Supreme Court of Canada in *Churchill Falls (Labrador) Corp. v. Hydro-Québec*, are instructive in this regard:

The duty of good faith does not negate a party’s right to rely on the words of the contract unless insistence on that right is unreasonable in the circumstances.<sup>8</sup>

[28] Let us briefly consider the circumstances of this matter. While the precise representation that may have been made to Mrs. Davies in respect of the applicability of the seniority priority to retirees has not been provided, reading between the lines, the Court understands her contention as being that she was told at the time of her hiring that the seniority priority would apply even after retirement. This might well have been reiterated when she retired although, again, the Court does not have the precise representation that was made to her and the handbook that has been produced is clearly not the one that she would have been given upon her retirement.

[29] This said, even accepting that such a representation was made to Mrs. Davies, it is not without importance to underline that it would have been made well over 60 years ago. In the Court’s view, in the context of an industry that has evolved considerably since then, and even since Mrs. Davies’ retirement, it is not tenable to conclude that Air Canada abandoned its right to issue employee travel privileges other than those

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<sup>6</sup> 2019 SCC 35.

<sup>7</sup> *Churchill Falls (Labrador) Corp. v. Hydro-Québec*, 2018 SCC 46.

<sup>8</sup> *Ibid.*

encompassed in the C-2 pass. In other words, we are not in a situation where the conduct of Air Canada runs “contrary to the requirements of good faith in that it violates objective standards of conduct that are generally accepted in society”.<sup>9</sup>

[30] More importantly, there is no factual allegation whatsoever that when Air Canada’s employees were granted the C-2 pass, they were told that theirs would be the only category of travel pass that Air Canada would ever issue.

[31] Moving now to consider article 1434 C.C.Q., which reads as follows:

**1434.** A contract validly formed binds the parties who have entered into it not only as to what they have expressed in it but also as to what is incident to it according to its nature and in conformity with usage, equity or law.

[32] The application of this article to Mrs. Davies’ working relationship is problematic, given that she was a unionized employee. This does not prevent the application of article 1434 C.C.Q. It can apply to a collective agreement. However, the implicit content must flow from the actual content of the agreement. This was recognized by the Court of Appeal in *Syndicat de la fonction publique et parapublique du Québec (SFPQ) c. Procureure générale du Québec*, citing the work of Robert P. Gagnon.<sup>10</sup>

Le contenu implicite de la convention collective rejoint également les droits et obligations qui découlent naturellement du contrat de travail sous-jacent. Pour l'employé, sont ici en cause prioritairement ses obligations de loyauté envers l'employeur et d'exécution prudente de son travail. Du côté de l'employeur, c'est son pouvoir de direction et les conséquences qui en découlent qui seront au premier chef réputés faire partie du contenu implicite de la convention collective.<sup>11</sup>

[33] Two things flow from this citation. Firstly, it cannot be reasonably argued that the alleged permanent right of a retiree to the same seniority priority as all future employees flows from the collective agreement, when that agreement does not contain any stipulations related to flight passes, privileges or acquired rights.

[34] Secondly, the unfettered management rights of Air Canada would include the right to issue new categories of flight passes, as there is no prohibition to doing so in the collective agreement.

<sup>9</sup> *Bhasin v. Hrynew*, 2014 SCC 71, para. 83.

<sup>10</sup> Robert P. Gagnon, *Le droit du travail du Québec*, 7<sup>e</sup> édition mis à jour par Langlois Langlois Kronström Desjardins, sous la direction d'Y. Bernard, A. Sasseville et B. Cliche, Éditions Yvon Blais, 2013.

<sup>11</sup> 2017 QCCA 1682, para. 31.

[35] But there is more. In a unionized situation “[t]here is no room left for private negotiation between employer and employee”.<sup>12</sup> Hence, there cannot be any individual or group agreements relating to benefits outside of the collective agreement that governed the working conditions of Mrs. Davies. Her argument on the applicability of article 1434 C.C.Q. fails. Air Canada had no contractual duty to her in respect of her C-2 FRT Pass. This was a privilege unilaterally granted to her and other employees.

[36] To better understand the nature of this grant, one might consider the arbitration decision in *Air Canada and Canadian Union of Public Employees, Air Canada Component: Grievance CHQ-15-07* (Policy Grievance regarding denial of B1 Travel Passes).<sup>13</sup>

[37] The union grieved the refusal of Air Canada to provide its members with three B-1 passes as it had done for the pilots following their union signing a 10 year collective agreement. In dismissing the grievance, the arbitrator agreed with Air Canada that the issuance of travel passes was at its discretion.<sup>14</sup> He noted that this discretion was sometimes exercised by awarding special passes to certain groups of employees,<sup>15</sup> and that the discretion remained unfettered.<sup>16</sup>

[38] This provides a good segue to the next point. Even if there was a promise made to the holders of C-2 passes, its breadth must be considered in light of the factual allegations of Mrs. Davies’ application and the other proof that the Court has allowed. The Court has already reproduced paragraphs 9 and 10. Paragraphs 11 and 13 are also helpful in determining whether Mrs. Davies has a defensible case.

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. [...]

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");

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<sup>12</sup> *Syndicat Catholique des Employés de Magasins de Québec Inc. v. Paquet Ltée*, 1959 CanLII 51 (SCC), p. 212; see also *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39 and *Montréal (Ville de) c. Lebrun*, 2008 QCCA 1976.

<sup>13</sup> Exhibit AC-1. An application for judicial review was rejected by the Divisional Court in *Canadian Union of Public Employees v. Air Canada*, 2019 ONSC 4613.

<sup>14</sup> *Ibid.*, para. 31.

<sup>15</sup> *Ibid.*, para. 34.

<sup>16</sup> *Ibid.*, para. 109.



[39] These factual allegations tell us a number of things. The passes that the members of the group were issued were C-2 passes. They allowed free travel post retirement and access to flights was based on years of service.

[40] One notes also that paragraph 11 refers to “this FRT flight pass”. This is not without importance as nothing has changed with respect to the C-2 passes. They still allow free travel and priority for flights is still based on seniority.<sup>17</sup> The liberality that was granted to holders of C-2 passes remains whole. In inferring that the passes are no longer honoured, Mrs. Davies’ allegation at paragraph 9 is false.

[41] There is no factual allegation that Air Canada undertook that it would never issue other passes with different benefits to other employees. Moreover, while Mrs. Davies appears to rely on usage to support her position, she has failed to allege or demonstrate that the usage in question (i.e., that FRT Privileges were a right owed to the retirees and that Air Canada never granted higher priority passes to any of its employees) is ancient, frequent, general, public and uniform. This is supported by the Court of Appeal judgment in *Gregory v. Château Drummond inc.*;

“[64] Un usage doit être non seulement allégué, mais aussi prouvé. Il doit de plus être ancien, fréquent, général, public et uniforme. En première instance, aucune preuve d'un usage n'a été faite.”<sup>18</sup>

[References omitted]

[42] Of course, in a class action context, an allegation of fact could be sufficient, but there is not even any such allegation, although Mrs. Davies states the following in her Argument Plan:

The Court has to accept as true that for at least the last sixty-eight years the access to the FRT flight passes for both employees and Retirees was based on the Seniority Priority. [...] <sup>19</sup>

[43] The proof is to the contrary. Air Canada, at different times, has adopted a practice of granting higher category passes. This is indeed a situation where the evidence shows « *sans conteste* que les faits allégués sont invraisemblables ou faux ». <sup>20</sup>

[44] It is also striking that Mrs. Davies has not made a single factual allegation that allows the Court to conclude that she was bumped by the holder of an FRT Pass with a higher priority. At best, in her examination out of Court, she refers to a few situations where she was unable to get on a flight, often to Toronto because of the number of

<sup>17</sup> See the sworn statement of Leslie-Ann Vezina, and paragraph 28 of the Court’s judgment of November 27, 2020.

<sup>18</sup> 2012 QCCA 601.

<sup>19</sup> Plan of Argument, para. 18.

<sup>20</sup> *Durand c. Subway Franchise Systems of Canada*, 2020 QCCA 1647, para. 51.

contingent passengers ahead of her. However, there is not one iota of evidence as to the how many of these passengers held a higher category of pass.

[45] It is also not surprising that there may be occasions where Mrs. Davies or another Air Canada retiree has been told that they are unable to take a particular flight. It is clear from the evidence that they are allowed to travel only on a space available basis. Air Canada gives precedence to paying customers, even those who might book at the last minute.

[46] This means that getting bumped from a flight is part of the expectation that an Air Canada pass holder, whether active or retired, has when he or she is attempting to travel. The traveller may have to try again the next day or the day after, depending on the availability of the flight that he or she wants to take.

[47] Mrs. Davies has not provided any factual allegation of a particular damage that she may have suffered as a result of being bumped from a flight or being unable to get onto a flight. The one example that she provided in her examination was in relation to her and her husband being required to take a Montreal/Los Angeles flight and drive to Phoenix to their vacation home, because the Montreal/Toronto flight at 5:30 or 6 the day before was full and they could not connect to the direct Toronto/Phoenix flight. This was their choice when others might have been available, such as taking an earlier flight to Toronto and waiting a little longer in the airport for the flight to Phoenix.<sup>21</sup> Air Canada cannot be held responsible for the particular choices that Mrs. Davies made in arranging her travel plans. Moreover, she did not provide any indication as to when this particular situation occurred.

### 3.2.2 The Alleged Discrimination

[48] Moving now to Mrs. Davies' affirmation that the issuance of the new passes to active employees discriminates against retired employees on the basis of age, this argument is also untenable.

[49] The Court does not need to make a determination as to the applicability of the *Québec Charter of Human Rights and Freedoms*<sup>22</sup> or the *Canadian Charter of rights and Freedoms*<sup>23</sup> to arrive at this conclusion. In any event, even if neither of those charters are applicable, the *Canadian Human Rights Act*<sup>24</sup> would certainly be applicable and it also prohibits discrimination on the basis of age.

[50] However, there is no demonstration that the issuance of new flight passes to existing employees discriminates on the basis of age. Firstly, by Mrs. Davies' very own admission, Air Canada employees retire at different ages and begin to benefit from free

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<sup>21</sup> Examination of May 10, 2021, page 36.

<sup>22</sup> CQLR, c. C-12.

<sup>23</sup> The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11.

<sup>24</sup> R.S.C., 1985, c. H-6.

travel during retirement accordingly. In addition, as outlined by the sworn statement of Ms. Vezina, there are different criteria that allow employees to benefit from free travel with the C-2 pass after retirement. An employee who started at age 20 and worked 25 continuous years might have free travel as of age 45, whereas one who started at 40 could only receive the benefit at age 65.

[51] For there to be age related discrimination, there would have to be evidence of the situation where C-2 pass holders were discriminated against on the basis of age. It is hard to think of one, but if 45-year-old retirees with 25 years of service were given precedence over 65-year-old retirees with the same years of service, that would likely be discriminatory. This is of course not the case. In fact, the non-discriminatory application of travel priority for those holding C-2 passes is evident. Retirees with more seniority than an active employees travelling on a C-2 pass will have boarding priority.

[52] Possibly, if the Canadian charter where applicable, one might make an argument that Air Canada was discriminating on the basis of an analogous ground of discrimination, i.e., retirement. The factual allegations put forward by Mrs. Davies, however, do not give rise to this argument. All retirees with C-2 passes continue to be treated in the same way and have the same benefit from their pass as they did during their employment. Nothing has changed for them as a result of retirement.

[53] What has changed is that certain active employees have received higher ranking passes. Air Canada's decision to accord a privilege to certain of its active employees cannot be deemed to be discriminatory vis-à-vis an employee who has retired. Working conditions and benefits for active employees change all the time and the discretion of an employer to make these changes is not fettered by benefits it may continue to offer to retirees.

### **3.3 Article 575(3)**

[54] Were a defensible cause of action to exist, this would be an appropriate class action. The class is undoubtedly quite large and it would be difficult or impractical to apply the rules of mandates to sue on behalf of others or for consolidation of proceedings.

### **3.4 Article 575(4)**

[55] It is not necessary to consider this paragraph of article 575 in great detail, given the Court's conclusion as to the absence of an arguable case.

[56] This said, the criteria that an acceptable representative must meet are minimal. Had she been able to demonstrate an arguable case, Mrs. Davies would meet those criteria. She is a member of the proposed group and, although she generally travelled with her husband and used his FRT Pass, the Court cannot rule out that she may have taken trips using her own pass and been bumped by an employee with a higher priority.

She stepped in as the representative without hesitation when her husband was unable to continue, and was present at the authorization hearing.

#### **4. CONCLUSIONS**

[57] While the Court understands the frustration of the C-2 pass holders who are now retired from Air Canada, the factual allegations that Mrs. Davies has put forward, particularly the absence of any allegation that Air Canada represented to C-2 pass holders that it would never issue passes with a higher priority, do not demonstrate an arguable case. In addition, the affirmation that the seniority priority enjoyed by C-2 pass holders would never be trumped is contradicted by the proof that the Court allowed Air Canada to produce. The proposed action is frivolous and clearly unfounded in law.

#### **WHEREFORE, THE COURT:**

[58] **DISMISSES** Petitioner's Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Petitioner;

[59] **WITH JUDICIAL COSTS.**

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THOMAS M. DAVIS, J.S.C.

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Hearing date: July 2, 2021

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