

**PROPOSED CLASS PROCEEDING**

Action No: T-519 -19

**FEDERAL COURT**

BETWEEN:

**Brian Roy**

Plaintiff

AND:

**The Calgary Airport Authority  
Edmonton Regional Airports Authority  
Fort McMurray Airport Authority  
Grande Prairie Airport Commission  
Comox Valley Airport Commission  
North Peace Airport Services Ltd.  
Kamloops Airport Authority Society  
Kamloops Airport Ltd.  
Prince George Airport Authority Inc.  
Vancouver Airport Authority  
Victoria Airport Authority  
Winnipeg Airports Authority Inc.  
Greater Moncton International Airport Authority Inc.  
Gander International Airport Authority Inc.  
St. John's International Airport Authority  
Deer Lake Regional Airport Authority Inc.  
Halifax International Airport Authority**

**Hamilton International Airport Limited**  
**Greater London International Airports Authority**  
**Ottawa Macdonald-Cartier International Airport Authority**  
**Sault Ste. Marie Airport Development Corporation**  
**Greater Toronto Airports Authority**  
**Aéroports de Montréal**  
**Aéroport International de Mont Tremblant inc**  
**Aéroport de Québec Inc.**  
**Regina Airport Authority**  
**Saskatoon Airport Authority**  
**Nanaimo Airport Commission**  
**Thompson Regional Airport Authority**  
**Fredericton International Airport Authority**  
**Saint John Airport Inc.**  
**Northern New Brunswick Airport Authority**  
**J.A. Douglas McCurdy Sydney Airport**  
**Sydney Airport Authority**  
**Your Quick Gateway (Windsor) Inc.**  
**Charlottetown Airport Authority Inc.**  
Defendants

### **STATEMENT OF CLAIM TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

MAR 26 2019

~~March 25, 2019~~

ORIGINAL SIGNED BY  
**JOYCE FAN**  
A SIGNÉ L'ORIGINAL

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: P.O. BOX 10065  
701 West Georgia Street  
Vancouver, BC V7U 1B6

TO:  
**The Calgary Airport Authority**  
2000 Airport Rd. N.E.  
Calgary, Alberta T2E 6W5

**Edmonton Regional Airports Authority**  
1, 1000 Airport Road  
Edmonton International Airport, Alberta T9E 0V3

**Fort McMurray Airport Authority**  
300 - 100 Snowbird Way  
Fort McMurray, Alberta T9H 0G3

**Grande Prairie Airport Commission**  
Suite 220, 10610 - Airport Drive  
Grande Prairie, Alberta T8V 7Z5

**Comox Valley Airport Commission**  
1250 Knight Road  
Comox, BC V9M 4H2

**North Peace Airport Services Ltd.**  
745 Thurlow Street  
Suite 2400  
Vancouver, BC V6E 0C5

**Kamloops Airport Authority Society**

300 - 350 Lansdowne Street  
Kamloops, BC V2C 1Y1

**Kamloops Airport Ltd.**

745 Thurlow Street  
Suite 2400  
Vancouver, BC V6E 0C5

**Prince George Airport Authority Inc.**

1000 299 Victoria Street  
Prince George, BC V2L 5B8

**Vancouver Airport Authority**

800-885 West Georgia Street  
Vancouver, BC V6C 3H1

**Victoria Airport Authority**

26 Bastion Square  
Burnes House, 3rd Floor  
Victoria, BC V8W 1H9

**Winnipeg Airports Authority Inc.**

2000 Wellington Avenue  
Room 249, Administration Building  
Winnipeg, MB R3H 1C2

**Greater Moncton International Airport Authority Inc.**

777 Aviation Avenue  
Unit 12  
Dieppe, NB E1A 7Z5

**Gander International Airport Authority Inc.**

1000 James Blvd. Po Box 400  
Gander International Airport  
Gander, NL A1V 1W8

**St. John's International Airport Authority**

100 World Parkway, Box 1  
Airport Terminal Building  
St. John's, NL A1A 5T2

**Deer Lake Regional Airport Authority Inc.**

1 Airport Road, Suite 1  
Deer Lake, NL A8A 1A3

**Halifax International Airport Authority**  
1959 Upper Water Street  
Suite 800  
Halifax, NS B3J 2X2

**Hamilton International Airport Limited**  
ATTN: Airport Manager  
9300 Airport Road, Suite 2206  
Mount Hope, Ontario L0R 1W0

**Greater London International Airports Authority**  
Care Of: Janet Carr  
1750 Crumlin Road  
London, ON N5V 3B6

**Ottawa Macdonald-Cartier International Airport Authority**  
1000, Airport Parkway Private  
Suite 2500  
Ottawa, ON K1V 9B4

**Sault Ste. Marie Airport Development Corporation**  
ATTN: Chief Executive Officer  
1-475 Airport Rd  
Sault Ste. Marie, ON, P6A 5K6

**Greater Toronto Airports Authority**  
3111 Convair Drive  
Mississauga, ON L5P 1B2

**Aéroports de Montréal**  
800 Place Leigh-Capreol  
Bureau 1000  
Dorval, QC H4Y 0A5

**Aéroport International de Mont Tremblant inc**  
150 ch. Roger-Hébert  
La Macaza (Québec) J0T1R0

**Aéroport de Québec Inc.**  
505, Rue Principale  
Quebec, QC G2G 0J4

**Regina Airport Authority**  
5201 Regina Avenue  
Suite 1  
Regina, SK S4W 1B3

**Saskatoon Airport Authority**

311 - 21 Street East  
Saskatoon Airport Authority  
Saskatoon, SK S7K 0C1

**Nanaimo Airport Commission**

3350 Spitfire Road  
Box 149  
Cassidy, BC V0R 1H0

**Thompson Regional Airport Authority**

Curtis M. Brisloe Law North, 2nd Floor 436 Thompson Dr N  
Thompson, MB R8N 0C6

**Fredericton International Airport Authority**

2570, Route 102 Hwy  
Unit 22  
Lincoln, NB E3B 9G1

**Saint John Airport Inc.**

4180 Loch Lomond Road  
Saint John NB E2N 1L7

**Northern New Brunswick Airport Authority**

2929 Route 180 South  
Tetagouche, NB E2A 7B9

**J.A. Douglas McCurdy Sydney Airport**

280 Silver Dart Way  
Sydney, NS B1M 1B8

**Sydney Airport Authority**

280 Silver Dart Way  
Sydney, NS B1M 1B8

**Your Quick Gateway (Windsor) Inc.**

ATTN: Airport Manager  
3200 County Road 42  
Unit #200  
Windsor, ON N8V 0A1

**Charlottetown Airport Authority Inc.**

65 Grafton Street  
Charlottetown, PEI C1A 1K8

## CLAIM

1. The Plaintiff claims, on his own behalf and on behalf of other members of the Class (as defined below):
  - a. An Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Courts Rules* (the "**Rules**") certifying this action as a class proceeding and providing any ancillary directions;
  - b. an Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiff as the representative plaintiff for the Class;
  - c. a declaration that each of the Defendants:
    - i. breached the terms of the Memorandum of Agreement for Airport Improvement Fees and/or the terms of the Memorandum of Agreement for Passenger Facility Fees;
    - ii. charged "Airport Improvement Fees" and/or "Passenger Facility Fees" to the members of the Class contrary to:
      1. the express terms of the Memorandum of Agreement for Airport Improvement Fees and/or the Memorandum of Agreement for Passenger Facility Fees; and/or
      2. the express terms of the contract between a Defendant and a member of the Class;
    - iii. have been unjustly enriched at the expense of the Class Members without a juridical reason; and/or
    - iv. breached s. 52 of the *Competition Act*, RSC 1985, c. C-34 (the "**Competition Act**") and that each member of the Class has suffered a loss as a result of the Defendants' breach;
  - d. an Order that each of the Defendants pay:
    - i. damages (under the law of contract and/or pursuant to s. 36 of the *Competition Act*) and/or restitution (under the law of restitution) to each of the Class Members in an amount equal to the amount of "Airport Improvement Fees" and/or "Passenger Facility Fees", plus applicable taxes, collected from the Class Members since the time each respective Defendant signed the Memorandum of Agreement for Airport Improvement Fees and/or the Memorandum of Agreement for Passenger Facility Fees; and

- ii. the costs of investigation and the full legal costs of this proceeding pursuant to s. 36 of the *Competition Act*;
- e. an Order pursuant to Rule 334.28(1) and (2) for the aggregate assessment of monetary relief, including use of any statistical evidence if necessary and permitted, and distribution to the Plaintiff and members of the Class;
- f. punitive damages;
- g. pre-judgment and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c. F-7; and
- h. such further and other relief as this Honourable Court deems just.

## **OVERVIEW OF THE CLAIMS OF THE CLASS**

- 2. This action seeks recovery for airline employees who travelled through various airports across Canada using an employee travel pass and paid an "Airport Improvement Fee" and "Passenger Facility Fee".
- 3. Travel using employee travel passes are exempt from these fees, as stipulated in the contracts between each of the Defendant airports and various airlines.
- 4. The Defendant airports represented that those fees were payable when traveling using employee travel passes, when the Defendant airports had in fact contractually agreed to exempt the employee travel passes from the fees.

## **THE PARTIES**

- 5. The Plaintiff, Brian Roy, is a pilot employed by Canada's flagship air carrier, Air Canada and resident in the province of Nova Scotia.
- 6. Each Defendant (listed in Schedules A or B to this Statement of Claim) is a legal entity, such as a corporation, society, or non-profit corporation that operate a commercial airport (an "aerodome" or an "airport" as defined in the *Aeronautics Act*, RSC 1985, c A-2) in a physical location within the territorial boundaries of Canada.
- 7. Each Defendant has an address for service in Canada, as provided in **Schedule A** or **Schedule B** to this Statement of Claim.



## **THE CLASS**

8. This Action is brought on behalf of members of a class consisting of the Plaintiff and all individuals who, from the time each Defendant entered into either the AIF MOA, PFF MOA, or GTAA MOA (as defined further below), travelled through a Defendant's airport using an airline employee travel pass and paid an "Airport Improvement Fee" and/or "Passenger Facility Fee" to the Defendant (hereinafter the "**Class**" or "**Class Member(s)**").
9. It is estimated that the Class includes at least tens of thousands of former and current airline employees, including retirees, and their travel companions.

## **AIRPORT IMPROVEMENT FEES AND PASSENGER FACILITY FEES**

10. Each of the Defendant airports listed in Schedule A of this Statement of Claim charge "Airport Improvement Fees", plus taxes (hereinafter "**AIF(s)**"),
11. Each of the Defendant airports listed in Schedule B of this Statement of Claim charge "Passenger Facility Fees", plus taxes (or similar "Passenger Fee") (hereinafter "**PFF(s)**").
12. The AIFs and PFFs are not charges imposed by federal law, but rather a charge imposed by the Defendant airports by virtue of a contract between a Defendant airport, air carriers, and/or the passengers (including the Class Members).
13. By contract (the ATAC MOAs below), AIFs collected by the Defendant airports must be used for capital improvements only.
14. In contrast, by contract (the ATAC MOAs below), PFFs collected by the Defendant airports may be used either for capital improvements or operating expenses.
15. The AIFs and PFFs are charged by each Defendant airport for each passenger that purchased a ticket and is departing from that airport.
16. The Class Members, including the Plaintiff, have collectively paid the AIFs and/or PFFs to each of the Defendant airports, and such fees were usually paid via the internet portal of the respective employers who collect the AIFs and/or PFFs on behalf of the Defendants.
17. The Plaintiff has paid an AIF to numerous Defendant airports including, *but not limited to*, the Defendant Halifax International Airport Authority, the Defendant Greater Toronto Airport Authority, and the Defendant Aéroports de Montréal, for a number of years as the Plaintiff is based in Halifax and regularly commutes to report to work in Toronto (or Montreal), and also returns home from Toronto (or Montreal).

18. Moreover, the Plaintiff's commute to/from Halifax and Toronto/Montreal to report to work is in the course of business of the respective employer airlines, as the Plaintiff is *required* to report to work to fly the airplanes.
19. The Plaintiff has also paid a PFF to the Defendant Charlottetown Airport Authority Inc. for previous travel to/from Prince Edward Island.
20. The Plaintiff's travel described above were all completed using his Travel Pass (as defined further below).
21. From time to time, the Plaintiff may travel using his Travel Pass for personal reasons and also paid a AIF or PFF to the respective airports.

## THE ATAC MOAs

22. The Air Transport Association of Canada is an entity under the *Canada Not-for-profit Corporations Act* and is acting as the voice for commercial aviation in Canada, akin to a trade association (hereinafter "**ATAC**").

### The AIF Memorandum of Agreement

23. On or about 1999, ATAC coordinated various airports in Canada and air carriers, whereby it resulted in those airports and air carriers entering into a written "Memorandum of Agreement" in respect of AIFs (hereinafter "**AIF MOA**").
24. The terms of the AIF MOA set out a contractual framework for the collection of AIFs by some of the Defendant airports and stipulate, *inter alia*, that:
  - a. "Airports [the Defendants in this action] may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers" (Preamble)
  - b. "The Parties agreed that this Memorandum of Agreement ("MOA") establishes the terms in respect of:...(b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain airport facilities." (Art. 1.1(b))
  - c. "This MOA shall be legally binding ...." (Art 1.2)
  - d. "The initial term of this MOA shall be for a period of 20 years commencing on May 31, 1999..." (Art. 17.1)
  - e. "This MOA shall be construed, interpreted and enforced in accordance with,

and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the Province of Ontario and, subject to Article 19, the Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.” (Art. 18.1)

- f. “...Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds...” (Art. 20.1)
- g. “The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors,....” (Art. 21.1)

25. The AIF MOA further provides that new airports and/or air carriers can subscribe to the AIF MOA by signing a designated form (Schedule C to the AIF MOA).

26. The AIF MOA may only be amended in accordance with the formula in Article 34 of the AIF MOA and, to the Plaintiff’s knowledge, no amendments were introduced since the inception of the AIF MOA.

27. The issue is that the AIF, on a proper interpretation and construction of the AIF MOA under the principles of contract law, does not apply to the Class Members (individuals who did **not** purchase an air ticket) because the terms unequivocally provide, *inter alia*, that:

**Remittance**

9.3 The obligation to remit AIF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.

...

9.5 With respect to DEPAX passengers who purchased tickets outside of North America:....

9.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

**Application of AIF**

11.1 Subject to the limitations described below, the AIF will apply to all departing enplaned passengers at a given airport (“DEPAX passenger(s)”).

....

11.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

...

11.6. The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN...

11.7 Regardless which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the AIF for the DEPAX passenger.

The PFF Memorandum of Agreement

28. On or about 2001, ATAC, coordinated various airports in Canada and air carriers, whereby it resulted in those airports and air carriers entering into a written "Memorandum of Agreement" in respect of PFFs (hereinafter "**PFF MOA**").

29. The PFF MOA was further amended around 2006.

30. The terms of the PFF MOA are substantially identical to those in the AIF MOA.

31. The terms of the AIF MOA set out a contractual framework for the collection of PFFs by some of the Defendant airports and stipulate, *inter alia*, that:

- a. "Airports [the Defendants in this action] may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers" (Preamble)
- b. "The Parties agreed that this Amended and Restated Memorandum of Agreement (this "MOA") establishes the terms in respect of:...(b) the collection of fees and charges by Signatory Air Carriers for an Airport from air carrier passengers if an Airport decides to impose such fees and charges to pay for the operation or capital development of certain Airport facilities." (Art. 1.1(b))
- c. "This MOA shall be legally binding ...." (Art 1.2)
- d. "The initial term of this MOA shall be for a period of 20 years commencing on July 1, 2006..." (Art. 15.1)
- e. "...Signatory Air Carriers acting as agents for the Airports in collecting and remitting the PFF funds..." (Art. 18.1)
- f. "The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors,...." (Art. 19.1)

32. The PFF MOA further provides that new airports and/or air carriers can subscribe to the PFF MOA by signing a designated form (Schedule C to the PFF MOA).

33. The PFF MOA may only be amended in accordance with the formula in Article 32 of the PFF MOA and, to the Plaintiff's knowledge, no amendments were introduced since 2006.
34. The issue is that the PFF, on a proper interpretation and construction of the PFF MOA under the principles of contract law, does not apply to the Class Members (individuals who did **not** purchase an air ticket) because the terms provide, *inter alia*, that:

#### **Remittance**

8.3 The obligation to remit PFF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.

...

8.5 With respect to DEPAX passengers who purchased tickets outside of North America:....

8.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

#### **Application of PFF**

10.1 Subject to the limitations described below, the PFF will apply to all departing enplaned passengers at a given airport ("DEPAX passenger(s)").

....

10.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

...

10.6. The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit a PFF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN including leisure travel....

10.7 Regardless which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the PFF for the DEPAX passenger.

#### **The Greater Toronto Airport Authority Agreement**

35. The Greater Toronto Airport Authority (GTAA) has implemented an agreement

substantially similar to the ATAC MOAs with various airlines (including Air Canada) providing the payment of an AIF to the GTAA (hereinafter the “**GTAA MOA**”).

36. To the Plaintiff’s knowledge, the latest GTAA MOA was executed on or about January 1, 2011 and entitled “Greater Toronto Airports Authority Airport Improvement Fee Agreement”.

37. The GTAA MOA specifically provides that AIF only applies to “enplaned passengers”, which are defined as:

*a departing passenger...but which shall not include:*

- airline employees
- customers travelling on passes or other travel documents with discount codes ID/IN...

38. The GTAA has not disclosed copies of or the precise terms of the GTAA MOA agreement. To the Plaintiff’s knowledge, the information above was obtained by WestJet pilots who were permitted an on-site review of the GTAA MOA agreement, without the ability to make any copies in any manner.

## **AIRLINE EMPLOYEE TRAVEL PASSES**

39. Airline employees’ travel passes are designated with discount codes ID/IN and are used for:

- a. The employee’s personal travel;
- b. Travel by an employee’s immediate family members, whether accompanying the employee or not; or
- c. The employee’s own commuting to/from their homes to an airport in another city to report for work.

(hereinafter the “**Travel Passes**”)

40. Travel Passes are issued to each airline employee generally free of charge and permits the employee, or pass holder, to be entitled to travel onboard that air carrier’s (or affiliated air carrier’s) airplane on a “stand-by” basis with no guarantee of travel whatsoever.

41. Travelling using a Travel Pass does not involve purchasing of an air ticket, and are subject to additional conditions and restrictions that regular fare paying passengers would not be subject to.

42. The ID discount code is an industry term referring to “Industry Discount” fares,

which includes employee standby travel and the term "passes" is a general industry term referring to free or substantially discounted travel for employees or their immediate families.

43. Furthermore, when the Class Members use the Travel Passes to commute to/from work in a different city, the Class Member(s) are travelling on business purposes (i.e. reporting to work for the benefit of their employers).

### **AIRPORTS CHARGING OF AIFS AND PFFS TO CLASS MEMBERS**

44. All the Defendant airports charge either the AIF or PFF to the Class Members, despite the Class Members travelling on Travel Passes that should not have been subject to the AIF or PFF under the AIF MOA, PFF MOA, or GTAA AIF, for any of the following reasons:

- a. The Class Members' travel to/from their homes to report to work is in the course of the airlines business and fits within the contractual exception;
- b. The Class Members' Travel Passes bear the ID/IN discount codes; and/or
- c. On a proper interpretation of the AIF MOA, PFF MOA, or GTAA AIF, it only applies to passengers that actually made a *purchase* of an air ticket.

45. Of note, some or all of the Defendants, during the first number of months or years of the AIF MOA and/or PFF MOA, did not charge the AIFs or PFFs to the Class Members.

46. The amount of AIF or PFF currently charged by each Defendant airport are noted in Schedules A and B.

47. While the Defendant airports and the respective airlines are the named parties to the AIF MOA, PFF MOA, or GTAA AIF, the Class Members are entitled to benefit from and enforce those agreements, pursuant to the federal common law:

- a. under traditional exceptions to privity of contract including:
  - i. agency whereby the respective airlines were acting in the role of an "agent" on behalf of their passengers;
  - ii. collateral contract (a collateral contract, under the terms of either the AIF MOA, PFF MOA, or GTA AIF, between each Class Member and the respective airports); and/or
  - iii. a contract for the benefit of third-parties (the AIF MOA, PFF MOA, and/or GTA AIF were entered into for the benefit of the passengers,

including Class Members).

- b. principled exception to the privity of contract (*Brown v. Belleville (City)*, 2013 ONCA 148)
48. In addition to the exceptions to privity above, airports within the province of New Brunswick and Quebec, and Class Members residing in said provinces, are entitled to further statutory exceptions to privity including:
- a. New Brunswick: *Law Reform Act*, RSNB 2011, c 184, s. 4
  - b. Quebec: *Civil Code of Québec*, CQLR c CCQ-1991, art. 1444-1450
49. Further, or in the alternative, the Class Members are also entitled to a remedy under the laws of restitution or unjust enrichment since:
- a. The Defendant airports obtained a benefit, being the AIFs or PFFs;
  - b. There was a corresponding deprivation on each of the Class Members who paid such AIFs or PFFs; and
  - c. There is no juridical reason for the Defendant airports to keep such benefits, although contracts are usually a juridical reason but in this instance the contracts do not permit charging of these fees.

## **AIRPORTS REPRESENTING THAT AIFS OR PFFS ARE NOT CHARGED TO CLASS MEMBERS**

50. Some Defendant airports further stipulate in public documents, in addition to the contractual terms under the AIF MOA or PFF MOA, that the Class Members are not subject to the AIF or PFF.

### **The Edmonton Regional Airports Authority**

51. The Edmonton Regional Airports Authority represents on its website that:

#### ***Airport Improvement Fee***

*Passengers departing Edmonton International Airport pay an Airport Improvement Fee (AIF) of \$30. This fee is included in the price of airline tickets. The AIF is used to fund any air terminal redevelopment projects.*

*The following passengers are exempt from the fee:*

- *Children under two*



- *Aircraft crew on duty*
- *Airline staff travelling on business*
- *In-transit passengers remaining on board an aircraft*
- *Passengers connecting within four hours for domestic/transborder flights (24 hours for international flights)*

52. Although the Edmonton Regional Airports Authority is a signatory to the AIF MOA, the Edmonton Regional Airports Authority fails to mention the exception for travel passes with discount codes ID/IN.

The Fort McMurray Airport Authority

53. The Fort McMurray Airport Authority represents on its website that:

***Airport Improvement Fee***

*An Airport Improvement Fee (AIF) of \$40.00 per departing passenger is payable by all scheduled air carriers operating a commercial air carrier passenger service at Fort McMurray International Airport that is available directly or indirectly to the public. Fort Chipewyan Airport passengers are an exception where the AIF charge is at \$10.00 per departing passenger. Passenger reports must be received by the 7th day of the following month; otherwise, the number of landed seats will be used to determine the fee.*

*The obligation of the air carrier to collect and remit AIF will not apply to airline crew travelling on business and infants under 2 years of age for whom no ticket was purchased. Regardless of which air carrier sells a ticket to a passenger or whose designator code is on the passenger's ticket, the air carrier on whom the departing passenger actually travels shall be the party responsible for the collection and remittance of the AIF for that departing passenger.*

54. Although the Fort McMurray Airport Authority is a signatory to the AIF MOA, the Fort McMurray Airport Authority fails to mention the exception for travel passes with discount codes ID/IN.

The Prince George Airport Authority

55. The Prince George Airport Authority represents on its website that:

***Airport Improvement Fee***

...

*Passengers exempt from the Airport Improvement Fee (AIF) are as follows:*

- *Arriving passengers*
- *Children under 2 years*
- *Attendants of persons with disabilities*
- *Aircraft crew who are on duty in uniform*

- *Connecting passengers who connect within 4 hours, applies to passengers connecting on the same ticket only*
- *Passengers on non-revenue generating private aircraft*
- *Medevac flights*

56. Although the Prince George Airport Authority is a signatory to the AIF MOA, the Prince George Airport Authority fails to mention the exception for travel passes with discount codes ID/IN and the exception for airline staff travelling on business.

### The Vancouver Airport Authority

57. For example, the Vancouver Airport Authority stated in its submission to Transport Canada's regulatory modernization initiative that:

*The Vancouver Airport Authority (the "Airport Authority") currently does not have any policy in place to waive airport improvement fees ("AIFs") for attendants accompanying passengers with disabilities.*

...

*The Airport Authority, together with other airport authorities across Canada, has entered into Memorandum of Agreement (MOA) with airlines operating from their airports for the collection of the AIF. The Air Transportation Association of Canada (ATAC) is also a party to the MOA. The MOA provides that the airlines will collect and remit to the airport authorities the AIF for passenger flying out of a particular airport....*

*....The MOA provides an exemption for certain category of passengers travelling through YVR (including connecting passengers, infants, and airline employees travelling for business and travel passes).*

58. However, despite these representations, the Vancouver Airport Authority charges the AIFs to the Class Members.

### The Winnipeg Airports Authority

59. The Winnipeg Airports Authority represents on its website, on its tariff of fees, that:

*...The obligation of the air carrier to collect and remit an AIF pursuant to this Tariff will not apply to:*

*i. a passenger continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries;*

*ii. a passenger continuing a journey less than 24 hours after arrival at the Airport for international itineraries (a passenger will be*

considered to be "continuing" a journey even though multiple air carriers may participate in the itinerary on air carrier ticket(s));

iii. *airline employees travelling on business; and*

iv. *infants under 2 years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant),*

60. Although the Winnipeg Airports Authority is a signatory to the AIF MOA, the Winnipeg Airports Authority fails to mention the exception for travel passes with discount codes ID/IN.

#### The Halifax International Airport Authority

61. The Halifax International Airport Authority, in their 2017 Aeronautical Rates And Charges document dated January 1, 2017, provides the following regarding the AIF, which mirrors those in the AIF MOA:

#### **4.0 Airport Improvement Fee (AIF)**

a) *The Airport Improvement Fee (AIF) is \$25.00 and applies to all departing enplaned passengers at the Airport's Air Terminal Building (ATB) with the exception of:*

i) *passengers continuing a journey less than 4 hours after arrival at the Airport for domestic and transborder itineraries;*

ii) *passengers continuing a journey less than 24 hours after arrival at the Airport for international itineraries;*

iii) *airline employees travelling on business including duty travel of crews of one air carrier travelling on aircraft of another air carrier;*

iv) *infants under 2 years of age for whom no ticket was purchased; and*

v) *passengers travelling on passes or other travel documents issued by an air carrier with discount codes ID/IN.*

62. The same provisions were in the Aeronautical Rates And Charges document of previous years but in 2018, in the 2018 Aeronautical Rates And Charges document, the Halifax International Airport Authority removed the express references to the underlined passages above for reasons unknown to the Plaintiff:

#### **4.0 Airport Improvement Fee (AIF)**

*b) a) The Airport Improvement Fee (AIF) of \$28.00 and the Intra-Provincial AIF of \$15.00 apply to all departing enplaned passengers at the ATB subject to certain limited exceptions. The air carrier on whose aircraft the passenger travels is responsible for remittance of the fee regardless of whether the fee has been collected from the passenger.*

#### The Aéroports de Montréal

63. The Aéroports de Montréal, during the material times, within their annual Aeronautical Fees document expressly acknowledge the exceptions in the AIF MOA.

#### **Passenger subject to Airport Improvement Fees**

*See article 11 of the MOA agreement between ATAC (Air Transport Association of Canada), signatory air carriers and signatory airports.*

#### The Regina Airport Authority

64. The Regina Airport Authority, in their letter dated November 1, 2016, with the subject "Final Rates and Fees Changes Effective January 1, 2017" state that:

*Passengers departing from Regina International Airport via commercial aircraft are required to pay an Airport Improvement Fee of \$20 per person for inter-provincial, transborder or international flights; and \$5 per person for intra-provincial flights. This fee is collected by the respective airline at the time of ticket purchase and must be remitted to RAA monthly. Passengers exempt from paying the AIF are infants under 2 for whom no ticket was purchased, airline employees travelling on business, customers travelling on passes or travel documents with discount codes, and passengers continuing a journey: (i) less than 4 hours after arrival at the Airport for domestic or transborder itineraries, and (ii) less than 24 hours after arrival at the Airport for international itineraries.*

65. However, the Regina Airport Authority charges the AIFs to the Class Members.

#### The Northern New Brunswick Airport Authority Inc.

66. The Northern New Brunswick Airport Authority Inc., in its aeronautics fee document applicable from April 2016 specifies that:

### ***Passenger Facilitation Fee***

a) *The Passenger Facilitation Fee (PFF) is \$40 and applies to all departing enplaned airline passengers at the Airport with the exception of:*

- i) airline employees travelling on business*
- ii) passengers connecting to same day flights*
- iii) infants under 2 years of age for whom no ticket was purchased*

67. Although the Northern New Brunswick Airport Authority Inc. is a signatory to the PFF MOA, the Northern New Brunswick Airport Authority Inc. fails to mention the exception for travel passes with discount codes ID/IN.

68. Furthermore, in the aeronautics fee document applicable on or after April 2018, the Northern New Brunswick Airport Authority Inc. now calls the PFF the "A.O.F.".

## **AIRPORTS AND ATAC CONCEALING THE AIF MOA and PFF MOA**

### **The Plaintiff's Investigation of the Charging of AIFs**

69. It is estimated that each airline employee contributed at least \$3,000 per year to the Defendant airports collectively, just taking into account the AIFs and PFFs paid for the Class Members' commute to/from work.

70. The Plaintiff previously contacted a number of Defendant airports to inquire on the basis for charging airport employees the AIFs and PFFs and requested copies of such documents that permit the charging of AIFs and PFFs on the Travel Passes.

71. None of the Defendant airports that the Plaintiff approached, including Victoria, Winnipeg, Halifax, and Toronto, provided a copy of the AIF MOA or PFF MOA, but rather, he was simply referred to ATAC.

72. The Plaintiff then contacted ATAC and was not able to obtain any satisfactory answer to the state of affairs, including the legal basis for charging the Class Members the AIFs or PFFs.

73. To the best of the Plaintiff's knowledge, the Defendant airports and ATAC has refused to provide copies of the AIF MOA and PFF MOA upon request, citing that they are "private agreements".

74. The relationship between each Class Member and the respective Defendant airports are in a commercial and/or business-to-consumer relationship that is

subject to the duty of good faith.

75. Each Defendants' failure to disclose to the Class Members their basis for charging the AIFs/PFFs is a breach of the duty of good faith and an attempt to conceal the improper basis for the charges.
76. Absent knowledge of what is stated in the AIF MOA and PFF MOA, Class Members would not know that they may be exempt from such fees.

*The Defendants' Representations to the Class Members*

77. The Defendants, whether on their own internet websites, at the airport counters, or via the intranet portals of the various airlines, represented to the Class Members that the Class Members must pay the AIFs and/or PFFs for travelling through the Defendant airports using a Travel Pass.
78. Such representation(s) above are not true considering that, under the AIF MOA, PFF MOA, or the GTAA AIF, the Defendants are contractually constrained from charging AIFs and PFFs to the Class Members.
79. The Defendants' charging of the AIFs and/or PFFs caused the Class Members to suffer a loss and/or damage for having paid the AIFs and PFFs, plus taxes, when no such fees were payable.

*Punitive Damages is Warranted*

80. While section 36 of the *Competition Act* does not permit this Court to award punitive damages (only actual loss and damage can be awarded under section 36), this Court has the power to award punitive damages under the federal common law, including the law of contracts and/or restitution.
81. The Defendants' conduct of charging the Class Members AIFs and PFFs for more than a decade, when they were not entitled to do so, followed by a complete disregard for their contractual obligations (and other representations) not to charge the AIFs and PFFs, followed by concealment of the AIF MOA and PFF MOA documents demonstrates a marked departure from the ordinary standard of decent behavior. It further demonstrates that the Defendants are lax, passive or ignorant with respect to the Class Members' rights.

**JURISDICTION**

82. Subsection 36(3) of the *Competition Act* provides that the Federal Court is a court of competent jurisdiction.

83. In addition, this Action concerns aeronautics with a subsisting body of federal laws including:

- a. *Aeronautics Act*, R.S.C., 1985, c. A-2
- b. *Carriage by Air Act*, R.S.C., 1985, c. C-26
- c. *Canada Transportation Act*, S.C. 1996, c. 10
- d. *Air Transportation Regulations*, SOR/88-58
- e. *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5
- f. Federal common law, including the law relating to contracts, restitution, conflict of laws, unjust enrichment, and waiver of tort

84. Both sections 23(b) and 23(c) of the *Federal Courts Act* provide that the Federal Court has jurisdiction.

85. The Defendant airports are subject to Canadian laws and within the territorial jurisdiction of this Court.

### Location of Trial

The Plaintiff proposes that this action be tried at Vancouver, British Columbia.

Dated: March 25, 2019

Champlain Avocats

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I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the \_\_\_\_\_

day of MAR 26 2019 A.D. 20\_\_

Dated this MAR 26 2019 day of \_\_\_\_\_ 20\_\_



**JOYCE FAN  
REGISTRY OFFICER  
AGENT DU GREFFE**

**Schedule A – Airports Charging the AIF**

	<b>Name of Defendant</b>	<b>Address for Service</b>	<b>Jurisdiction of Incorporation</b>	<b>Amount of AIF charged</b>
1.	The Calgary Airport Authority	2000 Airport Rd. N.E. Calgary, Alberta T2E 6W5	Alberta	\$30
2.	Edmonton Regional Airports Authority	1, 1000 Airport Road Edmonton International Airport, Alberta T9E 0V3	Alberta	\$30
3.	Fort McMurray Airport Authority	300 - 100 Snowbird Way Fort McMurray, Alberta T9H 0G3	Alberta	\$40
4.	Grande Prairie Airport Commission	Suite 220, 10610 - Airport Drive Grande Prairie, Alberta T8V 7Z5	Alberta	\$20-25



5.	Comox Valley Airport Commission	1250 Knight Road Comox, BC V9M 4H2	Federal ( <i>Canada Not- for-profit Corporations Act</i> )	\$5-11
6.	North Peace Airport Services Ltd.	745 Thurlow Street Suite 2400 Vancouver, BC V6E 0C5	British Columbia	\$18
7.	Kamloops Airport Authority Society	300 - 350 Lansdowne Street Kamloops, BC V2C 1Y1	British Columbia ( <i>Societies Act</i> )	\$10
8.	Kamloops Airport Ltd.	745 Thurlow Street Suite 2400 Vancouver, BC V6E 0C5	British Columbia	\$10
9.	Prince George Airport Authority Inc.	1000 299 Victoria Street Prince George, BC V2L 5B8	Federal ( <i>Canada Not- for-profit Corporations Act</i> )	\$25

10.	Vancouver Airport Authority	800-885 West Georgia Street Vancouver, BC V6C 3H1	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$5-\$20
11.	Victoria Airport Authority	26 Bastion Square Burnes House, 3rd Floor Victoria, BC V8W 1H9	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$15
12.	Winnipeg Airports Authority Inc.	2000 Wellington Avenue Room 249, Administration Building Winnipeg, MB R3H 1C2	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$25
13.	Greater Moncton International Airport Authority Inc.	777 Aviation Avenue Unit 12 Dieppe, NB E1A 7Z5	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$20-25
14.	Gander International Airport Authority Inc.	1000 James Blvd. Po Box 400 Gander International Airport Gander, NL A1V 1W8	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$25

15.	St. John's International Airport Authority	100 World Parkway, Box 1 Airport Terminal Building St. John's, NL A1A 5T2	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$35
16.	Deer Lake Regional Airport Authority Inc.	1 Airport Road, Suite 1 Deer Lake, NL A8A 1A3	Newfoundland	\$20
17.	Halifax International Airport Authority	1959 Upper Water Street Suite 800 Halifax, NS B3J 2X2	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$15-28
18.	Hamilton International Airport Limited	<b><u>ATTN: Airport Manager</u></b> 9300 Airport Road, Suite 2206 Mount Hope, Ontario L0R 1W0	Ontario	\$25
19.	Greater London International Airports Authority	Care Of: Janet Carr 1750 Crumlin Road London, ON N5V 3B6	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$15-20

20.	Ottawa Macdonald-Cartier International Airport Authority	1000, Airport Parkway Private Suite 2500 Ottawa, ON K1V 9B4	Federal <i>(Canada Not-for-profit Corporations Act)</i>	\$15-23
21.	Sault Ste. Marie Airport Development Corporation	<b><u>ATTN: Chief Executive Officer</u></b> 1-475 Airport Rd Sault Ste. Marie, ON, P6A 5K6	Ontario	\$20
22.	Greater Toronto Airports Authority	3111 Convair Drive Mississauga, ON L5P 1B2	Federal <i>(Canada Not-for-profit Corporations Act)</i>	\$4-25
23.	Aéroports de Montréal	800 Place Leigh-Capreol Bureau 1000 Dorval, QC H4Y 0A5	Federal <i>(Canada Not-for-profit Corporations Act)</i>	\$25-30
24.	Aéroport International de Mont Tremblant inc	150 ch. Roger-Hébert La Macaza (Québec) J0T1R0	Quebec	\$25

25.	Aéroport de Québec Inc.	505, Rue Principale Quebec, QC G2G 0J4	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$35
26.	Regina Airport Authority	5201 Regina Avenue Suite 1 Regina, SK S4W 1B3	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$5-20
27.	Saskatoon Airport Authority	311 - 21 Street East Saskatoon Airport Authority Saskatoon, SK S7K 0C1	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$5-20

**Schedule B – Airports Charging the PFF**

	<b>Name of Defendant</b>	<b>Address for Service</b>	<b>Jurisdiction of Incorporation</b>	<b>Amount of PFF charged</b>
28.	Nanaimo Airport Commission	3350 Spitfire Road Box 149 Cassidy, BC V0R 1H0	Federal <i>(Canada Not-for-profit Corporations Act)</i>	\$10
29.	Thompson Regional Airport Authority	Curtis M. Brisloe Law North, 2nd Floor 436 Thompson Dr N Thompson, Mb R8N 0C6	Manitoba	\$30
30.	Fredericton International Airport Authority	2570, Route 102 Hwy Unit 22 Lincoln, NB E3B 9G1	Federal <i>(Canada Not-for-profit Corporations Act)</i>	\$20-25
31.	Saint John Airport Inc.	4180 Loch Lomond Road Saint John NB E2N 1L7	New Brunswick	\$25

32.	Northern New Brunswick Airport Authority	2929 Route 180 South Tetagouche, NB E2A 7B9	New Brunswick	\$40
33.	J.A. Douglas McCurdy Sydney Airport	280 Silver Dart Way Sydney, NS B1M 1B8	Nova Scotia (a partnership)	\$25
34.	Sydney Airport Authority	280 Silver Dart Way Sydney, NS B1M 1B8	Nova Scotia	\$25
35.	Your Quick Gateway (Windsor) Inc.	<b><u>ATTN: Airport Manager</u></b> 3200 County Road 42 Unit #200 Windsor, ON N8V 0A1	Ontario	\$15
36.	Charlottetown Airport Authority Inc.	65 Grafton Street Charlottetown, PEI C1A 1K8	Federal ( <i>Canada Not-for-profit Corporations Act</i> )	\$20