

Court File No. 11-CV-00009146-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

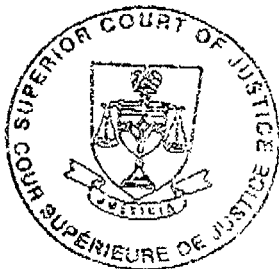
**INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
AND DAVID RITCHIE**

Applicants

and

AIR CANADA

Respondent



**APPLICATION under Rules 14.05(2), 14.05(3)(d), 14.05(3)(g), and 14.05(h) of the
Rules of Civil Procedure and under sections 247 - 248 of the
*Canada Business Corporations Act***

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be fixed by the Court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an

Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

March 18 2011
Date

Tara Stead
Issued by
Local registrar

330 University Avenue, 7th Floor
Toronto, Ontario

TO **AIR CANADA**
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Lawyers for the Respondent,
Air Canada

APPLICATION

1. The Applicants makes application for:
 - a. a declaration that Air Canada is not maintaining operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
 - b. a declaration that Air Canada is in breach of s. 6(1)(d) of the *Air Canada Public Participation Act*, R.S.C. 1985, c. 35 (4th Supp.) [the "Act"] because Air Canada is not maintaining operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
 - c. further, or in the alternative, a declaration pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended [the "CBCA"] and in particular s. 247 thereof, that Air Canada is not in compliance with its articles of continuance or its "articles" as defined in s. 1 of the *CBCA* because Air Canada is not maintaining operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
 - d. further, or in the alternative, a declaration that Air Canada is in breach of s. 6(1)(d) of the *Act* because its articles of continuance do not contain provisions requiring Air Canada to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
 - e. a declaration that Air Canada is required, under its articles of continuance or its "articles" as defined in s. 1 of the *CBCA*, to maintain operational and

overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;

- f. an Order directing Air Canada to comply with the *Act* by maintaining operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
- g. further, or in the alternative, an Order directing Air Canada to comply with its articles or its articles of continuance by maintaining operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
- h. an Order directing Air Canada to include in its articles of continuance or articles the provision required by s. 6(1)(d) of the *Act*;
- i. an interim, interlocutory, and permanent injunction restraining Air Canada from breaching the *Act* and its articles or its articles of continuance by failing to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
- j. an interim, interlocutory injunction restraining Air Canada from proceeding with the transfer of employees currently carrying out maintenance and overhaul operations from employment with Air Canada to employment with Aveos Fleet Performance Inc, which transfer will result in Air Canada's ceasing to be the employer of any employees carrying out overhaul operations at the centres in Winnipeg, Montreal and Mississauga as of July 14, 2011, until such time as this application is finally disposed of by this Honourable Court;

- k. the Costs of this Application; and
 - l. such further and other relief as counsel may advise.
2. The grounds for the application are:

The Parties

- a. the Applicant International Association of Machinists and Aerospace Workers ("IAMAW") is a Trade Union certified under the Canada Labour Code to represent, among other members, approximately two-thousand three hundred employees employed by Air Canada in relation to the maintenance and overhaul of aircraft in overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga;
- b. David Ritchie is the IAMAW's General Vice-President for Canada and is a shareholder of Air Canada;
- c. Air Canada is Canada's largest full-service airline and the largest provider of scheduled passenger services in the Canadian market, the Canada-U.S. transborder market and in the international market to and from Canada;

Air Canada's Operational and Overhaul Centres

- d. As of July 14, 2011 Air Canada will no longer maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga (the "three material centres");

- e. As of July 14, 2011 Air Canada will no longer be the employer of any person carrying out overhaul work at any of the three material centres;

Air Canada's 1988 Privatization

- f. Before 1988, Air Canada operated as a Crown corporation pursuant to corporate status granted it by the *Air Canada Act*, S.C. 1977, c. 5;
- g. In 1988, Parliament enacted the *Act*, which continued Air Canada as a private business corporation incorporated pursuant to the *CBCA*, subject to specific conditions set out in the *Act*, including the conditions set out in s.6(1)(d), which provides that Air Canada's articles of continuance must contain provisions requiring Air Canada to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga;
- h. the *Act* repealed the *Air Canada Act* and, shortly thereafter, Air Canada applied to the Government of Canada and received a certificate of continuance pursuant to the *CBCA*;

The Act and the Three Material Centres

- i. the *Act*, and more particularly s. 6(1)(d) thereof, mandates that Air Canada's articles of continuance contain:

"provisions requiring [Air Canada] to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga"

"des dispositions [o]bligeant [Air Canada] à maintenir les centres d'entretien et de révision dans les villes de Winnipeg et Mississauga et dans la Communauté urbaine de Montréal";

Air Canada No Longer Maintains the Three Material Centres

- j. Air Canada has undergone a series of corporate changes and restructurings since 1988. However, at all times to the present, and up until July 14, 2011, it has continued and will continue, to carry out maintenance and overhaul work at the three material centres using Air Canada employees represented by the IAMAW;
- k. As of July 14, 2011 Air Canada will no longer employ any persons carrying out overhaul work at any of the three material centres;
- l. As of July 14, 2011 these overhaul centres will be operated by a distinct company, Aveos Fleet Performance Inc (“Aveos”), using persons employed by Aveos and not by Air Canada;
- m. In 2002 Air Canada first undertook a corporate restructuring under which its internal technical services division, which carried out maintenance, repair and overhaul work on Air Canada and other aircraft, became a distinct corporate entity. The new entity was named Air Canada Technical Services and was a wholly owned subsidiary of Air Canada. Air Canada continued to carry out maintenance, repair and overhaul operations at the three material centres using Air Canada employees represented by the IAMAW;
- n. In 2004 Air Canada undertook a further corporate reorganization under the protection of the Companies Creditors Arrangement Act (“CCAA”). In that restructuring a new holding company was created, ACE Aviation Holdings Inc., (“ACE Aviation”) which held ownership of Air Canada and of certain newly created limited partnerships which had formerly been internal divisions of Air Canada, namely, ACTS LP (carrying out Air Canada’s

maintenance, repair and overhaul operations), AC Cargo (carrying out Air Canada's cargo operations) and ACGHS (carrying out Air Canada's groundhandling operations). The stated rationale for the creation of these new business units was "to enable certain key businesses, including Cargo, Groundhandling and Technical Services, to better compete for third party business and generate value for their stakeholders";

- o. Air Canada continued to be the employer of the employees who carried out the operations associated with the ACTS, AC Cargo and ACGHS business units;
- p. On October 16, 2007 ACE Aviation sold the business of ACTS LP to a consortium, with ACE Aviation retaining a 23% ownership interest. The business previously carried on by ACTS LP continued seamlessly, operating under the name of ACTS until September 23, 2008, at which time it was renamed "Aveos Fleet Performance Inc.";
- q. All IAMAW employees remained employees of Air Canada and members of the Air Canada Pension Plan, pending clarification of the impact of the sale on IAMAW represented employees, and pursuant to an agreement to this effect between the IAMAW and Air Canada;
- r. Aveos faced insolvency in or around January 2009 and, on March 12, 2010, Aveos completed an out of court restructuring that resulted in ACE Aviation relinquishing ownership of Aveos shares, and Air Canada acquiring ownership of 17.5% of Aveos;
- s. In June, 2010, Aveos and Air Canada applied to the Canada Industrial Relations Board ("CIRB") for a declaration that Air Canada had sold its

maintenance repair and overhaul ("MRO") business to Aveos, and for orders dividing the IAMAW bargaining units at Air Canada. In that proceeding the IAMAW took the position that Aveos remained under the direction or control of Air Canada, and that Air Canada and Aveos remained in a common employer relationship, such that the IAMAW represented employees carrying out maintenance repair and overhaul work at Aveos should remain employees of Air Canada;

- t. On January 31, 2011 the CIRB issued orders declaring that Air Canada's maintenance, repair and overhaul business had been sold and that Air Canada and Aveos were no longer common employers of the IAMAW members carrying out Air Canada's former maintenance repair and overhaul business. In reasons issued March 2, 2011, the Canada Industrial Relations Board held that Air Canada and Aveos are not in the same business and that Aveos and Air Canada are not subject to common direction or control;
- u. Air Canada, the IAMAW and Aveos are party to an agreement dated January 8, 2009 that sets out procedures for an orderly transition of employees from Air Canada to Aveos, and that comes into effect in the event of a CIRB order dividing the IAMAW bargaining units. Under the timetable set out in that agreement, IAMAW represented employees carrying out the maintenance, repair and overhaul business formerly operated by Air Canada will cease to be employees of Air Canada on July 14, 2011;

Air Canada Is Breaching the Act or Its Articles

- v. Since Air Canada no longer has any employees carrying out overhaul operations at any of the three material centres, and since the

maintenance, repair and overhaul business formerly operated and controlled by Air Canada, which includes all overhaul operations at the three material centres, is now owned and operated exclusively by Aveos, Air Canada is no longer maintaining the three material centres;

- w. The failure to maintain the three material centres runs contrary to the *Act*, and in particular s. 6(1)(d) thereof;
- x. Further, or in the alternative, the failure to maintain the three material centres runs contrary to Air Canada's articles of continuance or the articles of Air Canada in their past or current form;
- y. The failure to maintain the three material centres runs contrary to Air Canada's articles of continuance or the articles of Air Canada in their past or current form, which is appropriately remedied by a declaration of such a breach and an order restraining such a breach pursuant to s.247 of the *CBCA*;

Statutory Provisions

- z. The *Air Canada Public Participation Act*, R.S.C. 1985, c, 35 (4th Supp.), and in particular s. 6(1)(d) thereof;
- aa. The *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, and in particular sections 1 (definition of "articles"), 247, and 248 thereof;
- bb. The *Rules of Civil Procedure*, R.R.O. Reg. 194, and in particular Rules 14.05(2), 14.05(3)(d), 14.05(3)(g), and 14.05(h) thereof; and

cc. Such further and other grounds as counsel may advise and this Honourable Court permit.

3. The following documentary evidence will be used at the hearing of the application:

- a. the Affidavit of Ronald Fontaine;
- b. the Affidavit of Gary Sinclair;
- c. this Notice of Application; and
- d. such further and other documentary evidence as counsel shall advise and this Honourable Court permit.

Date:

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Applicants

and

AIR CANADA

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SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceedings commenced at Toronto

NOTICE OF APPLICATION

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