

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**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 MOTION

THE MOVING PARTIES, International Association of Machinists and Aerospace Workers (“IAMAW”) and David Ritchie will make a motion to the court on Wednesday, April 13, 2011, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

x orally.

THE MOTION IS FOR

1. An interim and interlocutory injunction restraining the Respondent Air Canada, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions, and anyone aiding or assisting Air Canada from breaching the *Air Canada Public Participation Act*, R.S.C. 1985, c. 35 (4th Supp.) [the “Act”], and in particular s. 6(1)(d) thereof, by failing to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community, and the City of Mississauga, until such time as this Application is finally disposed of by this Honourable Court;

2. An interim and interlocutory injunction restraining the Respondent Air Canada, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions, and anyone aiding or assisting Air Canada from breaching 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, until such time as this Application is finally disposed of by this Honourable Court;

3. An interim and interlocutory injunction restraining the Respondent Air Canada, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions, and anyone aiding or assisting Air Canada from proceeding with the transition process currently underway to transfer employees carrying out maintenance and overhaul operations from employment with Air Canada to employment with Aveos Fleet Performance Inc. (“Aveos”) and which 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;

4. An Order dispensing with service of this Notice of Motion and any Motion Record or, in the alternative, an Order abridging service of this Notice of Motion and any Motion Record, if such Orders are required;
5. Costs to be fixed and payable forthwith; and
6. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. As of July 14, 2011 at the latest, Air Canada will no longer employ any persons to carry out the overhaul of aircraft. As a result, 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”);
2. As set out in the Notice of Application, the Moving Parties allege that the failure to maintain the three material centres constitutes a violation of the *Act* and a violation of Air Canada’s articles of continuance or articles;
3. Between the present date and the hearing of the Applicants’ Application, steps are underway to transition Air Canada’s employees carrying out the maintenance, repair and overhaul of aircraft in the three material centres from employment with Air Canada to employment with Aveos, the sole operator of overhaul activities in the three material centres;
4. These steps are set out in an agreement dated January 8, 2009 that details procedures for an orderly transition of employees from Air Canada to Aveos [the “Agreement”];

5. Pursuant to the Agreement, by April 15, 2011, Air Canada employees must make an irrevocable election whether to try to remain an employee of Air Canada, to accept available work with Aveos; to retire from Air Canada in order to accept an available position with Aveos without seniority; or, to resign from Air Canada to accept an available position with Aveos without seniority;
6. Employees who elect at the first instance to remain with Air Canada, and who are identified as having sufficient seniority to hold a position at Air Canada, will be required to bump within Air Canada into positions held by less senior employees or will be placed on lay off. Those employees who elect at first instance to remain at Air Canada, but who are identified as unable to hold a position based on their seniority, either at their home base or anywhere in the system, may have a further opportunity to accept an offer of available employment from Aveos.
7. There are a number of classifications under the IAMAW collective agreement that are specific to overhaul operations, and whose incumbents do not hold seniority rights that would allow them to remain in active employment with Air Canada once Air Canada ceases to be the employer of employees carrying out overhaul operations. Employees in those classifications must accept a position at Aveos in order to continue working;
8. Air Canada is a national enterprise, and the IAMAW collective agreement provides for seniority rights effective across the country. As a result of the transition process, a significant number of Air Canada employees will be required to move their families and their homes to continue their employment in other parts of the country. Employees could learn of these moves and the moves themselves could commence at any time after April 15, 2011;

9. At a date between April 15, 2011 and July 14, 2011 all employees who have accepted a position with Aveos will lose their employment rights with Air Canada and become employees of Aveos, regardless of whether that employee continues to be assigned to work for the benefit of Air Canada;
10. The Applicants and members of the IAMAW who are represented by the IAMAW stand to suffer irreparable harm, including but not limited to the harm described above, if the injunctive relief as requested herein is not granted. The fundamental factual premise of the transition process is that Air Canada will no longer employ any persons carrying out overhaul operations after July 14, 2011, and that any person wishing to remain employed in that capacity must accept employment with Aveos. The legality of this situation is what is at issue in this application;
11. The balance of convenience favours the granting of these Orders;
12. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
13. Rules 1.04(1), 2.01, 3.02(1), and 40 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and,
14. Such further and other grounds as counsel may advise and this Honourable Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Notice of Application herein;

2. This Notice of Motion;
3. The Affidavit of Ronald Fontaine;
4. The Affidavit of Gary Sinclair; and
5. Such further and other evidence as counsel may reasonably require and this Honourable Court shall permit.

April 1, 2011

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