

NOTICE TO CLASS MEMBERS - AUTHORIZED CLASS ACTION

BENAMOR V. AIR CANADA

500-06-000883-179

1. By judgment dated November 27, 2020, the Québec Court of Appeal authorized a class action on behalf of the following persons who will be members of the class:

All consumers in Canada who, between August 16, 2013 and July 5, 2021, purchased, received, and/or acquired one or more Air Canada Consumer Flight Pass(es) with a specified number of flight credits;

hereinafter referred to as the "**Class**".

2. This class action will be exercised in the district of Montréal.
3. The status of representative for this class action has been granted to **Joseph Benamor**.
4. The address of the attorneys to Plaintiff/Representative **Joseph Benamor** is:

Champlain Avocats
1434 Sainte-Catherine Street West, Suite 200
Montréal, Québec H3G 1R4

5. The principal questions of fact and law to be dealt with collectively are the following:

Application of the Consumer Protection Act

1. Is the *CPA* a law of public order applicable to all merchants located within Quebec?
2. Considering that Air Canada is headquartered and domiciled in the province of Quebec, does the *CPA* also govern Air Canada's conduct and/or transactions, when transacting remotely via the internet with a consumer residing outside of Quebec?
3. If Question 2 is "No", does the *CPA* apply by virtue of the Quebec choice of law clause within Air Canada's website Terms of Use (for Class members prior to February 23, 2016 who are resident outside of Quebec)?
4. Subsidiarily, if Question 2 is "no", then for Class members on or after February 23, 2016 who are resident outside of Quebec, by virtue of the Alberta choice of law provision (para. 21 of the Application for Authorization) and operation of Article 3117 *CCQ*, did Air Canada commit a contractual fault under Article 1458 *CCQ* by:

- a. Selling the Air Canada Consumer Flight Pass, which is a "prepaid purchase card" under section 1 of *Gift Card Regulation*, Alta Reg 146/2008? and
- b. Imposing fees and expiry dates contrary to section 2-3 of the above statute?

Consumer Protection Act Prepaid Card Questions

5. Is the Air Canada Consumer Flight Pass a "prepaid card" within the meaning of s. 187.1 of the *CPA*?

6. If the Air Canada Consumer Flight Pass is a "prepaid card":

- a. Is the expiry date on Air Canada's Consumer Flight Pass contrary to s. 187.3 of the *CPA*?
- b. Is the charge for an extension of the expiry date on Air Canada's Consumer Flight Pass a charge for the use of a prepaid card contrary to s. 187.4 of the *CPA*?
- c. Is the charge for the change of a travelling companion's name on Air Canada's Consumer Flight Pass a charge for the use of a prepaid card contrary to s. 187.4 of the *CPA*?

Remedies Questions

7. Does the absolute presumption of prejudice apply to the Class members' claims?

8. Are the Class members entitled to compensatory damages (or a reduction of obligations) from Air Canada, consisting of:

- a. a monetary amount equivalent to the value of the Consumer Flight Pass flight credits that have been forfeited to Air Canada;
- b. a monetary amount equivalent to the extension fees paid to extend the expiry of the Consumer Flight Pass; and/or
- c. a monetary amount equivalent to the companion name change fees paid for the use of the Consumer Flight Pass?

9. Are the Class members entitled to any or all of the following remedies with respect to Air Canada imposing an expiry date on their Consumer Flight Passes;

- a. reduction of each Class Members' obligations;
- b. rescind, set aside, or annul the Class Member's Consumer Flight Pass purchase(s);
- c. award compensatory damages to each Class Member; and/or
- d. award moral damages, including damages for inconvenience, to each Class Member?

10. Does Air Canada's conduct demonstrate lax, passive or ignorance with respect to consumers' rights and to their own obligations under the consumer protection laws such that punitive damages is warranted? If so, how much?

11. Are the Class Members entitled to the interest and additional indemnity set out in the C.C.Q. on the above monetary amounts, from the date of initial date of purchase of their Consumer Flight Pass(es)?

6. The conclusions sought in relation to these questions are the following:

GRANT the class action of the Applicant and each of the Class members;

DECLARE the Defendant liable for the damages suffered by the Applicant and each of the members of the Class;

CONDEMN the Defendant to pay an amount in damages, including compensatory and/or moral damages, to each member of the Class, or alternatively a reduction of obligations for each Class member in an amount to be determined by the Court, plus interest as well as additional indemnity, under Article 1619 of the C.C.Q., since the date of each Class member's purchase of their Consumer Flight Pass;

CONDEMN the Defendant to pay an amount in punitive and/or exemplary damages to each member of the Class, in an amount to be determined by the Court, with interest as well as the additional indemnity, under Article 1619 of the C.C.Q.;

CONDEMN the Defendant to bear the costs of the present action including expert, expertise, and notice fees;

ORDER that the above three condemnations be subject to collective recovery;

CONDEMN the Defendant to bear the costs of the action including the cost of notices, the cost of claims administration, and the cost of experts, if any;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class.

7. The class action to be exercised by the representative on behalf of the members of the Class is an action for one or more of the following remedies: (i) compensatory damages; (ii) reduction of the Class Member's obligations, (iii)

rescinding, setting aside or annulling the Class Member's Consumer Flight Pass purchase; (iv) moral damages; and (v) punitive and/or exemplary damages.

8. Any Class member who has not requested to opt out in the manner set out below will be bound by the judgment to be rendered in the class action.
9. The date after which a member may no longer opt out without special permission is August 31, 2021.
10. A Class member who has not brought a personal action having the same subject matter as the class action who wishes to opt out of the class action may do so before the expiration of the deadline to opt out by advising the Clerk of the Superior Court of Québec in district of Montréal by registered mail, with a copy to the attorneys of the Plaintiff/Representative indicating the court number 500-06-000883-179:

Clerk of the Superior Court of Québec

1 Notre-Dame Street East
Montréal, Québec, H2Y 1B6

Champlain avocats

1434 Saint-Catherine Street West, Office 200
Montréal, Québec, H3G 1R4
spaquette@champlainavocats.com

11. Any Class member who has brought (prior to the expiration of the deadline to opt-out) an action having the same subject matter as the class action is deemed to have opted out from the Class if he or she does not discontinue that court action before the expiration of the deadline to opt-out.
12. A member of the Class other than a Representative or an Intervenor may not be required to pay the legal costs arising from the class action.
13. A member may seek authorization from the Court to intervene if the intervention is considered helpful to the Class. A member who intervenes is required to submit to a pre-trial examination at the request of the Defendant. A Class member who does not intervene may not be subject to a pre-trial examination unless the Court

considers that it would be useful for its determination of the issues of law or fact to be dealt with collectively.

Montréal, Québec, **July 5, 2021**

THE ATTORNEYS FOR THE PLAINTIFF/REPRESENTATIVE JOSEPH BENAMOR

M^e Sébastien A. Paquette
M^e Jérémie John Martin
1434, rue Sainte-Catherine Ouest, Bureau 200
Montréal, Québec H3G 1R4
Tél : 514-944-7344
<https://champlainlawyers.com/class-action/air-canada-flight-pass-expiry-and-fees/>
E-mail : spaquette@champlainavocats.com

THE DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPERIOR COURT OF QUEBEC.