

**SMALL CLAIMS COURT OF NOVA SCOTIA**

DANIEL JOSEPH SERGE LACHANCE

Claimant

-and-

AIR CANADA

Defendant

**DEFENDANT AIR CANADA'S PLEA**

- 1- Air Canada is an air carrier duly authorized to carry passengers, baggage and cargo nationally and internationally;
- 2- Unless expressly admitted elsewhere in this Statement of Defence. Air Canada expressly denies each and every allegation contained in the Claimant's Civil Claim and puts the Claimant to the strict proof thereof;
- 3- Air Canada denies any negligence by it or its servants, agents or employees and pleads that it and its servants, agents and employees took all reasonable measures required to avoid any damage;

**TO RE-ESTABLISH THE FACTS, DEFENDANT PLEADS AS FOLLOWS:**

- 4- Air Canada denies the allegations contained in the present Action as to the fact that the reason Claimant did not travel on flight AC289 on February 2nd, 2014 was caused by an overbooking situation but rather because his itinerary did not allow his acceptance on that flight;
- 5- Claimant's tickets were issued directly by his Travel Agency *World Travel Service* and were bearing numbers 0142130570174 and 0142130570175 for domestic carriage on February 2nd, 2014 from Halifax to Toronto to Vancouver to Whitehorse, returning to Halifax on February 8th, 2014, the whole as more fully appears from a copy of Claimant's tickets, a copy of the Claimant's PNR (Passenger Name Record) and copy of the Terms and Conditions filed herewith as **Exhibit D-1**;

- 6- Air Canada has never dealt directly with the Claimant and every aspect of the travel was arranged by the Claimant and his Travel Agency World Travel Service;
- 7- The Claimant's complete itinerary was as follow (Connecting Time: **CT**):
- |        |                  |                        |                           |
|--------|------------------|------------------------|---------------------------|
| AC0603 | February 2, 2014 | Halifax – Toronto      | 05:30 – 07:08             |
| AC0153 | February 2, 2014 | Toronto – Vancouver    | 08:00 – 10:07 (CT 52 min) |
| AC0289 | February 2, 2014 | Vancouver – Whitehorse | 12:30 – 15:05 (CT 2:23)   |
| AC0288 | February 8, 2014 | Whitehorse – Vancouver | 05:50 – 08:15             |
| AC0206 | February 8, 2014 | Vancouver – Toronto    | 09:00 – 11:27 (CT 45 min) |
| AC0118 | February 8, 2014 | Toronto – Halifax      | 12:20 – 21:49 (CT 53 min) |
- 8- It is important to note that the minimum connection time (MCT) between two domestic flights at the Toronto Pearson International Airport is 45 minutes and 40 minutes for the Vancouver International Airport;
- 9- MCT's are determined by the International Air Transport Association (IATA), in conjunction with the various airport authorities, based on certain standards as established by IATA. Factors such as terminal configuration, gating (bridge/non-bridge), aircraft type, customs process etc. are all considered.
- 10- The following information is available on the Air Canada's website at:

<http://www.aircanada.com/en/travelinfo/airport/connectiontimes.html>

<b>...connecting through:</b>	<b>Minimum Connection Time</b>
Calgary	35 min* (30 min for connections between 2 Air Canada Express flights operated by Jazz)
Charlottetown	15 min
Edmonton	35 min* (30 min for connections between 2 Air Canada Express flights operated by Jazz)
Fredericton	15 min
Halifax	30 min (25 min for connections between 2 Air Canada Express flights operated by Jazz)
Moncton	15 min
Montreal	40 min
Ottawa	35 min (30 min for connections between 2 Air Canada Express flights operated by Jazz)
Quebec City	20 min (15 min for connections between 2 Air Canada Express flights operated by Jazz)
Regina	20 min
Saint John, NB	20 min
Saskatoon	20 min
St John's, NL	15 min
Thunder Bay	15 min
Toronto	45 min
Vancouver	40 min* (30 min for connections between 2 Air Canada Express flights operated by Jazz)
Winnipeg	25 min

**Example:** If you're travelling from **Sudbury to Vancouver** with a connecting flight in **Toronto**, you'll need to provide for a minimum connection time of 45 minutes between your arrival in Toronto and your departure for Vancouver.

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- 11- Furthermore, upon the booking process, the Air Canada's reservation system detects flights without adequate connection time;
- 12- When this situation occur, the system will prevent the booking from being processed;
- 13- The MCT between flights AC0603 and AC0153 was of 45 minutes;
- 14- The connection time between flights AC0603 and AC0153 was of 52 minutes;
- 15- In fact, when Claimant and his Travel Agent chose this itinerary, they allocated only an additional period of **7 minutes** between flights AC0603 and AC0153;
- 16- The departure of Claimant's first flight, being AC0603, was delayed 18 minutes. It is therefore evident that the MCT of 45 minutes between flights AC0603 and AC0153 was no longer respected.
- 17- Accordingly, the Air Canada's booking system has detected the discrepancy between flights AC0603 and AC0153 and an automatic rebooking was performed. Flight AC0153 was therefore canceled from claimant's reservation and flight AC0181 was added thereto. The departure time of flight AC0181 was scheduled at 10:00 and the arrival in Vancouver at 12:07.
- 18- The same process was also performed as the Air Canada's booking system detected a second anomaly in Claimant's itinerary since the MCT between flights AC0181 and AC289 was no longer respected as there were only 23 minutes of connection time and that the MCT was of 40 minutes. Therefore, a second automatic rebooking was performed and flight AC0289 was canceled from Claimant's reservation and flight AC291 was added thereto.
- 19- The definition of an oversold situation is that a seat will not be available on a flight for which a person had a confirmed reservation;
- 20- In the present case, Claimant **was no longer holding a confirmed seat** on flights AC0153 and AC0289 on February 2, 2014;

#### **TERMS AND CONDITIONS OF CARRIAGE:**

- 21- Notwithstanding the above-mentioned facts, Air Canada further pleads and relies upon the terms and conditions of the contract of carriage between it and the Claimant, including the terms incorporated into the contract of carriage and contained in the tariff published and made available in accordance with regulations under the *Canada Transportation Act*, S.C. 1996, c. C-10 as amended.
- 22- More precisely, the Terms and Conditions of the contract of carriage provide that:

#### **Notice of Contract Terms Incorporated by Reference**

1. Your contract of carriage with the carrier that provides you with carriage by air, whether International, domestic or a domestic portion of an international journey is subject to this notice; to any notice or receipt of the carrier; and to the carrier's individual terms and

conditions (Conditions), related rules, regulations and policies (Regulations) and any applicable tariffs.

2. If your carriage is by more than one carrier, different Conditions, Regulations and any applicable tariffs may apply for each carrier.
3. The Conditions, Regulations and any applicable tariffs of each carrier are, by this notice, incorporated by reference into and made part of your contract of carriage.
4. The Conditions may include, but are not restricted to:
  - o Conditions and limits on the carrier's liability for the bodily injury or death of passengers.
  - o Conditions and limits on the carrier's liability for the loss of, damage to or delay of goods and baggage, including fragile or perishable goods.
  - o Rules for declaring a higher value for baggage and for paying any supplementary fee that may apply.
  - o Application of the carrier's Conditions and limits of liability to the acts of the carrier's agents, servants and representatives, including any person providing either equipment or services to the carrier.
  - o Claims restrictions, including time limits by which passengers must file claims or bring actions against the carrier.
  - o Rules about reconfirmations or reservations; check in times; the use, duration and validity of air transportation services; and the carrier's right to refuse carriage.
  - o Rights of the carrier and limits on the carrier's liability for delay or failure to perform a service, including schedule changes, substitution of alternative carriers or aircraft and re-routing, and, when required by applicable law, the obligation of the carrier to notify passengers of the identity of the operating carrier or substituted aircraft.
  - o Rights of the carrier to refuse carriage to passengers who fail to comply with applicable laws or who fail to present all necessary travel documents.

23- Defendant pleads that it is bound to sell tickets to the public in accordance with its tariffs;

24- Specifically, and without limitation, Air Canada relies upon the following Rules of its tariff:

**Rule 135AC CANCELLATION Of RESERVATIONS**

**C: Airport Check-In And Boarding Time Limits**

[ ... ]

- (3) Boarding Times - The passenger must be available for boarding at the gate at least 20 minutes prior to scheduled departure time of the flight on which he/she holds a reservation and must arrive properly documented and ready to travel.
- (4) If the passenger fails to meet any of these requirements, the carrier will reassign any pre-reserved seat and/or cancel the reservation of such passenger. Departure will not be delayed for passengers who arrive too late for such formalities to be completed before scheduled departure time. Carrier is not liable to the passenger for loss or expense due to passenger (s) failure to comply with this provision.

[ ... ]

the whole as more fully appears from a copy of the Tariff filed herewith as Exhibit **D-3**;

- 25- Consequently, Air Canada would have been entitled to reassign your seat, without such action being considered as an oversold situation since you failed to present yourself at least 20 minutes prior to scheduled departure time of flight AC289;
- 26- Air Canada denies it breached its contract of carriage with the Claimant, and puts the Claimant to the strict proof thereof;
- 27- Air Canada therefore submits that this action be dismissed as against it;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**MAINTAIN** Defendant's Plea;

**DISMISS** Claimant's Action;

**THE WHOLE** with costs against Claimant.

Montréal, this 21<sup>st</sup> day of March, 2014



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Manon C. Gagnon  
Paralegal  
AIR CANADA