

RULE/LA RÈGLE 26.02 ( a )

THE ORDER OF  
L'ORDONNANCE DU

Court file no. 02-CV-234992 CP

DATED / FAIT LE

REGISTRAR / GREFFIER  
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

A. Sadeghi

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

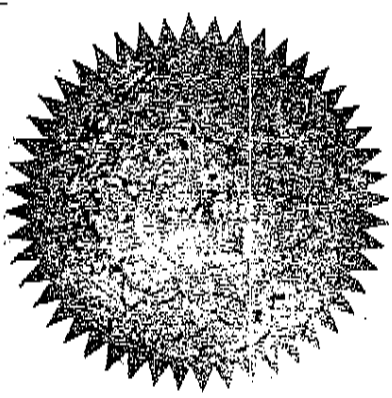
ROBERT GRAHAM WHITE and  
HARRY THOMAS ZANIN

Plaintiffs

- and -

AIR CANADA

Defendant



Proceeding under the *Class Proceedings Act*, 1992

**AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

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

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer, or where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in the Court Office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: August <sup>27</sup>~~26~~, 2002

Issued by:

  
Registrar

Address of Court Office:  
10<sup>th</sup> Floor, 393 University Avenue  
Toronto, Ontario M5G 1E6

TO: Air Canada  
130 Bloor Street West  
Toronto, Ontario  
M5S 1P5

**The Claim**

1. The Plaintiffs claim, on their own behalf, and on behalf of the Class:
  - (a) an order pursuant to the *Class Proceedings Act*, S.O. 1992, c. 6, certifying this proceeding as a class proceeding, and appointing Robert Graham White and Harry Thomas Zanin as the Representative Plaintiffs;
  - (b) past and future special damages;
  - (c) general damages in the amount of \$10 million or such other amount as this Honourable Court deems just to compensate the Plaintiffs and the Class;
  - (d) punitive and exemplary damages;
  - (e) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
  - (f) costs of this action and associated G.S.T. on a solicitor and client basis; ~~and~~
  - (g) specific performance of any contractual obligations;
  - (h) aggravated damages; and

- (i) such further and other relief as this Honorable Court finds just.

### **The Parties**

2. The Plaintiff, Robert Graham White ("White"), resides in Toronto, Ontario.
3. The Plaintiff, Harry Thomas Zanin ("Zanin"), resides in London, Ontario.
4. The Defendant, Air Canada, is a federally incorporated airline with a registered office at 130 Bloor Street West, Toronto, Ontario.

### **Overview**

5. White and Zanin were employees of Canadian Airlines ("Canadian"). White was an employee of Canadian from 1967 to 1990. He had risen to the position of Training/Communications manager when he took a severance package from Canadian in 1990.
6. Zanin was an employee of Canadian from 1971 to 1995. He had risen to the position of Manager of Commercial Operations when he took early retirement from Canadian in 1995.
7. During the 1990s Canadian made efforts to cut costs by downsizing its personnel. To encourage employees to leave, Canadian offered employees "Factor 60 and Factor 70" retirement benefits. These Factor 60 and Factor 70 benefits were made available to employees whose combined age and years of service with the company added up to at least 60 or 70.

8. Both White and Zanin were of sufficient age and years of seniority with Canadian that they qualified for the Factor 60/ Factor 70 benefits. They were each offered these benefits to leave the company. Both White and Zanin accepted these benefits and left Canadian as did many other Canadian employees who accepted materially identical benefits packages.

9. In or about January 2000, Air Canada acquired operational control of Canadian and thereby became responsible for its liabilities and obligations, including the provision of retirement benefits to Canadian retirees.

10. In or about September 2000, Air Canada unilaterally terminated certain Factor 60/ Factor 70 benefits to Canadian retirees. Air Canada refused to honour its contractual obligations to those retirees, denying benefits to White, Zanin and others. It similarly denied travel benefits to Factor 60/Factor 70 retirees from one of its regional carriers, Airbc, and to former Canadian employees who had accepted transfer agreements transferring them to MTU Maintenance Canada.

#### **Material Facts Regarding White**

11. On November 2, 1989, Canadian offered White a severance package (the "Severance Package").

12. The terms of the Severance Package were contained in a letter and release addressed to White dated November 2, 1989.

13. One of the terms of the Severance Package granted to White lifetime travel privileges (the "Travel Benefit"). The Travel Benefit permitted White reduced-cost airline travel.

14. The Severance Package ensured the lifetime continuation of the Travel Benefit.

15. White accepted the Severance Package in order to obtain the Travel Benefits offered. After accepting the Severance Package White finished his employment with Canadian in September 1990.

16. The terms of the Severance Package as accepted by White formed a binding contract between White and Canadian. In taking over Canadian, Air Canada assumed this liability.

17. Between 1990 and 2000, White used and relied on the Travel Benefit.

18. On or about September 15, 2000 the Defendant sent White a letter unilaterally and to a material degree reducing the Travel Benefit.

### **Material Facts Regarding Zanin**

19. In or about September 1994, Canadian offered Zanin an early retirement package (the "Retirement Package").
20. One of the terms of the Retirement Package granted Zanin lifetime travel privileges (the "Travel Benefit"). The Travel Benefit permitted Zanin reduced-cost airline travel.
21. The Retirement Package ensured the lifetime continuation of the Travel Benefit.
22. Zanin accepted the Retirement Package in order to obtain the Travel Benefit. After accepting the Retirement Package Zanin finished his employment with Canadian in May 1995.
23. The terms of the Retirement Package as accepted by Zanin formed a binding contract between Zanin and Canadian. In taking over Canadian, Air Canada assumed this liability.
24. Between 1995 and 2000, Zanin used and relied on the Travel Benefit.
25. On or about September 15, 2000 Air Canada unilaterally and to a material degree reduced the Travel Benefit.

### **Defendant's Breach of Contract**

26. The Defendant's unilateral reduction of the Travel Benefit was a wrongful breach of the Defendant's contractual obligations to the Plaintiffs.

27. The Defendant's wrongful breach of contract has caused and continues to cause the Plaintiffs loss and damage.

28. The Plaintiffs are aware of other former employees of the Canadian who accepted materially identical severance or retirement packages known as "Factor 60 and Factor 70 benefits". The Factor 60 and Factor 70 retirement benefits included identical or substantially similar Travel Benefits, the contractual terms of which have been similarly breached by the Defendant.

29. The Plaintiffs brings this action on his own behalf and on behalf of a Class of persons defined as follows:

All former employees of Canadian Airlines International Ltd. ("Canadian"), Air Canada or Air Canada Inc. d.b.a. Airbc, wherever resident, who accepted retirement or severance packages from their respective employer, and all former employees of Canadian, wherever resident, who became employees of MTU Maintenance Canada ("MTU"), who accepted a transfer package from Canadian as part of their transfer from Canadian to MTU, who were classified as Factor 60 or Factor 70 employees upon retirement,



severance or transfer, and who were given the ability to obtain air travel and related services as part of their retirement, severance or transfer package;

Excluded from the Class are persons who are members of the following class proceedings before Madam Justice D.M. Smith of the British Columbia Supreme Court (the "B.C. Actions") which include B.C. residents only:

(i) *Halbert v. Air Canada*, Court File No. S014979;

(ii) *Trainor v. Air Canada*, Court File No. S014978;

(iii) *Brownsmith v. Air Canada*, Court File No. S026641; and

(iv) *Andrews v. Air Canada and Air Canada Regional Inc. d.b.a. AIRBC*,  
Court File No. S014583

~~"All former employees of Canadian Airlines who accepted severance or retirement packages from the defendant that included factor 60 or factor 70 retirement travel benefits"~~

30. Particulars of the loss and damages suffered by the Plaintiffs and the Class include the financial loss of the Travel Benefit, being the difference between the past and future financial value of the Travel Benefit contracted for by the Plaintiffs as a term of the Severance Package or Retirement Package, versus the financial value of the Travel Benefit as reduced by the Defendant.

31. The Defendant's conduct is intentional, high-handed and shows a wanton disregard for the legal interests of the Plaintiffs' and other Canadian retirees such that an award of punitive damages is merited.

32. The Travel Benefits obtained by the Plaintiffs and class members formed a critical part of their retirement plans and goals, and was something of great value to them. The denial of these benefits is most grievous to the Plaintiffs and class members, and has caused them an intangible loss. This loss cannot be adequately compensated for by compensatory damages alone. The nature of the Plaintiffs' loss and the Defendant's conduct is such that aggravated damages are warranted.

33. The Travel Benefits are of unique value to the Plaintiffs and class members. The nature of the Plaintiffs' loss and the Defendant's contractual obligations are such that an order for specific performance is warranted in this case.

#### **Place of Trial**

34. The Plaintiff proposes that the Trial in this action take place in the City of Toronto, in the Province of Ontario.

Date Issued: August 26, 2002

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Barristers & Solicitors

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Solicitors for the Plaintiff

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**AMENDED  
STATEMENT OF CLAIM**

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