

JUN 19 2018

VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ERIC WONG

PLAINTIFF

AND

AIR CANADA

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

STATEMENT OF FACTS

THE PARTIES

1. The Plaintiff, Eric Wong, ("Mr. Wong") is a businessman who resides in Vancouver, in the province of British Columbia.
2. Mr. Wong is the sole shareholder, director, and officer of Infinite Talent Corporation, a company incorporated pursuant to the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44., and which provides information technology consulting services from an office in Vancouver, in the province of British Columbia.
3. The Defendant, Air Canada, ("Air Canada") is a company incorporated by Special Act of Parliament for the principal purpose of carrying on business as an international and domestic air carrier throughout Canada, including in several locations in the Province of British Columbia. Air Canada is also a member of the Star Alliance global airline alliance.
4. The registered office address of Air Canada is located at 7373 De Law Côte Vertu Blvd. West, Saint Laurent, Quebec, H4S 1Z3, and the head office mailing address of Air Canada is located at 510 De Maisonneuve Blvd. W., 7th Floor, Montreal, Quebec, H4A 3T2. Air Canada is also extra-provincially registered in the Province of British Columbia, with a mailing address and delivery address

located at 2700, 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B8.

AIR CANADA BOUND BY ITS AIR CARRIER TARIFFS

5. Tariff requirements for Canadian air carriers are detailed in the *Canada Transportation Act*, S.C. 1996, c. 10 and the *Air Transportation Regulations*, SOR/88-58 for domestic air services and, for international air services, *The Carriage by Air Act*, R.S.C. 1985, c. C-26., which implements the provisions of the *Convention for the Unification of Certain Rules for International Carriage by Air* (the Montreal Convention) as part of domestic law in Canada.
6. As required by these enactments, Air Canada has filed domestic and international tariffs setting out:
 - a. a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and other incidental services;
 - b. the terms and conditions under which the carrier operates its business as it relates to the transportation of passengers, publication/baggage or goods.
7. In accordance with the provisions of these enactments Air Canada is required to:
 - a. display in a prominent place at the business offices of the carrier a sign indicating that the tariffs for commercial air service offered by the carrier, including the terms and conditions of carriage, are available for public inspection at the business offices of the carrier, and allow the public to make such inspections;
 - b. apply any fare, rate, charge or term or condition of carriage applicable to the commercial air service it offers which is set out in a tariff that has been published or displayed and is in effect;
 - c. publish the terms and conditions of carriage on any Internet site used by the licensee for selling the commercial air service offered by the carrier;

and Air Canada has done so at all material times.

8. The Air Canada tariffs function as the contract of carriage between the passenger and the carrier, covering the passengers' rights and obligations, as well as the air carrier's rights and its responsibilities towards the passenger.
9. Carriers must respect their tariffs at all times and the tariffs must not be, or applied to be, unjust, unreasonable, unduly discriminatory or create undue obstacles to the mobility of persons with disabilities.
10. To make the air carriers' tariffs more accessible to the public, the Canadian Transportation Agency has posted a list of links to airline websites, including the website of Air Canada, where the air carrier's tariffs can be found by the public.
11. Air Canada definitively states to the public that it is bound by its tariffs (fare rules) with respect to cancellation of travel. In the Air Canada website "Frequently Asked Questions" section, the question "What happens if I buy a ticket and an emergency disrupts my travel?" is answered by Air Canada as follows:

Air Canada will cancel any purchased ticket and provide a full refund without penalty up to 24 hours after purchase.

Beyond 24 hours of purchase, a non-refundable ticket offers no options in the event that an unexpected medical emergency or other unforeseen circumstance forces you to cancel your trip or modify your travel plans. And we can't make any exception to the fare rules.

AIR CANADA'S ADVERTISEMENTS MARKETING ITS SERVICES

12. Air Canada's advertisements marketing its commercial air services to the public must be in accordance with its tariffs and must set out fares and conditions of carriage relating to such matters as ticket cancellation, fare refundability, "any-time change", "same-day airport change" and "same-day airport standby", among other carriage conditions.
13. Air Canada's advertisements marketing its commercial air services are governed by the following enactments relating to air carriers:

- a. Section 86.1 of the *Canada Transportation Act*, S.C. 1996, c.10; and

- i. requires the Canadian Transportation Agency to make regulations respecting the advertising of air service prices and specifically states that the Canadian Transportation Agency shall make regulations respecting advertising in all media, including on the Internet, of prices for air services within, or originating in, Canada;
- ii. requires the Canadian Transportation Agency to make regulations that will enable a consumer to readily determine the total price of an air service and requires some itemization. It specifically states that an advertisement for the price of an air service shall include in the price all costs of providing the service and to indicate in the advertisement all fees, charges and taxes collected on behalf of another person in respect of the service;
- iii. allows the Canadian Transportation Agency to prescribe what constitutes costs, fees, charges and taxes that may be itemized in the advertised price.

b. Section 177 of the *Canada Transportation Act* allows the Canadian Transportation Agency to designate the provisions of the Act and of any regulation made pursuant to the Act, the contravention of which results in a violation and to prescribe the maximum amount of the monetary penalty that may be imposed for such violation.

c. Part V.1 of the *Air Transportation Regulations* and specifically subsection 135.8(1) requires any person advertising the price of an air service to include, among other things, the total price including any third-party charges, that must be paid to purchase the service.

14. In addition to enactments governing transportation, Air Canada's commercial air services, including advertisements marketing the services, are governed by the following enactments of general application:

- a. The *Competition Act*, R.S., 1985, c. 19 (2nd Supp.), s. 19, seeks to protect consumers by prohibiting anticompetitive business practices by maintaining and encouraging competition in Canada in order to provide consumers with competitive prices and product choices in their

purchase of a “product”, which section 2 of the *Act* defines as “includes an article and a service” and defines “service” as “a service of any description whether industrial, trade, professional or otherwise”, which definition includes all services provided by Air Canada.

b. *Regulations Respecting Anti-Competitive Acts of Persons Operating a Domestic Service*, SOR/2000-324, which regulations define certain acts of an air carrier as “anti-competitive acts”.

c. *Business Practices and Consumer Protection Act*, SBC 2004, C. 2.

15. The *Competition Act* contains both criminal and civil provisions prohibiting misleading and deceptive advertising and marketing, as follows:

a. Section 36 of the *Competition Act* provides:

Recovery of damages

36 (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part VI, or

(b) the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

b. An offence under Part VI includes:

False or misleading representations

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

c. Part VI of the *Competition Act* preserves a civil right of action by providing in section 62, which within Part VI that:

Civil rights not affected

62 Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action.

- d. With respect to "Reviewable Conduct" under the *Competition Act*, section 52(6) provides:

Reviewable conduct

52(6) Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

- e. "Reviewable conduct" include the *Competition Act* provisions related to promotional contests in section 74.06, which provides:

Promotional contests

74.06 A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest, conducts any contest, lottery, game of chance or skill, or mixed chance and skill, or otherwise disposes of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever, where:

- (a) adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the person that affects materially the chances of winning;
- (b) distribution of the prizes is unduly delayed; or
- (c) selection of participants or distribution of prizes is not made on the basis of skill or on a random basis in any area to which prizes have been allocated.

16. Pursuant to the *Business Practices and Consumer Protection Act*:

- a. The Plaintiff is a "consumer" as defined in section 1(1) of the *Act*;
- b. Air Canada is a "supplier" which supplies goods or services to consumers in British Columbia, including the Plaintiff, as defined in section 1(1) of the *Act*;
- c. The Plaintiff's purchase of air services are "consumer transactions" as defined in section 1(1) of the *Act*;
- d. The solicitation, offer, advertisement or promotion by Air Canada are "consumer transactions" as defined in section 1(1) of the *Act*;
- e. Any waiver or release by a person of the person's rights, benefits or protections under the *Act* is, pursuant to section 3 of the *Act*, void

17. The Plaintiff pleads that, as set out in this Notice of Claim, the Defendant Air Canada has breached the provisions related to false or misleading representations in the *Competition Act* and the provisions of the *Business Practices and Consumer Protection Act* prohibiting a "deceptive act or practice".

AEROPLAN AND ALTITUDE LOYALTY PROGRAMS

18. The Defendant Air Canada created Aeroplan, a customer loyalty program, in 1984. In 2002, Aeroplan was spun off as a wholly owned subsidiary of the Air Canada.

19. In June 2005, Air Canada's parent company, ACE Aviation Holdings, sold 12.5% of Aeroplan for \$250 million through an initial public offering, thereby creating the world's first publicly traded loyalty program, Aeroplan Income Fund, which in 2008 was reorganized into a public corporation, Groupe Aeroplan Inc.

20. On May 28, 2008, ACE Aviation Holdings disposed of its remaining holdings in the fund with the result that the Aeroplan program was and is no longer under direct control of Air Canada.

21. In 2014, Air Canada created the Altitude program, which it represents to the public and its customers on the Air Canada website and elsewhere as a program "designed to recognize Air Canada's most frequent flyers with a range of priority travel services, lounge access, and upgrades that make ... travel as comfortable and seamless as possible." It takes 25,000 Altitude Qualifying Miles in a calendar year to reach Altitude status.

22. At all material times, Air Canada used advertising to promote its services and products and to solicit customer loyalty and business through both the Altitude and Aeroplan programs.

THE PLAINTIFF'S TRAVEL REQUIREMENTS

23. Mr. Wong travels on a frequent basis throughout Canada, the United States, and, on occasion, in Europe and Asia to provide information technology consulting services to clients of Infinite Talent Corporation. The frequency of

travel will vary according to the demands of clients but on average the travel will be on a weekly basis.

24. At material times, Mr. Wong was a member of Air Canada's Aeroplan and Altitude programs and was in the top tier of frequent flyers known as Super Elite members, who qualify under this sub-category of membership by earning 100,000 Aeroplan status miles or 95 status flight segments on an annual basis.
25. Mr. Wong had been a member of the Air Canada Aeroplan program as a Super Elite tiered member since 2012, and a member of Air Canada Altitude program since its inception in 2014 as a Super Elite tiered member.
26. Mr. Wong is not a typical business airline passenger in two respects. First, his business is of such a nature that he can adjust his travel plans on short or no notice in the event of changed flight circumstances (delayed departure or the potential for missed connections) or changed business meeting circumstances. Second, Mr. Wong is an air travel "Hobbyist" – a passenger who uses the existing tariff and travel rules set up by airlines, credit cards and hotels to earn free or reduced cost travel benefits including flights, lodging and other upgrades.
27. In planning his air travel on Air Canada, the Plaintiff's travel needs are frequently subject to change on short or no notice, with the result that in order to facilitate his changed travel circumstances, Mr. Wong often booked his passenger tickets in fare categories that did not result in cancellation penalties, non-refundable amounts, or rebooking and rerouting charges, in accordance with the applicable Air Canada Tariff filed by Air Canada as required by the *Canada Transportation Act* and the *Air Transportation Regulations*.
28. To further facilitate his ability to change his flights to accommodate his changed travel circumstances, the Plaintiff typically travelled without checking in any baggage, so that his cancellation of a ticket on short notice would not require the retrieval of any baggage by the air carrier.
29. In addition, being a Super Elite tiered member of the Altitude program facilitates and accommodates these sudden travel changes by, for example, enabling Super Elite members to reserve a seat in economy class even when a

flight is booked to capacity, by purchasing a full-fare ticket (booking class Y) seat at least six hours prior to departure.

THE AIR CANADA “EARN YOUR WINGS” PROMOTIONAL CONTEST

30. Air Canada established a promotional contest, “Earn Your Wings”, starting in 2013 which continues in essentially the same format to date. The contest was based on the concept of loyalty gamification such as points, challenges, leaderboards, rules, and incentives to motivate passengers to have more of a reason to choose Air Canada; increase average yield by encouraging purchases of higher fare products; and increase traffic to underperforming and newer markets.
31. These promotional contests are subject to the requirements of the *Competition Act* and, specifically, section 74.06, of the *Competition Act*.
32. Air Canada designed the “Earn Your Wings” promotional contest to utilize the marketing process of “gamification”, that is the process of adding games or game like elements to something (such as a task) to promote and encourage participation in the promotional contest and business for Air Canada.
33. This gamification process specifically appeals to the air travel “Hobbyist” rather than the passenger with normal travel needs. For example, it would be rare for a typical airline passenger to travel the route Vancouver-Victoria-Vancouver-Seattle-Vancouver on the same day and it may not even be possible to do so if the passenger actually left the terminal buildings. Under the “Earn Your Wings” promotional contest rules, however, the real value of the combination of “wings”, “badges” and “bonus wings” earned would considerably exceed the cost of the airfares.
34. The Air Canada “Earn Your Wings” promotional contest fit into the travel patterns and needs of the Plaintiff who could adopt and modify his business travel needs to attain the rewards offered by the promotional contest, always with the Plaintiff’s objective of the total value of the rewards exceeding the cost to him.
35. The Plaintiff participated in versions 1 through 4 of the Air Canada “Earn Your Wings” promotional contest with the objective of finishing in the top 25 of

version 1 and the top 20 of versions 3 and 4 and placed first in versions 1, 3 and 4 of the promotional contest, which achievements entitled Mr. Wong to substantial prize awards with the top 10 participants being awarded (depending on the version of the contest) between an additional 400,000 to 1,000,000 miles each, while the top 11-30 participants were awarded proportionately variable numbers of miles each.

36. To be eligible to participate, in the Air Canada “Earn Your Wings” promotional contest, Air Canada required participants to be an Altitude Member by achieving Air Canada Altitude status at specified levels.
37. The Air Canada “Earn Your Wings” promotional contests were a tremendous financial success for Air Canada having over a 560% return on investment for Air Canada with the top 25 users alone logging a total of 3,178 airport visits, thereby confirming Air Canada’s plan that when a marketing platform is engaging enough, users are happy to spend significantly more to further their progress within the game.
38. The “Earn Your Wings” promotional contests also resulted in Air Canada receiving several marketing awards.

AIR CANADA WRONGFUL TREATMENT OF THE PLAINTIFF

39. Mr. Wong was known to Air Canada personnel, through personal contact with Mr. Wong and information about him on Air Canada computer systems, and it was specifically known to many Air Canada personnel that the Plaintiff had highly successful achievements in the “Earn Your Wings” promotional contests referred to in this Notice of Claim.
40. Mr. Wong’s travel patterns, whether motivated by Air Canada’s gamification promotion or otherwise, were also well known to Air Canada personnel with whom, because he was such a frequent passenger, he dealt with frequently.
41. At all material times during his travels on Air Canada Mr. Wong intentionally chose the tariff fare categories that provided him with the most travel flexibility with respect to refundability, “any-time change”, “same-day airport change” and “same-day airport standby” pursuant to the Air Canada tariffs and paid Air Canada premium fares to be assured of that flexibility.

42. With respect to access to the Air Canada Maple Leaf Lounge, at all material times during his travels on Air Canada Mr. Wong intentionally chose the tariff fare categories that entitled him to access to Maple Leaf Lounges, or he was entitled to Maple Leaf Lounge access because of his Altitude status or similar status with Air Canada partner airlines.
43. On several occasions during 2015, the Plaintiff checked in for Air Canada flights with the intention of flying and after check-in attended the Maple Leaf Lounge but before the flight departure determined that his travel needs had changed, resulting in the Plaintiff cancelling his flight reservation with Air Canada.
44. On all of these occasions of air travel, the Plaintiff had complied with all passenger and carry-on baggage security clearance processes at an airport passenger screening checkpoint required by *the Canadian Aviation Security Regulations, 2012* for a passenger to proceed into the Airport Departure area.
45. On each of these occasions, the Plaintiff intended to travel on the ticketed flights and had a document of entitlement (a boarding pass, a ticket, or any other document accepted by an air carrier that confirms the status of the person to whom it was issued as a passenger), as defined in the section 142 of the *Canadian Aviation Security Regulations, 2012* that served as proof of authorization to enter a restricted area (past security clearance) of the airport.
46. On each of these occasions, as was his habit, the Plaintiff had checked in no baggage, so there was no issue of Air Canada being required to remove baggage from a flight on which the Plaintiff did not travel.
47. Upon cancellation of the Air Canada flights on each of these occasions, the Plaintiff either immediately left the restricted area of the airport in the same manner as used by arriving passengers or booked an alternative flight, in which case he obtained a document of entitlement permitting him to be present in the departure area of the airport and to travel on the replacement flight.
48. On the single occasion where the Plaintiff cancelled an Air Canada flight departing to the United States from the Trans-Border Departure Area, the Plaintiff Eric Wong did not, as falsely asserted by Air Canada, fail to travel to

the United States but rather did indeed travel that day to the United States from the Trans-Border Departure Area, on another carrier.

49. Section 142(1)(e) of the *Canadian Aviation Security Regulations, 2012* provides that non-passengers may be screened at checkpoints at restricted area access points if the person is in possession of a courtesy-lounge or conference-room pass that is issued by an air carrier and that is approved by the operator of the aerodrome but the Plaintiff never used such a pass.

50. On the occasions referred to in paragraph 43 of this Notice of Claim, the Plaintiff cancelled his flights as he was entitled to do so for his fully refundable fares pursuant to the Air Canada tariffs, and until January 10, 2016, left the Maple Leaf Lounge and went about his business without any interference from Air Canada personnel.

51. On January 10, 2016, after having checked for an Air Canada flight on which he intended to travel and clearing security, the Plaintiff Eric Wong's travel plans changed while he was in the Maple Leaf Lounge in the International Departures section of the Vancouver International Airport, whereupon:

- a. Mr. Wong advised an Air Canada Maple Leaf Lounge customer service agent that he no longer wished to fly on his scheduled flight, that he wished to leave the lounge and that, since he was in the International Departures Area, he required an escort to the Arrivals Hall of the airport via the Canada Customs Clearance arrivals area;
- b. the Air Canada Maple Leaf Lounge customer service agent insisted, in a stern manner, that Mr. Wong provide a reason for his change of travel plans;
- c. Mr. Wong advised the Air Canada Maple Leaf Lounge customer service agent that he did not wish to fly and wanted to leave the lounge;
- d. the Air Canada Maple Leaf Lounge customer service agent sternly instructed the Mr. Wong that he was to remain in the lounge, take a seat and not move until she had finished investigating "abuses" supposedly committed by the Plaintiff;

- e. the Air Canada Maple Leaf Lounge customer service agent required Mr. Wong to remain seated in the lounge and would not permit him to leave the lounge while the lounge agent made numerous telephone calls and conducted computer terminal searches about Mr. Wong's prior Air Canada flight records;
- f. after, with no lawful authority, detaining Mr. Wong in the Air Canada Maple Leaf Lounge for a period of time, Mr. Wong was eventually permitted to leave the Air Canada Maple Leaf Lounge and was provided an escort to the Vancouver International Airport Customs Clearance Arrivals area from where he was cleared to enter the Arrivals Hall of the airport.

52. The Plaintiff asserts, as he has in all of his dealings with Air Canada personnel, that the Air Canada tariffs do not require him to provide Air Canada with a reason for the cancellation by him of a ticket.

53. On or about January 20, 2016, the Plaintiff was notified by Air Canada that his Altitude Super Elite status will be suspended for an indefinite period of time, until a complete review of this file has been done. The notification also stated: "This is without prejudice to any other rights or recourses of Air Canada, including but not limited to the right to recover damages."

54. The reason given by Air Canada for this action against Mr. Wong was an allegation that he had "cleared security and accessed the international or trans-border sterile areas of the airport, possibly, without the purpose of traveling on that day", which allegations are false, untrue, and incorrect.

55. After the January 20, 2016 notification from Air Canada, the Plaintiff continued to travel on Air Canada for work on a regular basis. If Air Canada had not wrongfully suspended and then revoked his Altitude Super Elite status, he would have continued to accrue miles and credits (Altitude Qualifying Miles, Altitude Qualifying Segments and Altitude Qualifying Dollars) for these travels but he was wrongly prevented from doing so by the actions of Air Canada.

56. On or about March 21, 2016, the Plaintiff further responded to the Defendant Air Canada by supplementing information provided in January 2016 by a voicemail message to Air Canada's Regional Manager/Investigator, Corporate

Security. Mr. Wong requested a status update on Air Canada's review of his file and the status of his Altitude Super Elite membership. To date the Plaintiffs and their corporate counsel have received no response from the Defendant Air Canada to their correspondence of March 21, 2016.

57. On or about April 29, 2016, the Plaintiff, through counsel, delivered a letter to the Defendant Air Canada refuting each allegation in the January 20, 2016 correspondence from the Defendant Air Canada, and giving notice of financial losses suffered by the Mr. Wong because of the loss of Altitude status and associated benefits attached to such status.
58. On or about May 27, 2016, Air Canada, through its legal representative, responded by letter to the Plaintiff contending that the Altitude Terms and Conditions provide that Altitude status is a privilege, which can be revoked by the Defendant Air Canada at its discretion.
59. Specifically, the May 27, 2016 letter cited the following term: "In the case of any act or omission by the Air Canada Altitude member or anyone acting on his behalf which is detrimental to Air Canada or any one of its partners in Air Canada Altitude, Air Canada may revoke the member's membership, among other possible recourses."
60. The Defendant Air Canada has thus far failed to specifically state what detriment the Plaintiff has purportedly caused Air Canada or any one of its partners in Air Canada Altitude and the Plaintiff says that, in fact, there were no such acts or omissions of Mr. Wong and no detriment to Air Canada.
61. On or about June 8, 2016, the Plaintiff, through his counsel, responded to the Defendant Air Canada's legal representative refuting all the allegations contained in the letter of May 27, 2016. Specifically, Air Canada was advised that in 2015, the Plaintiff flew on Air Canada or Star Alliance flights approximately 150 times and was entitled to use the Maple Leaf Lounge approximately 300 times. The Plaintiff was entitled to use the Maple Leaf Lounge because of his Super Elite status and any tickets used by the Plaintiff when he accessed the Maple Leaf Lounge were either used or were refundable under the terms set by the Air Canada tariffs for the premium fares of the tickets purchased.

62. On or about June 14, 2016 the Defendant Air Canada, through its legal representative, wrote requesting substantiation of the circumstances under which the Plaintiff's plans changed while at the airport, requiring him to cancel his bookings.
63. The Plaintiff has not responded to this renewed request for justification of the ticket cancellation because Air Canada requiring him to do so is contrary to Air Canada's tariffs and contrary to the representations on the Air Canada's website, which, with respect to the fare classes for Mr. Wong's tickets stated at all relevant times "Free cancellation within 24 hours of booking. You'll get a full refund – no questions asked."
64. Air Canada's actions have unreasonably interfered with Mr. Wong's pursuit of employment, having regard to the immediacy and severity of the indefinite suspension of his Altitude status without any opportunity for Mr. Wong to refute the allegations of Air Canada against him.
65. Because of the indefinite suspension or revocation of Mr. Wong's Altitude membership, Mr. Wong has suffered business and personal losses and incurred extraordinary expenses to compensate for the loss of benefits associated with the loss of Altitude membership.
66. The revocation of Mr. Wong's Altitude membership substantially lessened the value of the prizes he won in the Air Canada "Earn Your Wings" promotional contests, resulting in a breach by Air Canada of section 74.06 of the *Competition Act* by it failing to make fair and adequate disclosure that the value of the prize could be adversely affected by a unilateral arbitrary decision of Air Canada and by retroactively affecting the value and distribution of the prizes.
67. The revocation of Mr. Wong's Altitude membership inappropriately rendered him ineligible to participate in recent versions of the Air Canada "Earn Your Wings" promotional contests as a punishment by Air Canada for his assertion of his rights to travel in accordance with the Air Canada tariff without providing Air Canada with reasons or justifications for ticket cancellations made in conformance to the tariffs, which ineligibility is an impermissible condition of participation in the promotional contests and is a breach by Air Canada of

section 74.06, of the *Competition Act* by imposing a condition for the selection of participants not made on the basis of skill or on a random basis.

68. The benefits the Plaintiff earned from the Altitude program constitute an asset and property interest of Mr. Wong with there being a commercial value in the attained financial benefits, award entitlements and other membership entitlements in the Altitude program.
69. The entire Altitude program including the perks and benefits associated with earning and using Qualifying Miles had a value that could be expressed in money since the services for which they could be exchanged was offered for sale to arm's length parties at an ascertainable price.
70. The revocation of Mr. Wong's Altitude membership resulted in him losing access to programs savings and business enhancements that had significant economic value to him and were important to his travel necessities, including but not limited to:
 - a. the Priority Reservation opportunities accorded to members of the Altitude program of his Super Elite status;
 - b. Priority Seat Selection;
 - c. Complimentary, or 50% Discount on, Preferred Seats;
 - d. the Air Canada "guaranteed Y fare flight benefit" whereby (with some restrictions) Super Elite members are guaranteed the right to reserve a seat in Economy Class on flights operated by Air Canada and Air Canada Express, with the purchase of a full-fare ticket (booking class Y) even if the flight is shown as full on the reservation system;
 - e. Priority Airport Check-In and Standby;
 - f. Complimentary Checked Baggage Allowance;
 - g. eUpgrade Eligibility on Air Canada flights;
 - h. Carrier Surcharge Waiver on Flight Rewards.

71. The Plaintiff continues to fly for work on a regular basis and, because of the revocation of his Altitude status, has suffered and continues to suffer from an unjustified, arbitrary and adversely discriminatory treatment by Air Canada's personnel. There are numerous such incidents, of which specific examples include the following:

- a. On June 18, 2016, the Plaintiff was travelling on an Air Canada flight from Vancouver to Victoria with several friends when he was escorted off the plane and detained by Air Canada employees after he and everyone had boarded, and made to submit while the Air Canada employees scrutinized his identification and, ultimately, allowed the Plaintiff Eric Wong to re-board the plane after subjecting him to humiliation in front of fellow passengers, including his friends.
- b. On June 20, 2016, the Plaintiff encountered delay in entering the Maple Leaf Lounge at the Vancouver International Airport when the customer service agent detained him at the reception desk while she called and spoke to corporate security, because of an extraordinary alert that appeared on a computer screen when the service agent entered the Plaintiff's Aeroplan number. Mr. Wong was ultimately permitted to enter the Maple Leaf Lounge, as he was entitled to do, but not without some embarrassment and delay.
- c. On June 27, 2016, the Plaintiff was denied entry to the Maple Leaf Lounge at the Vancouver International Airport, which was in the Trans-Border Departure area for passengers departing to the United States. The Plaintiff had purchased a business class ticket with United Airlines, a member of the Star Alliance program. Under the terms and conditions of his ticket, the Plaintiff was entitled to entry to the Maple Leaf Lounge, and was wrongfully denied entry.

72. Because of the way Mr. Wong has been treated, and what was said to him, by Air Canada personnel after they have accessed Air Canada computer records while dealing with him, it is apparent that the Air Canada computer records contain something negative about him in the context of "security".

73. After January 20, 2016, there have been repeated incidents of conduct amounting to intimidation of the Plaintiff by Air Canada personnel at various times, which conduct has been embarrassing and to the detriment of the Plaintiff on those occasions.
74. After January 20, 2016, Air Canada corporate security has engaged in surveillance and monitoring of the Plaintiff's online and offline activities, kept records of such activities which are made available to Air Canada staff and persons unknown to the Plaintiff in an effort to unfairly characterize the Plaintiff as a person deserving of restrictive treatment and to retroactively justify their high-handed actions taken against the Plaintiff to that date.
75. As a federally regulated organization, and since its personal data flows across provincial or national borders, Air Canada, is subject to the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA) with respect to the handling (collection, use and disclosure) of personal information of the Plaintiff Eric Wong in the course of its commercial activities.
76. Pursuant to PIPEDA, the Plaintiff has a right to expect that the personal information Air Canada holds about him is accurate, complete and up-to-date and a right to see that information and to seek and obtain corrections from Air Canada if the information about him is wrong or inaccurate.
77. PIPEDA also requires Air Canada to collect, use or disclose personal information about the Plaintiff by fair and lawful means, with Mr. Wong's consent, and only for purposes that are stated and reasonable.
78. The Plaintiff made requests of Air Canada for disclosure of his personal information pursuant to PIPEDA but has been refused disclosure of the relevant information about what is being alleged against him in their retained data and what information has resulted in the revocation of his Altitude membership and the publication to Air Canada personnel of information about him that results in their negative interactions with him.
79. Air Canada refuses to produce "any information and/or document gathered relating to an investigation file" asserting that such information "remain covered by Litigation Privilege as collected in anticipation of litigation" which justification

the Plaintiff says is invalid since the false or inaccurate information about him is the cause of potential litigation, not information gathered in response to litigation.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT AIR CANADA

80. General and special damages for breach of contract;
81. General and special damages for negligence;
82. Special damages for business losses suffered by the Plaintiff;
83. A declaration that an act or practice engaged in or about to be engaged in by the Defendant in respect of consumer transactions related to the Plaintiff contravenes the *Business Practices and Consumer Protection Act* or the regulations of that Act;
84. An interim or permanent injunction restraining Air Canada from contravening the *Business Practices and Consumer Protection Act* or the regulations of that Act;
85. An order that the Defendant restore to the Plaintiff any money or other property or thing, in which the Plaintiff has an interest, that may have been acquired because of a contravention of the *Business Practices and Consumer Protection Act* or the regulations of that Act;
86. A declaration that an act or practice engaged in or about to be engaged in by the Defendant in respect of a consumer transaction related to the Plaintiff contravenes the *Competition Act* or the regulations of that Act;
87. A temporary injunction restraining Air Canada from flagging the Plaintiff Eric Wong's profile with any alerts based on his past conduct;
88. Costs on a solicitor and own client basis;
89. Such other relief which this Honourable Court considers necessary or just in the circumstances;

90. The Plaintiffs do not anticipate that the trial of this matter will exceed 25 days and propose that the trial be held at the courthouse in Vancouver, British Columbia.

LEGAL BASIS

COMPETITION ACT

91. The Plaintiff pleads that Air Canada breached *Competition Act* provisions prohibiting misleading and deceptive advertising and marketing and claims damages pursuant to section 36 of the *Competition Act*.

92. The Plaintiff pleads that Air Canada breached provisions relating to promotional contents and claims damages pursuant to section 36 of the *Competition Act* and for common law tort for breaches of the duties of care recognized by the legislation.

Business Practices and Consumer Protection Act

93. The Plaintiff pleads that Air Canada breached *Business Practices and Consumer Protection Act* provisions prohibiting misleading and deceptive advertising and marketing and claims damages pursuant to sections 171 and 172 of the *Business Practices and Consumer Protection Act*.

94. The Plaintiff claims the following relief provided for in the *Business Practices and Consumer Protection Act*:

- a. a declaration that an act or practice engaged in or about to be engaged in by Air Canada in respect of a consumer transaction contravenes the *Act* or the regulations;
- b. an interim or permanent injunction restraining Air Canada from contravening this *Act* or the regulations;
- c. an order that Air Canada restore to the Plaintiff any money or other property or thing, in which the person has an interest, that may have been acquired because of a contravention of the *Act*.

BREACH OF CONTRACT

95. The Plaintiff pleads that Air Canada breached its contractual obligations to the Plaintiff, Eric Wong by:

- a. Actions constituting a fundamental breach of the Plaintiff's contracts governing the Altitude program and the "Earn Your Wings" promotional contest;
- b. imposing sanctions on Mr. Wong for his cancelation of full fare, fully refundable tickets that he was entitled to cancel without restriction or without providing an explanation to Air Canada for his travel decision;
- c. imposing sanctions that substantially diminished the value of the prizes won by the Plaintiff in the "Earn Your Wings" promotional contest;
- d. imposing sanctions that prevented the Plaintiff from utilizing earned benefits under the Altitude program;
- e. suspending, altering and revoking Mr. Wong's Altitude status.

96. The Plaintiff pleads that the position of Air Canada that they have a contractual right to act as they have in their actions toward Mr. Wong is contrary to the recognition of good faith contractual performance as a general organizing principle of the common law of contract and the common law duty which applies to all contracts to act honestly and in good faith in the performance of contractual obligations, a principle that cannot be contractually overridden.

97. The Plaintiff pleads that, contrary to its assertion, Air Canada does not have the unfettered discretion to take actions that adversely change the rights and property of Mr. Wong at their will.

98. The Plaintiff further pleads that in interpreting the relevant contractual provisions governing the Altitude program and the Earn your Wings Contest, the interpretations advanced by Air Canada should be rejected since to accept that interpretation would render either the formation or the performance of the agreements inconsistent with the statutory schemes referred to in this Notice of Claim and to enforce Air Canada's position would undermine the public policy objectives of the statutory schemes.

99. The Plaintiff further pleads that Air Canada breached the implied covenant of good faith and fair dealing which, as an "interpretive tool", requires that contracts governing the Altitude program and the Earn your Wings Contest must have some reasonableness to them and a proper interpretation of the provisions do not permit Air Canada to abuse its position and unjustly deprive the Plaintiff of the benefits of the contracts.

100. The Plaintiff further pleads that the interpretations of the contracts governing the Altitude program and the Earn your Wings Contest relied upon by Air Canada are void as being injurious to the public, or against the public good since:

- a. the interpretation gives effect to the incidental performance of an act (the imposition of a sanction or penalty) contrary to the statutorily imposed tariffs governing Air Canada passenger services;
- b. the interpretation would confer benefits on Air Canada by depriving the Plaintiff of the benefit of his winnings in the Earn your Wings Contests through the violation of the statutory provisions governing advertising and contests referred to in this Notice of Claim.

NEGLIGENCE

101. The Plaintiff pleads:

- a. that Air Canada had an obligation to the Plaintiff to take care with respect to its representations to him and the public relating to its commercial air services, the Altitude program and the Earn Your Wings Promotion;
- b. that Air Canada had an obligation to the Plaintiff to act honestly in the performance of their mutual contractual obligations;
- c. that Air Canada had an obligation to the Plaintiff to take care in any investigation into his travel before issuing any alerts or notices that were detrimental to the reputation of the Mr. Wong or raised "security" concerns about him;

- d. that the Defendant should have observed a high standard of care in order to fulfill or perform the duty imposed upon it with respect to its representations, in order to achieve the objectives of appropriate consumer representations in the *Competition Act* and the *Business Practices and Consumer Protection Act*;
- e. that Air Canada should have observed a high standard of care in order to fulfill or perform the duty imposed upon it with respect to investigation into the actions of the Plaintiff, which standard of care should have:
 - i. been in accordance with the duty to act fairly and reasonably by providing notice to the Plaintiff of any concerns and seeking an explanation from him before taking any action to his detriment;
 - ii. taken all relevant matters, such as the gamification travel promotion and the Earn Your Wings contest promoted by the Air Canada, into account in assessing the travel patterns of the Plaintiff;
 - iii. ensured that no irrelevant matters were to be considered, including the biases of security-focused staff who were not aware of the perfectly legitimate travel peculiarities encouraged by the Earn Your Wings contest;
 - iv. taken care to ensure that there were no alerts about the Plaintiff suggesting that there were security concerns about him.
- f. that Air Canada breached the duties of care it owed to the Plaintiff by failing to comply with, fulfill or observe the relevant standards of care;
- g. that the breaches of duty caused harm to the Plaintiff; and
- h. that such harm was proximate to the Defendant's conduct and foreseeable such that the Defendant is liable for its occurrence.

102. The Plaintiff pleads that proof of the statutory breaches alleged in this Notice of Claim, causative of damages, are evidence of the negligence of the Defendant.

103. The Plaintiff further pleads that the statutory formulation of the duties referred to in this Notice of Claim afford a specific, and useful, standard of reasonable conduct, which standard, the Plaintiff say was breached by Air Canada its servants or agents.

104. Air Canada is vicariously liable for the negligent or wrongful acts of its employees, servants or agents.

LIMITATIONS

105. By a Tolling and Standstill Agreement effective the 19th day of January, 2108, the Plaintiff and Defendant entered into an agreement pursuant to which any law (including any statutory limitation periods) or rule of equity, practice or procedure limiting or restricting in any way the time applicable for Eric Wong to commence proceedings against Air Canada concerning the Possible Claims including, but not limited to, waiver, estoppel, laches or delay (a "Limitation Period"), is tolled and suspended and shall not continue to run during the Standstill Period, which expires on June 19, 2018.

Plaintiff's address for service:

Donald J. Sorochan Law Corporation
Barristers and Solicitors
500-815 Hornby Street
Vancouver, BC V6Z 2E6

Fax number address for service

604.669.5180

E-mail address for service

don@sorochanlaw.com

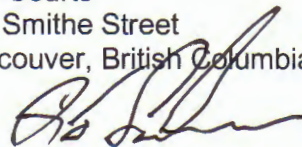
Place of trial:

Vancouver, British Columbia

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

Date: June 19, 2018



Signature of Lawyer for the Plaintiff
Donald J. Sorochan, QC

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claims for breach of contract and negligence by a passenger against an airline for wrongful termination of benefits in an airline loyalty program.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

*[Put an "x" in **one** box below for the case type that best describes this case.]*

A personal injury arising out of:

☐ a motor vehicle accident

☐ medical malpractice

☒ another cause

A dispute concerning:

☐ contaminated sites

1.

☐ construction defects

☐ real property (real estate)

☐ personal property

☐ the provision of goods or services or other general commercial matters

☐ investment losses

☐ the lending of money

☐ an employment relationship

☐ a will or other issues concerning the probate of an estate

☒ a matter not listed here

PART 3: THIS CLAIM INVOLVES:

[Put an "x" in all boxes below that apply to this case.]

☐ a class action

☐ maritime law

☐ aboriginal law

☐ constitutional law

☐ conflict of laws

☒ none of the above

☐ do not know

PART 4: ENACTMENTS RELIED ON

Competition Act, R.S., 1985, c. 19 (2nd Supp.), s. 19,
Business Practices and Consumer Protection Act, SBC 2004, C. 2.
Canada Transportation Act and the *Air Transportation Regulations*