

Transportation Notes: Québec Court Rules One Passenger One Ticket Applies in Class Action

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The Québec Superior Court of Justice recently ruled against Air Canada in a class action brought by passengers with disabilities, their attendants, and obese passengers who were required to pay for an additional seat on flights.

The Court held that Air Canada was required to compensate passengers and their attendants for the discriminatory practice but limited the class of individuals eligible for compensation to those who purchased their tickets in the province of Québec.

Facts

The representative plaintiff in this class action was severely disabled. He lived in a long-term care home in Baie Comeau, Québec and his condition required constant assistance. On several occasions, he traveled to Montreal on a flight operated by Air Canada. Given his disability, he required an attendant to accompany him for each of these flights.

On each occasion, he assumed the cost of his attendant's seat on the plane as well as his own, as required by Air Canada's fare policy.

The policy stipulated, among other things, that passengers with a disability must travel with an attendant who, during the flight, may assist, for example, with everyday needs, such as eating, using the washroom, or taking medication, and in case of changes in cabin pressure or an emergency, services not provided by the crew.

Position of the Parties

The plaintiff argued that Air Canada was liable for committing a contractual fault by levying fees for the additional seat required for passengers with a disability, disregarding the obligations imposed on Air Canada by the *Civil Code of Québec*, the *Canada Transportation Act*, and the *Canadian Human Rights Act*.

The plaintiff argued that the travel expenses of the attendant should be borne by Air Canada, which has an obligation to do all that is reasonably possible to accommodate passengers with disabilities.

The plaintiff argued that the additional expense constituted an undue obstacle to mobility contrary to the *Canada Transportation Act* in addition to being discriminatory.

With respect to the claims on behalf of the attendants who paid for their own ticket to accompany a person with a disability, the plaintiff argued these claims were proper because they were related to the claims of the disabled passengers.

Finally, for obese persons, the plaintiff argued the reasoning was similar due to the fact that Air Canada required payment for two

seats for the benefit of a single person whose particular condition did not allow for the use of a single seat.

Air Canada argued that the Court had no jurisdiction to hear the case.

In the alternative, Air Canada argued that its pricing practices were not discriminatory.

Air Canada further argued that its rate policies did not constitute undue obstacles to mobility contrary to the *Canada Transportation Act*.

Air Canada argued that the claims by class members who were attendants should not succeed because these passengers could not claim to have been discriminated against personally on the basis of a disability.

Finally, Air Canada urged the Court to limit the scope of the class action to those who purchased tickets in Québec.

The Québec Superior Court Decision

The Court began by addressing preliminary issues including the attendants' claims, whether the class should be limited to those who purchased tickets in Québec, the nature of the claim, and the question of jurisdiction.

The Attendant Claims

The Court held that attendants who paid for their own seat to accompany a person with a disability were entitled to compensation, reasoning that the attendant could not be considered the same as any other passenger. Rather, an attendant must be considered an accessory to the transport of the person with the disability. Therefore, the Court held attendants who paid for their own seats were properly included in the collective action.

Class Limited to Québec Purchasers

The Court limited the class of people eligible for reimbursement from Air Canada to those passengers who bought tickets in Québec.

The Court reasoned that; the claim was based on whether Air Canada committed a contractual fault within the meaning of Article 1458 of the *Civil Code of Québec*.

In contrast to the other Canadian provinces, Québec has a civil law regime, codified in the *Civil Code of Québec*. Given the significant differences between the civil law and the common law and given the absence of evidence from the plaintiffs on the law applicable in the other provinces, the Court limited the class members to only those persons who bought tickets in Québec.

The Nature of the Claim & Jurisdiction

The Court held that the essential nature of the class action was a claim for contractual liability for breaching an obligation imposed by the *Civil Code of Québec*, the *Canada Transportation Act*, and the *Canadian Human Rights Act*.

The question of jurisdiction had been finally decided on during a previous and in any case, the Québec Court of Appeal's decision in *WestJet v. Chabot*, 2016 QCCA 584 established that the Court had jurisdiction to hear and decide a class action based on contractual civil liability where damages were claimed against an airline for the improper performance of a contractual obligation.

Was Air Canada at Fault?

Once the preliminary issues were addressed, the Court framed the issue of whether Air Canada was liable for a contractual fault as follows:

1. Has Air Canada committed a discriminatory practice by requiring payment of two airline tickets, either (1) for an attendant in the context where the passenger suffers from a disability, or (2) for an obese person who requires two seats?
2. If there is a discriminatory practice, does that constitute a fault within the meaning of Article 1458 of the *Civil Code of Québec*?
3. If there is a fault, can Air Canada exonerate itself by invoking a valid defence?

The Court found that Air Canada's practice of requiring passengers with a disability and obese passengers to purchase two seats was discriminatory. Relying on a decision of the Canadian Transportation Agency from 2008, the Court found that the fact that a person must pay for the additional seat because of his or her disability constituted an undue obstacle to his or her mobility within the meaning of the *Canada Transportation Act*.

As Air Canada did not present any evidence to challenge the veracity of the Canadian Transportation Agency's decision, the decision was presumed to be accurate.

The Court also held that the practice of requiring payment for two seats was a discriminatory practice within the meaning of the *Canadian Human Rights Code*.

The Court found that there was no valid defence because imposing "one person one ticket" rate as an accommodation measure would not result in excessive costs or for Air Canada.

The practice therefore constituted a fault within the meaning of the *Civil Code of Québec*. The failure to perform a specific duty imposed by a law or a regulation is in principle a civil fault, since there is a violation of a norm of conduct fixed by the legislator.

Damages

The Court held that damages could be awarded based on the cost of the second fare for each passenger with a disability or who was obese. However, the Court declined to award non-pecuniary damages for humiliation and punitive damages, as the plaintiffs presented no evidence for these heads of damages.

Comment

This decision confirms that carriers who do not abide by a "one passenger one ticket" policy may be liable for discriminating against passengers with disabilities and obese passengers who require more than one seat.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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