

APR 21 2015

Halifax, N.S.

2015

Hfx No. 438449

Supreme Court of Nova Scotia

Between:

S. Philip Cameron

Plaintiff

and

**Air Canada, John Doe #1, John Doe #2, Nav Canada, and
Halifax International Airport Authority**

Defendants

Proceeding under the Class Proceedings Act, SNS 2007, c 28

NOTICE OF ACTION

To: The Defendants

Air Canada
Douglas A. Tupper, Recognized Agent
1300-1969 Upper Water Street
Halifax, Nova Scotia
B3J 3R7

John Doe #1

John Doe #2

Nav Canada
Mark S. Bursey, Recognized Agent
900-1959 Upper Water Street
Halifax, Nova Scotia
B3J 3N2

Halifax International Airport Authority
James S. Cowan, Recognized Agent
800-1959 Upper Water Street
Halifax, Nova Scotia
B3J 2X2

Action has been started against you

The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary at 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiff designates the following address:

MacGillivray Law Office Incorporated
6452 Quinpool Road
Halifax, Nova Scotia
B3L 1A8

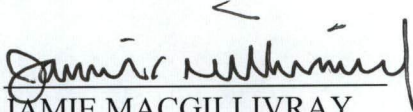
Documents delivered to this address are considered received by the plaintiff on delivery. Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

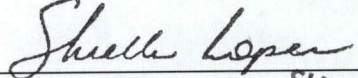
Signature

Signed April 20th, 2015.


JAMIE MACGILLIVRAY
MacGillivray Law Office Incorporated
6452 Quinpool Road
Halifax, Nova Scotia
B3L 1A8
**Solicitor for the Plaintiff
and the Proposed Class**

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on April 21, 2015.


Prothonotary **SHIELLA LOPES**
Deputy Prothonotary

STATEMENT OF CLAIM

1. In this Statement of Claim, the following defined terms are used:

Class Members – refers to all passengers on board AC624

AC624 – refers to Air Canada Flight 624 from Pearson International Airport in Toronto to Halifax International Airport in Halifax which had a scheduled flight time of March 28, from 8:55pm to March 29, 2015 at 12:02am, the actual flight time was close to schedule

Flight Crew – refers to the pilot in command, co-pilot and other members of the crew who exercised operational control over AC 624

Halifax ATC – refers to air traffic control provided by Nav Canada at the Airport

HIAA – refers to the Defendant Halifax International Airport Authority which owned and operated the former Halifax Stanfield International Airport (“the Airport”)

Montreal Convention – refers to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal in 1999 and which was enacted into law in Canada by the *Carriage by Air Act*, RS 1985, c. C-26, as amended, on November 4, 2003 and was enacted into law in France on June 28, 2003

Nav Canada – refers to the Defendant Nav Canada which was responsible for the provision of air traffic control services at the Airport at the time AC 624 crash landed

Runway 05 – refers to the runway that AC624 was approaching when the Crash occurred

the Crash - This refers to the incident forming the subject matter of this claim where AC624 was en route from Toronto to Halifax with 133 passengers aboard. On the approach to Runway 05 at the Airport it hit an earthen berm, an antenna array, and a power line all short of Runway 05. AC624 with its' landing gears torn off then bounced back into the air before crashing to the ground on Runway 05.

Warsaw Convention – refers to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, October 12, 1929, as amended by the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 signed at the Hague on September 28, 1955, and as adopted in Canada pursuant to the provisions of the *Carriage by Air Act*, RSC 1985, c. C-26

The Claim

2. The Plaintiff, S. Philip Cameron (“the Plaintiff”), claims on behalf of himself and on behalf of the Class:
 - (a) general damages and special damages in an amount sufficient to cover the damages for every Class Member which is estimated to be Twelve Million Dollars (\$12,000,000.00) subject to further assessment of the injuries suffered by Class Members unknown to the Plaintiff;
 - (b) prejudgement and post judgement interest pursuant to the provisions of the *Judicature Act*, RSNS 1989, c. 240; as amended
 - (c) costs of this action on a substantial indemnity basis, including Harmonized Sales Tax; and,
 - (d) such further and other relief as this Honourable Court may deem just and subject to information being obtained through disclosure of documents from the Defendants and discovery of the Defendants.

The Parties

3. The fifty-four year old Plaintiff resides in Pictou County, in the Province of Nova Scotia, and is employed as a Mechanic at a tire production facility. On March 29, 2015, the Plaintiff was a passenger on AC624 travelling from Toronto Pearson International Airport in Toronto, Ontario to the Airport in Halifax, Nova Scotia.

4. The Defendant, Air Canada, is an extra-provincial corporation carrying on business pursuant to the laws of Canada with its head office located at 7373 Cote Vertu West, St. Laurent, Quebec. Air Canada maintains business premises in Nova Scotia and throughout Canada as a commercial air carrier. Air Canada operated AC624 as a regularly scheduled commercial flight.

5. Nav Canada is a private, non-share capital company incorporated pursuant to the laws of Canada. At all material times, Nav Canada owned and operated Canada's civil air navigation service and was responsible for the provision of air traffic control services at the Airport including the provision of air traffic control, flight information, weather briefings, aeronautical information, airport advisory services and electronic aids to navigation.

6. HIAA is incorporated pursuant to the laws of Canada and is responsible for the management, operation and maintenance of the Airport. At all times material, HIAA was responsible for providing airport services including maintaining Runway 05 and related equipment.

7. At all material times, Air Canada was the employer of the Flight Crew, including but not limited to the captain John Doe #1 ("Captain") and the first officer, John Doe #2 ("First Officer"). Therefore, Air Canada is vicariously liable for the acts and omissions of the Flight Crew. The names of the Captain and First Officer have not been officially released as of the time of drafting this pleading.

8. The Defendant, John Doe #1, was at all material times the Captain in command on AC624.

9. The Defendant, John Doe #2, was at all material times, the First Officer on AC624.

10. In bringing this action on behalf of a class of approximately One Hundred and Thirty-Three (133) persons in Canada and abroad who were passengers on AC624 to be further defined in the motion for certification, the Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, S.N.S. 2007, c. 28, as amended.

The Events of Air Canada Flight 624

11. Around midnight, toward the end of an uneventful flight from Toronto, AC624 descended to approximately 9,000 feet and started circling the Airport. One of the two pilots informed passengers they were waiting for better visibility and for the cloud ceiling to lift to allow a landing. The pilot also warned he may have to divert the flight to an alternate airport in Moncton, New Brunswick to refuel and wait for better weather. After a little more than thirty minutes either the Captain or the First Officer announced conditions had improved and that they would attempt a landing.

12. The first contact with the ground was about 335 metres short of Runway 05 where AC624 crashed into an earthen berm. This impact tore off its main landing gear and damaged the wings. AC624 then crashed through a sturdy metal antenna array. Finally, AC624 bounced back up into the air and smashed belly-first onto Runway 05. The impact caused the nose wheel to brake off, and the fuselage slid down Runway 05 with sparks flying. One engine was tore completely off the plane and the second engine was pulverized. One wing was smashed.

13. The passengers evacuated from AC624 and were left on the barren Runway 05 in the cold, wind and snow for approximately fifty minutes before being picked up by the HIAA emergency personnel.

Claims Against Air Canada & The Flight Crew

14. Air Canada entered into contracts of international carriage with each of the passengers on AC624 including the Plaintiff. The contracts of international carriage and liability of Air Canada and its employees are governed in part by the provisions of the *Carriage by Air Act*, RS 1985, c. C-26, as amended. The Plaintiff pleads and relies upon the provision of the *Carriage by Air Act*, RS 1985, c. C-26, as amended including, in particular, Articles 17 and 21 of the Montreal Convention and articles 17, 22, and 25 of the Warsaw Convention.

15. The events of AC624 as described above, constitute an accident within the meaning of Article 17 of the Montreal Convention and Article 17 of the Warsaw Convention and accordingly the defendant, Air Canada, is liable to its passengers for damage sustained for bodily injury upon the condition only that the accident which caused the injury took place on board AC624.

16. In the event that bodily injury of any passenger's claim governed by the Montreal Convention exceeds \$100,000 Special Drawing Rights, the Plaintiff states that the crash was caused by the negligence of Air Canada and its employees including the First Officer

and the Captain, and accordingly, Air Canada cannot avail itself of any of the limits on liability under Article 21 of the Montreal Convention.

17. In the event that the bodily injury of any passenger whose claim is governed by the Warsaw Convention exceeds 250,000 francs, Air Canada waived this limit when it entered into the Inter-Carrier Agreement on Passenger Liability (IIA) on or about October 14, 1996, such that the limit on liability in Article 22 (1) of the Warsaw Convention does not apply.

18. The Plaintiff pleads that Air Canada was negligent and in breach of its' contractual duties to the Class as set out below:

- a) failing to ensure that passengers were reasonably safe while aboard AC624.

19. As Against The First Officer and The Captain, for Whose Negligence Air Canada is Vicariously Responsible:

- a) operating AC624 in such a manner as to cause the crash;
- b) failing to keep the plane under proper control;
- c) failing to keep a proper lookout;
- d) failing to take reasonable care to avoid the crash;
- e) operating the Aircraft in such a manner that it hit on earthen berm 335 meters short of Runway 05 and crashed;
- f) choosing to attempt the landing on Runway 05 when they knew or ought to have known the conditions had changed necessitating an abort;
- g) choosing to attempt to land when they knew or ought to have known that the conditions generally were such that it was unsafe to land;

- h) failing to exercise due care and skill in the operation of AC624;
- i) such other negligence as may appear as the Defendants produce documentary disclosure and allows for the Discovery of the parties.

Claims Against HIAA

20. The Plaintiff pleads that HIAA was negligent as set out below:

- a) failing to adequately inspect, test, and report on Runway 05 surface conditions;
- b) choosing to keep Runway 05 open when it knew or ought to have known that was not reasonably safe to do so;
- c) choosing to operate Runway 05 with an inadequate instrument landing system;
- d) such other negligence as may appear as the Defendants produce documentary disclosure and allows for the Discovery of the parties.

Claims Against Nav Canada

21. The Plaintiff pleads that Nav Canada was negligent as set out below:

- a) instructing the Flight Crew of AC624 to land on Runway 05 when Halifax ATC knew or should have known the conditions were unsafe for landing;
- b) choosing to continue to operate Runway 05 when Halifax ATC knew or should have anticipated that the prevailing meteorological conditions were rapidly deteriorating making Runway 05 unsafe for landing;
- c) Failing to advise the Flight Crew of AC624 that the Aircraft's speed, rate and angle of descent would result in the AC624 crashing;
- d) such other negligence as may appear as the Defendants produce documentary disclosure and allows for the Discovery of the parties.

Damages

22. As a result of the crash, the Plaintiff and Class Members sustained physical and psychological injuries the nature and extent of which vary among individual Class Members.

23. The Plaintiff sustained damage to his musculoskeletal system including, bruising, tearing, straining and damaging of the nerves, muscles, tendons and ligaments throughout his body. The Plaintiff also suffered psychological injury and trauma.

24. Class Members sustained physical and psychological injuries as a result of the crash including, but not limited to, musculoskeletal system injuries, anxiety, depression, post traumatic stress disorder, fear of flying, fatigue, nightmares, and insomnia. These injuries and impairments have been accompanied by pain, suffering, and a loss of enjoyment of life. The precise nature and extent of these injuries vary among individual Class Members.

25. Further, as a result of the crash the Plaintiff and Class Members will be required to undergo medical treatment, medical tests and procedures, and take medication. The Plaintiff and Class Members had and will incur medical, hospital, rehabilitative, health care and other out-of-pocket expenses and claim for these past and future expense arising as a result of their injuries.

26. The damages sustained by the Plaintiff and Class Members include but are not limited to special and general damages for pain and suffering, physical and emotional losses, as well as loss of earning and earning capacity, monetary damages and medical and other bills and expenses.

27. Some of the expenses related to the medical treatment that the Plaintiff and Class Members have undergone, and will continue to undergo, have been borne by the various provincial health insurers. As a result of the negligence of the Defendants, the various provincial health insurers have suffered and will continue to suffer damages for which the Class Members seek compensation pursuant to their statutory obligation to do so.

28. The Plaintiff and Class Members plead and rely upon the provisions of the following statutes as amended, and the pursuant regulations they are under:

- a) *Carriage by Air Act*, RSC 1985, c. C-26;
- b) *Aeronautics Act*, RSC 1985, c. A-2;
- c) *Class Proceeding Act*, SNS 2007, c. 28;
- d) *Contributory Negligence Act*, RSNS 1989, c. 95;
- e) *Occupiers' Liability Act*, SNS 1996, c. 27.

Jurisdiction

29. The Plaintiff and Class Members plead and rely on Article 33 of the Montreal Convention and are bringing this action before a Court of the Domicile of Air Canada, in a place where the Plaintiff's contract with Air Canada was entered into, the province

where the crash occurred; and in the province of the Plaintiff's principle and permanent residence. For all of these reasons this Court has jurisdiction over this action.

Place of Trial

30. The Plaintiff proposes this action on his behalf and on behalf of the Class Members and proposes that a trial in this action take place at the Halifax Regional Municipality, in the Province of Nova Scotia.

Signature

Signed April 20th, 2015.



JAMIE MACGILLIVRAY
MacGillivray Law Office Incorporated
6452 Quinpool Road
Halifax, Nova Scotia
B3L 1A8

**Solicitor for the Plaintiff
and the Proposed Class**