



FEDERAL COURT

AIR CANADA

Applicant

-and-

**ROBERT ADAMSON, ROBERT DAVID ANTHONY, JACOB BAKKER,
DONALD BARNES, MICHAEL BINGHAM, DOUG BOYES,
KENNETH BUCHHOLZ, DANIEL BURROWS, DAVID G. CAMERON,
WAYNE CASWILL, GEORGE COCKBURN, BERT COPPING, GARY DELF,
JAMES E. DENOVAN, MAURICE DURRANT, COLM EGAN, ELDON ELLIOTT,
LEON EVANS, ROBERT FORD, LARRY FORSETH, GRANT FOSTER,
GUY GLAHN, KENWOOD GREEN, JONATHAN HARDWICKE-BROWN,
TERRY HARTVIGSEN, JAMES HAWKINS, GEORGE HERMAN,
JAMES RICHARD HEWSON, BROCK HIGHAM, LARRY HUMPHRIES,
GEORGE DONALD IDDON, PETER JARMAN, NEIL CHARLES KEATING,
GEORGE KIRBYSON, ROBIN LAMB, STEPHEN LAMBERT, LES LAVOIE,
HARRY G. LESLIE, ROBERT LOWES, GEORGE LUCAS, DONALD MADEC,
DON MALONEY, MICHAEL MARYNOWSKI, BRIAN MCDONALD,
PETER MCHARDY, GLENN RONALD MCRAE, JAMES MILLARD,
BRIAN MILSOM, HOWARD MINAKER, GEORGE MORGAN,
GREG MUTCHLER, HAL OSENJAK, STEN PALBOM, DONALD PAXTON,
MICHAEL PEARSON, DAVID POWELL-WILLIAMS, PAUL PRENTICE,
MICHAEL REID, PATRICK RIESCHI, STEVEN ROSS, GARY SCOTT,
PHILLIP SHAW, ANDREW SHERET, MICHAEL SHULIST, DONALD SMITH,
OWEN STEWART, RAY THWAITES, DALE TRUEMAN,
ANDRE VERSCHOLDEN, AND DOUGLAS ZEBEDEE**

CANADIAN HUMAN RIGHTS COMMISSION

AIR CANADA PILOTS ASSOCIATION

Respondents

APPLICATION FOR JUDICIAL REVIEW
UNDER SECTION 18.1 OF THE *FEDERAL COURT ACT*

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Montreal.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules* and serve it on the applicant's solicitor, or where the applicant is self represented, on the applicant, WITHIN 10 DAYS after being served with the notice of application.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

SEP 08 2011

**L'ORIGINAL A ÉTÉ SIGNÉ PAR
RAZVAN MOVILA
HAS SIGNED THE ORIGINAL**

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TO: Attorney General of Canada
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APPLICATION

This is an application for judicial review of a decision dated August 10, 2011 of the Canadian Human Rights Tribunal (the "Tribunal") in Tribunal file numbers T1196/0807, T1197/0907, T1246/5807, T1247/5907, T1263/7507, T1279/0908, T1280/1008, T1336/6608, T1337/6708, T1380/0609, T1390/1609, T1402/2809 and T1418/4409, (the "Decision").

In the Decision (reported at 2011 CHRT 11), the Tribunal dealt with seventy complaints filed by individual pilots formerly employed by Air Canada who alleged that Air Canada and the Air Canada Pilots Association ("ACPA") discriminated against them by requiring that they retire at age 60 pursuant to the mandatory retirement rule found in the collective agreement entered into between Air Canada and ACPA. In the Decision, the Tribunal determined that Air Canada had not met the burden of proving that it will suffer undue hardship with the elimination of the age 60 retirement rule and accordingly, concluded that Air Canada could not rely on the defence of *bona fide* occupational requirement under ss. 15(1)(a) and 15(2) of the *Canadian Human Rights Act* ("CHRA").

In the Decision, the Tribunal ruled that Air Canada could not rely on the defence of *bona fide* occupational requirement despite the existence of international conventions established by the International Civil Aviation Organization ("ICAO") to which Canada is a party and which impose maximum age limits on pilots who fly internationally.

The Applicant makes application for:

- (a) an order in the nature of *certiorari* quashing the Decision of the Tribunal;
- (b) the costs of this application; and
- (c) such further and other relief as counsel may advise and that this Honorable Court may deem just.

The grounds for the application are:

- (a) The Tribunal erred in law and in fact in finding that the Applicant did not meet its obligation of accommodation prior to November 2006; and
- (b) The Tribunal erred in law and in fact in finding that Air Canada did not meet its burden of proving that it will suffer undue hardship with the elimination of the age 60 retirement rule.
- (c) Such further and other grounds as counsel may advise and this Honorable Court permit.

This application will be supported by the following material:

- (a) an Affidavit from Harlan Clarke, Director of Labour Relations at Air Canada, together with exhibits attached thereto, to be sworn and filed in this Honorable Court; and
- (b) such other affidavits and material as counsel may advise and this Honorable Court permit.

September 8, 2011.

Heenan Blaikie

Heenan Blaikie LLP

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