Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

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Between:

William Charles Bailie, Richard Galashan, Robert G. Williams, Robert Harrison, Alvin Gerrard, Sheldon K. Cullen, Garth Vickery, Arthur Randolph Gouge, Warren Young, Gary Nedelec, Jorg Bertram, Lloyd Fraser, Colin Jordan, Mervyn Andrew, Alexander Samanek, Michael S. Sheppard, Robert Harrold Mitchell, Francis J.R. Jeffs, Douglas Goldie, Stephen Ritchie St. Pierre, James Stanley Caldwell, Brian Scott Hope, Trevor Alexander Nicol, James Dow, David R. Lance, Gary Bedbrook, Marcel Duschesne, John Burridge, Chris Evans, John Bell, Tim Ockenden, Kent Jeffrey Benson, David R. England, Pierre Garneau, Jacques Couture, Dave Lineker, William C. Nickerson, Larry James Laidman, John Stephen Gibbs, Robert Bruce Macdonald, Gordon A.F. Lehman, Michael Dell, Dennis Smith, James F. Dietrich, Ralph Tweten, Eric William Rogers, John D. Hargreaves, Peter J.G. Stirling, David Malcom Macdonald, Robert William James, Camil Geoffroy, Brian Campbell, Trevor David Allison, Robert Ferguson, Kenneth David Douglas, Benoit Gauthier, Bruce Lyn Fanning, Marc Carpentier, Mark Irving Davis, Allan Brian Cary, Richard Dale Purvis, Raymond Calvin Scott Jackson, John Bart Anderson, James Shawn Cornell, Raymond D. Hall, Michael Stanley Bellinger, Donald Clifford Eddie, Peter Douglas Keefe, Robin Patrick Mclean Barr, David Leonard Mehain, Jacques Robillard, Errold Dale Smith, Glenn Donald Torrie, David Alexander Findlay, Warren Stanley Davey, Raymond Robert Cook, Keith Wylie Hannan, Michael Edward Ronan, Gilles Desrochers, William Lance Frank Dann, Robert Francis Walsh, Alban Ernest Maclellan, John Andrew Clarke, Bradley James Ellis, Michael Ennis, Stanley Edward Johns, Thomas Frederick Noakes, William Charles Ronan, Barrett Ralph Thornton, Robert James McBride, John Charles Pinheiro, David Allan Ramsay, Harold George Edward Thomas, Murray James Kidd, William Ayre, Stephen Norman Collier, William Ronald Clark

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Air Canada

Air Canada Pilots Association

Respondents

Ruling

Member: David L. Thomas

Table of Contents

I. Motion to Dismiss 1

II. Background 1

III. Judicial History of the Similar Complaints in *Vilven/Kelly* & *Thwaites/Adamson* 3

IV. Judicial Findings – Finally Determined by FCA 6

V. Law 6

A. Tribunal's Discretion to Dismiss Complaint without Hearing 6

B. Abuse of Process by Re-litigation 8

VI. Positions of the Parties on the Motion 11

A. ACPA's Position on the Motion 11

B. ACPA's Reply 13

C. Air Canada's Position on the Motion 13

D. Coalition Complainants' Position on the Motion 14

VII. Analysis 15

A. General Observations 15

VIII. Principles Applicable to Abuse of Process 17

A. Judicial Economy 17

B. Consistency 18

C. Finality 19

D. Integrity of the Administration of Justice 20

E. Fairness 21

IX. Recent Federal Court Decision in *Gregg et al v. Air Canada Pilots Association and Air Canada*, 2017 FC 506 ("*Gregg*") 22

X. Conclusion 24

I. Motion to Dismiss

[1] This is a ruling concerning a Motion filed by one of the Respondents, the Air Canada Pilots Association ("ACPA"), dated March 15, 2016, seeking an order dismissing the complaints. ACPA set out several reasons why the complaints should be dismissed at this preliminary stage before the hearing has commenced. The other Respondent, Air Canada, supported the motion, adopting ACPA's submissions and adding further reasons in their submissions.

[2] These complaints are part of a complex matter involving the mandatory retirement of Air Canada pilots at the age of 60. The issue has been before the Canadian Human Rights Tribunal ("Tribunal" or the "CHRT") for more than a decade. For the reasons set forth below, I grant ACPA's motion and dismiss the complaints of those complainants who reached the age of 60 prior to December 31, 2009. For the within complainants who reached the age of 60 on January 1, 2010 or later, the motion is dismissed and I will grant a hearing.

II. Background

[3] This matter involves the complaints of retired Air Canada pilots who claim that Air Canada engaged in a discriminatory practice and applied a discriminatory policy by requiring them to retire at the age of 60. The mandatory retirement was pursuant to the collective agreement negotiated between Air Canada and the bargaining agent, ACPA, and the pilots' pension plan. As a result, many human rights complaints have been filed by these retired pilots against both Air Canada and ACPA, and in this instance the ninety-seven (97) pilots have been combined into a single hearing by the Tribunal, referred to as the "*Bailie*" matter. The pilots claim that requiring them to retire at age 60 was in violation of sections 7, 9 and 10 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, as amended (the "*CHRA*").

[4] Prior to the *Bailie* group of complainants, there were two similar groups of Air Canada retired pilot complainants before the Tribunal. The Tribunal similarly grouped

those complainants together into separate hearings. The first group will be referred to as the *Vilven/Kelly* matter, and the second group will be referred to as the *Thwaites/Adamson* matter.

[5] The *Bailie* matter was previously seized by Member Garfield, whose term with the Tribunal has since expired. In 2011, ACPA brought a motion to adjourn the *Bailie* matter in light of the ongoing appeals in both the *Vilven/Kelly* and the *Thwaites/Adamson* matters. Those matters were making their way through the Federal Court and the Federal Court of Appeal ("FCA"). Member Garfield granted the motion in February of 2012 (2012 CHRT 6). He opined that the legal issues in *Vilven/Kelly*, *Thwaites/Adamson* and *Baillie* address substantially the same issues. Further, the history of the *Vilven/Kelly* and *Thwaites/Adamson* proceedings showed that every significant Tribunal decision had been judicially reviewed by one or more parties. Therefore, Member Garfield found that an adjournment with certain conditions was preferable and less intrusive than determining some parts of the complaint based on *res judicata*, issue estoppel or abuse of process as some parties had suggested. When adjourned, the *Bailie* group of complaints remained intact for adjudication once judicial clarity in the other cases had been achieved. As such, Member Garfield adjourned these proceedings.

[6] The *Bailie* matter remained adjourned for four (4) years, until the Supreme Court of Canada ("SCC") dismissed the application for leave to appeal the FCA`s judgment in the *Thwaites/Adamson* matter. (Leave to appeal denied March 10, 2016, see *Robert Adamson, et al. v. Air Canada, et al.*, 2016 CanLII 12161).

[7] In the *Bailie* matter there are ninety-seven (97) complainants and the majority are represented by one legal counsel, Mr. Raymond Hall, who is also an Air Canada pilot and one of the complainants herein. The complainants represented by Mr. Hall are referred to as the "Coalition complainants". The complainants in the *Bailie* matter have retirement dates ranging from June 2004 to February 2012. Fifty-two (52) pilots turned 60 prior to 2010 and the remaining forty-five (45) retired at various times after December 31, 2009 and up to February of 2012. The importance of distinguishing these two groups will become clear in these reasons.

[8] ACPA brought a motion to dismiss the *Bailie* complaints dated March 15, 2016. In correspondence dated March 16, 2016, counsel for the Coalition complainants stated that he required a substantial amount of time to contact his clients, consult them, and seek instructions regarding the motion and a number of substantive issues given the years that had passed since the adjournment of the proceedings and the number of determinations of the court. Counsel for the Coalition complainants argued that all parties should restate their positions given the changes in the law and the facts since the original Statements of Particulars ("SOPs") were filed.

[9] ACPA responded by arguing that the parties should not be amending their SOPs prior to a motion to dismiss. Rather, ACPA suggested that the Coalition complainants raise any new facts or changes to the legal framework in response to ACPA's motion to dismiss the complaints.

[10] On April 4, 2016, Member Garfield directed the parties to serve and file motion materials by specific dates. He further stated that "any party may request, or the Tribunal determine, that a conference call take place to hear oral submissions". All of the written submissions on the motion to dismiss were received and the conference call to hear oral submissions was conducted before me on September 19, 2016.

III. Judicial History of the Similar Complaints in *Vilven/Kelly* & *Thwaites/Adamson*

[11] The *Vilven/Kelly* matter was the first proceeding regarding the mandatory retirement rules and pilots who were forced to retire from Air Canada at the age of 60. Three (3) complaints were combined for the proceeding from two complainants, Mr. Vilven and Mr. Kelly, and both were represented by Mr. Hall. The timeframe assessed in the *Vilven/Kelly* proceedings was for pilots retiring from 2003 to 2005.

[12] The main issue in that case was whether the mandatory retirement rule under section 15(1)(c) of the *CHRA* was constitutional. Section 15(1)(c) (since repealed) permitted the termination of employment based on age, if it was the "normal age of retirement for employees working in positions similar to the position of that individual." If

section 15(1)(c) applied, then what was the normal age of retirement for similarly employed pilots in Canada, and how would that be determined?

[13] The complainants in *Vilven/Kelly* challenged the constitutionality of section 15(1)(c). This issue was finally resolved by the FCA's decision (2012 FCA 209), which declared that section 15(1)(c) was constitutionally valid (Leave to appeal to the SCC denied (2013 CanLII 15565)). Given the Federal Court's earlier judgment in *Vilven v. Air Canada* ("*Vilven* FC") (2009 FC 367), upholding the Tribunal's finding that 60 was the normal age of retirement for pilots and that Mr. Kelly and Mr. Vilven were caught by section 15(1)(c), the FCA confirmed that their complaints should be dismissed. (See *Vilven/Kelly v. Air Canada & Air Canada Pilots Association*, 2007 CHRT 36 for the Tribunal's decision where it made the finding of the normal age of retirement.)

[14] It should be noted that Parliament repealed section 15(1)(c) of the *CHRA* in December 2012 and thereafter the Respondents ceased requiring pilots to retire at age 60.

[15] The *Thwaites/Adamson* matter was the second proceeding regarding the mandatory retirement rules and pilots who were forced to retire from Air Canada at the age of 60. There were seventy (70) pilots in this group, with retirement dates starting in 2005 up until 2009. The majority of the complainants were represented by Mr. Hall.

[16] The Tribunal's decision in the *Thwaites/Adamson* matter was considered by the FCA which explained that the Federal Court's decision by Justice Mactavish in *Vilven* FC is not necessarily a binding precedent on the Tribunal given the fact situation. The FCA stated that this decision should be seen as informing the context in which the Tribunal's decision is made and should limit the range of reasonable options open to the Tribunal when crafting the comparator group under para. 15(1)(c). (See paras. 31 and 60 of the *Adamson v. Canada (Human Rights Commission)*, 2015 FCA 153).

[17] The FCA in *Thwaites/Adamson* further found that the comparator group factors identified in the *Vilven* FC decision is not a "test" but rather "factors" to be applied by the Tribunal. The activities of other Canadian airline pilots must be examined on the basis of

the factors identified in *Vilven* FC, but not necessarily applied in a rigid fashion like a test. The factors were identified as follows:

1. Flying domestically;
2. Flying internationally;
3. Transporting passengers;
4. Flying varying sizes of aircraft; and
5. Flying varying types of aircraft.

(See para. 41, *Adamson v. Canada (Human Rights Commission)*, 2015 FCA 153).

[18] In the *Thwaites/Adamson* matter, the parties disagreed over which *Vilven* FC factors were paramount and, most importantly, whether these factors were to be read conjunctively by the Tribunal, or disjunctively, as found by the Federal Court in *Thwaites/Adamson*.

[19] The FCA explained in the *Thwaites/Adamson* decision that the Tribunal was not obliged to apply the *Vilven* FC factors in the same manner as Mactavish J. suggested in *Vilven/Kelly*, but rather it had greater leeway in deciding how to make use of these factors. As such, the Tribunal was entitled, when applying the *Vilven* FC factors, to opt for the conjunctive approach.

[20] In the end, the FCA concluded that the threshold for judicial review was not met. The FCA judge could not set aside the Tribunal's decision on the normal age of retirement issue as there was evidence on the record supporting the Tribunal's findings and conclusions (see paras. 82-83 of the FCA *Thwaites/Adamson* decision). The FCA explained:

> [82] In the present matter, the Tribunal heard extensive evidence on the choice of comparator groups. In the end, it accepted Captain Duke's evidence, a witness for Air Canada, to determine the comparator group for the years 2005 to 2008 (Tribunal's decision at paragraph 173). For the year

> 2009, it accepted the evidence of two witnesses, Captain Paul Prentice, a witness for the complainants, and Harlan Clark, a witness for Air Canada.
>
> [83] There was evidence on record supporting the Tribunal's findings and conclusions. I find no reason to intervene.

[21] As such, the FCA in *Thwaites/Adamson* accepted the Tribunal's finding that "for each of the years 2005-2009, the majority of pilots working for Canadian airlines, including Air Canada, in similar positions to that of the complainants, retired by the age of 60" (see para. 181 of the Tribunal decision in *Thwaites/Adamson* (2011 CHRT 11)).

IV. Judicial Findings – Finally Determined by FCA

[22] The following issues have been finally determined by the FCA in the *Vilven/Kelly* and *Thwaites/Adamson* proceedings:

1. Paragraph 15(1)(c) of the *CHRA* is constitutionally valid (now repealed);
2. The Tribunal ought to apply the *Vilven* FC factors when determining the comparator group pursuant to paragraph 15(1)(c) of the *CHRA* for Air Canada pilot retirement complaints;
3. The Tribunal has discretion as to how they wish to apply the factors, with the direction of the previous decisions;
4. 60 was the normal age of retirement for pilots in positions similar to those occupied by Messrs. Vilven and Kelly in the period of 2003 – 2005;
5. 60 was the normal age of retirement for pilots working for Canadian airlines in similar positions to the Complainants in the years 2005 – 2009 (see para. 181 of the Tribunal decision in *Thwaites/Adamson* (2011 CHRT 11).

V. Law

A. Tribunal's Discretion to Dismiss Complaint without Hearing

[23] In *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 ("*First Nation*"), the Federal Court confirmed the Tribunal's power to dismiss a complaint on the basis of a preliminary motion. Justice Mactavish explained that a

previous Federal Court decision, cited below, had already confirmed this discretionary power as follows:

> [137] After examining some of the statutory provisions referred to above, Justice von Fickenstein observed that it was "hard to fathom" why it would be in anyone's interest for the Tribunal to hold a hearing in a case where the hearing would amount to an abuse of process: at para. 18. He concluded that there was no statutory or jurisprudential bar that would preclude the Tribunal from dismissing a complaint on the basis of a preliminary motion on the grounds of abuse of process, "always assuming there are valid grounds to do so": at para 19. This decision as subsequently affirmed by the Federal Court of Appeal: 2004 FCA 363 (CanLII), 329 N.R. 95.

See also Canada (Human Rights Commission) v. Canada Post Corp., 2004 FC 81 ("*Cremasco*"), affirmed in Canadian Human Rights Commission v. Canada Post Corp., 2004 FCA 363.

[24] The Tribunal's power to dismiss a human rights complaint in advance of a full hearing on the merits "should be exercised cautiously and then only in the clearest of cases..." (See para. 140 of *First Nation, supra*). In cases where there may be serious issues of credibility or where the issues of fact and law are complex and intermingled, it may well be more efficient to await the full hearing before ruling on the preliminary issue. However, Justice Mactavish did add the following:

> [143] That said, there may be cases where a full hearing involving viva voce evidence is not necessarily required. As the Tribunal noted, this could include cases where there is no dispute as to the facts, or where the issue is a pure question of law. (…)
>
> [148] (…) In every case, the Tribunal will have to consider the facts and issues raised by the complaint before it, and will have to identify the appropriate procedure to be followed so as to secure as informal and expeditious a hearing process as the requirements of natural justice and the rules of procedure allow.
>
> [149] However, the process adopted by the Tribunal will have to be fair, and will always have to afford each of the parties "a full and ample opportunity to appear[,] … present evidence and make representations" in relation to the matter in dispute.

[25] Accordingly, the Tribunal has the power to dismiss a complaint on a motion to dismiss for abuse of process. However, should the Tribunal dismiss a complaint on a motion to dismiss, the process adopted must meet the requirements of natural justice and procedural fairness and it should only be done in the clearest of cases.

B. Abuse of Process by Re-litigation

[26] The SCC decision in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 ("*CUPE*") remains a leading decision regarding abuse of process. The doctrine of abuse of process precludes re-litigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice (see para. 37 *CUPE*, see also *Cremasco*).

[27] The determination as to whether the re-litigation of issues and material facts constitutes an abuse of process by re-litigation is a discretionary matter (see *CUPE* at para. 35). In *CUPE*, the SCC explored the rationales underlying issue estoppel and abuse of process, explaining the doctrine engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would … bring the administration of justice into disrepute" and that it had been applied in cases where the litigation before the court is found to be in essence, an attempt to re-litigate a claim which the court has already determined (see para. 37 of *CUPE*, see also para. 56 of *Canam Enterprises Inc. v. Coles*, 2000 CanLII 8514, dissent approved by SCC (2002 SCC 63)).

[28] The focus of the doctrine of abuse of process is the integrity of the adjudicative process. In *CUPE*, the SCC makes three preliminary observations when assessing same:

1. There can be no assumption that re-litigation will yield a more accurate result that the original proceeding;
2. If it yields the same result, will it be a waste of additional resources and unnecessary expenses for the parties?

3. If the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, will the inconsistency, in and of itself, undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality?

   (See *CUPE* at para. 51)

[29] Re-litigation carries serious detrimental effects and should be avoided unless the circumstances dictate that re-litigation is in fact necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole. The SCC suggests the following situations where re-litigation may be necessary:

1. When the first proceeding is tainted by fraud or dishonesty;
2. When fresh, new evidence, previously unavailable, conclusively impeaches the original results; or
3. When fairness dictates that the original result should not be binding in the new context.

(See *CUPE* at para. 52)

[30] Although none of the parties to the Motion referred to the SCC decisions in *Figliola* (*British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52) ("*Figliola")* and *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 ("*Penner*"), these are two important SCC decisions where the court has recently reviewed finality doctrines.

[31] In *Penner*, the SCC elaborated on the discretionary application of issue estoppel and the need for flexibility and fairness. Although *Penner* does not refer to the doctrine of abuse of process, as the court explained in *CUPE*, the discretionary factors for fairness that apply to prevent the doctrine of issue estoppel from operating in an unjust or unfair way are equally available to prevent the doctrine of abuse of process from achieving similar undesirable results (see para. 53 of *CUPE*).

[32] In *Penner* the SCC reaffirmed an older SCC decision in *Danyluk v. Ainsworth Technologies Inc*., 2001 SCC 44, where a list of factors were established to indicate some circumstances that may be relevant in a particular case to determine whether, on the

whole, it is fair to apply issue estoppel. The SCC explained how the factors arose and can be considered at para. 39 as follows:

> Broadly speaking, the factors identified in the jurisprudence illustrate that unfairness may arise in two main ways which overlap and are not mutually exclusive. First, the unfairness of applying issue estoppel may arise from the unfairness of the prior proceedings. Second, even where the prior proceedings were conducted fairly and properly having regard to their purposes, it may nonetheless be unfair to use the results of that process to preclude the subsequent claim.
>
> [Emphasis added]

[33] This list of factors is not exhaustive and the SCC specifically states that it does not need to be applied mechanically (see paras. 37-38 of *Penner*). The factors are taken from the previous SCC decision, and are known as the "*Danyluk* factors". The factors that could be considered in exercising discretion are as follows:

a. the wording of the statute;

b. the purpose of the legislation;

c. the availability of an appeal;

d. safeguards within the administrative process;

e. the expertise of the administrative decision maker;

f. the circumstances giving rise to the prior decision; and

g. any potential injustice that might result from the application or non-application of the doctrine.

(See paras. 66 to 80 *of Danyluk supra*)

[34] Although the decision in *Figliola* can be distinguished from this matter on the facts, the SCC provided a good summary of the common underlying principles of the doctrines of finality for preventing "abuse of the decision-making process" at para. 34 as follows:

- It is in the interests of the public and the parties that the finality of a decision can be relied on (*Danyluk*, at para. 18; *Boucher*, at para. 35).

- Respect for the finality of a judicial or administrative decision increases fairness and the integrity of the courts, administrative tribunals and the administration of justice;

on the other hand, re-litigation of issues that have been previously decided in an appropriate forum may undermine confidence in this fairness and integrity by creating inconsistent results and unnecessarily duplicative proceedings (*Toronto (City)*, at paras. 38 and 51).

- The method of challenging the validity or correctness of a judicial or administrative decision should be through the appeal or judicial review mechanisms that are intended by the legislature (*Boucher*, at para. 35; *Danyluk*, at para. 74).

- Parties should not circumvent the appropriate review mechanism by using other forums to challenge a judicial or administrative decision (*TeleZone*, at para. 61; *Boucher*, at para. 35; *Garland*, at para. 72).

- Avoiding unnecessary re-litigation avoids an unnecessary expenditure of resources (*Toronto (City)*, at paras. 37 and 51).

[Emphasis added]

[35] The above principles are a useful guide to the Tribunal in considering the analysis required in the motion herein. Generally speaking, the application of the doctrine of abuse of process is discretionary and considers various factors to arrive at a conclusion as to whether or not the matter amounts to re-litigation, which would put the administration of justice into disrepute. Lastly, I must also consider fairness and whether there are any reasons not to apply the finality doctrine.

VI. Positions of the Parties on the Motion

[36] The *Bailie* complaints and the predecessor complaints are unusual and precedent-setting because the legal and most of the factual issues are the same in all related matters, except for the actual complainants and their dates of birth. Furthermore, the normal age of retirement should apply to all complainants equally in a given timeframe. However, it remains within the realm of possibility that the normal age of retirement itself may have changed over the years with changes in the industry.

A. ACPA's Position on the Motion

[37] ACPA relies upon *Cremasco* to confirm the Tribunal's jurisdiction to dismiss the matter by way of a preliminary motion on the ground of abuse of its process inasmuch as

the Tribunal is the "master of its own house". This is not a contested point of law. The Tribunal does have this jurisdiction, but as explained in the FC's *First Nation* decision, it must only be exercised in the "clearest of cases".

[38] ACPA submits that the *CUPE* decision directly applies to the *Bailie* matter. ACPA relies upon the decision in *Thwaites/Adamson* to explain that proceeding with the *Bailie* complaints would be an abuse of the Tribunal's process and a re-litigation of a matter which has already been determined. ACPA quotes the FCA decision in *Thwaites/Adamson* at length, particularly relying on the following at para. 16:

> The record reasonably supports the Tribunal's finding at paragraph 181 of its decision that "…for each of the years 2005-2009, the majority of pilots working for Canadian airlines, including Air Canada, in similar positions to that of the [c]omplainants, retire[d] by the age of 60."

[39] ACPA submits there is simply nothing left to litigate. Unfortunately, ACPA did not address the fact that the court determination of the normal age of retirement was only for the period of 2005 to 2009. ACPA did not make any distinction of the forty-five (45) pilots in the *Bailie* matter who turned 60 after December 31, 2009.

[40] ACPA submits that should re-litigation be required, the same evidence considered in the previous hearings will be the only evidence before the Tribunal in the *Bailie* matter. The Coalition complainants have specifically admitted in their SOP that they would be relying on the evidence in *Vilven/Kelly* and *Thwaites/Adamson*. In fact, the Coalition complainants went so far as to assert that it would be an abuse of process for them to be required to call any evidence. In their motion submissions, ACPA provided examples from the Coalition complainants' SOPs and previous Notices of Motion in the *Bailie* matter.

[41] ACPA also argues that dismissing the matters would support judicial economy as there was a considerable amount of evidence adduced in the *Thwaites/Adamson* hearing and given the complainants have admitted that they would be relying upon the same evidence, there is no factual basis upon which their claims should require adjudication. In their view, the Tribunal has received judicial clarity from the FCA decisions and the Tribunal should be avoiding duplicative litigation.

B. ACPA's Reply

[42] ACPA's reply to the responses of the Coalition complainants and other self-represented complainants points out that the Coalition complainants have failed to provide anything further than an assertion to support their position that the normal age of retirement may be different in the *Bailie* matter. Although the Coalition complainants assert there are material facts which would affect the normal age of retirement that differ from the *Vilven/Kelly* and *Thwaites/Adamson* proceeding, no details were provided.

[43] ACPA asserts that the balance of the Coalition complainants' position regarding the inapplicability of the previous decisions is nothing more than a reiteration of the positions advanced unsuccessfully before the FCA and their leave to appeal to the SCC.

C. Air Canada's Position on the Motion

[44] Air Canada relies upon the motion submissions of ACPA. In addition, Air Canada addresses the fact that some pilots retired after the time frame specifically addressed in the *Thwaites/Adamson* proceedings at paras. 8 and 9 of their submissions:

> 8. A similar abuse of process arises regarding the complainants who retired shortly after the last of the *Thwaites* complainants. The complainants who retired after the time analyzed in *Thwaites*, did so shortly following that period. Further, the evidence in *Thwaites* concerned the age of retirement of thousands of pilots in Canada. (See para. 176 of *Thwaites*, 2011 CHRT 11, in ACPA's materials).
>
> 9. Given the stability in the normal age of retirement through the time considered in *Thwaites*, and indeed, considered in *Vilven v. Air Canada*, and given that in both cases it was established that there are thousands of pilots in the comparator group, it is highly improbable that a meaningful change to the normal age of retirement could have occurred in the short time between the retirement of the Thwaites complainants and that of these complainants. (Ibid. and *Vilven v. Air Canada*, 2007 CHRT 36, ("*Vilven*"), attached as Tab 1).

[45] Air Canada also raises the issue of costs, submitting that the Tribunal must be vigilant to avoid an abuse of process. The Respondents in this matter have already committed significant time and effort defending the complaints in *Vilven/Kelly* and

Thwaites/Adamson. Neither should be required to do so again given the chances of the complaints being upheld are as remote as they are in this case. Furthermore, Air Canada submits, re-litigating adds to the unfairness because the Respondents do not have the possibility of being compensated for the expense of the hearing based on the SCC decision in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 ("*Mowat*").

D. Coalition Complainants' Position on the Motion

[46] There are eighty-nine (89) pilots represented by Mr. Hall, with eight (8) additional self-represented complainants, totaling ninety-seven (97) complainants in the *Bailie* matter. Four (4) of the self-represented complainants have provided submissions on the motion. Unfortunately, I do not read them as addressing the legal issues but rather restating their general complaint, seeking to have "their individual" complaint heard.

[47] The following provides a brief overview of the Coalition complainants' arguments. I have only included arguments which I find to be relevant to this decision. The Coalition complainants' first argument is based on privity. They argue that none of the *Bailie* complainants were a party to the previous proceedings. To the extent that each complainant is unique, each complaint should be heard separately. None of the *Bailie* complainants have had any opportunity to participate in the two prior proceedings or the right to make any representations to the Tribunal in respect of the issues raised or to be informed of the issues in dispute in those proceedings.

[48] Much of the motion submissions of the Coalition complainants suggests that the reason they want to re-litigate is because they feel that the Tribunal should apply the comparator group factors differently for the *Bailie* matter, than was done in the *Vilven/Kelly* and *Thwaites/Adamson* proceedings. The Coalition complainants argue that even where an appellate court has found one interpretation to be reasonable, that decision will not necessarily bind a future administrative tribunal. Strictly speaking, an administrative tribunal is not bound by its previous decisions or the decisions of its predecessor (see *Altus Group Limited v. Calgary (City)*, 2015 ABCA 85 at para. 16).

[49] The Coalition complainants rely upon the FCA decision in *Morel v. Canada*, 2008 FCA 53 ("*Morel*") to address the balancing of interests between the rights of individuals to be heard and the interests of finality, fairness, efficiency and the authority of judicial decisions in respect of the doctrine of abuse of process. They rely upon *Morel* to assert their right to be heard, over the gravity of casting doubt on the previous proceedings. More specifically, that the quasi constitutional rights of a party to a fair hearing must take precedence over finality and the potential for conflicting results.

VII. Analysis

[50] I have considered all of the parties' arguments, although I am not addressing all of them here. I am addressing the ones that I feel are necessary and relevant to my decision.

A. General Observations

[51] The Coalition complainants find themselves in the somewhat awkward position of arguing against part of their position taken in their SOP dated March 18, 2011, and in their Replies to Air Canada and ACPA dated April 11, 2011 and April 12, 2011 respectively. In their SOP at para. 13, they state: "With respect to the liability portion of the hearing, the Complainants expect to rely on the evidence and argument adduced in both the *Vilven-Kelly* hearing and the *Thwaites/Adamson* hearing." Only one or two witnesses would be required to re-adduce that evidence for the hearing. In other words, the argument was being made that new evidence on liability would not be required in the *Bailie* matter.

[52] In the Coalition complainants' Reply to Air Canada, dated April 11, 2011, at para. 16, they affirmed the issue of mandatory age having been settled:

> 16. The issue of determining whether Air Canada' termination of its pilots by reason of mandatory retirement meets the requirements of paragraph 15(1)(c) of the *Act* was thoroughly canvassed by all parties in the *Thwaites* hearing.

[53] In the Coalition Complainant's Reply to ACPA's Statement of Particulars, dated April 12, 2011, at paras. 9 and 10, they stated:

> 9. This proceeding marks the third instance of litigation of the identical issue involving the identical mandatory retirement provisions of the Air Canada – ACPA collective agreement and pension plan by the same four parties (albeit with a different set of Coalition Complainants privies). While the specific attributes and behaviors of the individual Complainants may be relevant to issues related to remedy, including damages, none of the Complainants' specific characteristics distinguish the instant issue of liability from the issue that was twice previously heard and decided by the Tribunal and the Federal Court. These Complainants, like all of the Complainants in the two prior proceedings, are before the Tribunal solely because their employment was terminated pursuant to the provisions of the Air Canada – ACPA collective agreement and pension plan, on the basis of having acquired the age of 60. **Consequently, this entire proposed liability hearing is nothing more than a relitigation of the very same issues that have already been decided with finality by the Tribunal and by the Federal Court.**
>
> 10. On the basis of the submissions made by ACPA in the instant Statement of Particulars, the Complainants at the outset object to re-litigating issues that have already been dealt with, with finality, by both this Tribunal and by the Federal Court in both the *Vilven-Kelly* proceeding and/or in the *Thwaites* proceeding. **It is the respectful submission of the Complainants that re-litigation of most, if not all of the issues raised in ACPA's Statement of Particulars can and should be dealt with by the Tribunal under principles of judicial comity, *stare decisis*, issue estoppel and/or abuse of process.**
>
> (Emphasis added.)

[54] As previously noted, the Coalition complainants' had expressed a desire to amend their SOP's following the release of the FCA decisions in both *Vilven/Kelly* and *Thwaites/Adamson*. The Respondents took the position that the Coalition complainants could raise any of these new material facts in response to the motion to dismiss.

[55] In the Coalition complainants' submissions in this motion to dismiss, they took a different view from their 2011 SOPs, stating, "…the material facts with respect to the normal age of retirement in the industry as of their respective dates of termination of employment are different than those of the Complainants in the *Thwaites/Adamson* proceeding." (Para. 4.) However, the submissions do not elaborate at all what is different.

What material facts are different for the *Bailie* complainant group? The written submissions are silent.

[56] When the parties gave their oral submissions to me, I took the opportunity to ask certain questions to attempt to get at the root of what had changed. Counsel for the Coalition complainants did not give me satisfactory answers, and the opportunity afforded to the unrepresented complainants did not yield any compelling information regarding evidence which could be adduced at a hearing, or legal argument. While the Complainants readily asserted that the normal age of retirement would be different for them, they did not provide much suggestion as to what evidence they intended to bring to the hearing to substantiate that claim.

VIII. Principles Applicable to Abuse of Process

[57] In the following analysis of the principles applicable to the determination of abuse of process, the Complainants are separated into two groups based on their age. Different conclusions are reached for each group.

A. Judicial Economy

[58] Air Canada submits that the Tribunal needs to be more vigilant about the possibility of abuse of process given our inability to award costs. At para. 13 of Air Canada's submissions, they detail the burden they have already undertaken in these cases:

> 13. The instant provides a compelling illustration of why that is the case: the complaints raise essentially the same issues, save for the identity of the complainants, as were raised in *Vilven*, above, where the lead complainant retired in 2003. Some thirteen years later, and by counsel's count, after some 50 days of hearings on the merits alone before the Tribunal, the Federal Court and the Federal Court of Appeal, and despite having twice had these issues heard by the Federal Court of Appeal and complainant counsel having twice sought leave to have them heard by the Supreme Court of Canada, the same complainant counsel seeks to continue this litigation.

[59] While I am sympathetic to their argument, case law tends to explain judicial economy in the context of abuse of process as pertaining to a Court or Administrative

Tribunal's resources. That said, a considerable amount of evidence was led by the parties in the previous proceedings and the Tribunal's 77 page decision in *Thwaites/Adamson* contained 30 pages of evidence. Further, the Coalition complainants' SOP and previous motion materials admit that they have no new evidence and that their cases are essentially identical to the *Thwaites/Adamson* and *Vilven/Kelly* hearings. For the *Bailie* complainants with retirement dates prior to December 31, 2009, they would fall directly in this time period. As such, I find it would go against judicial economy to re-litigate and entertain evidence which was already brought before the Tribunal on the same issue with the same factual scenario and time period.

[60] The Respondents have made a strong argument, demonstrating that from 2003 all the way until December 31, 2009, evidence before this very Tribunal found that the normal age of retirement for pilots was 60. Given the number of years and evidence brought forward, they argue that without any new facts or evidence, the normal age of retirement for pilots remains 60 for all of the complainants in this matter. Rather than address the argument of judicial economy, the Coalition complainants failed to bring forth any new evidence to support their argument that there are new facts that have changed that normal age of retirement, despite having been directly questioned by myself during oral submissions.

[61] The argument of judicial economy is less convincing in the context of the younger group of complainants. The Tribunal does not have material facts before it for the time period considered by the younger group. It should not preclude the complainants who turned 60 after December 31, 2009, from having the opportunity to make their case.

B. Consistency

[62] The *Bailie* complaints follow two FCA decisions (leave to appeal to SCC denied), which address the same legal issues, albeit for different time periods. In *Morel*, the FCA explains that when Justice Arbour applied the doctrine of abuse of process to the facts on appeal in *CUPE*, "it is clear that she was mostly concerned with maintaining the integrity of

the judicial system, especially with respect to the prospect of conflicting decisions bringing the administration of justice into disrepute" (see para. 38 of *Morel*).

[63] I believe it would create judicial inconsistency should the Tribunal render a new decision on the merits which could place one pilot retiring on February 1, 2009 who was part of the *Thwaites/Adamson* group, receiving a different result than a pilot retiring on the same date, or even an earlier retirement date, who is in the *Bailie* group. Arriving at an inconsistent result would question the authority and finality of a judicial decision from one of Canada's highest courts, the FCA (with leave to appeal to the SCC denied). I conclude the Tribunal would be risking a judicial inconsistency to allow the older group of pilots, who turned 60 before December 31, 2009, to re-litigate this matter.

[64] For the pilots who turned 60 after December 31, 2009, there would be no judicial inconsistencies created in proceeding with their complaints. There is no evidence before the Tribunal for the normal age of retirement for that time period. As such, it cannot be said that there would be a strict judicial inconsistency arising if there was a different finding.

C. Finality

[65] It is important to repeat part of one of the underlying principles of the doctrines of finality which was summarized at para. 34 of *Figliola*: "Respect for the finality of a judicial or administrative decision increases fairness and the integrity of the courts, administrative tribunals and the administration of justice (…)" (see also *CUPE*, at paras. 38 and 51).

[66] For the most part, Mr. Hall used his oral argument to criticize the earlier approach taken by the Tribunal in the previous matters to determine the comparator group. Mr. Hall stated that the *Thwaites/Adamson* Tribunal's chosen comparator group leads to "a profound absurdity." (See para. 26 of the Coalition complainants' submissions)

[67] The response to this statement by counsel for ACPA, with which I am inclined to agree, was set out at para. 12 of their Reply:

> 12. The statement at paragraph 26 of the Response that the *Thwaites* chosen comparator group leads to a profound absurdity is precisely the position rejected by the Federal Court of Appeal. If it had been a profound absurdity then the Court of Appeal would not have concluded that the Tribunal's decision was reasonable.

[68] It is apparent to me that the main aim of the Coalition complainants is to attempt to re-litigate the comparator groups that were established in the earlier proceedings, and later reviewed by the Federal Court and the FCA. The Tribunal is not necessarily bound by those decisions. However, there must be some finality to judicial decisions, especially those of higher courts. In my view, to allow the re-litigation of this issue would indeed be an abuse of process. It would not be fair to demand the Respondents to start all over again and would bring the integrity of this proceeding into question if I so ordered.

[69] For the pilots turning 60 after December 31, 2009, it cannot be said there is finality already determined in their case. As mentioned above, there is no evidence before the Tribunal regarding the normal age of retirement for the period after 2009. Further, the Respondents have not provided me with convincing arguments beyond speculation that the age of retirement for the pilots turning 60 after December 31, 2009 has remained 60. There is no judicial finality with respect to those years affecting the younger claimants.

D. Integrity of the Administration of Justice

[70] As noted in the FCA decision in *Thwaites/Adamson*, the Tribunal had the discretion to apply the *Vilven* FC factors as they saw fit given the facts. No parties have provided new evidence which would allow the Tribunal to find that re-litigation of the 2003-2009 retirees will yield a more accurate result than the original proceeding. A significant amount of time and judicial resources were expended in litigating the first two proceedings. I believe it would be a waste of judicial resources and expenses for parties to re-litigate. Lastly, if for some reason the Tribunal were to arrive at a different result than the prior proceeding, I believe this inconsistency in and of itself would undermine the credibility of

the entire judicial process, yielding conflicting results and would put the integrity of the administration of justice into disrepute.

[71] As previously noted, for the post-December 31, 2009 retirees, proceeding to a hearing would not bring the administration of justice into disrepute as that time period has not been before the Tribunal.

E. Fairness

[72] The complainants have not led evidence that the earlier findings of the Tribunal were tainted by fraud or dishonesty. They have not suggested there is fresh evidence that was not available to the Tribunal for the *Thwaites/Adamson and Vilven/Kelly* matters. That the Complainants do not like the findings in the earlier matters is not sufficient argument under the heading of fairness.

[73] However, with respect to the pilots who turned 60 after December 31, 2009, a different argument of fairness arises. These pilots were not privy to the earlier matters before the Tribunal. Their facts are different in that they were forced to retire during a period of time that was not under consideration of the Tribunal in the other complaints.

[74] The reality is that there is no factual or evidentiary record before the Tribunal regarding the normal age of retirement from 2010 to 2012. One self-represented complainant, Mr. Collier, who reached the age of 60 in September 2011, called for the Tribunal to re-evaluate the mandatory retirement age in 2011 as he felt there were changes in the industry.

[75] Section 50(1) of the *CHRA* requires me to "give all parties to whom notice has been given a full and ample opportunity…to appear at the inquiry, present evidence and make representations." For complainants like Mr. Collier, who turned 60 after December 31, 2009, the *CHRA* makes it clear to me that he must be given the opportunity to be heard. The doctrine of fairness is compelling in the case of complainants like Mr. Collier.

IX. Recent Federal Court Decision in *Gregg et al v. Air Canada Pilots Association and Air Canada*, 2017 FC 506 ("*Gregg*")

[76] Following the close of submissions on this motion but prior to my releasing this ruling, the Federal Court released the above noted judgment which the Respondents argue is relevant to this motion. The *Gregg* decision is a judicial review of the Canadian Human Rights Commission ("Commission") decision, since 2013, not to refer similar Air Canada pilot complaints to the Tribunal because it is "plain and obvious that the complaints cannot succeed". The Federal Court upheld the Commission's decision not to refer the pilots to the Tribunal.

[77] In May of 2017, the parties were invited to provide additional written submissions regarding the *Gregg* decision. ACPA submitted that the *Gregg* "decision is directly applicable to the outstanding motion to dismiss and fortifies the arguments advanced in that motion." Air Canada suggests that to decide differently from *Gregg* would lead observers to conclude that "form has trumped substance or that the decision on the Motion was tainted by arguments over technicalities."

[78] Counsel for the Coalition complainants notes the distinction between the Court's task and that of the Tribunal. In the *Gregg* decision, the Court was reviewing the reasonableness of the Commission's exercise of its discretion in assessing the preliminary merits of the complaints. Whereas the Tribunal, in the present motion before it, is assessing abuse of process to determine whether the complaints should be preliminarily dismissed. Nevertheless, Mr. Hall describes the *Gregg* decision as "severely flawed" and has since given notice of its appeal to the FCA.

[79] On the surface, these two decisions may look very similar. However, the task before the Tribunal is indeed different than the task before the Commission. Under the *CHRA*, the Commission is permitted to summarily reject a complaint under the statutory provisions of section 41(1). However, the *CHRA* affords no statutory option to the Tribunal for the preliminary rejection of a complaint. The only basis upon which the Tribunal may reject a complaint prior to a hearing is under the common law.

[80] The Commission's decision not to refer the *Gregg* complaints to the Tribunal was based on section 41(1)(d) of the *CHRA:*

> **41 (1)** Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that
>
> **(…)**
>
> **(d)** the complaint is trivial, frivolous, vexatious or made in bad faith; or
>
> (…)
>
> [Emphasis added.]

The courts have developed voluminous jurisprudence guidance with respect to this provision. In the *Gregg* decision, the Federal Court concluded that the Commission's actions were reasonable and therefore not reviewable.

[81] This ruling must be based on the common law and the doctrines of abuse of process that were outlined above. The Tribunal's powers and functions under the *CHRA* are different than the Commission's. The Commission has a preliminary screening and investigative role, acting as a gatekeeper to the inquiry process, which includes consideration of the public interest. The Tribunal, on the other hand, has adjudicative powers granted under the *CHRA* to hold a full, quasi-judicial *de novo* inquiry.

[82] This does not mean that the Tribunal lacks the authority to dismiss a referred complaint on a preliminary basis. But the Tribunal cannot do so relying upon the statutory authority afforded to the Commission under section 41(1) of the *CHRA*, as occurred in the case of *Gregg*. Instead, the Tribunal must apply the common law doctrines of finality, in this case, abuse of process by re-litigation. Dismissing a referred complaint on a preliminary basis before the Tribunal, in this case based on a finding of abuse of process by re-litigation, is not identical to the test applicable under section 41(1)(d) of the *CHRA*. Therefore, while the *Gregg* decision certainly informs the Tribunal, it does not create a precedent which binds the Tribunal in this ruling.

[83] It is not lost on me that this ruling has the possibility of creating an apparent judicial inconsistency for the younger complainants' vis-à-vis the complainants in the *Gregg*

matter. However, as noted above, the Tribunal has a different role than the Commission. At this stage the Tribunal has not completed any fact finding nor has it rendered a final decision. The Tribunal does not benefit from the preliminary screening that the Commission has in place. In any event, it may be that no judicial inconsistency will occur once the Tribunal has rendered a decision. There is also no certainty of the outcome of the *Gregg* appeal to the FCA. The issue of judicial uncertainty is but one element of the test for abuse of process by re-litigation. In this case, I do not find that this one element outweighs the other reasons to allow the younger complainants to continue before the Tribunal as I have outlined above.

X. Conclusion

[84] In their motion to dismiss, ACPA reiterates the Coalition complainants' position in the past, at para. 20: "that there are no new facts which would undermine the Tribunal's conclusions in the *Thwaites/Adamson* decision. In fact the Complainants asserted that it would be an abuse of process for them to be required to call any evidence."

[85] In their submissions to this motion to dismiss, Air Canada submits at para. 9 that, "…it is highly improbable that a meaningful change to the normal age of retirement could have occurred in the short time between the retirement of the *Thwaites/Adamson* complainants and that of these complainants."

[86] The earlier objections to re-litigating the normal age of retirement by the Coalition complainants were made in March and April of 2011, prior to the Tribunal having dismissed the *Thwaites/Adamson* complainants. At a time that was some 15 months after the last period considered in the *Thwaites/Adamson* matter, the complainants were not putting forward any argument that "material facts" had changed in the industry that would impugn the earlier finding. The last *Bailie* complainant reached the age of 60 in February of 2012.

[87] In the interests of judicial economy, consistency, finality, for the sake of the integrity of this Tribunal and in fairness to the Respondents, I am not going to allow the re-litigation of the comparator group for the older pilots in this group of complaints. I am satisfied that

the normal age of retirement for commercial airline pilots in Canada, for the periods considered in the *Vilven-Kelly* and *Thwaites/Adamson* matters, namely up to December 31, 2009, was 60.

[88] While I am sympathetic to the Respondents' arguments that it is "highly improbable" that a meaningful change to the material facts affecting the normal age of retirement occurred during the short period after December 31, 2009 until the last *Bailie* complainant reached the age of 60 in February of 2012, I have not been provided with satisfactory information that there were no changes in the industry.

[89] I acknowledge the hardship of the Respondents after all this time. However, the words of Justice Mactavish in *First Nation*, *supra*, are clear that the Tribunal's power to dismiss a human rights complaint in advance of a full hearing on the merits "should be exercised cautiously and then only in the clearest of cases..." (para. 140). Air Canada uses the words "highly improbable" to describe the likelihood of a different finding in this matter. In the *Gregg* decision, Justice Annis describes the existence of probative evidence showing a different conclusion to be "highly unlikely." However, it is the role of the Tribunal to weigh actual evidence that is brought before it. While the Commission must necessarily assess the likelihood of the existence of evidence when carrying out its duties under section 41, it is not the role of the Tribunal to speculate whether certain evidence may or may not exist. The Tribunal has no investigatory powers and has no material evidence before it for the younger complainants. It is the right and the obligation of the parties to present that evidence to the Tribunal in a quasi-judicial forum. At the Tribunal stage, summary dismissal should only occur in cases where it is clearly the most appropriate means by which to secure the procedurally fair determination of the complaint. For the younger complainants, this is not one of those cases. The Tribunal should not summarily dismiss a complaint based solely on probabilities or speculation.

[90] In a motion to dismiss, the onus is on the moving party to satisfy the Tribunal that there is no further evidence to be heard. Counsel for ACPA has suggested that the evidentiary burden should shift to the complainants to show that there were new factors affecting retirement age in 2010, 2011 and 2012. However, I do not think this is correct. As concluded by Justice McTavish in *First Nation*, *supra*, parties ought to be given a full

hearing except in the clearest of cases, supporting a presumptive right to a hearing. This is consistent with section 50(1) of the *CHRA* which requires the Tribunal to give parties a full and ample opportunity to present evidence and make representations at an inquiry. It follows that in a motion to dismiss for abuse of process, it is the moving party who must satisfy the Tribunal that this is the clearest of cases where the complaint should be dismissed.

[91] There is no factual or evidentiary record before the Tribunal regarding the normal age of retirement from 2010 to 2012. Section 50(1) of the *CHRA* requires the Tribunal to "give all parties to whom notice has been given a full and ample opportunity…to appear at the inquiry, present evidence and make representations." For the complainants in this matter who turned 60 after December 31, 2009, the *CHRA* compels us to give them the opportunity to be heard.

[92] While this ruling concludes that we will have a hearing for the younger complainants, I have some sympathy for the Respondents in this matter. They have battled for more than a decade at considerable effort and cost which, they argue, citing the *Mowat* decision, *supra*, are costs they cannot recover. The length and cost of proceedings before the Canadian Human Rights Tribunal have been a source of criticism in the past.

[93] While The Tribunal is described as an "administrative tribunal", the quasi-constitutional nature of our subject matter assures that parties before us generally wish to argue their position to the fullest extent, as is their right. Injuries may run deep, and reputations are vigorously defended. While Parliament set up an expectation for an "expeditious" inquiry in the language of our governing legislation, this expectation is tempered by the requirements of natural justice and the procedural rights afforded under sections 48.9(1) and 50(1) of the *CHRA*. As a result, CHRT hearings rarely proceed as quickly as one would expect in an "administrative" process.

[94] In conclusion, the motion to dismiss the complaints of the complainants herein who reached the age of 60 on or before December 31, 2009, is granted for the reasons above.

[95] For the remaining forty-five (45) complainants who reached the age of 60 on or after January 1, 2010, the motion is dismissed. This dismissal is without prejudice to the Respondents to bring a motion to dismiss again at a later time.

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
July 4, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1438/6409; T1516/6210 to T1607/5310; T1630/17610 to T1645/17610; T1646/0111 to T1649/0411; T1664/01911 to T1681/03611; T1707/6211 to T1722/7711; T1723/7811 & T1724/7911; T1755/11011 to T1768/12311; T1780/1012 & T1781/1012; T1793/2312 & T1794/2412; T1801/3112 to T1806/3612; T1801/3112 & T802/3212

Style of Cause: Mehain et al. v. Air Canada and Air Canada Pilots Association
Bailie et al. v. Air Canada and Air Canada Pilots Association
Hargreaves et al. v. Air Canada and Air Canada Pilots Association
Ferguson and Douglas v. Air Canada and Air Canada Pilots Association
Gauthier et al. v. Air Canada and Air Canada Pilots Association
Findlay et al. v. Air Canada and Air Canada Pilots Association
Alban Ernest MacLellan v. Air Canada and Air Canada Pilots Association
Noakes et al. v. Air Canada and Air Canada Pilots Association
Robert McBride v. Air Canada and Air Canada Pilots Association
John Pinheiro v. Air Canada and Air Canada Pilots Association
Ramsay et al. v. Air Canada and Air Canada Pilots Association
William Ayre v. Air Canada and Air Canada Pilots Association
Collier and Clark v. Air Canada and Air Canada Pilots Association

Ruling of the Tribunal Dated: July 4, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Raymond D. Hall, for the Complainants (except Messrs. Ayre, Clark, Collier, McBride, Pinheiro, Smith, Rogers and Walsh)

William Clark, for himself

Stephen Collier, for himself

Robert McBride, for himself

Eric Rogers, for himself

No submissions filed by Messrs. Ayre, Pinheiro, Smith and Walsh

Daniel Poulin, for the Canadian Human Rights Commission

Fred Headon, for Air Canada

Bruce Laughton, for Air Canada Pilots Association