

Judge rejects Air Canada arguments over fuel charge

By Neal Hall, Vancouver Sun January 21, 2012

A B.C. Supreme Court judge has ruled against Air Canada, saying provincial consumer protection law applies to the air carrier in a proposed class-action lawsuit that claims the airline lists its hefty international fuel surcharge in the tax portion of its tickets, instead of as a fee the airline gets to keep.

Jim Poyner, a lawyer involved in the case, said the proposed class-action suit could result in millions paid back to consumers if successful.

"The remedy (under British Columbia's consumer protection laws) is you've got to pay it all back," he explained about the money collected by airlines from hundreds of people leaving Vancouver on international flights each day.

The potential number of people who could join the class-action is "huge," Poyner said.

Poyner has filed similar lawsuits, seeking class-action certification, against the airlines operating inter-national flights out of Vancouver: Air Canada, Lufthansa, Cathay Pacific Airways, Japan Airlines, Delta Air Lines and British Airways.

The representative plaintiff, Bulent Unlu, claims that Air Canada and Lufthansa airlines falsely represented that the fuel surcharge, coded as YQ on tickets, is a tax charged and collected by the airlines on behalf of a third-party government body, rather than a surcharge collected for the airlines themselves.

Unlu bought a ticket in 2008. The air-fare was \$870.20, but with taxes and fees the total price was \$1,360.

Included in the tax portion was the fuel surcharge cost of \$340.40, Unlu claims.

The fuel surcharge is not a tax but is retained by the airlines for their own use, he adds.

The proposed class-action asserts that this amounts to the airlines engaging in a deceptive act or practice contrary to the Business Practices and Consumer Protection Act, a provincial statute.

B.C. Supreme Court Justice Elaine Adair concluded the arguments of the airlines cannot succeed, so dismissed the application.

The judge ordered that a date for a class-action certification hearing must be set in 45 days. The full judgment is online at: <http://bit.ly/xOMnhF>

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