

OCT 18 2021



No.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

ANNE MARIE MACCALLUM

PLAINTIFF

and

AIR INDIA LIMITED,

SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS AERONAUTIQUES, AND

SITA PASSENGER SERVICE SYSTEM (US) INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. On May 21, 2021, Air India Limited (“**Air India**”) announced a major data breach affecting approximately 4.5-million passengers, in relation to data that was stored at Air India’s passenger service provider (i.e., Societe Internationale de Telecommunications Aeronautiques and SITA Passenger Service System (US) Inc.). As a result of this data breach, the Plaintiff and Class Members’ (defined below) private information (including full names, birthdates, ticket information, passport numbers, credit card numbers, and other sensitive data) were exposed, in breach of those passengers’ privacy and reasonable expectations, and as a result of Air India’s negligence. Through this suit, the Plaintiff and Class Members seek to hold Air India accountable for its conduct and to obtain compensation.

The Parties

The Plaintiff

2. The Plaintiff, Anne Marie MacCallum, is a resident of Vancouver, British Columbia. At material times, she was a customer and passenger with Air India. In order to obtain services from Air India, she provided private information to Air India, including her full name, address, and passport details, which information alone or in combination is not public information. Air India, in turn, placed the Plaintiff’s private information in the hands of SITA PSS.

3. The Plaintiff received an e-mail from Air India, that her information was exposed as a result of the Data Breach (defined further below).

4. The Plaintiff brings this claim on her own behalf and on behalf of:

All individuals residing in Canada whose private information was or might have been compromised as part of the Data Breach of SITA PSS's servers in the USA that was discovered on or about February 24, 2021 (the "**Class**" or "**Class Member(s)**"), including a subclass of individuals who were passengers of Air India who received notification of the Data Breach on or about May 19, 2021 (the "**Air India Subclass**" or "**Air India Subclass Member(s)**").

The Defendant SITA PSS's Business

5. Societe Internationale de Telecommunications Aeronautiques is a multinational information technology company that provides information technology and telecommunications services to the air transport industry ("**SITA**"). SITA is a corporate entity formed under the laws of Belgium with an attorney for service in British Columbia at c/o Michael Axford, 250 Howe Street, 20th Floor, Vancouver, BC V6C 3R8.

6. SITA Passenger Service System (US) Inc. is a corporation formed under the laws of the state of Delaware, USA, with a registered agent at c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808 (hereafter "**SITA USA**"). SITA USA has place of business and/or agent in British Columbia at 4789 Kingsway - Suite 500 Burnaby, British Columbia, V5H 0A3.

7. SITA and SITA USA (collectively "**SITA PSS**") are related companies or affiliates and the details of their corporate relationship is within their exclusive knowledge.

8. SITA PSS provides services to information technology and telecommunications services to many airlines, including Air India.

The Defendant Air India's Business

9. Air India is a commercial airline headquartered in New Delhi, India, which operates worldwide, including, but not limited to, the operation of international passenger flights to/from British Columbia and Canada, under the authority and requirements of the *Canada Transportation Act*, SC 1996, c 10, the *Air Transportation Regulations*, SOR/88-58 and related enactments. Air India is extra-provincially registered in British Columbia with an address for service c/o Kate Marples, 777 Dunsmuir Street, 11th Floor, Vancouver, BC.

10. Air India has employees, aircraft, and facilities in British Columbia. Air India operates from Canadian airports, including Vancouver International Airport and the Toronto Pearson International Airport. Customers located in British Columbia book travel with Air India directly, or through intermediaries, from British Columbia, and pay for those services.

11. In order to make a purchase from and take flights on Air India, customers provided Air India with private information including but not limited to:

- a. full legal name,
- b. date of birth,
- c. nationality,
- d. addresses,
- e. phone numbers,
- f. email addresses,
- g. passport or other government ID numbers,
- h. credit card numbers, and/or
- i. frequent flyer program membership numbers.

In addition, Air India collects travel information regarding its passengers, records customer service remarks about customers' interactions with the airline, and other generates and collates other sensitive data (collectively, "**Private Information**").

12. The Private Information alone or in combination is not public information.
13. The Private Information was obtained from customers by Air India for the limited purpose of processing their orders or permitting them to travel on Air India.
14. The Private Information was stored in SITA PSS's servers.
15. The Plaintiff and Class Members had direct, transactional relationships with Air India. The information collected by Air India was sensitive and collected in the course of its business. It was reasonably foreseeable that harm such as identity theft could result if such information were disclosed or not securely stored, and it was foreseeable to Air India as an experienced participant in the airline industry.

The Data Breach

16. In or about February 24, 2021, SITA PSS discovered that its servers containing Private Information of the Class Members was accessed without authorization (hereafter the "**Data Breach**"). SITA PSS did not publicize the extent of the Data Breach, nor any further details regarding the Data Breach.
17. Thereafter, on or about May 19, 2021, Air India publicly announced that in relation to the Data Breach, there was unauthorized access to information system(s) containing passenger data of up to 4.5 million passengers, including passengers who have flown with Air India. The information compromised includes the Private Information.
18. Air India confirmed that the following data was accessed: name, date of birth, contact information, passport information, ticket information, Star Alliance and Air India frequent flyer information, and credit card data.

19. Customers have received emails or other communications from Air India purporting to notify Class Members that some of their Private Information had been accessed, without further particularization.

20. The Plaintiff received an email from Air India notifying her that her Private Information had been accessed as a result of the Data Breach. Air India advised the Plaintiff that her title, name and address had been accessed, in breach of her privacy.

Class Members' Losses

21. The Plaintiff and Class members have suffered a loss and violation of privacy. The Plaintiff and Class members have or will suffer losses associated with responding to this wrongdoing and from additional misuse of their Private Information.

22. In particular, as a result of SITA PSS's actions and Air India's actions (for the Air India Subclass only), the Plaintiff and Class Members have suffered, or will likely suffer, damages including, but not limited to:

- a. Damage to their credit ratings or reputation;
- b. Costs incurred in preventing identity theft;
- c. Cancelling their payment cards, including any financial losses suffered by the Class Member and wasted time in engaging in the procedures to report fraudulent transactions on a payment card;
- d. Changing or closing payment or bank accounts;
- e. Wasted time in investigating and reviewing their accounts and transactions;
- f. Serious risk of identity theft or phishing scams;
- g. Costs of replacing passports or other identification documents;
- h. Out of pocket expenses; and/or
- i. Injury to feelings from the stress and frustration of dealing with the Data Breach.

23. In addition, Class members have suffered or will likely suffer further losses from identity theft because of the likelihood that the Private Information has been or will be sold for criminal purposes, including identity theft. It is likely or alternatively there is a real and

substantial chance the Private Information will be used in the future for criminal purposes such as to create fictitious bank accounts, obtain loans, secure credit cards or to engage in other forms of identity theft, thereby causing Class Members to suffer additional losses.

Part 2: RELIEF SOUGHT

24. The Plaintiff claim on her own behalf and on behalf of the Class Members against the Defendants, SITA PSS and/or Air India for:
- a. An order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c 50;
 - b. a declaration that SITA PSS:
 - i. owed a duty of care to the Plaintiff and the Class, and breached the standard of care owed to them;
 - ii. intruded upon seclusion of the Plaintiff and the Class;
 - iii. committed the common law tort of breach of privacy of the Class Members; and/or
 - iv. for Class Members residing in British Columbia, committed a tort under section 1 of the British Columbia *Privacy Act*, RSBC 1996, ch 373 (the "**BC Privacy Act**");
 - c. the same declaration in (b) above in respect of Air India and the Air India Subclass;
 - d. an order for the aggregate assessment of the following remedies, pursuant to s. 29 of the *Class Proceedings Act*:
 - i. Statutory damages for breach of the *BC Privacy Act* in an amount to be determined by the Court;
 - ii. Nominal damages for negligence, intrusion upon seclusion, and/or breach of privacy; and/or

- iii. Punitive damages; and/or
 - iv. Aggregate compensatory damages for lost time and inconvenience.
- e. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- f. the costs of administering the plan of distribution of the recovery in this proceeding;
- g. an order that SITA PSS shall offer credit protection services to each Class Member for a period of five years, at SITA PSS's own cost;
- h. an order that Air India shall offer credit protection services to each Air India Class Member for a period of five years, at Air India's own cost;
- i. an order pursuant to s. 27 and 28 of the *Class Proceedings Act* for individual assessment of actual compensatory damages to members of the Class and the appointment of a special referee for assessing each individual case using special modes of proof as directed by the Court; and
- j. such further and other relief that, as to this Honourable Court, seems meet and just.

Part 3: LEGAL BASIS

25. The Plaintiff pleads and relies on the *Class Proceedings Act*, RSBC 1996, c 34 ("*CPA*"), the *Personal Information Protection Act*, SBC 2003, c 63 ("*PIPA*"), the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 ("*PIPEDA*"), and the *BC Privacy Act* and related enactments.

SITA PSS's Statutory Obligations Towards the Class

26. SITA PSS is a person engaged in a commercial activity that has a “real and substantial connection” to Canada, namely the Private Information stored on its servers are those of individuals that reside in Canada.

A.T. v. Globe24h.com, 2017 FC 114

27. SITA PSS was subject to the provisions of *PIPEDA*, as stated in section 4 of *PIPEDA*. Section 5(1) of *PIPEDA* provides that “[s]ubject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.” None of the exceptions in ss. 6 to 9 apply here.

28. Schedule 1 to *PIPEDA* consists of “*Principles Set Out in the National Standard of Canada Entitled Model Code for the Protection of Personal Information, CAN/CSA-Q830-96*”. These principles provide *inter alia* that:

4.3 Principle 3 - Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

... 4.5 Principle 5 —Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

... 4.5.3

Personal information that is no longer required to fulfil the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

... 4.7 Principle 7 – Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

4.7.1 The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use, or modification. Organizations shall protect personal information regardless of the format in which it is held.

4.7.2 The nature of the safeguards will vary depending on the sensitivity of the information that has been collected, the amount, distribution, and format of the information, and the method of storage. More sensitive information should be safeguarded by a higher level of protection...

4.7.3 The methods of protection should include

- (a) physical measures, for example, locked filing cabinets and restricted access to offices;
- (b) organizational measures, for example, security clearances and limiting access on a "need-to-know" basis; and
- (c) technological measures, for example, the use of passwords and encryption.

4.7.4 Organizations shall make their employees aware of the importance of maintaining the confidentiality of personal information.

(the "Schedule 1 Obligations")

29. The requirements of *PIPEDA* imposes minimum standards of conduct on SITA PSS in respect of the Private Information of the Class Members, and informs the standard of care in negligence (i.e., breach of the statutory standards may be proof of negligence).

Air India's Statutory Obligations Towards the Air India Subclass Members

30. Air India is a person engaged in a commercial activity in Canada that is a federal work, undertaking or business that is within the legislative authority of Parliament (i.e., aviation).

31. Air India was subject to the provisions of *PIPEDA*, as stated in section 4 of *PIPEDA*. Section 5(1) of *PIPEDA* provides that "[s]ubject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1." None of the exceptions in ss. 6 to 9 apply here. The Schedule 1 Obligations (above) also apply to Air India.

32. Organizations handling personal information, including the Private Information, while carrying on business in British Columbia, Air India was subject to the provisions of *PIPA*. In particular, *PIPA*, s 34 provides:

“An organization must protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks.”

33. The requirements of *PIPEDA* and *PIPA* imposes minimum standards of conduct on Air India, and informs the standard of care in negligence (i.e., breach of the statutory standards may be proof of negligence).

Negligence

34. SITA PSS owed all the Class Members a duty of care in handling the Class Members' Private Information, to safeguard the Class Members Private Information to ensure it would not be accessed improperly without authorization, and also to implement security measures to prevent unauthorized access to the Class Members' Private Information.

35. SITA PSS breached the standard of care and particulars of that breach include, but are not limited to:

- a. Failure to deal with the Class Members' information in accordance with its own policies and the statutory obligations
- b. Failure to implement appropriate safeguards to protect the Class Members' Private Information;
- c. Failure to delete and destroy the Private Information of the Class Members after there was no longer a proper purpose for retaining such information;
- d. Failure to keep its information systems up-to-date;

- e. Failure to rectify a known information systems vulnerability that is nearly one decade old; and/or
- f. Failure to abide by the minimum standards set under *PIPA* and/or *PIPEDA*.

36. SITA PSS is at all material times vicariously liable for the negligence of its own employees and agents, and SITA PSS knew that breach of the standard of care would cause damage to the Class Members, which it did as set out above.

37. Paragraphs 34-36 of this Part similarly apply to Air India in respect of the Air India Subclass Members.

Common Law Breach of Privacy and Intrusion upon Seclusion

38. SITA PSS's conduct (as described in Part 1) also constitutes a common law tort of breach of the privacy of the Class Members.

39. SITA PSS's conduct further constitute reckless intrusion upon the seclusion of the Class Members' private affairs in a manner that is highly offensive to a reasonable person and such intrusion was without any lawful justification.

40. Paragraphs 38-39 of this Part similarly apply to Air India in respect of the Air India Subclass Members.

The BC Privacy Act

41. For Class Members residing in British Columbia, including the Plaintiff, the *BC Privacy Act* further creates a statutory tort, actionable without proof of damage, where a person, willfully and without a claim of right, violates the privacy of another.

42. As set out above, SITA PSS has breached the *BC Privacy Act*. SITA PSS willfully and without a claim of right, violated consumers' privacy, by failing to protect the Private Information. SITA PSS's failings respecting the Private Information were not reasonable

in the circumstances, having regard to the lawful interests of the Plaintiff and Class Members in that information, and was in breach of s 1 of the *Privacy Act*.

43. In particular, between the time when SITA PSS identified the Data Breach and when it announced it to the public (including the Plaintiff and Class Members residing in British Columbia), which was approximately three months, SITA PSS willfully and without a claim of right compromised Class Members' privacy by:

- a. denying Class Members the knowledge of the scope and extent of the Data Breach as it relates to each individual Class Members;
- b. denying Class Members the opportunity to protect their Private Information, by making public representations that there has been no harm and/or fraud that could be fully traced back to the Data Breach; and/or
- c. failing to offer Class Members any credit protection services, fraud protection, and/or identity theft insurance.

44. Paragraphs 41-43 of this Part similarly apply to Air India in respect of the Air India Subclass Members.

Territorial Jurisdiction of the Supreme Court of British Columbia

45. All of the Defendants, SITA, SITA USA, and Air India are ordinarily resident in British Columbia, and as such the courts of British Columbia have territorial competence over them.

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28 ("**CJPTA**"), s. 3(d) and 7(b) in the case of SITA and Air India and 7(c) in the case of SITA USA; *Supreme Court Civil Rules*, Rule 4-3(2)(b)

46. The subject-matter of this claim, which involves the privacy rights of Canadians (including British Columbians) has a real and substantial connection to British Columbia and/or Canada.

CJPTA, s. 3(e)

Plaintiffs' address for service:

Hammerco Lawyers LLP
400 – 2233 Columbia Street
Vancouver, British Columbia V5Y 0M6

Fax number for service: 604-269-8511

Email address for service: kmclaren@hammerco.ca

Place of trial: Vancouver, British Columbia

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

September 29th, 2021



Signature of co-counsel for the
Plaintiffs
KEVIN MCLAREN
ALEXIA MAJIDI
SIMON LIN
MATHEW GOOD

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising out of breaches of customers' privacy through unauthorized access to private information.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Class Proceedings Act, RSBC 1996, c 34

Personal Information Protection Act, SBC 2003, c 63

Personal Information Protection and Electronic Documents Act, SC 2000, c 5

Privacy Act, RSBC 1996, c 373