

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF LYNX AIR HOLDINGS  
CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT

**APPLICATION BY  
CANADIAN UNION OF PUBLIC EMPLOYEES ON BEHALF OF  
CABIN CREW EMPLOYEES**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**KOSKIE MINSKY LLP**  
Barristers & Solicitors  
20 Queen St. West, Suite 900  
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File Number: 16407-240298

## **NOTICE TO THE RESPONDENT**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: December 4, 2024  
Time: 2 p.m.  
Where: Calgary Law Courts (by WebEx - See **Schedule "A"**)  
Before: The Honourable Justice Armstrong

Go to the end of this document to see what you can do and when you must do it.

## REMEDY CLAIMED OR SOUGHT

1. The Canadian Union of Public Employees ("**CUPE**"), on behalf of the Lynx Air Cabin Crew Employees (as defined below), seeks the following relief in respect of the proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"):
  - (a) An Order substantially in the form attached hereto as **Schedule "B"** that the terminated cabin crew employees (the "**Cabin Crew Employees**") of Lynx Air Holdings Corporation ("**Lynx Holdco**") and 1263343 Alberta Inc. dba Lynx Air ("**Lynx Opco**", and together with Lynx Holdco, "**Lynx Air**" or the "**Company**"), who were members of CUPE Local 5558, are entitled to a severance pay claim that includes 16 weeks pay in lieu of notice of group termination ("**Group Termination Notice**") under section 212 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the "**CLC**");
  - (b) A Representation Order substantially in the form attached hereto as **Schedule "C"**:
    - (i) appointing CUPE as Representative to the Cabin Crew Employees under Rule 2.16 of the *Alberta Rules of the Court*, Alta. Reg. 124/2010 (the "**Alberta Rules**") in this proceeding, or in connection with any other proceeding in respect of Lynx Air that may be commenced under the *Bankruptcy and Insolvency Act*, R.S.C 1985, c B-3 (the "**BIA**");
    - (ii) authorizing CUPE to determine, file, advance or compromise the claims of the Cabin Crew Employees which exists or may arise at law or equity, against Lynx Air in the Proceedings in connection with any issue or matter related to the recovery, compromise of rights or entitlements of the Cabin Crew Employees;

- (iii) authorizing FTI Consulting Canada Inc. (the "**Monitor**") and/or Lynx Air to provide CUPE all relevant data in respect of the employment and the termination of the Cabin Crew Employees, including those pertaining to pension, benefit, and severance and termination payments and arrangements for group health, life insurance, and including where available, up-to-date financial information regarding these arrangements (the "**Employee Data**");
  - (iv) that CUPE be authorized to take all steps and to do all acts necessary and desirable to carry out the terms of the Representation Order including dealing with any Court or any regulatory body, other governmental ministry, department or agency;
  - (v) that CUPE shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions of the Representation Order, save and except for any claim based on gross negligence and wilful misconduct on its part; and
  - (vi) that CUPE shall be at liberty and is authorized to apply to this Honourable Court for advice and directions in the discharge or variation of its powers and duties; and
- (c) Such further and other relief as CUPE may request and this Honourable Court may grant.

## GROUNDS FOR MAKING THIS APPLICATION

### Overview

2. On February 7, 2024, CUPE was certified as the Bargaining Agent for 240 Cabin Crew Employees of the Calgary-based airline, Lynx Air. Approximately two weeks later, Lynx Air brought an application seeking creditor protection under the CCAA. That application prevented CUPE from finalizing a collective agreement.
3. On February 22, 2024, the Court of King's Bench of Alberta (the "**Court**") granted the Initial Lynx Air CCAA Order.
4. Three days later, on February 25, 2024, Lynx Air terminated the Cabin Crew Employees in a "group termination" without paying severance pay.<sup>1</sup> The sudden terminations caused immediate financial and other hardships to the Cabin crew Employees and their families.
5. Lynx Air is liquidating while under CCAA protection. There is no Plan of Compromise or claims process for creditors at this time. The amount of future distributions, if any, to unsecured creditors (such as the Cabin Crew Employees) is unknown.
6. As part of the Initial CCAA Order, the Court ordered that the Wage Earner Protection Program ("**WEPP**") applies to this Proceeding. WEPP is the only and most important source of compensation for the Cabin Crew Employees in respect of their unpaid severance pay. WEPP will pay up to \$8,507.66 to each employee in respect of unpaid severance pay. Payments to the Cabin Crew Employees under WEPP do not prejudice any other creditor.
7. There is no dispute that the Cabin Crew Employees have claims in respect of their unpaid severance pay against Lynx Air.

<sup>1</sup> The term "severance pay" as used in this Notice of Application refers to all payments owing to an employee as a result of their termination of employment and includes termination pay and pay in lieu of notice of termination.

8. Commencing in March 2024, CUPE contacted the Monitor in an effort to cooperatively settle the methodology to use to calculate the Cabin Crew Employees' severance pay claims for a group Proof of Claim, and to avoid the possibility of a disallowance which would cause delays in obtaining a WEPP payment. Despite extensive efforts, no agreement or methodology was reached. The main issue of contention is that CUPE takes the position that the employees' severance pay claim should include an amount of Group Termination Notice under section 212 of the CLC, while the Monitor says it should not.
9. At the individual level, the Monitor's exclusion of Group Termination Notice materially reduces the severance pay amount that each Cabin Crew Employee can claim under WEPP in amounts ranging from \$3,245.88 for some employees to \$8,507.66 for others, entirely eliminating their severance claim. In short, the Monitor's approach results in the Cabin Crew Employees being underpaid their full entitlements under WEPP.
10. On or about March 13, 2024, the Monitor proceeded to send its calculations of the Cabin Crew Employees' severance claims to Service Canada to process WEPP payments on their behalf. These claims were calculated without including an amount in respect of Group Termination Notice. As a result, only 215 of the 240 terminated Cabin Crew Employees received a WEPP payment, whereas 25 Employees did not receive any amount. None of the Cabin Crew Employees who received a WEPP payment received the maximum amount of \$8,507.66.
11. In the course of CUPE's discussions with the Monitor to try and settle the severance pay methodology, CUPE also requested the Monitor to provide it with the Employee Data of its members so that it could calculate their claim amounts. The Employee Data was not immediately provided to CUPE. On April 16, 2024, after the WEPP process was administered by the Monitor and payments were underway, the Monitor provided CUPE a spreadsheet with its own calculations of the Employees' severance claim that it sent to Service Canada, which as

noted above, CUPE says is incorrect. CUPE requires the Employee Data of its members to prepare and file a group proof of claim on their behalf.

**First Relief Requested: The Cabin Crew Employees are entitled to include Group Termination**

**Notice in their severance pay claim**

12. On March 7, 2024, counsel to CUPE (Koskie Minsky LLP, "**CUPE counsel**") attended a conference call with the Monitor and requested the Employee Data (i.e., dates of hire, rates of pay, dates of termination, etc.) of its members so that it could calculate the Cabin Crew Employees' severance pay claims. The Monitor declined to provide that, stating it would think about whether the claim calculations of the Employees could be disclosed to CUPE.
13. Further, the Monitor calculated the Cabin Crew Employees' claims for termination pay as pay in lieu of notice of individual termination of employment under section 230 of the CLC. In CUPE's view, this was an incorrectly low severance calculation for the Cabin Crew Employees and deprives them of receiving their full WEPP payment.
14. On March 12, 2024, CUPE counsel sent emails to Monitor counsel, along with case law, that Group Termination Notice applies and that CUPE, as the Bargaining Agent of the Cabin Crew Employees, is entitled to the Employee Data of its members.
15. On March 13, 2024, Monitor counsel wrote to CUPE counsel maintaining its position that the Cabin Crew Employees have no entitlement to a claim based on Group Termination Notice, and that it would proceed to send WEPP notices to the terminated employees with an outline of their claim as calculated by it and Lynx Air. Monitor counsel also refused to provide CUPE counsel with the Employee Data of the Cabin Crew Employees.
16. The difference between CUPE and the Monitor's calculations of the Cabin Crew Employees' severance pay claim is material:

- By applying Group Termination Notice, CUPE has preliminarily calculated the total claim amount of the Cabin Crew Employees, including unpaid wages, vacation pay, termination pay, and severance pay and other amounts to be approximately \$3.2M, of which \$2.1M can be claimed by the Cabin Crew Employees under WEPP.
  - By using only pay in lieu of notice of individual termination of employment and excluding Group Termination Notice, the Monitor has calculated the amount of the severance pay claim in respect of outstanding wages, vacation pay, pay in lieu of individual termination notice, and severance amounts to be approximately \$679,000, the entirety of which can be claimed by the Cabin Crew Employees under WEPP.
17. Despite the objections raised by CUPE to the Monitor exclusion of Group Termination Notice from its calculation of the Cabin Crew Employees' severance pay claims, on or around March 13, 2024, the Monitor nevertheless sent the Employees an outline of their claim – calculated without a claim for pay *in lieu* of Group Termination Notice – and instructed them to apply for a WEPP payment. This enabled the Employees to apply for a WEPP payment, however, the exclusion of Group Termination Notice from their claims by the Monitor resulted in the Employees being underpaid by approximately \$1.42M.
  18. If this Court finds the Cabin Crew Employees were entitled to a claim for Group Termination Notice as CUPE requests in this Application, then the Cabin Crew Employees' claims should be amended. Pursuant to section 21 of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("WEPPA"), the Monitor has an obligation to advise the federal government of the Cabin Crew Employees' claim for pay in lieu of Group Termination Notice. Accordingly, section 31.1 of WEPPA enables the government to make a payment to the Employees in respect of a WEPP amount they are eligible for, but did not receive.
  19. This approach will ensure all Cabin Crew Employees can receive an additional and necessary payment under WEPP.

**Second Relief Requested: CUPE should be appointed as Representative of the Cabin Crew Employees to obtain the Employee Data of its members**

20. In order to calculate and file a group proof of claim on behalf of its members, CUPE requires the Employee Data of its members.
21. In response to the requests by the union, the monitor provided a spreadsheet of its own calculation of the Cabin Crew Employees' severance pay claim, which as noted, does not include an amount in respect of Group Termination Notice.
22. To resolve this impasse, the union requests the Court to order its appointment as Representative of the Cabin Crew Employees in the CCAA proceeding and to authorize the Monitor and/or Lynx Air to provide CUPE with the Employee Data of its members.
23. The Court has authority to appoint Representatives for terminated employees under both the broad power granted section 11 of the CCAA and Rule 2.16 of the *Alberta Rules*.
24. CUPE has been certified as a Bargaining Agent and its best placed to represent the interests of the Cabin Crew Employees. As the Representative appointed by the Court, CUPE will help streamline the CCAA process by:
  - a) Determining the amounts owing to the Cabin Crew Employees for severance pay;
  - b) Finalizing the group Proof of Claim on behalf of all the Cabin Crew Employees;
  - c) Acting as a single point of contact for all Cabin Crew Employees' claims to prevent of the filing of different Cabin Crew Employee claims with different legal methodologies (thereby generating overall cost-saving for Lynx Air, its estate and other creditors);
  - d) Settling claims as required in cases of individual Cabin Crew Employee disputes, or applying to the Court for directions to settle such a dispute; and



- e) Assisting Cabin Crew Employees with preparing documentation and applying for payments under WEPP or a future claims process.

#### **MATERIAL OR EVIDENCE TO BE RELIED ON**

25. The Affidavit of Natasha Lisun, sworn July 31, 2024.
26. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

#### **APPLICABLE RULES**

27. The *Alberta Rules of Court*, Alta Reg 124/2010.

#### **APPLICABLE ACTS AND REGULATIONS**

28. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c C-36, s 11.
29. *Canada Labour Code*, RSC 1985, c L-2.
30. *Interpretation Act*, R.S.C. 1985, c. I-21.
31. *Judicature Act*, RSA 2000, c J-2.
32. *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.
33. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

#### **WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

## Schedule "A"

The above booking is Confirmed

File #(s) : 2401 02664

Style of Cause: LYNX AIR HOLDINGS CORP. v. COMPANIES CREDITORS ARRANGEMENT ACT

**Date/Duration:**

**Dec 04, 2024 02:00 PM**

**Total: 150 Minute(s)**

Booking Type/List: Commercial

Purpose of Hearing: Commercial Hearing

Counsel: Sean Francis Collins;Walker Welsh MacLeod;Pantelis Kyriakakis;Randal Steven Van de Mosselaer;Julie Laura Treleaven;Abir Shamim;Andrew Hatnay

Special Requirements:

Requirements: Courtroom Required

Equipment: Video Conferencing

**Counsel: Please ensure that all relevant parties have received Webex information.**

**Virtual Courtroom 60** has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

**Schedule "B"**

COURT FILE NUMBER 2401-02664  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OF  
ARRANGEMENT OF LYNX AIR HOLDINGS  
CORPORATION and 1263343 ALBERTA INC. dba LYNX  
AIR

DOCUMENT **GROUP TERMINATION NOTICE ORDER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**KOSKIE MINSKY LLP**  
Barristers & Solicitors  
900-20 Queen Street West  
Toronto, ON M5H 3R3

Solicitors: Andrew J. Hatnay / Abir Shamim  
Telephone: (416) 595-2083 / 2039  
Email: ahatnay@kmlaw.ca / ashamim@kmlaw.ca

**DATE ON WHICH ORDER WAS PRONOUNCED:** December 4, 2024  
**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary, Alberta  
**JUSTICE WHO MADE THIS ORDER:** The Honourable Justice Armstrong

**UPON** the application of the Canadian Union of Public Employees ("**CUPE**"); **AND UPON** reading the Affidavit of Natasha Lisun sworn July 31, 2024: **AND UPON** hearing from counsel for CUPE, counsel for FTI Consulting Canada Inc. (the "**Monitor**"), counsel for Lynx Air Holdings

Corporation and 1263343 Alberta Inc. dba Lynx (collectively, "**Lynx Air**"), and any other interested party; **AND UPON** being satisfied that CUPE has acted and continues to act in good faith and with due diligence and that circumstances exist that make this Order appropriate;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of this application is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other person other than those persons served is entitled to service of this application.

**GROUP TERMINATION NOTICE ORDER**

2. Members of CUPE Local 5558 who were formerly employed by Lynx Air as Cabin Crew Employees have a claim in this proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 in respect of 16 weeks' pay in lieu of group termination notice pursuant to section 212 of the *Canada Labour Code*, R.S.C. 1985, c. L-2.
3. Such further and other relief as CUPE may request and this Honourable Court may grant.

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Justice of the Court of the King's Bench of Alberta

**Schedule "C"**

COURT FILE NUMBER 2401-02664  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OF  
ARRANGEMENT OF LYNX AIR HOLDINGS  
CORPORATION and 1263343 ALBERTA INC. dba LYNX  
AIR

DOCUMENT **REPRESENTATION ORDER**

ADDRESS FOR  
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**KOSKIE MINSKY LLP**  
Barristers & Solicitors  
900-20 Queen Street West  
Toronto, ON M5H 3R3

Solicitors: Andrew J. Hatnay / Abir Shamim  
Telephone: (416) 595-2083 / 2039  
Email: ahatnay@kmlaw.ca / ashamim@kmlaw.ca

**DATE ON WHICH ORDER WAS PRONOUNCED:** December 4, 2024

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Corporation and 1263343 Alberta Inc. dba Lynx (collectively, "**Lynx Air**"), and any other interested party; **AND UPON** being satisfied that CUPE has acted and continues to act in good faith and with due diligence and that circumstances exist that make this Order appropriate;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of this application is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other person other than those persons served is entitled to service of this application.

**REPRESENTATION ORDER**

2. CUPE is appointed as the Representative to members of CUPE Local 5558 who were formerly employed by Lynx Air as cabin crew employees (the "**Cabin Crew Employees**") in this proceeding under *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-26, and in connection with any other proceeding that may be commenced under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**Proceedings**").
3. CUPE is authorized to determine, file, advance or compromise the claims of the Cabin Crew Employees which exist or may arise at law or equity, against Lynx Air in the Proceedings in connection with any issue or matter related to the recovery, compromise of rights or entitlements of the Cabin Crew Employees.
4. The Monitor and/or Lynx Air is authorized to provide to CUPE all relevant data in respect of the employment and the termination of the Cabin Crew Employees, including those pertaining to pension, benefit, and severance and termination payments and arrangements for group health,

life insurance, and including where available, up-to-date financial information regarding these arrangement.

5. CUPE, or its counsel on behalf of CUPE, is authorized to take all steps and to do all acts necessary and desirable to carry out the terms of this Order, including dealing with any Court or any regulatory body, other governmental ministry, department or agency.
6. CUPE shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order, save and except for any gross negligence and wilful misconduct on its part.
7. CUPE shall be at liberty and is authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of its powers and duties.
8. Such further and other relief as CUPE may request and this Honourable Court may grant.

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Justice of the Court of the King's Bench of Alberta