

ALPA Merger Committee



Reference Document

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PRESS STATEMENT: August 6, 2008

Chair of former Canadian Airlines Pilots asks New Brunswick Law Society to sanction past Canadian Industrial Relations Board Chair

Opinion by retired Chief Justice of Ontario says Paul Lordon in clear conflict of interest accepting Air Canada pilots' contract to write new seniority report

Vancouver, BC (August 6, 2008) - Captain Rob McInnis, Chair of the Merger Committee of the Airline Pilots Association (ALPA), an association representing former Canadian Airline Pilots, said today he has asked the New Brunswick Law Society to immediately investigate the conduct of the former Chair of the Canadian Industrial Relations Board (CIRB), Paul Lordon, for breach of the Society's Code of Professional Conduct.

As former Chair of the CIRB, Paul Lordon wrote the basic *Decision 183* which established the principles that led to the settlement of the seniority dispute between former Canadian Airlines and Air Canada pilots. The protocols were agreed to be final and binding and have withstood several court challenges. All litigation concerning the seniority list came to an end in 2007 when leave to appeal to the Supreme Court of Canada was denied for the third time.

"Despite the fact that he participated in the CIRB's decision making process, Paul Lordon is now willing to accept money from the Air Canada Pilots Association (ACPA) to try to reverse a dispute that the CIRB has repeatedly said should be over," said McInnis. "It is distressing and astonishing that a former senior public servant and lawyer should place himself in such an egregious conflict of interest by accepting a retainer to re-examine the seniority list which was developed and adopted after years of discussion and debate while he was Chair of the CIRB."

The New Brunswick Law Society clearly states that

(a) the lawyer shall not represent any person in the same or in a related matter with which the lawyer has been concerned while holding public office;

and

(b) the lawyer shall not advise any person upon a ruling of an official body of which the lawyer is or was a member at the time the ruling was made.

ALPA hired the former Chief Justice of Ontario, Roy McMurtry to provide a legal opinion on Mr. Lordon's decision to take the contract with the ACPA.

"Mr. McMurtry has told us that it is his opinion that the retainer of Mr. Lordon by ACPA creates "a reasonable apprehension of a conflict of interest" and that Mr. Lordon ought to withdraw from the retainer," McInnis said.

"I would go further and say that Mr. Lordon's new opinions, paid for by pilots who have refused to accept legal and binding *Decision 183*, has no credibility whatsoever. It is his earlier work as CIRB Chair, backed up by numerous court decisions that will stand the test of time."

ALPA also says that Mr. Lordon's contract with the Air Canada pilots violates the federal Conflict of Interest Act which states that:

S. 33 No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office

S. 34 No former public office holder shall give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public.

"We are optimistic that the New Brunswick Law Society will agree with the findings of former Chief Justice McMurtry and the Air Canada pilots will withdraw this inflammatory report," McInnis added.

For more information, please contact:

Captain RJ (Rob) McInnis 416 318 7663

<http://www.formercanadianpilots.ca/>

COMPARISON FACTS AND FIGURES

Since 2003, the Air Canada pilots have made repeated claims about the Keller list being unfair. However, by any objective measure of career advancement, compensation or fairness, Air Canada pilots are the ones who have gained the most from the merger of Air Canada and Canadian.

	Air Canada	Canadian
Change in the number of wide body captains from the merger to today (June 2008)	+12%	-25%
Change in the number of narrow body captains since the merger	+11%	-48%
Percentage of First Officers at the merger who are Captains today	44%	34%
Percentage of pilots in a lower ranking position than they were before the merger	2%	3%
Change in the average hourly rate of pay	+ \$ 40.37	+ \$ 11.64
Percentage change in the average hourly rate of pay	+33%	+7%
Percentage change in pay for the most junior ranking pilots at the merger	+149%	+11%
Percentage of pilots paid a lower hourly rate today than they were before the merger	5%	6%
Share of the top 10% of the 2003 Keller seniority List	60%	40%
Share of the top 10% of the list today (June 2008)	78%	22%
Share of the top 10% in 5 Years (June 2013)	84%	16%
Percentage of pilots who will retire in the top 5% of the seniority list	60%	32%
Percentage of pilots who will have retired by the end of the decade	18%	43%
Average years of service at the merger date	14	21
Percentage of pilots with 12 or more years of service at the merger date	52%	86%
Average number of years of service lost or gained on the current seniority list	2.5	-3.3

FAIRNESS FACT SHEET

- **Paul Lordon has not reviewed ANY Data or analysis from the ex-Canadian Pilots... All he has seen is the Original Air Canada pilots' side of the story. How can he make ANY conclusions as to the fairness of the Keller award with only half the information? Mr. Lordon has been duped by ACPA. As the former Chair of the CIRB he should understand that to suggest he sits in judgment of any issue would require him to seek out BOTH sides of the story... its called fairness.**
- **ACPA and the OAC pilots didn't tell Mr. Lordon that the 0.25% Ratio adjustment Arbitrator Keller included in his award has long since disappeared... Keller knew this adjustment would be 'washed out' through attrition to the benefit of the OAC pilots; Lordon didn't understand this fact nor did he bother to ask "what are the ratios in each category today". If he had he would see that the 0.25% has gone. (see attached Chart on page 14)**
- **Air Canada became a viable global airline competitor as a result of the merger with Canadian Airlines.**
- **The Keller Award has governed pilots' seniority at Air Canada since June, 2003.**
- **All parties agreed that the Keller Award would be "final and binding" with the exception of court challenges.**
- **The Keller Award is a compromise which clearly favours the Original Air Canada (OAC) pilots.**
- **Under Keller, the minority Original Canadian Airlines pilots (OCP) suffered seniority discounts of up to 10 years.**
- **The OAC pilots will enjoy much higher career earnings.**
- **The OAC pilots will enjoy improved career advancement.**
- **The OAC pilots will enjoy improved pension and benefits.**

Chronology

BRIEF CHRONOLOGY OF KEY SENIORITY LABOUR BOARD AND COURT DECISIONS November 29, 2007.

- 04/01/00 Air Canada acquires Canadian Airlines.
- 31/03/01 Arbitration [Award of M.G. Mitchnick](#) re pilot seniority integration
- 10/07/02 [CIRB in Decision 183](#) quashes Mitchnick Award at request of Canadian pilots represented by ALPA; CIRB finds that Mitchnick Award violates principles of *Canada Labour Code*
- 27/03/03 [Federal Court of Appeal](#) dismisses ACPA's judicial review application of CIRB Decision 183
- 20/11/03 [Supreme Court of Canada](#) dismisses ACPA's application for leave to appeal this decision of the Federal Court of Appeal.
- 22/02/03 ACPA and Canadian pilots enter agreement to conduct a new seniority arbitration with provision that the decision of the arbitration panel will be "for all purposes final and binding on the parties [Air Canada, ACPA, ALPA] and the seniority list resulting from the decision will be the seniority list that shall be implemented by the parties" subject only to judicial review by the courts. [ALPA ACPA Air Canada Keller protocol Agreement](#)
- 16/06/03 Arbitrator Brian Keller issues new seniority integration award. [Keller Award](#) is implemented by Air Canada.
- 06/03 ACPA seeks CIRB Reconsideration of the Keller Award notwithstanding "final and binding" provisions of the arbitration agreement.
- 28/01/04 CIRB unanimously dismisses ACPA's application to reconsider Keller Award in [Decision 263](#). CIRB finds that ACPA is bound by the "final and binding" commitment it had made and that Keller Award properly considered Decision 183.

- 14/02/05 [Federal Court of Appeal](#) unanimously dismisses ACPA's judicial review application of CIRB Decision 263. Federal Court of Appeal also finds that ACPA is bound by the "final and binding" commitment and agreed with the CIRB conclusion that "its intervention was neither warranted nor justified".
- 20/05/05 [Justice Dawson of the Federal Court Trial Division](#) dismisses ACPA's application to quash the Keller Award on grounds that the arbitrator had violated rules of natural justice. Justice Dawson comments that "there is a public interest in bringing finality to this dispute".
- 16/06/05 [CIRB issues Decision 1269](#) which gives reason for dismissing a further application by ACPA that the CIRB reconsider its own Decision 263. CIRB concurs with its earlier decision and refers to the decision of the Federal Court of Appeal which had sustained Decision 263. CIRB declares that "no labour relations purpose would be served by adding yet another layer of review".
- 23/09/05 [ACPA and Air Canada retain Martin Teplitsky](#) to review the Keller Award and later ask the CIRB for permission to amend the Keller seniority list.
- 10/11/05 [The Supreme Court](#) denies ACPA's application for leave to appeal the Federal Court of Appeal decision upholding CIRB decision 263.
- 15/02/06 [The Federal Court of Appeal](#) dismisses ACPA's appeal of the Federal Court Trial Division's decision to dismiss ACPA's application to quash the Keller Award.
- 10/03/06 [CIRB issues Decision 349](#) denying ACPA and Air Canada's request to consider whether the Teplitsky recommendations would violate the Canada Labour Code. **"The pilot seniority list, the result of the Keller arbitration process, is now final and binding on ALPA, ACPA, and Air Canada. ACPA and Air Canada, acting alone, cannot change the list because some pilots in the bargaining unit are dissatisfied with it."** [emphasis added]
- 29/06/06 [The Supreme Court of Canada](#) denies ACPA's application for leave to appeal the February 15, 2006 Federal Court of Appeal decision upholding the Federal Court Trial Division's decision which upheld the Keller Award.
- 01/09/06 [The CIRB issues Decision 360](#) which rejects ACPA's application to reconsider Decision 349.

19/06/07 [The Federal Court of Appeal](#) unanimously reject's ACPA's judicial review application concerning CIRB Decisions 349 and 360.

29/11/07 [The Supreme Court](#) denies ACPA's application for leave to appeal the February 15, 2006 Federal Court of Appeal decision rejecting Teplitsky and upholding the Keller Award.

Summary: Since July 2002 the position of the former Canadian Airlines pilots, represented by ALPA, has been sustained by numerous and *all* decisions rendered by the CIRB, the Federal Court Trial Division, the Federal Court of Appeal, and the Supreme Court of Canada. The Keller Award has been consistently sustained in its entirety.

Two Different Protocols

Why Keller was “Final and Binding” but Mitchnick was subject to Review?

The following are excerpts from the protocol agreements that governed both arbitrators in the seniority integration. All parties agreed to and signed these protocol agreements prior to commencing the proceedings. They also received CIRB authorization.

There is a crucial difference between the two protocol agreements; Mitchnick (later overturned by the CIRB) was, by design, subject to review whereas Keller was NOT. Keller was intended to be the final word on the seniority issue between Air Canada, ACPA and ALPA.

It was at ACPA’s insistence that the Keller Award should be “Final and Binding” on Air Canada, ACPA and ALPA.

Excerpt from Mitchnick Protocol Agreement

- (k) The award(s) of the arbitrator shall be incorporated into Bored (sic) order(s), issued under Subsection 18.1(2) of the Code, in order to implement the within agreement of the parties. Such orders will be final orders of the Board, **subject only to reconsideration by the Board and/or judicial review** under the Federal Court Act.

Excerpt from Keller Protocol Agreement

9. Subject only to the judicial review rights of the parties described in paragraphs 10, 11 and 12 below, the decision(s) of the panel will be for all **purposes final and binding on the parties** and the seniority list resulting from the decision(s) will be the seniority list that shall be implemented by the parties.

It would appear that “Final and Binding” doesn’t apply to Air Canada and the Original Air Canada Pilots.

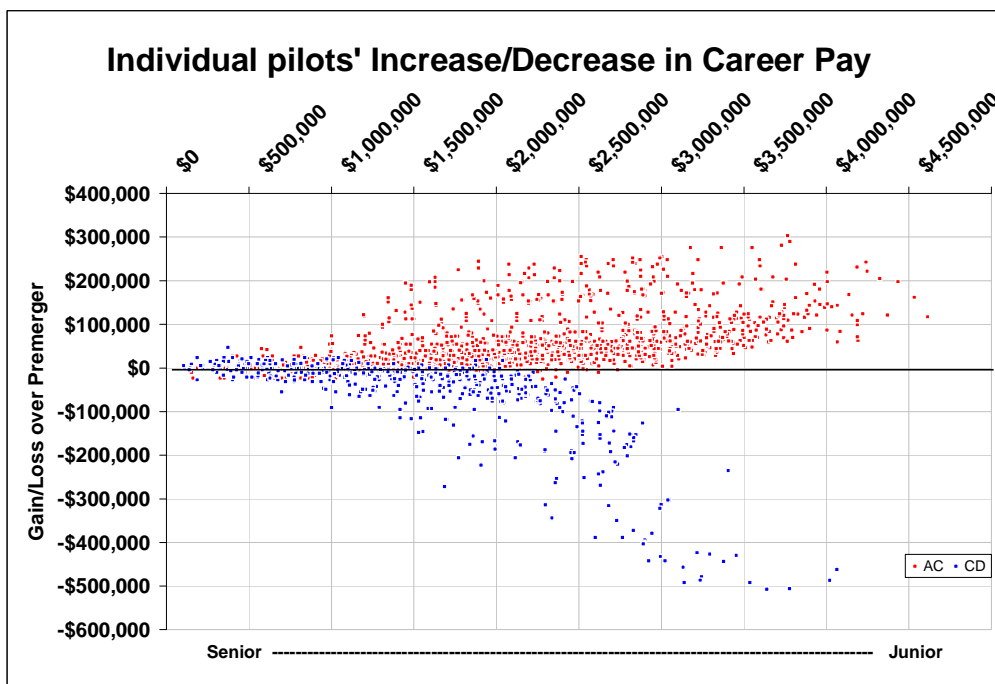
[It's About Fairness \(Who Really Won and Who Really Lost?\)](#)

The most common measure for assessing the fairness of seniority mergers is whether pilots can access the work their respective group brought to the merger. For instance, if two groups bring similar work to a merger while the narrow-body First Officers from only one group will eventually have sufficient seniority to be wide-body Captains, the list is not fair.

A far more refined and accurate type of analysis measures the career progress of each pilot from each group will be on a merged seniority list versus that pilot's career if his group did not have to pool their work with another. By comparing the total potential career earnings on each of the two career paths, it can readily be seen whether pilots have sufficient seniority on the merged list to preserve the value of their pre-merger seniority, whether they receive a windfall or whether their careers are damaged.

The graph below, which plots the gain or loss in potential career earnings for all pilots on the Keller seniority list, shows dramatically that ***virtually every Air Canada pilot has gained seniority*** while ***all but a handful of Canadian pilots have lost***.

This data was verified by the accounting firm of Deloitte Touche, was used in the Keller arbitration, and has been relied upon in the many legal appeals ACPA has undertaken. Even more tellingly, in the course of 5 appeals to the CIRB, 4 trips to the Federal Court of Appeal, 4 requests to the Supreme Court of Canada and 1 to the Federal Court Trial Division, ***ACPA has never tried to refute this data*** nor have they offered any form of analysis that would demonstrate why they should be get even more seniority than Keller gave them.

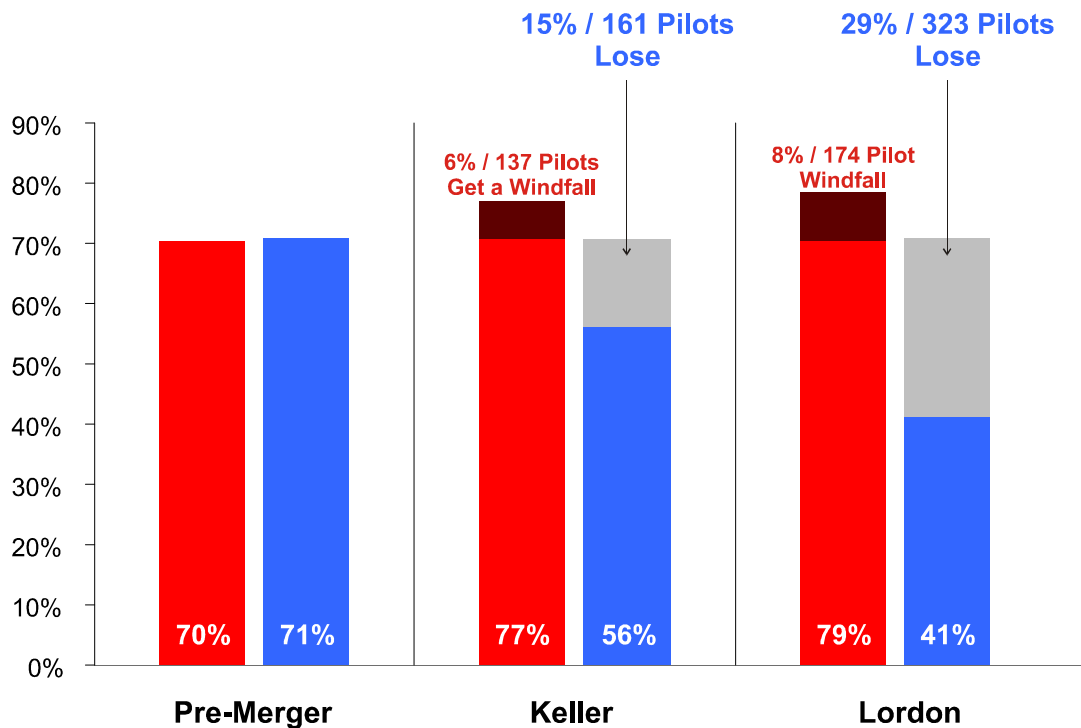


It's About Career Advancement

Pilots in the top 10% of a seniority list are typically the ones holding the most senior positions with the best pay and life-style. In most of the major carriers in North America, the vast majority of the wide-body, international flying is done by pilots in the top 10% of the seniority list. Given this, the number of pilots who retire from that section of the list provides is a useful measure of the fairness of a combined seniority list.

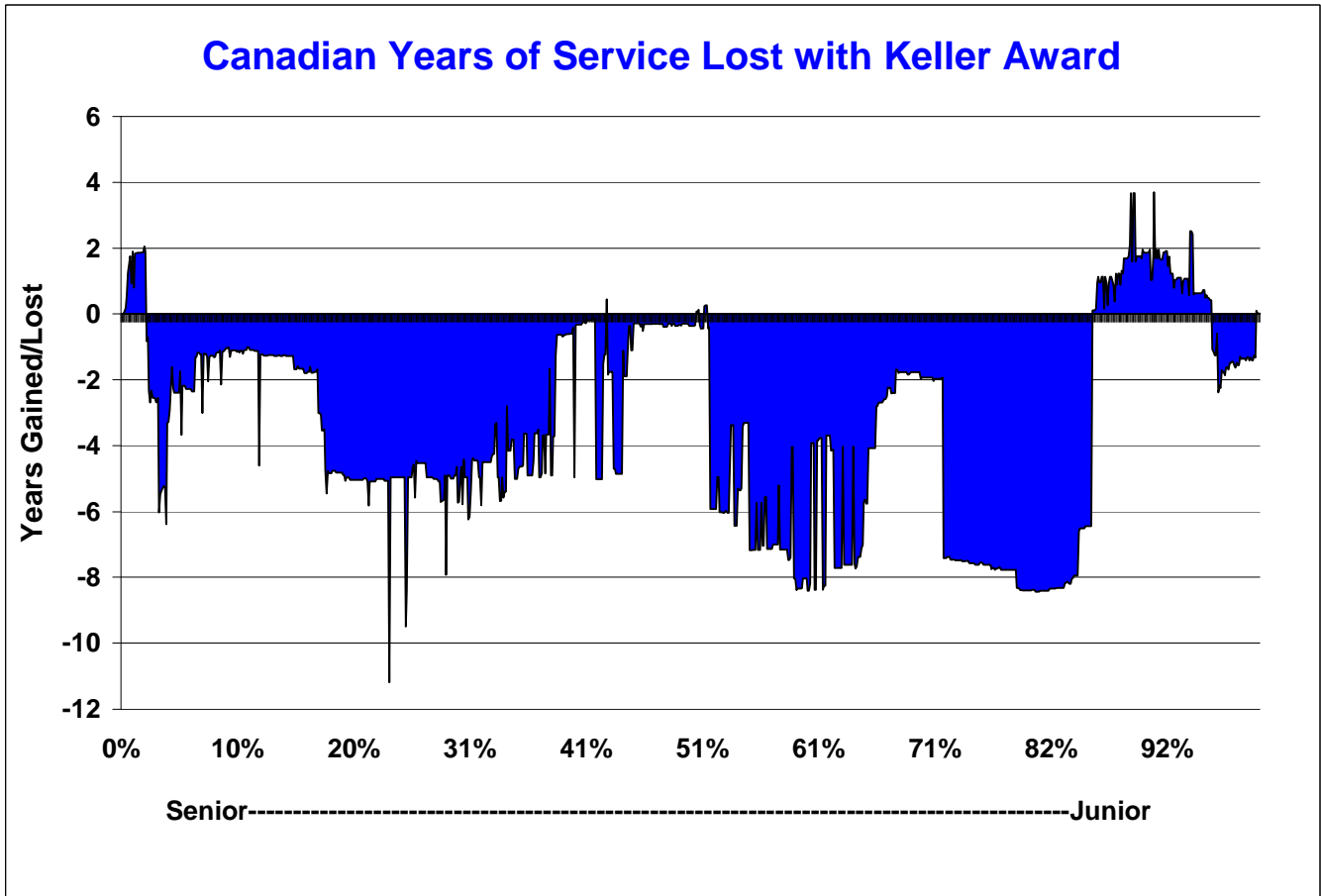
Prior to the merger, approximately 70% of the pilots from each airline, Canadian and Air Canada, would have retired in the top 10%. Under the Keller seniority list only 56% of Canadian pilots will now retire in the top 10% and 161 (15% of the Canadian list) will now find that they are blocked from ever attaining that section of the list by younger Air Canada pilots who had fewer years of service at the time of the merger.

Under the "Lordon List" this situation would be even more unfair, more than doubling the number of pilots who will be blocked from the top 10% of the list.



It's About Service

The graph below show how many years of service have been lost by each of the Canadian Pilots **using the Keller List**. The vertical 'Y' axis is Years Lost. E.g. Canadian pilots, approx 15% to 45% from the top of the **Keller List**, have lost about 5 years of service each. Conversely, the Air Canada pilots have gained by an equal number of years. (Senior is on the left)



Ratios and the Keller Adjustment

Arbitrator Keller divided each pilot group into 6 categories and then applied an adjustment to three in order to compensate Canadian pilots for the damages they had suffered under the Mitchnick Award. The adjustment was intended to give Canadian pilots a temporary advantage that would quickly disappear due to the fact that Canadian pilots were, on average, older than Air Canada pilots and would retire sooner.

In the table below, the three adjusted categories (highlighted in bold) have the year in which the Keller Adjustment disappears circled in red. In two of the three, the adjustment has already disappeared and in the third category it will be gone by the end of 2008.

What the ratios demonstrate is that as Canadian pilots retire, their positions are increasingly occupied by Air Canada pilots, while junior Canadian pilots are unable to reach the top of the seniority list. This will result in the wholesale transfer of all the best positions to Air Canada pilots.

The Keller adjustment was intended merely to slow that transfer down for a short period of time and, as the numbers show clearly to anyone who takes the time to look at them, that time has come to an end.

Ratio of Air Canada to Canadian Pilots by Keller Category

Category	Adjusted Ratios		Ratios					
	June 2003	June 2004	June 2005	June 2006	June 2007	June 2008	June 2009	
Category 1	0.65	n/a	1.00	1.29	3.21	3.71	3.21	4.33
Category 2	2.38	2.13	2.03	2.09	2.24	2.33	2.52	2.62
Category 3	1.63	1.38	1.24	1.32	1.38	1.43	1.51	1.65
Category 4	0.36	n/a	1.71	1.71	1.71	1.63	2.68	8.20
Category 5	1.94	1.69	2.09	3.01	4.28	5.81	7.92	7.79
Category 5	7.72	n/a	7.64	7.70	7.71	7.72	7.65	7.54

The solution...

Tell the Original Air Canada Pilots

"This is over"

Since July 2002 the position of the former Canadian Airlines pilots, represented by ALPA, has been sustained by numerous and *all* decisions rendered by the CIRB, the Federal Court Trial Division, the Federal Court of Appeal, and the Supreme Court of Canada. The Keller Award has been sustained in its entirety, as recently as June 19, 2007 in a decision of the Federal Court of Appeal.

All have agreed that..... THIS IS OVER

Future Seniority Lists

Below Are the first 5 pages of the Keller Seniority List... for each of the years 2010 and 2003

The first 5 pages are the original June 2003 Keller list. Note the 'Mix' of Canadian and Air Canada Pilots that the Arbitrator intended.

Now look at the next 5 pages for the year 2010. Note there are Very Few Canadian Pilots remaining in the Senior Positions. The Canadian Pilots are still here, but they have been blocked from ever becoming senior by ratio deterioration.

The Air Canada pilots dominate ALL the senior positions and the Canadian Pilots are stuck forever in the Junior ranks.

It's About Fairness... How Can This be Fair?

Your ALPA Merger Committee...