

December 16, 2025

**VIA ELECTRONIC FILING**

Reply to: Michael Dery\*  
Direct Line: 604.484.1742  
Direct Fax: 604.484.9742  
E-mail: [mdery@ahbl.ca](mailto:mdery@ahbl.ca)  
Matter No.: 1158370

British Columbia Court of Appeal  
The Law Courts  
400-800 Hornby Street  
Vancouver, BC V6Z 2C5



Attention: Registrar Timothy Outerbridge

Dear Sirs/Mesdames:

**Re: Air Passenger Rights v. WestJet Airlines Ltd.  
Court of Appeal File No. CA51094**

We write to request the Registrar's assistance in setting a schedule for the exchange of remaining materials. The Registrar has set the hearing of this appeal for one day on March 17, 2026. The respondents (WestJet, CRT and the Attorney General) proposed the following to Mr. Lin last Friday:

**Factums of WestJet and CRT** (and respondent's appeal book, if any) – January 12

**Factum of AG** – February 12

**Reply factums of appellant** – February 27

**Book of authorities** – March 3

Mr. Lin proposed the following in response, including an extension of one week (to December 24) for WestJet's and the CRT's factums:

**Respondent's Factums:** December 24, 2025 (originally December 17, 2025)

**Appellant's Replies:** January 7, 2026 (originally December 31, 2025)

**Book of Authorities:** January 14, 2026 (only the authorities for the Appellant, WestJet, and the CRT)

**AG's Factum, if any:** February 12, 2026 (we also assume that the AG would promptly inform us if they elect not to participate)

**Appellant's Reply to AG's Factum:** February 19, 2026

**Supplementary book of authorities:** February 20, 2026

Although Mr. Lin would have significantly more time to prepare his replies under the respondents' proposal than under his own, he has conveyed that his client would be prejudiced by the respondents' proposal for two reasons: first, that WestJet would have a longer time to prepare its factum when the appellant's timelines have been "significantly truncated" as a result of his choice to file his factum less than three weeks after the lower court decision was rendered; and second, that he requires time to bring an application under Rule 60 to strike portions of WestJet's factum, if, as he expects, WestJet makes arguments "that were not properly before the court below, or contradictory to WestJet's position taken in the court below".

Mr. Lin also suggests that WestJet has misunderstood the Registrar's intentions in directing that the parties set a schedule for the exchange of remaining materials, which, in his view, was only to ensure the AG had sufficient time to review the other parties' materials.

In response to Mr. Lin's proposal, WestJet proposed an earlier date of January 7 for its factum. Mr. Lin appears to believe that granting WestJet an extension to that date would allow him sufficient time to bring an application under Rule 60, as he states he will recommend to his client to consider granting an extension to that date, but only if WestJet gives an undertaking that, where it refers to the chambers judge's decision "in any communications with any passengers, or submissions in any court (including courts outside of British Columbia)", it will "**concurrently** inform the passenger and/or the court, as the case may be, that the appeal has been expedited to be heard on March 17, 2026, and immediately provide the following materials to the passenger and/or the court, as the case may be" (emphasis in original):

1. All factums that have been filed;
2. The notice of hearing; and
3. The Court's letter dated December 12, 2025.

In WestJet's view, this is an unreasonable request, and, in any event, is unrelated to the prejudice to the appellant alleged by Mr. Lin.

We have not summarized the entirety of the parties' correspondence, as it is lengthy. However, we have enclosed it for the Court's reference.

Given Mr. Lin's position, we did not feel it would be constructive to continue to attempt to resolve this issue among the parties, and, thus, we respectfully seek the Court's assistance. Should it be the Court's preference to address it in a case management hearing rather than in writing, we are available to attend any day before Christmas.

Please do not hesitate to let us know if you require anything further.

Yours truly,

**ALEXANDER HOLBURN BEAUDIN + LANG LLP**

Per:

A handwritten signature in black ink, appearing to be 'Michael Dery', written over a horizontal line.

Michael Dery\*  
Partner  
MAD/KAM  
Encl.

\*Professional Law Corporation

cc. Simon Lin, counsel for the appellant  
Eliza McCullum, counsel for the Civil Resolution Tribunal  
Tyna Mason, counsel for the Attorney General of British Columbia

## ROSS, Julia

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**From:** MCGOLDRICK, Kathryn  
**Sent:** Sunday, December 14, 2025 10:18 PM  
**To:** Simon Lin  
**Cc:** McCall, Jeannette AG:EX; Marsh, Kimberley AG:EX; McCullum, Eliza CRT:EX; CRT Paralegal CRT:EX; DERY, Michael; tyna.mason@gov.bc.ca  
**Subject:** RE: CA51094 - AIR PASSENGER RIGHTS(A) v. WESTJET AIRLINES LTD.

Simon,

It appears you are insisting on compliance with the timeline under the Rules (with only a short extension) not because there is any prejudice to your client, but simply to insist on compliance for its own sake. This is unreasonable, and we would remind you of your obligations under the Code of Professional Conduct to grant reasonable extensions where it does not prejudice your client. There is clearly no prejudice here – in fact, you would have significantly more time to provide your replies to WestJet’s and the CRT’s factums under our proposal than under yours. Further, while we recognize that your factum was served on November 17, you served your appeal record and factum at the same time, less than three weeks after the decision was made (when, as Justice Sharma confirmed, no order had yet been made). As a result, we did not have the same ability to anticipate our factum’s deadline and plan accordingly with respect to other hearings, etc, as we would in any other appeal where the appellant does not take the very unusual step that you have. We also note that it was, of course, entirely your choice to proceed in this manner, and was not due to any shortening of your client’s timeline by WestJet.

Although the Registrar has characterized the appeal is being heard on an expedited schedule, it is not being heard for over three months from now. As long as the AG has enough time to review the materials – which she does under our proposed schedule, as it was developed in consultation with her counsel – there is no need to require the other parties to provide their materials sooner.

Further, on appeals where all parties have counsel, it is less common that factums are served according to the timeline in the Rules than the reverse – extensions, sometimes lengthy ones, are granted almost as a matter of course. In our view, in directing that a schedule be set for all of the remaining materials, it could not have been the Registrar’s intention only that the AG have sufficient time to review the other parties’ materials, because she would clearly have enough time to do that if WestJet and the CRT served their factums when they would have been due under the Rules. In our view, his intention was obviously that the parties work backwards from the February 27 deadline to set a reasonable schedule in light of that deadline.

While we cannot speak for the CRT, we would be willing to agree to a compromise of January 7 for WestJet’s factum. While that is obviously closer to our original proposed date of the 12<sup>th</sup> than to your offer of the 24<sup>th</sup>, we note that there are only five business days during that time period and that counsel are on vacation.

The Registrar may set a schedule for exchange of materials in the context of case management. If you continue to insist on December 24, we will write to him and request that this be done. We expect he will consider your refusal to grant us anything more than a seven-day extension, in light of the date of the appeal hearing, the fact that your factum was served so soon after the lower court decision, the lack of any prejudice to your client, and the fact that you are insisting on service the day before Christmas, to be unreasonable, and we see no reason why he would not simply endorse our proposed schedule.

If we are eventually forced to attend chambers to seek an extension, and you bring an application under s. 18 and/or 36 of the Act, we expect we would seek special costs, as such an application would be completely unreasonable. An

application seeking a stay of the decision so the CRT can continue to decide *APPR* claims would similarly be without merit.

We look forward to hearing from you.

Kind regards,

Kathryn

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KATHRYN MCGOLDRICK <i>Lawyer</i>	ALEXANDER HOLBURN BEAUDIN + LANG LLP
Tel: 604 484 1763 Fax: 604 484 9763	2700 - 700 West Georgia Street, Vancouver, BC, V7Y 1B8 Barristers + Solicitors   Vancouver   Kelowna   Toronto

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**From:** Simon Lin <simonlin@evolinklaw.com>  
**Sent:** Saturday, December 13, 2025 8:00 AM  
**To:** MCGOLDRICK, Kathryn <kmcgoldrick@AHBL.CA>  
**Cc:** McCall, Jeannette AG:EX <Jeannette.McCall@gov.bc.ca>; Marsh, Kimberley AG:EX <Kimberley.Marsh@gov.bc.ca>; McCullum, Eliza CRT:EX <Eliza.McCullum@crtbc.ca>; CRT Paralegal CRT:EX <Paralegal@crtbc.ca>; DERY, Michael <mderly@AHBL.CA>; AHBL Trial Services <service@ahbl.ca>; tyna.mason@gov.bc.ca  
**Subject:** Re: CA51094 - AIR PASSENGER RIGHTS(A) v. WESTJET AIRLINES LTD. [IMAN2-IMANAGE.FID778807]

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Dear Ms. McGoldrick,

Thank you for your email.

It appears WestJet misunderstood the Registrar's intentions. From the note on Wednesday and the Directions, it is apparent that the Registrar was concerned that the AG would require sufficient time to review all the materials, provide its position, followed by the Appellant's reply thereto. In that spirit, we are certainly open to the AG filing their factum by February 12, 2025, followed by the Appellant's reply to be provided within the one week permitted under the Rules.

On the other hand, we do not understand why WestJet is seeking a nearly one month extension, when WestJet was reminded at least three times in the past month that it is expected that WestJet will comply with the timelines under the Rules. An extension for WestJet, when the Registrar has directed that the appeal be expedited, defeats the whole purpose of expediting. By definition, expediting would require truncating the timeline on all sides. As it stands, WestJet has the full benefit of the 30 days from the date of the Appellant's factum being filed.

Moreover, while the Registrar has for now foreclosed the possibility of a January hearing, it may be possible to have this heard in February if Ms. Mason informs us shortly upon receiving the Appellant's reply that the AG would not participate. WestJet's proposed schedule appears to truncate everyone else's time, including the time period the Court would have for reviewing the materials, while granting itself a time period 4x as much as the Appellant.

With that said, we are prepared at this time to grant WestJet a short courtesy extension as detailed below. The proposed courtesy extension would also apply to the CRT.

**Respondent's Facts:** December 24, 2025 (originally December 17, 2025)

**Appellant's Replies:** January 7, 2026 (originally December 31, 2025)

**Book of Authorities:** January 14, 2026 (only the authorities for the Appellant, WestJet, and the CRT)

**AG's Factum, if any:** February 12, 2026 (we also assume that the AG would promptly inform us if they elect not to participate)

**Appellant's Reply to AG's Factum:** February 19, 2026

**Supplementary book of authorities:** February 20, 2026

Should WestJet not agree to the aforementioned schedule, we trust that WestJet will file their materials by December 17, 2025.

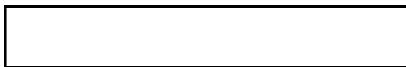
We note that extensions of time must be dealt with by way of an application in chambers. On that note, it appears the earliest available chambers date is December 30, 2025. My office can be available that day for a chambers application for WestJet's request for an extension of time. We also reserve the right to bring a cross-application under ss. 18 and/or 36 of the *Court of Appeal Act* to strike WestJet's Notice of Appearance and that WestJet not be heard due to failure to abide by the rules. We may also request that the Court attach conditions to any extensions of time, including a stay or any other condition to prevent WestJet from further relying on the BCSC decision until the appeal is resolved.

For greater certainty, the Appellant reserves the right to bring an application to seek a stay or for any other interim order.

Thank you and we look forward to hearing from you by no later than close of business on **Tuesday December 16, 2025.**

Kind Regards,

**Simon Lin**  
Barrister & Solicitor



**Evolink Law Group**

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On Fri, Dec 12, 2025 at 2:36 PM MCGOLDRICK, Kathryn <[kmcgoldrick@ahbl.ca](mailto:kmcgoldrick@ahbl.ca)> wrote:

Good afternoon Simon,

Further to the direction of the Registrar that the parties set a schedule for the exchange of remaining materials, the respondents propose the following:

Factums of WestJet and CRT (and respondent's appeal book, if any) – January 12

Factum of AG – February 12

Reply factums of appellant – February 27

Book of authorities – March 3

Could you please let us know at your earliest convenience whether you are agreeable to this proposal, in the event we need to seek assistance from Registrar Outerbridge in setting a schedule.

Kind regards,

Kathryn

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KATHRYN MCGOLDRICK

ALEXANDER HOLBURN BEAUDIN + LANG LLP

*Lawyer*

Tel: 604 484 1763

2700 - 700 West Georgia Street, Vancouver, BC, V7Y 1B8

Fax: 604 484 9763

Barristers + Solicitors | Vancouver | Kelowna | Toronto

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**From:** Dhamrait, Kristine <[Kristine.Dhamrait@BCCourts.ca](mailto:Kristine.Dhamrait@BCCourts.ca)>

**Sent:** Friday, December 12, 2025 11:24 AM

**To:** Dhamrait, Kristine <[Kristine.Dhamrait@BCCourts.ca](mailto:Kristine.Dhamrait@BCCourts.ca)>; Simon Lin <[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)>; 'service@evolinklaw.com' <[service@evolinklaw.com](mailto:service@evolinklaw.com)>; McCullum, Eliza CRT:EX <[Eliza.McCullum@crtbc.ca](mailto:Eliza.McCullum@crtbc.ca)>; CRT Paralegal CRT:EX <[Paralegal@crtbc.ca](mailto:Paralegal@crtbc.ca)>; DERY, Michael <[mdery@AHBL.CA](mailto:mdery@AHBL.CA)>; MCGOLDRICK, Kathryn <[kmcgoldrick@AHBL.CA](mailto:kmcgoldrick@AHBL.CA)>; AHBL Trial Services <[service@ahbl.ca](mailto:service@ahbl.ca)>; [tyna.mason@gov.bc.ca](mailto:tyna.mason@gov.bc.ca)

**Cc:** McCall, Jeannette AG:EX <[Jeannette.McCall@gov.bc.ca](mailto:Jeannette.McCall@gov.bc.ca)>; Marsh, Kimberley AG:EX <[Kimberley.Marsh@gov.bc.ca](mailto:Kimberley.Marsh@gov.bc.ca)>  
**Subject:** Re: CA51094 - AIR PASSENGER RIGHTS(A) v. WESTJET AIRLINES LTD.

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Dear counsel,

Please see attached letter sent on behalf of Registrar Outerbridge regarding the above-noted matter.

Kindly confirm receipt of this email.

Thank you,

Kristine

**Kristine Dhamrait**

Registrar's Assistant |

Court of Appeal for British Columbia |

604 660 2729 (Office) | 604 660 1951 (Fax) |

[kristine.dhamrait@bccourts.ca](mailto:kristine.dhamrait@bccourts.ca)

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December 16, 2025

**VIA EMAIL**

Alexander Holburn Beaudin + Lang LLP

**ATTN: Michael Dery and Kathryn McGoldrick**

2700-700 West Georgia

Vancouver BC, V7Y 1B8

Dear Ms. McGoldrick,

**RE: Air Passenger Rights v. WestJet Airlines Ltd., CA51094**

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We write in response to your email sent on Sunday December 14, 2025 at around 10:17 PM. Consistent with usual practice, we are responding to you by the next business day.

**The Courtesy Extension that the Appellant Offered was Reasonable**

We were somewhat surprised by the assertions that WestJet has made in regards to the one-week courtesy extension that we had offered, and appears to be based on WestJet's own misremembering of the facts to date.

Firstly, there appears to be a suggestion that the service of the Appellant's factum somehow caught your office by surprise, when the Appellant served the factum about two weeks from the time the underlying BCSC decision was rendered. We remind you that on November 7, 2025, we have written to your office and in that letter, it clearly stated:

In light of the above, we believe it would be in the interests of justice to schedule the appeal hearing for the earliest available date. Our client intends to file their Appeal Record, Appeal Book, Transcript, and Factum by next week.

Furthermore, there has been numerous reminders and back and forth thereafter in relation to our November 7, 2025 letter. As such, your office could not have been caught by surprise and there would have been ample time to make any arrangements to fulfill WestJet's anticipated obligations under the *Court of Appeal Rules*.

We note that your office only filed the Notice of Appearance on November 10, 2025, days **after** it was made clear that this appeal will be expedited. As such, it was incumbent on your office to raise any timing concerns either before or immediately after filing the Notice of Appearance, or refer WestJet to other counsel that could meet the timelines. Unfortunately, we had heard nothing from your office regarding the inability to meet the

30-day timeline for filing a responding factum until, literally three business days before the deadline (i.e., December 12, 2025). This was also after more than a month long saga of WestJet refusing to cooperate to settle the terms of the BCSC Order.

Secondly, the assertion that our courtesy extension to December 24, 2025 is unreasonable is wholly without merit and self-contradictory.

We remind you that on November 19, 2025, Mr. Dery, in another case where he is representing WestJet (i.e., Fox v. WestJet), the court fixed a deadline of December 19, 2025 for WestJet to take a particular step. Before the court, the undersign offered Mr. Dery up to January 5, 2026 to take that step. Mr. Dery complained before the Court that such an extension would simply cause him to work over the holidays, and was not preferred. Our courtesy extension to December 24, 2025 here is wholly consistent with Mr. Dery's preference that he expressed in open court. It allows your office to have all the necessary steps completed and not affect the holidays.

Conversely, our office will end up having to work on the Reply during the holidays, rather than having the Reply completed by December 24, 2025.<sup>1</sup>

### **Prejudice if WestJet's Factum is Delayed**

WestJet's assertions that there is no prejudice if its factum is extended to January 12, 2026 overlooks two material points.

Firstly, under the *Court of Appeal Rules*, both the appellant and respondent have thirty-days to submit their factum and appeal books, and arguably an appellant would typically have an extra ninety-days on top of the 30-days for filing a Notice of Appeal and 60-days for filing an Appeal Record were considered.

In this instance, the Appellant's factum was filed about two weeks from the time the underlying BCSC decision was rendered. In other words, the Appellant's timelines had already been significantly truncated, with no resulting truncation to WestJet's timelines. A party whose timelines are being truncated is being prejudiced:<sup>2</sup>

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<sup>1</sup> Under the timelines in the *Court of Appeal Rules*, the Respondents' factums are due December 17, 2025 and the Reply factum(s) are due one week later on December 24, 2025.

<sup>2</sup> [\*O'Callaghan v Hengsbach\*](#), 2017 BCSC 2182 at para. 17.

[17] Such applications should be restricted to emergent circumstances and should not reward inefficiency, inattention to a particular case, or a lack of oversight. To abridge the time limits imposed by the *Supreme Court Civil Rules* is, presumably, to prejudice the other party who is, naturally, entitled to rely on timelines imposed by the *Rules* and to expect the opposing party to do likewise.

WestJet's proposal to extend its own timelines by almost double is further exacerbating the prejudice to the Appellant, when the Appellant had truncated its own timelines from 120-days down to about 2 weeks.

Furthermore, as noted in the cited passage above, a party to a proceeding is entitled to rely on the timelines under the court's rules and to expect the other party to do so likewise. In this instance, we have not received any viable explanation from WestJet why the request for double the time is only being made at the eleventh hour.

Secondly, other than the unequal time allocations, there is also prejudice to the Appellant and the appeal process if WestJet's factum is filed later than provided under the rules. Based on Mr. Dery's submissions before Justice Sharma at the Judicial Management Conference for settling the terms of the BCSC Order, it appears that WestJet is planning on making arguments that were not properly before the court below, or contradictory to WestJet's position taken in the court below.

In such circumstance, the Appellant would have a right to bring a Rule 60 application to strike portions of WestJet's factum. In our experience dealing with your office, it appears that your office often has very limited availability when your client is the non-moving party for an application. As such, if WestJet's factum is delayed any further, the chances of a Rule 60 application being heard may be diminished, and could also affect the appeal date that has now been fixed for March 17, 2026.

### **WestJet's Request to Extend to January 7, 2026**

In any event, we will recommend to our client to consider accepting WestJet's proposed January 7, 2026 filing date of its factum as detailed in the table below, subject to WestJet providing an undertaking as detailed further below. In the table below, we have included our December 13, 2025 proposal along with the revisions underlined.

<u><b>Appellant's Proposal on December 13</b></u>	<u><b>Appellant's Revised Proposal</b></u>
<p><b>Respondent's Factums:</b> December 24, 2025 (originally December 17, 2025)</p> <p><b>Appellant's Replies:</b> January 7, 2026 (originally December 31, 2025)</p> <p><b>Book of Authorities:</b> January 14, 2026 (only the authorities for the Appellant, WestJet, and the CRT)</p> <p><b>AG's Factum, if any:</b> February 12, 2026 (we also assume that the AG would promptly inform us if they elect not to participate)</p> <p><b>Appellant's Reply to AG's Factum:</b> February 19, 2026</p> <p><b>Supplementary book of authorities:</b> February 20, 2026</p>	<p><b>Respondent's Factums:</b> <u>January 7, 2026</u> (originally December 17, 2025)</p> <p><b>Appellant's Replies:</b> <u>January 14, 2026</u>, in accordance with the <i>Court of Appeal Rules</i></p> <p><b>Book of Authorities:</b> <u>January 16, 2026</u> (only the authorities for the Appellant, WestJet, and the CRT)</p> <p><b>AG's Factum, if any:</b> February 12, 2026 (we also assume that the AG would promptly inform us if they elect not to participate)</p> <p><b>Appellant's Reply to AG's Factum:</b> February 19, 2026</p> <p><b>Supplementary book of authorities:</b> February 20, 2026</p>

The aforementioned time extension for WestJet is **conditional** upon WestJet providing an undertaking that should WestJet refer to or rely upon *Air Passenger Rights v WestJet Airlines Ltd.*, 2025 BCSC 2145 in any communications with any passengers, or submissions in any court (including courts outside of British Columbia), that WestJet shall **concurrently** inform the passenger and/or the court, as the case may be, that the appeal has been expedited to be heard on March 17, 2026, and immediately provide the following materials to the passenger and/or the court, as the case may be:

1. All factums in this appeal that has been filed;
2. Notice of Hearing; and
3. Letter from Registrar Outerbridge on December 12, 2025.

In light of the developments herein and context, it is highly likely that conditions will be imposed on WestJet for any requests for an extension of time.<sup>3</sup> The proposed undertaking above is necessary to avoid further complications or confusion arising from the underlying BCSC decision. We are aware of at least one instance where WestJet had not provided complete information when it sought to rely upon refer to or rely upon *Air Passenger Rights v WestJet Airlines Ltd.*, 2025 BCSC 2145 with passengers.

The Appellant does not have the confidence that WestJet will provide complete information about the situation with this appeal in the absence of a binding undertaking:

1. WestJet was issued a fine from the Canadian Transportation Agency for misleading passengers on their legal entitlements and violating the *Air Passenger Protection Regulations*.<sup>4</sup>
2. WestJet attempted to mislead passengers on the scope of settlement privilege and confidentiality.<sup>5</sup>
3. WestJet had an interlocutory injunction issued against it for allegedly engaging in deceptive acts or practices relating to passengers' legal entitlements.<sup>6</sup>

## **Conclusion**

We look forward to hearing from you by no later than the end of this week.

We reserve the right to bring this letter to the Court's attention.

Yours truly,

**EVOLINK LAW GROUP**



**SIMON LIN**

Barrister & Solicitor

Cc: Tyna Mason, counsel for the Attorney General of British Columbia; Eliza McCullum, counsel for the Civil Resolution Tribunal

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<sup>3</sup> E.g., [Mott v. Pacific National Exhibition, 617548 b.c. Ltd.](#), 2001 BCCA 731.

<sup>4</sup> <https://otc-cta.gc.ca/eng/content/westjet-penalized-violations-appr>

<sup>5</sup> <https://www.cbc.ca/news/canada/british-columbia/bc-couple-westjet-compensation-fight-1.7389792>

<sup>6</sup> [Air Passenger Rights v WestJet Airlines Ltd.](#), 2025 BCSC 155.