



COURT OF APPEAL FILE NO. CA51094
Air Passenger Rights v WestJet Airlines Ltd.
Respondent's Factum

COURT OF APPEAL

ON APPEAL FROM the order of The Honourable Madam Justice Sharma of the
Supreme Court of British Columbia pronounced on the 30th day of October, 2025

BETWEEN:

AIR PASSENGER RIGHTS

APPELLANT
(Petitioner)

AND:

WESTJET AIRLINES LTD.

RESPONDENT
(Respondent)

AND:

CIVIL RESOLUTION TRIBUNAL

RESPONDENT
(Administrative Decision Maker)

RESPONDENT'S FACTUM

CIVIL RESOLUTION TRIBUNAL

Air Passenger Rights

SIMON LIN

EVOLINK LAW GROUP
4388 Still Creek Drive, Suite 237
Burnaby, BC V5C 6C6

Tel: 604-620-2666

E-mail: simonlin@evolinklaw.com

WestJet Airlines Ltd.

MICHAEL DERY and KATHRYN
MCGOLDRICK

ALEXANDER HOLBURN BEAUDIN +
LANG LLP
2700 – 700 West Georgia Street
Vancouver, BC V7Y 1B8

Counsel for the Appellant

Tel: 604-484-1700

E-mail: mdery@ahbl.ca and
kmcgoldrick@ahbl.ca

Counsel for the Respondent,
WestJet Airlines Ltd.

Civil Resolution Tribunal

ELIZA MCCULLUM

CIVIL RESOLUTION TRIBUNAL
PO BOX 9239 STN PROV GOVT
Victoria, BC V8W 9J1

Tel: 236-475-4597

E-mail: eliza.mccullum@crtbc.ca

Counsel for the Respondent,
Civil Resolution Tribunal

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CHRONOLOGY

The CRT confirms the accuracy of the appellant's chronology, with the following additions.

Date	Event
December 2, 2025	A judicial management conference is held before the Honourable Madam Justice Sharma, per her direction at para. 113(c) of her reasons for judgment.
December 3, 2025	The parties agree to the terms of a draft final order. The appellant submits the draft final order to the Court, by the parties' consent.
December 8, 2025	Sharma J. issues the final order.

OPENING STATEMENT

This appeal concerns a Civil Resolution Tribunal (the “CRT” or the “Tribunal”) small claims final decision about compensation for a cancelled flight (the “Final Decision”). The CRT takes no position on the merits of the appeal, as is appropriate for an adjudicative tribunal. However, the appeal raises questions about the CRT’s jurisdiction, the appellant’s standing, and the standard of review. These are issues to which the tribunal may appropriately speak. The CRT’s submissions may assist the court in conducting a fully informed adjudication of the appeal.

As an administrative tribunal, the CRT only has jurisdiction to resolve disputes within the authority set out in its enabling statute, the *Civil Resolution Tribunal Act*, SBC 2012, c 25 (“*CRTA*”). The CRT’s small claims jurisdiction includes claims for debt or damages of \$5,000 or less. The CRT is mandated to be accessible, speedy, informal, and flexible.

CRT members initially resolved *Air Passenger Protection Regulations*, SOR/2019-150 (“*APPR*”) compensation claims under the Tribunal’s small claims damages jurisdiction. Following clarification from the Supreme Court of Canada (“SCC”) that *APPR* compensation is not damages, CRT members examined whether the CRT otherwise had jurisdiction to resolve these claims. They found that resolving standardized *APPR* compensation claims is within the CRT’s small claims debt jurisdiction, in part because the *APPR* are incorporated into air carriers’ contracts of carriage.

In this matter, the chambers judge ruled, without the benefit of submissions from the parties, that *APPR* compensation is not a private contractual debt but rather an aspect of a comprehensive statutory compensation scheme, over which the chambers judge found the Canadian Transportation Agency (the “Agency”) has exclusive jurisdiction to resolve claims. Had the parties or the chambers judge raised the issue of the CRT’s jurisdiction to resolve *APPR* claims for compensation, the CRT would have provided helpful submissions on that point in the petition proceeding.

The Tribunal makes its submissions to assist this Court with deciding the relevant issues arising from the Final Decision, and any other issues this Court wishes to address in its discretion.

PART 1 – STATEMENT OF FACTS

Overview of the CRT Process

1. The CRT is British Columbia's first online tribunal. The Tribunal has a statutory mandate under the *CRTA* to provide dispute resolution services in a manner that is "accessible, speedy, economical, informal and flexible."¹
2. The CRT process typically begins with the use of the CRT's web-based "Solution Explorer," an expert system that provides free legal information and tools for consensual dispute resolution. If a user then decides to apply for dispute resolution services, the CRT provides an initiating document known as a Dispute Notice. Once the responding party provides its position on the claim by submitting its Dispute Response, the CRT's formal dispute resolution process begins.
3. This process has two phases: Case Management and Tribunal Hearing. During the Case Management phase, the parties have an opportunity to explore a settlement, either directly with each other or with the assistance of a CRT case manager. Case managers are trained dispute resolution professionals who attempt to help the parties settle some or all their issues.
4. If the dispute is not resolved during Case Management, the parties prepare a Tribunal Decision Plan ("TDP") which sets out the claims, evidence, and arguments for the tribunal member who will hear the dispute. Applicants provide their evidence and argument first, followed by the respondent's evidence and argument, and finally the applicant's reply.
5. When the TDP is complete, the dispute advances to the Tribunal Hearing phase, at which time the dispute is assigned to a tribunal member for adjudication. This phase is an adversarial process that produces a binding and enforceable decision.

¹ *CRTA*, s. 2.

CRT Jurisdiction

6. The CRT has jurisdiction over small claims disputes of \$5,000 or less, as well as certain types of claims related to motor vehicle accidents, cooperative associations, societies, strata property matters, and, most recently, claims under the *Intimate Images Protection Act*, SBC 2023, c 11.

7. The extent of the CRT's small claims jurisdiction is set out in the *CRTA* at Part 10 – Tribunal Jurisdiction – Division 3 – Tribunal Small Claims. *CRTA* s. 118(1) provides that the Tribunal has jurisdiction to resolve a claim for relief in one or more of the following, if the amount of the claim is less than or equal to the CRT's small claims monetary limit:

- (a) Debt or damages;
- (b) Recovery of personal property;
- (c) Specific performance of an agreement relating to personal property or services;
or
- (d) Relief from opposing claims to personal property.

8. The *Tribunal Small Claims Regulation*, BC Reg 232/2018, s. 3 sets the tribunal small claims monetary limit at \$5,000 or less, exclusive of interest and any dispute-related expenses.

9. Under *CRTA* s. 119, the CRT does not have small claims jurisdiction over claims about libel, slander, or malicious prosecution and claims for or against the government.

The CRT Dispute and Judicial Review

10. The facts relevant to the CRT dispute and judicial review are set out in the Final Decision indexed as *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640 and the chambers judge's decision indexed as *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 2145.²

² Appellant's Appeal Book, pp. 307-313; Appeal Record, pp. 105-134.

PART 2 – ISSUES ON APPEAL

11. Consistent with the CRT's limited role in this appeal, the CRT will address the following issues, while taking no position on the errors in the Final Decision alleged by the appellant:

- (a) Preliminary Issues: Appellate Review and Tribunal Standing
- (b) Standard of Review
- (c) Assignment Agreement
- (d) Appellant Standing
- (e) Jurisdiction

PART 3 – ARGUMENT

Preliminary Issues: Appellate Review and Tribunal Standing

12. This is an appeal from a decision dismissing an application for judicial review. The primary question for the appellate court is whether the court below identified the appropriate standard of review and applied it correctly.³

13. The CRT appeared at the hearing of judicial review pursuant to s. 15 of the *Judicial Review Procedure Act* (“JRPA”), which gives an administrative decision maker the right to be a party, at its option.⁴ In that hearing, and in this appeal, the CRT takes no position on the merits. The CRT’s submissions are limited to the appropriate standard of review, clarification of its position on the assignment at issue, jurisdiction, and brief submissions on standing.

14. Both this Court and the SCC have confirmed that in hearing from adjudicative tribunals, the courts are required to exercise their discretion to balance the need for fully informed adjudication against the importance of maintaining tribunal impartiality. In particular, the SCC has deemed it appropriate for tribunals to take an explanatory role with reference to the record, jurisdiction, and standard of review, in order to ensure that the reviewing court’s decision is fully informed.⁵ In addition, “a tribunal may be able to explain how one interpretation of a statutory provision might impact other provisions within the regulatory scheme, or the factual and legal realities of the specialized field in which they work. Submissions of this type may be harder for other parties to present.”⁶

³ *Dhillon v. Workers’ Compensation Appeal Tribunal*, 2022 BCCA 251 at para. 13.

⁴ R.S.B.C. 1996, c. 241.

⁵ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at paras. 42-43, 57; *18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494 at para. 51.

⁶ *Ontario (Energy Board)* at para. 53.

Standard of Review

15. This Court recently reaffirmed the standard of review on an appeal from a judicial review application:

[11] On appeal, the issue is whether the judge identified and applied the correct standard of review. Where, as here, the judge identified the correct standard, the question is whether he applied it correctly. This court effectively “steps into the shoes of the reviewing judge and conducts a *de novo* review of the tribunal’s decision”: *Macdonald v. The Owners, EPS 522*, 2024 BCCA 52 at para. 6, citing: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10; *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.*, 2023 BCCA 168 at para. 55. No deference then is owed to the reviewing judge.⁷

16. Although the court below’s reasoning may be instructive, the decision is not entitled to deference on appeal, except where the reviewing judge was required to make findings of fact.⁸

17. Here, the chambers judge made no findings with respect to the standard of review and the parties’ positions.

18. This Court may wish to consider whether the appropriate standard of review for all the issues the appellant raises is correctness, based on the law set out below.

19. The standard of review for CRT decisions is set out in the *CRTA* and depends on the type of claim under review. *CRTA* s. 56.7 sets out the standard of review for claims in the CRT’s specialized expertise or exclusive jurisdiction. *CRTA* s. 56.8 sets out the standard of review for all other types of claims, which include small claims disputes such as this one.

Standard of review – other tribunal decisions

56.8 (1) This section applies to an application for judicial review of a decision of the tribunal other than a decision for which the tribunal must be considered to be an expert tribunal under section 56.7.

⁷ *The Owners, Strata Plan BCS 3407 v. Emmerton*, 2024 BCCA 354.

⁸ *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.*, 2023 BCCA 168 at para. 56.

(2) The standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting

- (a) a finding of fact,
- (b) the exercise of discretion, or
- (c) the application of common law rules of natural justice and procedural fairness.

(3) The Supreme Court must not set aside a finding of fact by the tribunal unless

- (a) there is no evidence to support the finding, or
- (b) in light of all the evidence, the finding is otherwise unreasonable.

(4) The Supreme Court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

20. The petition raises no questions of procedural fairness. Should this Court require additional guidance on the application of the other standards of review, the CRT's response to petition sets out the guiding principles for applying each standard of review under *CRTA* s. 56.8.⁹

21. Respecting legislated standards of review within the limits of the rule of law is consistent with the SCC's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*.¹⁰ Following that decision, administrative decisions are now presumptively reviewable on a reasonableness standard. That presumption can be rebutted in two scenarios: (1) where the legislature has indicated a different standard applies or (2) where the rule of law requires the standard of correctness to apply.

22. With respect to scenario (1) legislated standards of review, the SCC said: "[a]ny framework rooted in legislative intent must, to the extent possible, respect clear statutory language that prescribes the applicable standard of review."¹¹ With reference to the *Administrative Tribunals Act*, SBC 2004, c 45, the SCC also said: "We continue to be of

⁹ Appeal Record, pp. 31-45.

¹⁰ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

¹¹ *Vavilov* at para. 34.

the view that where the legislature has indicated the applicable standard of review, courts are bound to respect that designation, within the limits imposed by the rule of law.”¹² This guidance is equally applicable to the *CRTA*.

23. With respect to scenario (2) in *Vavilov*, the rule of law requires a correctness standard of review for constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies. The SCC confirms in *Vavilov* that “[t]he application of the correctness standard for such questions respects the unique role of the judiciary in interpreting the constitution and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary.”¹³ This “rule of law” limitation to applying statutory standards of review preserves the role of the superior court in matters of such importance.

24. Finally, for other questions of law that arose in relation to the petition proceeding, rather than as a result of the CRT decision, it is well-established that the standard of review is correctness.¹⁴

The Assignment Agreement

25. The appellant asserts that on July 24, 2024, the CRT dispute applicants absolutely assigned to the appellant their *APPR* compensation claim, and any related right to seek judicial review of the Final Decision (the “Assignment Agreement”).

26. In the CRT’s response to petition—filed before the SCC released its ruling in *International Air Transport Association v. Canada (Transportation Agency)*—the CRT initially suggested that the chambers judge may need to consider whether the Assignment Agreement was made lawfully.¹⁵ The CRT raised that the common law rule against

¹² *Vavilov* at para. 35.

¹³ *Vavilov* at para. 53.

¹⁴ *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8-9.

¹⁵ 2024 SCC 30; Appeal Record, pp. 37-38.

maintenance and champerty, which prohibits the assignment of bare causes of action, may bar the CRT applicants from assigning their claims to the appellant.¹⁶

27. Following the SCC issuing *International Air*, the CRT issued multiple decisions finding that *APPR* standardized compensation claims are claims in debt.¹⁷ The tribunal members' findings and reasons are summarized below, beginning at para. 50 of this factum.

28. In written submissions filed on March 20, 2025, the CRT clarified its position in the court below: that claims in debt can validly be assigned at law without violating the rule against champerty, and that *Law and Equity Act*, RSBC 1996, c 253, s. 36 permits the assignment of debts.

29. The CRT takes no position on the validity of the Assignment Agreement.

30. If this court finds the Assignment Agreement to be lawful, this Court may wish to consider the impact of dispute participants assigning their rights to a claim and, with them, their rights under the *JRPA*. While the appellant does not seek remittal of any issues to the CRT, this Court's decision may collaterally impact the general rule under *CRTA* s. 20 that parties are to represent themselves in CRT disputes. Small claims disputes like this one do not fall under the exceptions to this rule found in *CRTA* s. 20.1.

Appellant Standing

31. The CRT takes no position on the appellant's standing to bring this appeal. This Court may find that its decision on the validity of the Assignment Agreement may be determinative of whether the appellant has standing in this proceeding.

¹⁶ *Fredrickson v. Insurance Corporation of British Columbia*, (1986) 3 BCLR (2d) 145 (CA) at paras. 21–23, aff'd [1988] 1 SCR 1089, as cited in *Ma v. Ma*, 2012 ONCA 408 at para. 11.

¹⁷ *Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278; *Pansegrau v. Air Canada*, 2024 BCCRT 1297.

The CRT's Jurisdiction to Resolve *APPR* Standardized Compensation Claims

32. Respectfully, the CRT wishes to reiterate that the nature of *APPR* claims and, by extension, the CRT's jurisdiction to resolve them, were not issues that either party raised at the CRT or on judicial review.

33. This Court has been asked to consider the validity of the Assignment Agreement. This Court may find that the nature of *APPR* claims—particularly whether they meet the legal definition of a debt—may affect the Assignment Agreement's validity. Such a finding may also give this Court reason to exercise its inherent jurisdiction to clarify the CRT's jurisdiction to resolve *APPR* claims, particularly whether it shares concurrent jurisdiction to do so with the Agency. As noted above at para. 23 of this factum, as this is a question related to the jurisdictional boundaries between two administrative bodies, the standard of review is correctness: *Vavilov* at para. 17.

(i) *The Agency's Jurisdiction to Resolve APPR Compensation Claims*

34. The Agency is established by the *Canada Transportation Act* ("CTA").¹⁸ As a statutory administrative decisionmaker, the Agency's jurisdiction is limited to the authority set out in the *CTA*. It has broad responsibility to administer acts and regulations about federally-regulated modes of transportation, including the *Transportation Modernization Act*, SC 2018, c 10, *Accessible Transportation for Persons with Disabilities Regulations*, SOR/2019-244, *Air Transportation Regulations*, SOR/88-58 ("ATR"), and *APPR*.

35. Significantly, neither the *CTA* nor *APPR* contain any provision giving the Agency exclusive jurisdiction over *APPR* compensation claim resolution.

36. This Court has affirmed that:

[81] It is presumed that the Legislature does not intend to abolish, limit or otherwise interfere with the rights of subjects. As noted by Major, J., speaking for the Court in *Crystalline Investments Ltd. v. Domgroup Ltd.* 2004 SCC 3 at para.

¹⁸ S.C. 1996, c. 10. Please note that s. 7(1) continues the "National Transportation Agency," which is now known as the Agency.

43, “explicit statutory language is required to divest persons of rights they otherwise enjoy at law”.¹⁹

37. The CRT has previously recognized that the Agency does have exclusive jurisdiction over certain claims related to the *APPR*. For example, in *Green v. WestJet Airlines Ltd.*, the deciding tribunal member distinguished the Agency’s jurisdiction from the CRT’s as follows:

10. The applicants complain about WestJet’s failure to communicate changes to their itinerary and failure to respond to their *APPR* complaint within the 30-day time limit. The applicants did not request a specific remedy for these alleged breaches of the *APPR*. The CRT has no jurisdiction to issue administrative penalties over a failure to comply with the *APPR* because the *Canada Transportation Act* sections 179 and 180 say that the [Agency] has jurisdiction (see *D.P. v. WestJet Airlines Ltd.*, 2025 BCCRT 1106). So, I make no findings about these alleged breaches. Nothing in this decision prevents the applicants from making a complaint to the Canadian Transportation Agency.²⁰

38. This Court may wish to consider why the federal legislature, when it reviewed the Agency’s *APPR* complaint resolution process in 2023, chose not to employ explicit statutory language to extend the Agency exclusive jurisdiction over *APPR* compensation claims. If this Court does consider this point, this Court may further wish to consider that the federal legislature did choose to extend the Agency exclusive jurisdiction over administrative penalties for failure to comply with the *APPR*.²¹

39. Decisions about *APPR* compensation often do not require specialized knowledge of air travel. Rather, they require a limited analysis of whether an airline’s reason for cancelling or delaying a flight or denying a passenger aboard was within its control and required for safety purposes.²²

40. Some CRT decisions have also acknowledged that it is possible that a party in a future dispute may believe the Agency is the most appropriate forum to resolve a claim for *APPR* compensation (see, for example: *Reshaur v. WestJet Airlines Ltd.* at paras. 30-

¹⁹ *Li v. Rao*, 2019 BCCA 265 at para. 81.

²⁰ 2025 BCCRT 1180. Emphasis added.

²¹ *CTA*, ss. 178-180.

²² See, for example: *Allbee v. WestJet Airlines Ltd.*, 2024 BCCRT 458.

36). As noted in *Reshaur*, if a CRT member agrees with a dispute party who raises this as an issue, *CRTA* s. 11(1)(a)(i) permits a CRT member to refuse to resolve a claim or dispute within its jurisdiction if another forum, such as the Agency, would be the most appropriate forum for that dispute.

41. In *Reshaur*, the respondent WestJet did argue that the Agency was a more appropriate forum to resolve the dispute, in part because, WestJet argued, the Agency allegedly resolves complaints more quickly than the CRT.²³ The air passenger applicant in that dispute asked the CRT Vice Chair to take notice of substantial delays and backlogs in the Agency's process, and a lack of evidence that the Agency was meeting its statutory deadlines. The Vice Chair found it unnecessary to do so because, he found, the prejudice of delays largely falls to the passenger seeking compensation, who makes the initial choice of forum. The Vice Chair rejected WestJet's argument on the facts of that dispute, but it is open to dispute parties to raise *CRTA* s. 11(1)(a)(i) in the future.

42. If this Court exercises its discretion to decide whether the Agency has exclusive jurisdiction to resolve *APPR* standardized compensation claims, it may wish to consider whether it is in the best interests of access to justice to limit air passengers to one choice of forum for *APPR* compensation claims not requiring specialized knowledge of air travel.

43. If this Court is inclined to conclude that the Agency has exclusive jurisdiction over *APPR* compensation claims, this Court may consider opining on whether the Agency is also the most appropriate forum for resolving damages claims under the *Convention for the Unification of Certain Rules for International Carriage by Air* (the "*Montreal Convention*").²⁴ As was the case in the Final Decision, an air passenger may have concurrent *Montreal Convention* damages and *APPR* standardized compensation claims. Those claims may rely on the same underlying set of facts, namely: whether the flight cancellation or delay was within the airline's control and whether it was required for safety purposes. Specifically, this Court may wish to consider the impact of damages and compensation claims related to the same travel itinerary potentially being bifurcated, and

²³ At paras. 30-36.

²⁴ *Carriage by Air Act*, RSC 1985, c. C-26.

as a result, the likelihood of different decision makers making different findings of fact on central issues.

(ii) How the CRT has Interpreted its Jurisdiction to Resolve APPR Compensation Claims

44. If this Court finds that the Agency does not have exclusive jurisdiction over *APPR* compensation claim resolution, the CRT may not automatically assume jurisdiction. The CRT may only exercise its jurisdiction where the *CRTA* authorizes.

45. The CRT has historically accepted and resolved claims for *APPR* standardized compensation within its small claims jurisdiction over debt and damages. Specifically, this meant resolving claims for delayed or cancelled flights where the delay or cancellation is within the airline’s control and not required for safety purposes, or for passengers who are denied boarding.²⁵

46. Before the SCC issued reasons in *International Air*, CRT members rarely articulated in detail the Tribunal’s jurisdictional basis for resolving such claims. As the Vice Chair noted in *Reshaur*—which was the first decision that the CRT released about *APPR* standardized compensation post-*International Air*—“[n]o airline ever challenged the CRT’s jurisdiction to decide *APPR* claims on the basis that they are not captured by *CRTA* section 118.”²⁶ The Vice Chair found it implicit in the CRT’s published decisions that its members treated *APPR* claims as damages claims.²⁷

47. Though its focus in *International Air* was on whether the *APPR* conflicted with the exclusivity principle in the *Montreal Convention*, the SCC ruled that the *APPR* do not create an “action for damages.” Instead, the *APPR* “create an entitlement to standardized compensation that does not seek to measure a passenger’s loss.”²⁸

²⁵ *APPR*, ss. 19 and 20.

²⁶ At para. 10.

²⁷ At para. 45.

²⁸ 2024 SCC 30 at para. 94.

48. In light of this finding, CRT members with *APPR* compensation claims already assigned to them for resolution by final decision sought submissions from dispute participants about whether the CRT has jurisdiction over such claims.

49. As they were the first decisions on this issue that the CRT published post-*International Air*, the CRT drew *Reshaur* and *Pansegrau v. Air Canada* to the chambers judge's attention.²⁹ Below are summaries of the tribunal members' lines of reasoning in deciding the CRT's jurisdiction to resolve these disputes. The CRT provides these summaries to assist this Court, should it exercise its discretion to make any findings about whether *APPR* standardized compensation claims are a "debt" and, as such, within the CRT's small claims jurisdiction.

a. Reshaur v. WestJet Airlines Ltd.

50. In *Reshaur*, the Vice Chair asked the applicant air passenger and respondent, WestJet, whether *APPR* standardized compensation claims are debt claims and so within the CRT's small claims jurisdiction under *CRTA* s. 118(1)(a). The parties referred to the same definition of debt:

A specific sum of money due and payable under or by virtue of a contract. Its amount must either be already ascertained or capable of being ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation, beyond mere calculation, then the sum is not a "debt or liquidated demand", but constitutes "damages".³⁰

51. In its submissions in that dispute, the Vice Chair found that WestJet effectively conceded that *APPR* standardized compensation meets most aspects of the definitions of a debt, but argued that the right to compensation under the *APPR* arises solely as a statutory obligation, not a contractual one.³¹

²⁹ 2024 BCCRT 1297; Appeal Record, pp. 26-27 at paras. 101-103; Appellant's Appeal Book, pp. 442-443.

³⁰ *Drayton v. W.C.W. Western Canada Water Enterprises Inc.*, 1989 CanLII 5319 (BC SC) at para. 7.

³¹ *Reshaur* at para. 20.

52. The Vice Chair concluded that this argument was wrong and that *APPR* standardized compensation claims are claims for debt because:

22. ... WestJet does not address why the incorporation of the *APPR* into its contract does not give rise to a contractual claim separate from its claim under the *APPR* itself. WestJet mentions the fact that the *APPR* is incorporated into its contract, but does not explain why this essentially has no legal effect.

53. Further, though the *APPR* contain no provision specifying that they do not affect a person's right to sue, the Vice Chair relied on the well-established statutory interpretative principle that if the legislature intends to adversely affect a right, it must do so expressly, including the right to bring an action.³²

54. The Vice Chair concluded:

27. In summary, I find that *APPR* claims are debt claims and the incorporation of the *APPR* into WestJet's contract of carriage gives rise to a civil right to bring an action. I therefore find that the CRT has jurisdiction to decide *APPR* claims as debt claims.

b. Pansegrau v. Air Canada

55. *Pansegrau* was the second *APPR* compensation decision the CRT issued following *International Air*. It was decided by a different CRT member than *Reshaur* (the "Tribunal Member"). As in *Reshaur*, the Tribunal Member asked the parties for submissions about the CRT's jurisdiction to resolve *APPR* claims.

56. The Tribunal Member outlined the definition of a "debt" that he relied on in deciding this question:

13. Although the parties refer to different cases discussing the meaning of the term "debt", I find there is no material distinction among them. A debt is an obligation to pay a specific sum of money under a contract. It must be already ascertained or capable of being ascertained by arithmetic rather than investigation (see *Busnex Business Exchange Ltd. v. Canadian Medical Legacy Corp.*, 1999 BCCA 78 at paragraph 8). In contrast, "damages" claims require evidence of harm or loss. Also,

³² At para. 25, citing *Gulkison v. Vancouver Police Board*, 2014 BCSC 669 at paras. 41-43.

principles like mitigation (the need to take steps to minimize a loss) generally apply to damages claims but not debt claims (see *Borkovich*).

57. The respondent air carrier, Air Canada, argued that *APPR* standardized compensation is not a debt because under the *APPR* passengers must satisfy prerequisites before the obligation to pay arises. The Tribunal Member disagreed, finding that this argument conflated liability with determining the amount of the debt owed.³³ The Tribunal Member also followed the same line of reasoning as the Vice Chair in *Reshaur* in finding that the lack of *APPR* provision providing a right to sue for breach of contract did not mean that it was nonexistent, but the lack of provision *removing* such a right meant that the legislature could not have intended to do so.³⁴

58. Finally, the Tribunal Member examined the effect of the *ATR* requirement for carriers to incorporate the *APPR* into their international tariffs:

16. ... I agree with Mr. Pansegrau that the courts have distinguished between statutory obligations that are incorporated in a contract and those that are not (see, for example, *Cheetham v. Bank of Montreal*, 2023 BCSC 1319 and *U.B.C. v. The Association of Administrative and Professional Staff on Behalf of Bill Wong*, 2006 BCCA 491). Those cases indicate that a person can sue where statutory minimums are expressly incorporated into the contract. That is what Mr. Pansegrau seeks to do, which is to hold Air Canada to the compensatory *APPR* obligations explicitly provided for in the tariff's rule 80. Efficiently resolving low dollar value breach of contract claims is consistent with the CRT's mandate.

59. The CRT provides the tribunal members' conclusions in *Reshaur* and *Pansegrau* about the Tribunal's jurisdiction to resolve *APPR* standardized compensation claims not primarily for their accuracy, but to illustrate the lines of reasoning that CRT members have followed in finding jurisdiction over *APPR* claims post-*International Air*. This reasoning is grounded in the CRT's statutory mandate of accessibility.³⁵

³³ At para. 14.

³⁴ At para. 15.

³⁵ *CRTA*, s. 2(a); *Pansegrau* at para. 3; *Reshaur* at para. 6.

PART 4 – NATURE OF ORDER SOUGHT

60. The CRT takes no position on the orders sought, except to oppose any order of costs as against the CRT. The CRT seeks no costs in this appeal, and no award of costs should be made against the CRT in any event. There is no evidence of misconduct or perversity in the proceedings, or any inappropriate argument on the merits of the appeal.³⁶

All of which is respectfully submitted.

Dated at the City of Victoria, Province of British Columbia, this 17th day of December, 2025.



Eliza McCullum

Counsel for the Respondent CRT

³⁶ 18320 Holdings Inc. at paras. 55-56.

APPENDICES: LIST OF AUTHORITIES

Authorities	Page # in factum	Para # in factum
<i>18320 Holdings Inc. v. Thibeau</i> , 2014 BCCA 494	9, 21	14, 60
<i>Air Passenger Rights v. WestJet Airlines Ltd.</i> , 2025 BCSC 2145	7	10
<i>Allbee v. WestJet Airlines Ltd.</i> , 2024 BCCRT 458	15	39
<i>British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.</i> , 2023 BCCA 168	10	16
<i>Boyd v. WestJet Airlines Ltd.</i> , 2024 BCCRT 640	7, 16	10, 43
<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i> , 2019 SCC 65	11-12, 14	21-23, 33
<i>Dhillon v. Workers' Compensation Appeal Tribunal</i> , 2022 BCCA 251	9	12
<i>Drayton v. W.C.W. Western Canada Water Enterprises Inc.</i> , 1989 CanLII 5319 (BC SC)	18	50
<i>Fredrickson v. Insurance Corporation of British Columbia</i> , (1986) 3 BCLR (2d) 145 (CA), aff'd [1988] 1 SCR 1089	12-13	26
<i>Green v. WestJet Airlines Ltd.</i> , 2025 BCCRT 1180	15	37
<i>Gulkison v. Vancouver Police Board</i> , 2014 BCSC 669	19	53
<i>Housen v. Nikolaisen</i> , 2002 SCC 33	12	24
<i>International Air Transport Association v. Canada (Transportation Agency)</i> , 2024 SCC 30	12-13, 17-18	26-27, 46-49
<i>Li v. Rao</i> , 2019 BCCA 265	14-15	36

<i>Ma v. Ma</i> , 2012 ONCA 408	12-13	26
<i>Ontario (Energy Board) v. Ontario Power Generation Inc.</i> , 2015 SCC 44	9	14
<i>Pansegrau v. Air Canada</i> , 2024 BCCRT 1297	13, 18-20	27, 49, 55-59
<i>Reshaur v. WestJet Airlines Ltd.</i> , 2024 BCCRT 1278	13, 15-20	27, 40-41, 46, 49-55, 57, 59
<i>The Owners, Strata Plan BCS 3407 v. Emmerton</i> , 2024 BCCA 354	10	15

APPENDICES: ENACTMENTS

ADMINISTRATIVE TRIBUNALS ACT

SBC 2004, c 45

Standard of review with privative clause

- 58** (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
- (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
- (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
 - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
 - (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
- (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
- (a) is exercised arbitrarily or in bad faith,
 - (b) is exercised for an improper purpose,
 - (c) is based entirely or predominantly on irrelevant factors, or
 - (d) fails to take statutory requirements into account.

Standard of review without privative clause

- 59** (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.
- (2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.
- (3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

- (a) is exercised arbitrarily or in bad faith,
- (b) is exercised for an improper purpose,
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

AIR PASSENGER PROTECTION REGULATIONS

SOR/2019-150

Compensation for delay or cancellation

- 19** (1) If paragraph 12(2)(d) or (3)(d) applies to a carrier, it must provide the following minimum compensation:
- (a) in the case of a large carrier,
 - (i) \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,
 - (ii) \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
 - (iii) \$1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and
 - (b) in the case of a small carrier,
 - (i) \$125, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,
 - (ii) \$250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
 - (iii) \$500, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

Compensation in case of refund

- (2) Despite subsection (1), if paragraph 12(2)(d) or (3)(d) applies to a carrier and the passenger's ticket is refunded in accordance with subsection 17(2), the carrier must provide a minimum compensation of
- (a) \$400, in the case of a large carrier; and

(b) \$125, in the case of a small carrier.

Deadline to file request

(3) To receive the minimum compensation referred to in paragraph (1) or (2), a passenger must file a request for compensation with the carrier before the first anniversary of the day on which the flight delay or flight cancellation occurred.

Deadline to respond

(4) The carrier must, within 30 days after the day on which it receives the request, provide the compensation or an explanation as to why compensation is not payable.

Compensation for denial of boarding

- 20 (1) If paragraph 12(4)(d) applies to a carrier, it must provide the following minimum compensation:
- (a) \$900, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by less than six hours;
 - (b) \$1,800, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours; and
 - (c) \$2,400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

Payment

(2) The carrier must provide the compensation to the passenger as soon as it is operationally feasible, but not later than 48 hours after the time of the denial of boarding.

Estimated arrival time

(3) If the compensation is paid before the arrival of the flight reserved as part of alternate travel arrangements at the destination that is indicated on their ticket, that compensation is determined based on the flight's expected arrival.

Written confirmation

(4) If it is not possible to provide the compensation before the boarding time of the flight reserved as part of alternate travel arrangements, the carrier must provide the passenger with a written confirmation of the amount of the compensation that is owed.

Adjustment

(5) If the arrival of the passenger's flight at the destination that is indicated on their original ticket is after the time it was expected to arrive when the

compensation was paid or confirmed in writing and the amount that was paid or confirmed no longer reflects the amount due in accordance with subsection (1), the carrier must adjust the amount of the compensation accordingly.

CANADA TRANSPORTATION ACT

SC 1996, c 10

PART I — Administration

Canadian Transportation Agency

Continuation and Organization

Agency continued

- 7** (1) The agency known as the National Transportation Agency is continued as the Canadian Transportation Agency.

PART VI — General

Administrative Monetary Penalties

Notices of violation

- 178** (1) The Agency, in respect of a violation referred to in subsection 177(1), (2.1) or (3), or the Minister, in respect of a violation referred to in subsection 177(2), (2.001), (2.01) or (2.2), may
- (a) designate persons, or classes of persons, as enforcement officers who are authorized to issue notices of violation; and
 - (b) establish the form and content of notices of violation.

...

Violations

- 179** (1) Every person who contravenes a provision, requirement or condition designated under section 177 commits a violation and is liable to a penalty fixed under that section or, in the case of a contravention referred to in subsection 177(3), either a penalty fixed under that subsection or a warning under subparagraph 180(b)(i).

(1.1) [Repealed, 2014, c. 8, s. 11]

How contraventions may be proceeded with

(2) Where any act or omission can be proceeded with as a violation or as an offence, proceedings may be commenced in respect of that act or omission as a violation or as an offence, but proceeding with it as a violation precludes proceeding with it as an offence, and proceeding with it as an offence precludes proceeding with it as a violation.

Nature of violation

(3) For greater certainty, a violation is not an offence and, accordingly, section 126 of the *Criminal Code* does not apply.

Continuing violation

(4) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

Issuance of notice of violation

180 If a person designated as an enforcement officer under paragraph 178(1)(a) believes that a person has committed a violation, the enforcement officer may issue, and shall serve on the person, a notice of violation that names the person, identifies the violation and

- (a) in the case of a contravention other than one referred to in paragraph (b), sets out the penalty for the violation that the person is liable to pay;
- (b) in the case of a contravention of any provision of any regulation made under subsection 170(1) or a contravention of any of subsections 60(1) to (4) and (7), 61(1) to (3) and 62(1) to (3) and (6) of the *Accessible Canada Act*

- (i) contains a warning, or
 - (ii) sets out the penalty for the violation that the person is liable to pay, and a lesser amount that may be paid in complete satisfaction of the amount of the penalty if paid within the time and in the manner set out in the notice; and
- (c) sets out the particulars concerning the time for paying and the manner of paying the penalty, if there is one.

CARRIAGE BY AIR ACT

RSC 1985, c C-26

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

(1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) *In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.*

CIVIL RESOLUTION TRIBUNAL ACT

SBC 2012, c 25

Part 1 — Definitions and Tribunal Mandate

Division 2 — Tribunal Mandate

Civil Resolution Tribunal mandate and role

- 2** (1) The Civil Resolution Tribunal is established, consisting of the chair and other tribunal members appointed in accordance with this Act.
- (2) The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that
 - (a) is accessible, speedy, economical, informal and flexible,
 - (b) applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
 - (c) uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and
 - (d) accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.
- (3) In fulfilling its mandate, the role of the tribunal is
 - (a) to encourage the resolution of disputes by agreement between the parties, and
 - (b) if resolution by agreement is not reached, to resolve the dispute by deciding the claims brought to the tribunal by the parties.
- (4) In addition to its responsibilities in relation to disputes brought to the tribunal for resolution, the tribunal may
 - (a) provide the public with information on dispute resolution processes generally, and

- (b) make its online dispute resolution services available to the public generally.

Part 2 — How to Bring a Matter to the Tribunal

Division 1 — Initiating a Claim

General authority for tribunal to refuse to resolve claim or dispute

- 11** (1) The tribunal may refuse to resolve a claim or a dispute within its jurisdiction if it considers that any of the following apply:
- (a) the claim or the dispute
 - (i) would be more appropriate for another legally binding process or dispute resolution process, or
 - (ii) has been resolved through a legally binding process or other dispute resolution process;

Part 3 — Tribunal Proceedings Generally

General rule that parties to represent themselves

- 20** (1) Unless otherwise provided under this Act, the parties are to represent themselves in a tribunal proceeding.
- (2) A party may be represented by a lawyer or another individual with authority to bind the party in relation to the dispute if
- (a) the party is a child or a person with impaired capacity,
 - (b) the rules permit the party to be represented, or
 - (c) the tribunal, in the interests of justice and fairness, permits the party to be represented.
- (3) Without limiting the authority of the tribunal under subsection (2) (c), the tribunal may consider the following as circumstances supporting giving the permission:
- (a) another party is represented in the proceeding;
 - (b) the other parties have agreed to the representation.
- (4) A person representing a party in a tribunal proceeding must be a lawyer unless
- (a) the rules otherwise permit, or
 - (b) the tribunal is satisfied that the person being proposed to represent the party is an appropriate person to do this.

(5) In the case of a party that is a corporation, partnership or other form of organization or office with capacity to be a party to a court proceeding, the person acting for the party in the tribunal proceeding must be

- (a) a director, officer or partner of the party,
- (b) an individual permitted under the rules, or
- (c) an individual permitted by the tribunal.

Lawyer representation in respect of accident claims or intimate image protection claims

20.1 Without limiting section 20, a party may, as of right, be represented by a lawyer in a tribunal proceeding in respect of an accident claim or an intimate image protection claim.

Part 5.1 — Judicial Review of Tribunal Decisions

Standard of review if tribunal has exclusive jurisdiction or specialized expertise

56.7 (1) The tribunal must be considered to be an expert tribunal relative to the courts in relation to a decision of the tribunal

- (a) concerning a claim within the exclusive jurisdiction of the tribunal, or
- (b) concerning a claim in respect of which the tribunal is to be considered to have specialized expertise, other than a decision of the tribunal concerning a claim described in section 133 (1) (c) [*claims within jurisdiction of tribunal for accident claims*].

(2) On an application for judicial review of a decision of the tribunal for which the tribunal must be considered to be an expert tribunal, the standard of review to be applied is as follows:

- (a) a finding of fact or law or an exercise of discretion by the tribunal must not be interfered with unless it is patently unreasonable;
- (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly;
- (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

Standard of review – other tribunal decisions

56.8 (1) This section applies to an application for judicial review of a decision of the tribunal other than a decision for which the tribunal must be considered to be an expert tribunal under section 56.7.

(2) The standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting

- (a) a finding of fact,

- (b) the exercise of discretion, or
 - (c) the application of common law rules of natural justice and procedural fairness.
- (3) The Supreme Court must not set aside a finding of fact by the tribunal unless
- (a) there is no evidence to support the finding, or
 - (b) in light of all the evidence, the finding is otherwise unreasonable.
- (4) The Supreme Court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.
- (5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

Part 10 — Tribunal Jurisdiction

Division 3 — Tribunal Small Claims

Claims within jurisdiction of tribunal for tribunal small claims

- 118** (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction to resolve a claim for relief in the nature of one or more of the following, if the amount of the claim is less than or equal to an amount, in respect of the *Small Claims Act*, prescribed by regulation as the maximum tribunal small claim amount:
- (a) debt or damages;
 - (b) recovery of personal property;
 - (c) specific performance of an agreement relating to personal property or services;
 - (d) relief from opposing claims to personal property.
- (2) An initiating party may adjust the initiating party's claim to fit within the maximum tribunal small claim amount prescribed under subsection (1).
- (3) The maximum tribunal small claim amount prescribed under subsection (1) may not exceed the amount prescribed by the Lieutenant Governor in Council under section 3 [*claims the Provincial Court may hear*] of the *Small Claims Act*.

Claims beyond jurisdiction of tribunal for tribunal small claims

- 119** The tribunal does not have jurisdiction under this Division in a claim
- (a) for libel, slander or malicious prosecution, or
 - (b) despite section 9 [*government as party*], for or against the government.

JUDICIAL REVIEW PROCEDURE ACT

RSBC 1996, c 241

Notice to decision maker and right to be a party

- 15** (1) For an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power
- (a) must be served with notice of the application and a copy of the petition, and
 - (b) may be a party to the application, at the person's option.
- (2) If 2 or more persons, whether styled a board or commission or any other collective title, act together to exercise a statutory power, they are deemed for the purpose of subsection (1) to be one person under the collective title, and service, if required, is effectively made on any one of those persons.

LAW AND EQUITY ACT

RSBC 1996, c 253

Assignment of debts and choses in action

- 36** (1) An absolute assignment, in writing signed by the assignor, not purporting to be by way of charge only, of a debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, is and is deemed to have been effectual in law, subject to all equities that would have been entitled to priority over the right of the assignee if this Act had not been enacted, to pass and transfer the legal right to the debt or chose in action from the date of the notice, and all legal and other remedies for the debt or chose in action, and the power to give a good discharge for the debt or chose in action, without the concurrence of the assignor.
- (2) If the debtor, trustee or other person liable in respect of the debt or chose in action has had notice that the assignment is disputed by the assignor or anyone claiming under the assignor, or of any other opposing or conflicting claims to the debt or chose in action, the debtor, trustee or other person
- (a) is entitled to call on the persons making the claim to interplead concerning the debt or chose in action, or
 - (b) may pay the debt or chose in action into court, under and in conformity with the *Trustee Act*.

TRIBUNAL SMALL CLAIMS REGULATION**BC Reg 232/2018****Maximum tribunal small claim amount**

- 3** For the purposes of section 118 (1) [*claims within jurisdiction of tribunal for tribunal small claims*] of the Act, the maximum tribunal small claim amount prescribed is \$5 000, exclusive of interest and any expenses referred to under section 49 [*order for payment of expenses*] of the Act.