SUBMISSIONS ON THE JURISDICTION OF THE CIVIL RESOLUTION TRIBUNAL

The Supreme Court of Canada's decision in *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 [***IATA***] does not call into question the jurisdiction of the British Columbia Civil Resolution Tribunal [**CRT**] to hear and decide claims for standardized compensation under ss. 19 and 20 of the *Air Passenger Protection Regulations* [***APPR***]. Rather, the Court's reasons make it clear that claims for *APPR* compensation are claims for relief in the nature of debt. Such claims are within the CRT's jurisdiction pursuant to s. 118(1)(a) of the *Civil Resolution Tribunal Act* **[*CRTA*]**.

Claims under s. 14 of the *APPR* also fall within the jurisdiction of the CRT. Section 14 of the *APPR* creates a contractual obligation on carriers to offer food and drink, a means of communication, and accommodation in certain circumstances. Section 2(1) of the *APPR* imposes liability on the carrier for this obligation. If the carrier fails to do so, it is in breach of contract, and the passenger has a claim for damages for breach of contract.

A. The Tariff and the *APPR*

The *Canada Transportation Act* requires that every air carrier establish and publish a "tariff" setting out its terms and conditions of carriage with respect to an enumerated list of core areas. The tariff is the contract of carriage between the carrier and the passenger: *Bergen v. WestJet Airlines Ltd*., 2021 BCSC 12 at para. 27; *Gauthier v. Air Canada*, 2024 BCSC 231 at para. 49; see also *Lukács v. Canada (CTA)*, 2015 FCA 269 at para. 20.

The *APPR* are regulations promulgated pursuant to the *Canada Transportation Act*.

The *APPR* creates obligations for air carriers in favour of passengers which, per s. 86.11(4) of the *Canada Transportation Act,* are "deemed to form part of the terms and conditions set out in the carrier's tariffs in so far as the carrier's tariffs do not provide more advantageous terms and conditions of carriage than those obligations." As explained by the Supreme Court of Canada, obligations with respect to compensation set out in the *APPR* "become part of the carrier's conditions of carriage": *IATA*, para. 86.

The rights and obligations set out in the *APPR* thereby become part of the contractual relationship between a carrier and a customer, and dictate uniform minimum standards which must be adhered to in the terms and conditions governing the contractual relationship between every carrier and passenger.

B. *IATA* Did Not Decide the CRT's Jurisdiction

In *IATA*, the Supreme Court of Canada held that a claim for standardized compensation under ss. 19 and 20 of the *APPR* is not an “action for damages” within the meaning of Article 29 of the *Montreal Convention*, an international treaty that has the force of law in Canada. The Court thereby confirmed that the *Montreal Convention* is not a bar to consumers’ rights to claim compensation under the *APPR*. The Court confirmed that consumers are entitled to bring such claims, notwithstanding the *Montreal Convention*.The Court did not purport to decide which courts or tribunals had jurisdiction over consumer *APPR* claims.

IATA did not address whether claims for standardized compensation under ss. 19 and 20 of the *APPR* are claims for relief “in the nature of debt or damages” within the meaning of s. 118(1)(a) of British Columbia's *Civil Resolution Tribunal Act* [***CRTA***], nor did *IATA* consider the CRT's jurisdiction at all. None of these questions were before the Supreme Court in *IATA*. Furthermore, *IATA* did not address the legal characterization of claims arising from an airline’s failure to provide a refund, alternate transportation, meals, or accommodation that the airline was required to provide under the *APPR* and for which the airline is liable under s. 2(1) of the *APPR*.

The meaning of the phrase “action for damages” in the *Montreal Convention*, decided in *IATA*, does not aid in interpreting what is relief “in the nature of debt” in British Columbia provincial legislation. The question resolved in *IATA* was one of international law and treaty interpretation, which has no bearing on the statutory interpretation of British Columbia’s *CRTA*, a provincial statute wholly unrelated to the *Montreal Convention*.

C. The Question before this Tribunal

There are two questions before the Tribunal. The first is whether the Supreme Court of Canada’s finding that a claim based on rights set out in ss. 19 and 20 of the *APPR* is not an “action for damages” within the meaning of the *Montreal Convention* means that such claims fall outside the CRT’s jurisdiction. The second is whether a claim for breach of rights arising under s. 14 of the *APPR* is a claim for “debt or damages” falling within CRT jurisdiction.

Resolution of these questions requires interpretation of s. 118 of the *CRTA*, which reads as follows:

> 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:
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> (a) debt or damages;

Notably, this provision provides jurisdiction in respect of claims for relief "**in the nature of"** "debt or damages"*.* That the statute contains the flexible language referring to the "nature" of relief illustrates that the scope of jurisdiction is to be approached in a pragmatic and functional way. This is a question of statutory interpretation, not of international law.

D. Statutory Interpretation of Relief in the Nature of "Debt"

The modern approach to statutory interpretation requires that the words of a statute be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the statute and its objects and purposes: *G.D. v. South Coast British Columbia Transportation Authority*, 2024 BCCA 252 at para. 73.

The meaning of claims "in the nature of debt or damages" in the *CRTA* encompasses claims for standardized compensation under ss. 19 and 20 of the *APPR* for the following reasons.

i. <u>Ordinary Meaning of "Debt"</u>

The term "debt" has a specific and established meaning that is distinct from "damages". A debt, or a liquidated demand, has been consistently defined for the purposes of interpreting the *Court Order Enforcement Act* as:

> "'Debt or Liquidated Demand.' - A liquidated demand in the nature of a debt, i.e., 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.'"
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> [Emphasis added].

See *Drayton v. W.C.W. Western Canada Water Enterprises Inc.* (1989) 1989 CanLII 5319 (BC SC), 63 D.L.R.(4th) 71 at 73, adopted in e.g. *Busnex Business Exchange Ltd. v. Canadian Medical Legacy Corp*., 1999 BCCA 78 at para. 8; *Primus Electric Inc. v. Ryken Construction Inc.*, 2014 BCSC 421 at para. 32.

Further, at common law, when parties set out liquidated damages in a contract, the amount due is in the nature of a debt, not damages. As explained in *AMT Financie Inc. v. Gonabady,* 2010 BCSC 278:

> [81] **Where parties set out liquidated damages in a contractual agreement, the amount due is in the nature of a debt rather than damages, provided that the amount due has already been ascertained or can be ascertained by simple arithmetic and without investigation by the court.** In such cases, there is no duty to

> mitigate and the breaching party is obligated to pay out the amount owing regardless of whether it is actually incurred as a loss by the innocent party: see *Bayliss Sign Ltd. v. Advantage Holdings Ltd.* (1986), 9 B.C.L.R. (2d) 230, 1 A.C.W.S. (3d) 414 (C.C.); *541574 B.C. Ltd. v. Vancouver English Centre Inc.*, [1998] B.C.J. No. 2989 (Prov. Ct.); and *32262 B.C. Ltd. v. Gardner*, [1996] B.C.J. No. 3188 (S.C.). The benefit of setting damages at the formation of the contract allows the parties to know in advance the consequences of a breach of their contractual obligations and to avoid the cost of litigating and proving the actual damages incurred.
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> [Emphasis added]

Whether money alleged to be owed under a contractual arrangement is a "debt" or is "damages" turns then on whether the amount has already been ascertained or can be ascertained by simple arithmetic and without investigation.

What amount is due and owing under ss. 19 and 20 of the *APPR* is ascertained and standardized. As set out above, obligations under the *APPR* are deemed to form part of the contractual relationship between the carrier and passenger. There is no need to perform any individualized assessment of loss to determine what passengers are contractually entitled to. Indeed, this standardization of entitlements and lack of any need for case by case investigation is precisely what led the Supreme Court of Canada in *IATA* to conclude that claims under the *APPR* were not claims for "damages" within the meaning of the *Montreal Convention*:

> [97] […] Where such claims are filed in courts of law, the claim is not in the nature of one for damages, because the claim is not tied to any harm suffered by the claimant and does not require any "case-by-case assessment" or relate to "compensation for harm incurred" (*International Air Transport Association v. Department for Transport*, at para. 43; *Zicherman*, at p. 227). Instead, **the claim is for payment of an amount that is already owed as a matter of standardized entitlements provided for under a consumer protection scheme**.
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> [Emphasis added.]

The Supreme Court of Canada was clear. Claims under ss. 19 and 20 of the *APPR* fall precisely into the accepted definition of a claim in the nature of a debt. They are claims for an ascertained and standardized amount that is alleged to be already owed under a contract governed by a consumer protection scheme. They are therefore within the jurisdiction of the CRT.

ii. Consistency with the *Small Claims Act*

The phrase "debt or damages" also appears in s. 3(1)(a) of the *Small Claims Act*, a legislation related to the *CRTA*, to prescribe the Provincial Court's jurisdiction, and should be interpreted in a consistent fashion. As this Tribunal has repeatedly recognized, the small claims jurisdictional provisions applicable to the CRT under s. 118(1)(a) are "functionally identical to those applicable

to the Provincial Court under the *Small Claims Act": Trans Can Trucking Ltd. v. Rana*, 2023 BCCRT 152, at para 11; *Wolfe v. Peace River Regional District*, 2022 BCCRT 652, at para. 14.

Section 3(1)(a) of the *Small Claims Act* was held to be "a generally-worded, broad-scope provision on jurisdiction": *Wijeyasekara et al. v. Singapore Airlines Limited*, 2007 BCPC 392 at para. 3. Section 118(1)(a) of the *CRTA* should be given the same broad interpretation.

iii. **The *CRTA*'s Purpose**

The purpose of the *CRTA* is to provide access to affordable justice without needing a lawyer or attending court. Holding that claims for standardized compensation owed under ss. 19 and 20 of the *APPR* are not claims for relief in the nature of "debt or damages" within the meaning of the *CRTA* would bar access to justice for consumers in British Columbia, and defeat the *CRTA*'s purpose.

First, the CRT and the Provincial Court's jurisdiction to hear claims for relief in the nature of "debt or damages" go hand-in-hand. If the CRT lacks jurisdiction to hear claims for standardized compensation owed under ss. 19 and 20 of the *APPR*, then the Provincial Court cannot hear these claims either, leaving the Supreme Court of British Columbia as the only forum in the provincial court structure to adjudicate such claims.

Second, claims for standardized compensation owed under ss. 19 and 20 of the *APPR* are in the range of a few hundred to a few thousand dollars. Forcing consumers to bring such claims in the Supreme Court of British Columbia, with its complex procedures that most lay litigants are unable to navigate, would bar access to justice, contrary to the purpose and objectives of the *CRTA*.

Third, access to affordable justice in claims of low dollar value is also a consumer protection measure. The CRT's jurisdiction to adjudicate consumer disputes between passengers and airlines should be interpreted "generously in favour of consumers": *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 37.

Lastly, claims under the *Montreal Convention* and claims under the *APPR* often arise with respect to the same set of facts. It is well established that claims arising under the *Montreal Convention* are claims for "debt or damages" and are within the Provincial Court's and the CRT's jurisdiction: *Wijeyasekara et al. v. Singapore Airlines Limited*, 2007 BCPC 392 at para. 3.

Holding that the CRT and the Provincial Court lack jurisdiction to hear claims for standardized compensation owed under ss. 19 and 20 of the *APPR* would require consumers to commence two separate proceedings in different forums with respect to the same set of facts: one for their claim under the *Montreal Convention*, and another for their claim for standardized compensation under the *APPR*. This cannot possibly be what the legislature intended, and such an interpretation should be rejected as absurd: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 27.

E. Section 14 Claims

Section 14 of the *APPR* sets out minimal standards of treatment of passengers that carriers must adhere to in the event of delays of more than two hours that are within the carrier's control. Specifically, for delays of more than two hours, carriers must provide free of charge food and drink in reasonable quantities and access to a means of communication. If the delay is expected to result in an overnight wait, carriers must offer hotel or other reasonable accommodation, and transportation thereto and therefrom.

Subsection 2(1) of the *APPR* imposes liability on the carrier for these obligations.

If an airline fails to comply with these obligations, it is in breach of contract. As noted above, the *APPR* requirements are deemed to form part of the tariff, which regulates the contractual relationship between the parties.

When an airline breaches its contractual obligations by failing to offer the required food, drink, access to communication, or accommodation, this gives rise to an action for damages for breach of contract. This has been noted by this Tribunal in the past, including in *Prinz v. WestJet Airlines Ltd*., 2024 BCCRT 980 at paras. 12-15.

Carriers are not immune from liability under the *Montreal Convention* for such an action for damages in respect of international flights. Rather, Article 19 of the *Montreal Convention* contemplates that carriers may be held liable for damage occasioned by delay. Carriers may escape liability under the *Montreal Convention* by showing they "took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures." This Tribunal has recognized in the past that even when liability under the *APPR* is not triggered because the delay was outside the carriers' control, liability under the *Montreal Convention* may still be found if reasonable steps to avoid the damage (like securing alternative flights) were not undertaken: *Boyd v. WestJet Airlines Ltd*., 2024 BCCRT 640 at paras. 20-22.

A claim arising from a failure to adhere to the minimal standards required by s. 14 of the *APPR* is a claim for damages for breach of contract, and is within this Tribunal's jurisdiction, much like claims under Article 19 of the *Montreal Convention*. This Tribunal has jurisdiction over both claims in respect of breaches of s. 14 of the *APPR* and claims arising under the *Montreal Convention.*

When a claimant seeks reimbursement of out-of-pocket expenses incurred for meals, accommodation, ground transportation, and communication, this Tribunal should consider the claimant's rights both under s. 14 of the *APPR* and Article 19 of the *Montreal Convention*, irrespective of the legal theory articulated by the claimant. This Tribunal's role is to provide access to affordable justice to consumers without the need of a lawyer or attending court. The litigants present a set of facts to the Tribunal, and it is left to the Tribunal member to determine the legal issues that emerge from those facts and bring their legal expertise to bear in resolving those issues: *RVR Concrete v. Windsor Wall Forming*, 2022 ONSC 4535 at para. 49.

F. Conclusion

Claims under ss. 19 and 20 of the *APPR* are claims for relief in the nature of debt. This was made clear by the Supreme Court of Canada in *IATA,* and is inherent in the nature of the rights created by the *APPR*. To hold otherwise would result in a situation where, notwithstanding the Supreme Court of Canada's recognition that claims for compensation under the *APPR* "can be vindicated in court" (*IATA,* para. 97), legal proceedings to enforce these relatively small dollar claims would be forced to go to the British Columbia Supreme Court. This could not possibly be what the legislature intended in creating the CRT and the Small Claims Court.

A claim arising from a carrier's breach of its obligations under s. 14 of the *APPR* is a claim for contractual damages, much like a claim under Article 19 of the *Montreal Convention*.

The CRT has jurisdiction, and this matter should move forward.