

I. OVERVIEW OF AIR CANADA'S POSITION

1. Air Canada submits this motion to dismiss the claim on the grounds that the Civil Resolution Tribunal (“**CRT**”) lacks jurisdiction under section 118(1)(a) of the *Civil Resolution Tribunal Act* (“**Act**”).¹ The CRT’s jurisdiction is limited to claims for *debt or damages*. Air Canada asserts that compensation under the *Air Passenger Protection Regulations*² (“**APPR**”) does not constitute either a debt or damages as defined in law.
2. This submission relies on the Supreme Court of Canada’s (“**SCC**”) decision in *International Air Transport Association v. Canada (Transportation Agency)*,³ which explicitly clarifies the nature of APPR compensation as a form of standardized entitlement distinct from damages.
3. Additionally, Air Canada argues that APPR compensation does not meet the common law definition of a debt, as it is contingent upon conditions precedent, rendering the obligation uncertain until those conditions are satisfied.

II. APPR COMPENSATION IS NOT DAMAGES

4. The SCC has definitively ruled that APPR compensation does not constitute damages. The Court distinguished between damages and standardized regulatory compensation, emphasizing the following key points in *IATA*.
 - a. **Standardized nature of compensation**
5. APPR compensation is not tied to individual harm or loss. Instead, it is a regulatory entitlement owed identically to all passengers who meet certain criteria, regardless of whether they have suffered any measurable harm:

[85] The Regulations do not provide for compensation that is individualized in the manner of a damage award. The compensation for delay, cancellation, denial of boarding or loss or damage to baggage is not contingent “on proof of damage”, is not linked to a showing of “damage sustained” or “occasioned by delay” to the claimant, and does not vary depending on the extent of the harm (if any) that results from wrongdoing by the carrier. The fact that the compensation owed under the Regulations may vary depending on whether it relates to a cancellation, delay, or denial of boarding, the amount of time that a passenger was delayed, and the size of the carrier does not change the standardized nature of the compensation, which addresses conditions experienced “identically by all passengers” (Nelson, at para. 52).

b. No proof of damage required

6. Damages require proof of harm or loss sustained by a claimant, which is absent in claims under the APPR. Compensation under the APPR is predetermined and does not vary based on the extent of harm:

[94] Because the Regulations do not provide for an action for damages, but instead create an entitlement to standardized compensation that does not seek to measure a passenger’s loss, they fall outside the scope of Article 29 and do not conflict with the Montreal Convention. The two forms of passenger compensation envisaged by the Regulations and the Montreal Convention are capable of “standing together”. The bargain at the centre of the Montreal Convention remains undisturbed. In actions for damages, passengers continue to enjoy certain evidentiary presumptions “on proof of

damage” (*Thibodeau*, at para. 42) which address “the need for equitable compensation based on the principle of restitution” (*Montreal Convention*, preamble). Carriers remain shielded from unlimited liability arising from actions for damages related to claims for death or bodily injury, damage or loss of baggage and cargo, and for delay.

[our emphasis]

c. No case-by-case assessment

7. APPR compensation is calculated based on standardized conditions set out in the regulations, without any individualized assessment of harm or causation. Compensation is predefined by regulation rather than adjudicated based on individual circumstances. This lack of individualized inquiry separates APPR entitlements from the concept of damages:

[97] Second, the appellants submit that, because claims for compensation under the *Regulations* can be vindicated in court, the *Regulations* do in fact give rise to “actions for damages” despite the primacy of the administrative enforcement mechanism under the *CTA*. But the fact that claims payable pursuant to the *Regulations* can be vindicated by way of an action in court does not change the nature of the compensation or the *Regulations* themselves. The *Regulations* make no provision for claims to be filed in court. And even assuming, without deciding, that judicial proceedings that seek to vindicate a claim under the *Regulations* amount to an “action” for the purposes of the *Montreal Convention*, the claim would not be for “damages”. 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.

[our emphasis]

8. Accordingly, APPR compensation lacks the individualized assessment and harm-based rationale central to damages, it falls outside the CRT’s jurisdiction under section 118(1)(a) of the Act.

III. APPR COMPENSATION DOES NOT CONSTITUTE A DEBT

9. A debt under common law is defined as:

[83] The ordinary legal meaning of the term “debt” has been held to be “an obligation to pay a sum certain or a sum readily reducible to a certainty”; *Canadian Imperial Bank of Commerce v. International Brokers Co.*, [1994] 8 W.W.R. 191 (Sask. C.A.) at para. 7, see also C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2d ed., (Toronto, Ontario: Carswell, 1994) at p. 16.⁴

“[A] sum payable in respect of a liquidated money demand, recoverable by an action.” *Diewold v. Diewold*, [1941] 1 D.L.R. 561 (S.C.C.). “[T]hat which is owed or due; anything, as money, goods or service, which one person is under obligation to pay or render another.” *Secretary of State of Canada v. Neitzke* (1921), 62 S.C.R. 262. See bankruptcy; creditor; insolvency.⁵

[our emphasis]

10. APPR compensation fails to meet this definition for the following reasons.

a. **Contingency of obligations**

11. A "debt" must be unconditional, due, and payable. Halsbury's Laws of Canada notes that for a debt to be "due and payable," it must be perfected, meaning it is not subject to contingencies or conditions that might prevent payment:

Debt must be absolute and unconditional. In order for a debt to be considered due and payable, it must be unconditional. Where conditions may arise that would either prevent payment or vest the amount in another, the moneys are not attachable.⁷ However, a distinction must be drawn between an obligation that is conditional only on the effluxion of time, and an obligation dependent on another party rendering services that are a condition precedent to the completion of the obligation. This is the difference between a "perfected debt" and a "conditional one".⁸ In the case of a perfected debt, it may be said that the time for payment, although it be in the future, will certainly arise.⁹ For example, where a debtor has agreed to pay a garnishee a series of monthly instalments, the future instalments can be attached.¹⁰ However, rent accruing due in the future is generally not attachable because the future rent might never become payable.¹⁶

12. This distinction is crucial when comparing "perfected" debts, which are certain and inevitable (e.g., installments agreed upon by contract), with "conditional" debts, which depend on external factors such as services rendered or fulfillment of prerequisites.

13. The APPR compensation is not "liquidated" because the mechanism, by its nature, is contingent on the fulfillment of specific conditions, which makes the amount uncertain until these conditions are met. This contingency undermines the certainty required for an obligation to be classified as a "perfected debt."

14. Liquidated obligations, by contrast, are predefined, fixed sums that are due under an agreement or statute without the need for further assessment.

15. Section 19 of the APPR provides for standardized compensation to passengers experiencing flight disruptions attributable to the carrier. However, this entitlement is explicitly contingent on the application of subsections 12(2)(d) and 12(3)(d) of the APPR, which impose conditions precedent that must be satisfied before any obligation to compensate arises. These conditions include:

- Compliance with eligibility requirements, such as the passenger's timely submission of a compensation request pursuant to section 19(3) APPR.
- The flight disruption was within the carrier's control under section 12 APPR and not caused by uncontrollable or safety-related factors. This is not always information that Air Canada has and must be demonstrated. For example, a passenger may be coming off a connecting flight operated by another carrier, which was delayed, causing a misconnection in their itinerary onto a flight operated by Air Canada, and a delay at arrival at final destination. If a claim is made against Air Canada, evidence that the initial delay was within carrier's control must be provided as a condition to compensation being payable.

- Arrival at final destination over 3 hours. Air Canada does not always have information on the length of a delay at final destination, as the passenger may be completing their itinerary on another or other carrier(s). The length of the delay must therefore be proven by the passenger.

16. These provisions establish prerequisites that must be satisfied before any compensation is payable. This regulatory design underscores the contingent nature of APPR compensation, which is fundamentally at odds with the legal concept of a debt. A debt is characterized by its certainty and immediate enforceability, whereas APPR compensation depends on compliance with specific and variable regulatory conditions.

17. Unlike rent or agreed-upon installments, which become due on a fixed schedule, APPR compensation is not guaranteed until the prescribed conditions are satisfied. This aligns with the principle that future obligations subject to potential variation or nullification (like future rent, which might never become payable if the lease terminates) are not considered attachable or unconditional debts under common law principles.

18. Since compensation is conditional on meeting these criteria, it cannot be classified as a “sum certain” or readily ascertainable obligation. The existence and quantum of the obligation remain uncertain until all conditions are met and verified.

b. No unconditional obligation to pay

19. Unlike a debt, which arises from an unconditional obligation to pay, APPR compensation is conditional and regulatory in nature. The carrier’s obligation arises only upon verification of specific criteria. This distinction undermines any characterization of APPR compensation as a debt enforceable at common law.

c. Regulatory purpose

20. APPR compensation is not rooted in contractual or quasi-contractual obligations but is instead a standardized regulatory entitlement designed to enforce consumer protection standards. As the SCC noted in *IATA*, APPR compensation reflects a policy objective, not an obligation akin to a contractual debt.⁷

21. The distinction between debt and compensation is further emphasized by the fact that the obligations imposed by these regulations are mandatory and cannot be modified through agreements between parties. Regardless of whether an airline considers these obligations a “debt,” it remains legally bound to fulfill them, with non-compliance subject to administrative sanctions.

IV. CRT Lacks Jurisdiction Over Regulatory Entitlements

22. APPR compensation, being neither a debt nor damages, falls outside the CRT’s jurisdiction. It is a regulatory entitlement designed to enforce compliance with consumer protection standards, not a private-law claim arising from contract or tort.

23. The CRT’s mandate does not extend to adjudicating administrative or regulatory claims. Such claims are better suited to the enforcement mechanisms of the Canadian Transportation Agency (CTA) or, where applicable, civil courts. Allowing the CRT to adjudicate claims under

the APPR would improperly expand its jurisdiction beyond what is contemplated under section 118(1)(a) of the Act.

24. Additionally, the APPR is silent on the creation of a private right of action. Unlike other federal legislation, such as the *Competition Act*⁸ or the *Canadian Environmental Protection Act*⁹, the APPR does not provide individuals with the ability to directly pursue legal claims for compensation or enforcement in a court of law. Instead, enforcement of its provisions is exclusively managed through administrative mechanisms.

V. **APPR DOES NOT MANDATE CARRIERS TO REFUND EXPENSES**

25. Section 14 APPR mandates carriers to provide certain standards of treatment, such as food, accommodation, and transportation to and from the airport. However, it does not impose an obligation on carriers to refund expenses incurred for such services.

26. As determined by the SCC, claims for APPR compensation do not qualify as actions for damages, or else they would conflict with the exclusivity of the Montreal Convention:

[94] Because the *Regulations* do not provide for an action for damages, but instead create an entitlement to standardized compensation that does not seek to measure a passenger's loss, they fall outside the scope of Article 29 and do not conflict with the *Montreal Convention*.[...]¹⁰

[our emphasis]

27. Consequently, a claimant cannot pursue reimbursement for such expenses under section 14 APPR. It should be noted that the decision in *Prinz v. WestJet Airlines Ltd., 2024 BCCRT 980* was rendered prior to the SCC decision.

VI. **Conclusion**

28. For the reasons set out above, Air Canada respectfully submits that APPR compensation does not constitute a debt or damages under the Act. Accordingly, the CRT lacks jurisdiction over this matter, and the claim should be dismissed.

All of which is respectfully submitted.