

VANCOUVER

17-Nov-25

COURT OF APPEAL
REGISTRY

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

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
(Tribunal Whose Order was Under Judicial Review)**

LOWER COURT TRANSCRIPT
Supreme Court Proceedings in Chambers
(Pages 1 - 25)

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

Air Passenger Rights

WestJet Airlines Ltd.

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**IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE MADAM JUSTICE SHARMA)**

New Westminster, BC
March 24–25, 2025

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

BETWEEN:

Air Passenger Rights

Petitioner

AND:

WestJet Airlines Ltd.

Respondent

PROCEEDINGS IN CHAMBERS

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No exhibits marked.

Submissions by Cnsl S. Lin

March 24, 2025
Vancouver, BC

(EXCERPT FROM PROCEEDINGS)

(PROCEEDINGS COMMENCED) ([10:04:42 AM])
(EXCERPT BEGINS) ([10:54:38 AM])

SUBMISSIONS BY CNSL S. LIN:

CNSL S. LIN: So here what the Supreme Court of Canada analyzed was, well, is this standardized compensation of 400, 700 or 1,000 dollars -- is it, quote/unquote, action for damages, or is it something else? If it's action for damages, it's trumped, and this regulation needs to be struck down. If it's not an action for damages, they can coexist, no problem. And this is what -- and the Supreme Court of Canada ultimately, of course, ruled that it was -- the standardized compensation amounts are not action for damages, and it starts from paragraph 94.

Because the [APPR] do not provide for an action of 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 --

Of the *Montreal Convention*.

-- 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 --

And emphasized.

-- actions for damages passengers continue to enjoy certain evidentiary presumptions "on proof of damage" ... which address "the need for equitable compensation based on the principle of restitution" ... Carriers remain shielded from unlimited liability

Submissions by Cnsl S. Lin

1 arising from --

2
3 Again, quote.

4
5 -- actions for damages related to claims for
6 death or bodily injury, damage or loss of
7 baggage and cargo and for delay.

8
9 95:

10
11 It is helpful to look beyond the context of
12 the *Montreal Convention* to other instances in
13 which courts have considered whether a
14 statutory entitlement is an award of damages.

15
16 And then I'm just reading the highlighted portion.

17
18 In concluding that the compensation owed
19 under the *Employment Standards Act* was not an
20 award of damages and there was no double
21 recovery, the court characterized the
22 compensation payable under the *Employment*
23 *Standards Act* as "minimum entitlements" that
24 "are not linked to ... actual loss
25 suffered ..." The entitlements could be
26 contracts with damages in the employment
27 context, which seek to correct the loss
28 suffered by a plaintiff through monetary
29 compensation ...

30
31 And then further on in paragraph 97:

32
33 ... the fact that claims payable pursuant to
34 the [APPR] can be vindicated by way of an
35 action in court does not change the nature of
36 the compensation or the *Regulations*
37 themselves.

38
39 So the airlines were arguing, well, you can file
40 in court to claim the standardized compensation,
41 so it must be a standard -- an action for damages.
42 And the Supreme Court of Canada rejected that
43 proposition and says:

44
45 ... even assuming, without deciding, that
46 judicial proceedings that seek to vindicate a
47 claim under the *Regulations* --

Submissions by Cnsl S. Lin

1

2

THE COURT: Sorry. Where are you reading from?

3

CNSL S. LIN: 97. The --

4

THE COURT: 97.

5

CNSL S. LIN: -- highlighted -- 97.

6

THE COURT: Yeah.

7

CNSL S. LIN: So the -- the argument was that because
you can file in court doesn't --

8

THE COURT: Yes.

10

CNSL S. LIN: -- necessarily mean an action for
damages, but the Supreme Court of Canada rejected
that proposition and said:

11

12

13

14

... 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."

15

16

17

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21

And I emphasize that's the key here. It's not a
claim for damages.

22

23

24

Where such claims are filed in courts of law,
the claim is not in the nature of one for
damages --

25

26

27

28

Not in the nature of one for damages.

29

30

-- 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" ... 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.

31

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39

So that's the context of -- of what was before the
CRT, and we say what was being assigned -- was it
an assignment of a damages claim or a debt claim?
And we have a -- I would say a very clear answer
from the Supreme Court of Canada that they
completely ruled out this -- these standardized
entitlements as a damages claim.

40

41

42

43

44

45

46

And on that point I would refer to my -- my
colleague from the CRT, their submissions.

47

Submissions by Cnsl S. Lin

1 THE COURT: Yes.

2 CNSL S. LIN: So paragraph 2. Since the CRT's response
3 was filed the SCC issued its decision -- the one
4 we just went through -- and the decision requires
5 the CRT to clarify its position. And here we see
6 APPR disputes are decided under the CRT small
7 claims jurisdiction. The section provides for the
8 CRT to resolve claims for relief in the nature of,
9 quote/unquote, debt or damages within the monetary
10 amounts set by regulations. So up to \$5,000 the
11 CRT can rule on, quote/unquote, debt or damage --
12 damages or debt. Amongst other things, the IATA
13 case -- the *International Air* case -- the SCC
14 found that the APPR did not provide for an action
15 for damages but instead created standardized
16 entitlements. Precisely what -- the paragraphs we
17 went through just now.

18 And then paragraph 5 I think is important
19 here. Since *International Air* was issued the CRT
20 has issued decisions confirming its jurisdiction
21 to decide APPR disputes as claims in debt. So
22 there were two CRT decisions rendered -- that's in
23 tabs 3 and 4 of our authorities -- the *Reshaur*
24 case versus *West Jet* and the *Pansegrau v. Air*
25 *Canada*, both issued after the -- the supreme court
26 decision. Both tribunal members looked at the
27 supreme court decision and found that they were
28 invoking their jurisdiction for adjudicating debt,
29 not damages, in order to grant those APPR
30 entitlements.

31 And here my friend at paragraph 6 also notes
32 the nature of APPR claims and the CRT's
33 jurisdiction to resolve them were not at issue in
34 the final decision, of course, because the supreme
35 court has not rendered their decision yet, so it
36 was not discussed. They're also not at issue in
37 this judicial review. However, this court has
38 been asked to consider the validity of the Boyds'
39 assignment of their claim to APR.

40 While the CRT continues to take no position
41 on the merits of judicial review, the CRT
42 acknowledges that claims in debt can validly be
43 assigned at law without violating the rule against
44 champerty.

45 And footnote 6 -- I'll take the court through
46 those two decisions.

47 THE COURT: M'mm-hmm.

Submissions by Cnsl S. Lin

1 CNSL S. LIN: We have them in our authorities.

2 Further, section 36 of the *Law and Equity Act*
3 does permit the assignment of debts. Again, we
4 will go through section 36, and we say that's a
5 complete answer to the standing issue.
6

7 **[PROCEEDINGS FROM 11:01:08 AM TO 12:05:48 PM]**
8

9 THE COURT: But judicial review is not an appeal. It's
10 a very different thing, and I think -- and that's
11 where I think part of your friend's argument is.

12 CNSL S. LIN: I think we have to take a step back and
13 look at what is the substance of the judicial
14 review. At the end of the day we are essentially
15 applying the test for an appeal because the
16 question that's being judicially reviewed is a
17 question of law.

18 THE COURT: It -- it's not. It's not. A -- on a
19 judicial review I am acting as a supervisory
20 court. I am not an appellate court. That's very
21 clear in the law. And so -- and that may not make
22 a difference to your argument, but it's where I
23 stumble.

24 CNSL S. LIN: Yes.

25 THE COURT: I'll put it that way. So -- so that's
26 where I -- that's where I understand the
27 controversy might be, that yes, they purported to
28 absolutely assign, but this doesn't control
29 whether or not they can seek judicial review.
30 So --

31 CNSL S. LIN: But --

32 THE COURT: So if it's -- just think of it in a
33 different sense. Someone gets a decision from the
34 Human Rights Tribunal, and the employer's supposed
35 to pay them money. They assign that and --
36 according to your argument they could assign that
37 and someone else can go and get that money.
38 That's completely contrary to -- to the idea of
39 what the Human Rights Tribunal is, which is to
40 give compensation to that employee that was
41 wronged. And then whether the tribunal is right
42 or not has to do with whether they stayed within
43 the bounds of their jurisdiction.

44 CNSL S. LIN: Respectfully, I would disagree with the
45 proposition that the CR -- the Human Rights
46 Tribunal's judgment cannot be assigned. That is a
47 judgment debt. It's an example in the --

Submissions by Cnsl S. Lin

1 THE COURT: It's not. It's compensation.

2 CNSL S. LIN: No, it is -- it's compensation --

3 THE COURT: It's compensation --

4 CNSL S. LIN: -- that --

5 THE COURT: -- for discrimination against a person. I
6 probably shouldn't go down that road because I'm
7 not going to have to answer that question.

8 I think I -- I am -- I understand what you're
9 saying, that this is really just a debt and the
10 judicial review is simply on a question of law:
11 did the tribunal get it wrong or not. And you say
12 there's no reason why, given that it's just a
13 debt, it can't be assigned. So I should probably
14 confine myself -- I shouldn't jump off to the
15 human rights because that's getting too
16 complicated.

17 Okay. I -- I think I understand your point.
18 You're saying in this instance because it's a
19 question of law there's nothing about the judicial
20 review that -- that makes it any different than
21 any other method of enforcing or appealing; is
22 that fair?

23 CNSL S. LIN: Correct. And section 36 I think is
24 really the answer. We assigned -- we received the
25 assignment of the debt [indiscernible] chose in
26 action, and that statute says we also receive all
27 legal or other remedies. And we submit that of
28 course judicial review is part and parcel of "all
29 legal or other remedies." It's one of the -- the
30 ways to enforce a debt.

31 THE COURT: Well --

32 CNSL S. LIN: Or the only way --

33 THE COURT: -- I think probably --

34 CNSL S. LIN: -- left.

35 THE COURT: -- what you have to do is look at what a
36 judicial review is; right? A judicial review is
37 the supervision of a statutory decision maker.
38 That's all it is.

39 CNSL S. LIN: Yes. And it -- it in theory should be
40 brought by the person that has direct private
41 interest, but it then goes back to the question --
42 the Boyds have severed their interest. They
43 already gave the debt away. Why would they have
44 an interest in -- in -- in advancing a judicial
45 review? And that's --

46 THE COURT: Well, they could have; right? If they
47 didn't assign it, they could have.

Submissions by Cnsl S. Lin

1 CNSL S. LIN: They could have, but they -- they chose
2 to assign it and -- assign the -- the debt away,
3 and that is precisely what section 36 provides,
4 when you can have a debt or [indiscernible] legal
5 chose in action being advanced by not the assignor
6 but the assignee exclusively.

7 THE COURT: I'm going to assume that there is no case
8 out there that addressed this particular issue --

9 CNSL S. LIN: No. My --

10 THE COURT: -- and that's --

11 CNSL S. LIN: -- friend --

12 THE COURT: -- why --

13 CNSL S. LIN: -- hasn't --

14 THE COURT: -- we're here.

15 CNSL S. LIN: -- cited any, and we say --

16 THE COURT: All right.

17 CNSL S. LIN: -- it would be resolved on the basis of
18 awarding all legal and other remedies for the
19 debt --

20 THE COURT: Okay.

21 CNSL S. LIN: -- under section 36.

22 THE COURT: Okay. I understand.

23 CNSL S. LIN: That's the substantive legal answer I
24 submit, as we noted in paragraph 16A of our -- of
25 our --

26 THE COURT: Yes. Yeah. Thank you.

27 CNSL S. LIN: We excerpted section 36 as well.

28 That's -- we say is the answer.

29 Again, it goes back to the point about
30 *Stevenson*. Nobody will have -- would be able
31 to -- to -- to advance a judicial review in a
32 circumstance like this if -- if the assignee could
33 not because the assignment has severed every
34 possible interest that the Boyds could have.

35 THE COURT: If it's valid; right?

36 CNSL S. LIN: Yes.

37 THE COURT: You -- you agree that there's an -- if your
38 friend's argument -- and I'm sorry. It may not be
39 exactly his argument, but his argument would
40 depend on saying this assignment can't be valid,
41 that -- because of the judicial review.

42 CNSL S. LIN: Well, I can't -- I don't think he could
43 say because of the judicial review. He needs to
44 look at the law of assignment, which is the law we
45 looked at --

46 THE COURT: Yeah.

47 CNSL S. LIN: -- and is it -- is the underlying claim a

Submissions by Cnsl S. Lin

1 debt or damages. I think that's the key legal
2 question that was what this court was facing in
3 *Argo Ventures*. And the court said well, it's not
4 obviously a debt, so no issue under section 36.
5 But even if it's damages, we still have this case
6 law. Still not an issue. So that --
7 THE COURT: But a judicial review is neither of those
8 things. It's not -- it's not an action. Judicial
9 review is based on the prerogative writs --
10 CNSL S. LIN: Yes. And it's --
11 THE COURT: -- that forces a statutory decision maker
12 to do or not do something.
13 CNSL S. LIN: And it's a legal --
14 THE COURT: So it's not --
15 CNSL S. LIN: -- end for --
16 THE COURT: -- actually --
17 CNSL S. LIN: -- other --
18 THE COURT: -- against West Jet; right?
19 CNSL S. LIN: Well, not directly, but --
20 THE COURT: It's not.
21 CNSL S. LIN: It's not directly against West Jet, but
22 the -- the legal effect of it is. And ultimately
23 I think the whole intent of section 36 is to
24 capture all legal and other remedies. It would be
25 a very messy situation where it's the Boyds doing
26 judicial review, but then they -- they have
27 already assigned away their -- their --
28 THE COURT: Well, no. I --
29 CNSL S. LIN: -- debt.
30 THE COURT: I guess that's my question to you, is that
31 you've not come across any case that talks about
32 whether section 36 of the *Law and Equity Act*
33 refers -- the wording of that phrase that you keep
34 mentioning includes petitions for judicial review
35 or applications for prerogative writs.
36 CNSL S. LIN: I haven't found a single --
37 THE COURT: Yeah.
38 CNSL S. LIN: -- decision where it --
39 THE COURT: Okay.
40 CNSL S. LIN: -- says that judicial review -- you can't
41 step into the shoes of the person seeking judicial
42 review as an assignee. I haven't found any
43 decision to --
44 THE COURT: No, but you've not found a case that says
45 you can.
46 CNSL S. LIN: And we say it's because it's -- it's
47 obvious you can because of the wording here.

Submissions by Cnsl S. Lin

1 THE COURT: Well, I've never seen it. Have you ever --

2 CNSL S. LIN: Yeah.

3 THE COURT: -- seen it? I've never seen it.

4 CNSL S. LIN: I've seen it in the foreclosure context.

5 The example --

6 THE COURT: Foreclosure is not judicial review, Mr. --

7 CNSL S. LIN: Yes.

8 THE COURT: -- Lin.

9 CNSL S. LIN: It's not judicial review.

10 THE COURT: Well, that's -- but that is the important
11 difference, I think, is what I'm asking about.

12 CNSL S. LIN: Yeah. And -- and again it goes back to
13 the point that judicial review needs to be
14 [indiscernible] by the person with direct
15 interest.

16 THE COURT: Yeah.

17 CNSL S. LIN: And the only person with direct interest,
18 according to *Stevenson*, would be the assignee
19 because all interest has been severed as of the
20 date of the --

21 THE COURT: I see --

22 CNSL S. LIN: -- assignment.

23 THE COURT: -- what you're saying. Okay.

24 CNSL S. LIN: Yeah.

25 THE COURT: Yeah. Okay. Thank you. I -- you're
26 saying that the assignment gets over the standing
27 problem by giving a direct interest to your
28 client.

29 CNSL S. LIN: Exactly. We -- we are the only ones with
30 a direct interest as of July 24th, the date of the
31 assignment, and that's, I would submit, the
32 precise language that was used in *Stevenson* as
33 well.

34 THE COURT: Okay. Sorry. In *Stevenson*?

35 CNSL S. LIN: *Stevenson*.

36
37 ... any rights to bring an action against
38 Mr. Popoff had been assigned to Ms. Deasey
39 and cannot be assumed by Ms. Stevenson as she
40 seeks to do by bringing this action.

41

42 THE COURT: Okay.

43 CNSL S. LIN: And then Madam Justice Southin's
44 discussion I think is -- is key.

45

46 Where there is an assignment within the
47 section of which notice has been given,

Submissions by Cnsl S. Lin

the assignor cannot sue for the debt.
The action must be brought by the
assignee.

(EXCERPT ENDS) ([12:13:55 PM])
(PROCEEDINGS ADJOURNED TO MARCH 25, 2025, AT
10:00 AM) ([4:01:18 PM])

Submissions by Cnsl M. Dery

March 25, 2025
Vancouver, BC

(EXCERPT FROM PROCEEDINGS)

(PROCEEDINGS COMMENCED) ([10:02:33 AM])
(EXCERPT BEGINS) ([10:07:41 AM])

SUBMISSIONS BY CNSL M. DERY:

CNSL M. DERY: So where -- what the first sort of consideration is when there's a flight disruption -- and you'll see this in -- in paragraph 4 here -- is what you have to look at is whether the flight disruption was caused by something that was within the carrier's control, within the carrier's control but required for safety or outside of the carrier's control, and so different things flow from that determination.

And who -- who makes that determination, Madam Justice? My client does. My client has an obligation to -- to communicate to passengers under the statute what the reason for the disruption was, and you'll see that correspondence, and you have seen -- you were referred to an email --

THE COURT: M'mm-hmm.

CNSL M. DERY: -- yesterday by my friend where my client was doing that.

And so then if the -- if the passenger is not satisfied with either the compensation or the -- or the explanation outside of control, then they can -- they can dispute it, they can file a claim, they can bring a lawsuit or they can complain to the Canadian Transportation Agency, who also adjudicates disputes, another -- another tribunal that handles these kinds of -- these kinds of complaints. So that -- that's broadly how -- how it works.

[PROCEEDINGS FROM 10:09:11 AM TO 10:23:54 AM]

CNSL M. DERY: The tribunal has lots of discretion in terms of its procedure, how to do a hearing, what evidence -- not bound by the rules of evidence. It's a -- it's a, you know, layperson friendly procedure.

Submissions by Cnsl M. Dery

1 So as far as -- the arguments before the
2 tribunal talked about how the -- and just at
3 paragraph 29 -- the eligibility of compensation
4 depends on the cause of the delay and the -- like
5 the -- the resulting delay. And you'll see at the
6 top of page 5 the provision in the APPR that
7 provides for the standardized compensation, which
8 is \$1,000 if the delay is over nine hours. And
9 we've put there as well the section of the APPR
10 with respect to labour disruption.

11 At paragraph 33 -- and this was evidence
12 before the tribunal -- we say the claimants are
13 bound by the terms and conditions of the passenger
14 ticket, the terms and conditions of West Jet's
15 international tariff. That together is the
16 contract of carriage, which has -- has terms and
17 conditions. In that tariff, which I won't take
18 you through -- it's a lengthy document -- there
19 are term -- the -- the terms of the APPR is --

20 THE COURT: M'mm-hmm.

21 CNSL M. DERY: -- are repeated in that tariff. They're
22 produced in that tariff, and so that -- that is in
23 there. And those -- that tariff has to be filed
24 with the regulator before it comes into effect.

25 Now, the -- the claimants -- Mr. and
26 Mrs. Boyd -- argued that because there was no
27 strike -- no actual strike the cancellation was
28 not due to strike or work stoppage.

29
30 **[PROCEEDINGS FROM 10:25:41 AM TO 10:51:00 AM]**

31
32 CNSL M. DERY: We say that -- we say that none of -- a
33 judicial review does not fall into any of those
34 categories. It just doesn't. It's not a -- it's
35 not a debt. It's not a -- and you can see the
36 definition of "debt" here from a very old case
37 from the -- from 1940. A debt is:

38
39 ... a sum payable in respect of a liquidated
40 money demand recoverable by action ...

41
42 And so while the claim was for a debt, the
43 assignment is not for that debt. The assignment
44 is to judicially review the decision and then
45 pocket the debt, I gather -- pocket the -- the
46 compensation if successful.

47 As far as the legal chose in action, we have

Submissions by Cnsl M. Dery

1 that definition there in our submission from a
2 decision of the court of appeal, and you can --
3 you can see that -- and I talked to you a little
4 bit about it yesterday, as to where -- what kind
5 of things are choses in action --

6 THE COURT: M'mm-hmm.

7 CNSSL M. DERY: -- and whether they are assignable, and
8 we say that's not -- again, a judicial review is
9 not that.

10 And from the -- from the Alberta court of
11 appeal at paragraph 80 of our submission it states
12 that:

13
14 A chose in action is a right to sue ...
15 includes the right to recover personal
16 property, the right to recover debts, the
17 right to recover damages in contract or tort
18 or for failure to perform a duty.

19
20 And the -- as you heard -- as you heard from my
21 friend and -- that the Supreme Court of Canada had
22 to make a decision here recently with respect
23 to -- and what that case was -- and I'm not sure
24 it was through -- explained too much yesterday,
25 but what that decision was was -- was the IATA --
26 the International Air Transport Association is
27 a -- is a -- is an industry group of a lot of
28 airlines -- a lot of international airlines, and
29 so they challenged the *Air Passenger Protection*
30 *Regulations* and said that -- that they could not
31 stand because they were in conflict with the
32 *Montreal Convention*. And so the court went
33 through an analysis as to what is a claim under
34 the *Montreal Convention* and what is this -- what
35 are the standardized compensation amounts. And
36 the court found that -- that a *Montreal Convention*
37 claim was a claim for damages, and the APPR
38 standardized compensation amounts are not damages.
39 They are -- they're just standardized --
40 standardized amounts. Nobody has to -- you know,
41 there's no -- there's no individuality to it. It
42 is just if you have a delay and you fall under the
43 statute -- it's determined to be outside of
44 control -- that is the amount. It's a
45 standardized compensation amount.

46 So the court said well, we don't have a
47 conflict here. There's -- the *Montreal Convention*

Submissions by Cnsl M. Dery

1 is damages. The -- the -- the APPR are
2 standardized compensation. The court did not say
3 that APPR standardized compensation amounts are
4 debt, that it is classified legally as a debt.
5 What my friend has done is take one sentence that
6 said those are amounts already owed to mean that's
7 a debt. And, you know, in fairness to -- to my
8 friend, the CRT had to decide after IATA came down
9 whether it had jurisdiction -- continuing
10 jurisdiction to hear these claims if they were not
11 a claim for -- for damages because that's what the
12 CRT --

13 THE COURT: Yeah. I was --
14 CNSL M. DERY: -- has --
15 THE COURT: -- going to --
16 CNSL M. DERY: -- jurisdiction --
17 THE COURT: -- ask about --
18 CNSL M. DERY: -- over.
19 THE COURT: -- that because --
20 CNSL M. DERY: Yeah.
21 THE COURT: -- it's a federal statute, so I was a
22 little unclear.
23 CNSL M. DERY: The convention -- sorry. The *Montreal*
24 *Convention* is a -- or --
25 THE COURT: No, the --
26 CNSL M. DERY: Oh, the APPR --
27 THE COURT: -- APPR --
28 CNSL M. DERY: -- is a -- is a federal statute.
29 THE COURT: -- is federal legislation. Usually federal
30 legislation doesn't end up in the provincial
31 court, but --
32 CNSL M. DERY: It has. Yeah. No. And it gives -- it
33 gives -- it does give a right of -- you know, a
34 right of a claim to --
35 THE COURT: Right.
36 CNSL M. DERY: -- to passengers to bring -- to bring a
37 claim and they -- and they can pursue that
38 through --
39 THE COURT: Because it's --
40 CNSL M. DERY: -- either through the courts --
41 THE COURT: -- they're bringing it against West Jet,
42 not --
43 CNSL M. DERY: Correct.
44 THE COURT: -- against the agency.
45 CNSL M. DERY: Correct. Yeah. Absolutely.
46 THE COURT: But did you say that the CTA also hears
47 these case, or did I mishear you?

Submissions by Cnsl M. Dery

1 CNSL M. DERY: No, you didn't. If a passenger is not
2 satisfied with something like this -- again, a
3 disruption outside of control --

4 THE COURT: Yes.

5 CNSL M. DERY: -- et cetera -- they also have the
6 option of bringing a complaint before the CTA.

7 THE COURT: So the Boyds could have gone to the CTA?

8 CNSL M. DERY: Yes, they could have. But they --

9 THE COURT: Well, that --

10 CNSL M. DERY: -- chose to --

11 THE COURT: -- makes no --

12 CNSL M. DERY: -- sue.

13 THE COURT: -- sense to me at all, but okay. I'll
14 ignore that issue.

15 CNSL M. DERY: That's how -- that's how -- yeah, they
16 can go to the -- they can go to the CTA, make a
17 complaint, and the CTA can order -- you know, can
18 order remedies.

19 THE COURT: Because if they did that, then they would
20 go to the federal court of appeal.

21 CNSL M. DERY: Correct. To appeal that --

22 THE COURT: Right.

23 CNSL M. DERY: -- decision. Yes. Correct. And I've
24 handled --

25 THE COURT: Right.

26 CNSL M. DERY: I've handled those as well.

27 THE COURT: I guess I'm just a little confused, but if
28 no one's making an issue of it, I will ignore my
29 confusion.

30 CNSL M. DERY: Oh, no problem. And I think -- I don't
31 know if this ameliorates your -- your confusion,
32 but the -- the CTA is not granted exclusive --

33 THE COURT: Okay.

34 CNSL M. DERY: -- jurisdiction --

35 THE COURT: Okay.

36 CNSL M. DERY: -- over these --

37 THE COURT: Fair enough.

38 CNSL M. DERY: -- complaints.

39 THE COURT: Okay.

40 CNSL M. DERY: I've argued that in many cases. My
41 friend --

42 THE COURT: Yes. Okay.

43 CNSL M. DERY: -- has as well.

44 THE COURT: It's not exclusive. Okay.

45 CNSL M. DERY: Yeah.

46 THE COURT: Yeah.

47 CNSL M. DERY: Yeah, we've -- I've made the argument

Submissions by Cnsl M. Dery

1 that that's -- that is the intention, that they
2 handle --
3 THE COURT: Right.
4 CNSL M. DERY: -- these --
5 THE COURT: Right. Right.
6 CNSL M. DERY: -- things, but there's no -- I can't
7 remember the --
8 THE COURT: Exclusivity clause.
9 CNSL M. DERY: Correct. Yeah, I can't remember the
10 name of what that kind of a provision is, but
11 it's -- yeah, there's no sort of --
12 THE COURT: Exclusivity --
13 UNIDENTIFIED SPEAKER: Privative clause.
14 THE COURT: -- clause, I think.
15 CNSL M. DERY: What is it?
16 UNIDENTIFIED SPEAKER: Privative.
17 CNSL M. DERY: Privative clause. Thank you. Privative
18 clause.
19 THE COURT: Well, the --
20 CNSL M. DERY: As many times as --
21 THE COURT: -- privative clause prevents judicial
22 review, but an exclusivity clause --
23 UNIDENTIFIED SPEAKER: Oh, sorry.
24 CNSL M. DERY: Oh.
25 UNIDENTIFIED SPEAKER: My bad.
26 CNSL M. DERY: Sorry. That might not be it. Yeah,
27 there is a term. I can't remember what it is. I
28 think we're both blanking on it.
29 THE COURT: Yeah, it's like what's under the labour
30 code or something --
31 CNSL M. DERY: Exactly.
32 THE COURT: Yeah.
33 CNSL M. DERY: Exactly.
34 THE COURT: Okay. So there's no exclusivity clause?
35 CNSL M. DERY: Right.
36 THE COURT: I see.
37 CNSL M. DERY: And so the --
38 THE COURT: Okay.
39 CNSL M. DERY: Yeah. And so the Boyds could have --
40 absolutely could have -- and we have -- it won't
41 surprise you. With -- with -- with lay litigants
42 we have folks who do both, who --
43 THE COURT: Oh, right.
44 CNSL M. DERY: -- will -- who will complain and sue.
45 THE COURT: Yeah, yeah. Okay.
46 CNSL M. DERY: And so --
47 THE COURT: Okay.

Reply by Cnsl S. Lin

1 CNSL M. DERY: And so we have that happen as well.
2 THE COURT: Okay. Right.
3 CNSL M. DERY: And so -- so in any event the -- the CRT
4 had to decide do we have -- do we still have
5 jurisdiction --
6 THE COURT: Yes.
7 CNSL M. DERY: -- over APPR claims because the Supreme
8 Court of Canada has now said --
9 THE COURT: It's not damages.
10 CNSL M. DERY: -- it's not damages.
11 THE COURT: Right. Okay.
12 CNSL M. DERY: But we have jurisdiction over debt and
13 damages, and so what the CTA has done -- or --
14 THE COURT: Yeah.
15 CNSL M. DERY: -- sorry. What the CRT has done -- and
16 my friend will go --
17 THE COURT: Yeah.
18 CNSL M. DERY: -- in much more detail --
19 THE COURT: Yes.
20 CNSL M. DERY: -- is ask for parties' submissions on
21 cases --
22 THE COURT: Oh, okay.
23 CNSL M. DERY: -- do you think we have jurisdiction --
24 THE COURT: Okay. Yeah --
25 CNSL M. DERY: -- and I -- if I --
26 THE COURT: But no -- no one in front of me is
27 challenging that jurisdiction, so --
28 CNSL M. DERY: No, we are not.
29 THE COURT: Okay.
30 CNSL M. DERY: And I think -- you know, again, if it
31 helps, I think what -- what the approach has been
32 is that -- is that it's going to be on a case by
33 case basis that people can make jurisdictional
34 arguments, I think, if I'm right.

35
36 [PROCEEDINGS FROM 10:58:07 AM TO 2:47:02 PM]

37
38 **REPLY BY CNSL S. LIN:**

39
40 CNSL S. LIN: And one key point that my friend did not
41 address directly is they're saying that we don't
42 have standing, period. I guess the next question
43 is who does, in light of the situation. My
44 friends have not stated that one way or the other,
45 but if nobody has standing, then that's a real
46 problem.
47 THE COURT: I think he puts the standing and the

Reply by Cnsl S. Lin

1 invalidity of the assignment together, so I think
2 he would say both -- both arguments mean that only
3 the Boyds could judicially review.

4 CNSL S. LIN: Well, you cannot divorce the assignment
5 and the -- and the standing issue, because if the
6 assignment is a proper assignment of debt, the
7 interest that's passed, then of course there will
8 be private interest standing, in our submission.
9 So it's impossible to sort of divorce the two and
10 look at it disjunctively. You have to consider
11 them --

12 THE COURT: No, I don't --

13 CNSL S. LIN: -- together.

14 THE COURT: I think your friend does look at them
15 together.

16 CNSL S. LIN: And I think the -- the key is -- well, it
17 goes right back to -- to the *Fredrickson* scenario
18 and also the text of the assignment. Perhaps I
19 can take you there. My friend took you through
20 it, but I think it's important to appreciate why
21 we have particular wording. He's pointing to
22 words such as "including actions, complaints,
23 appeals and judicial reviews," "a right to bring
24 and defend legal proceedings." And I think we
25 would be facing a different argument if we hadn't
26 did [sic] a catch-all to include everything
27 because section 36 had the word "absolute." So if
28 we kept something back and have -- not have it
29 assigned, then it won't be absolute and then we'd
30 be facing a different type of argument.

31 And on that note I think we can go to the
32 binder that I provided to you and start at tab 1,
33 which I think has a complete answer. Yesterday
34 you asked me about -- at section 36 there's
35 reference to "legal and other remedies," and you
36 asked me if there's any case law on that.

37 THE COURT: Yes.

38 CNSL S. LIN: I didn't -- I wasn't able to find
39 Canadian case law initially, and then I -- I went
40 a bit further back to England.

41 THE COURT: M'mm-hmm.

42 CNSL S. LIN: And apparently this has been discussed in
43 England in the -- 1888. Tab 1, *Read v. Brown*.
44 And if we go to page 130 and the section -- just
45 taking a step back. Section 36 of the *Law and*
46 *Equity Act* is very similar to the section 53 of
47 the *Conveyancing* --

Reply by Cnsl S. Lin

1 THE COURT: M'mm-hmm.

2 CNSL S. LIN: -- Act my friend passed up, and all of
3 these statutes actually originate back to [sic]
4 England back in the 1870s when there was the
5 fusion of equity and common law.

6 THE COURT: Yes.

7 CNSL S. LIN: And that's when this provision was born.
8 It's actually very similar across the
9 Commonwealth. We have a very similar provision,
10 and the court of appeal of England was dealing
11 with that precisely. So what the court of appeal
12 says here was:

13
14 The effect of this comprehensive language is
15 in my opinion not merely to place the
16 assignee of a debt in the same specific
17 position as to legal remedies as his
18 assignor --

19
20 Emphasize "in the same specific position."

21
22 -- but to enable the assignee of a debt to
23 treat the debt assigned to him as a debt to
24 which as assignee under the statute he has
25 himself personally acquired a legal right
26 enforceable by any legal remedy.

27
28 So we have that from the English court of appeal
29 interpreting virtually the same provision.

30 And I think it goes further. If we go to the
31 next page, page 131:

32
33 But I may base my judgment upon stronger
34 ground than this ... subsection 6 of the
35 *Judicature Act* --

36
37 Which is the equivalent of section 36.

38
39 -- gives to the assignee of a debt ... more
40 than the mere right to sue for it; it gives
41 him the debt and the legal right to the debt,
42 and it follows from that that he would have a
43 legal right to sue for and recover it, even
44 had the section not contained the words "and
45 all legal and other remedies for the same."
46 A question therefore arises as to the true
47 construction of this section.

Reply by Cnsl S. Lin

1
2 And the next page is I think important.
3

4 In construing ... 25 sub ... 6, we must adopt
5 the ordinary rule --
6

7 So statutory interpretation. And the second
8 passage that we highlighted is key:
9

10 They transfer the legal right to the debt as
11 well as the legal remedies for its recovery.
12

13 And here's the key:
14

15 The debt is transferred to the assignee and
16 becomes as though it had been his from the
17 beginning; it is no longer to be the debt of
18 the assignor at all, who cannot sue for it,
19 the right to sue being taken from him; the
20 assignee becomes the assignee of a legal debt
21 and is not merely an assignee in equity ...
22 We must give that meaning to the language of
23 the subsection; and, that being so, an
24 assignee, in order to shew that the debt is
25 his and that he may sue upon it, must prove
26 the assignment ...
27

28 So prove the absolute assignment in that case.
29 And I won't go further than that.

30 And then tab 2 is where the Supreme Court of
31 Alberta in the early 1900s adopted very similar
32 language. Page 48 we see -- talking about the --
33 the absolute assignments, very similar to the
34 section 36 language. And then the next page we
35 see the -- the reference to "all legal and other
36 remedies."
37

38 An assignment which is within the subsection
39 has not only the legal right to the chose in
40 action but also all legal and other remedies
41 for the same. The point is conclusively
42 settled in that way. However, by the
43 judgment of the court of appeal in *Read v.*
44 *Brown* --
45

46 We just looked at *Read v. Brown*.
47

Reply by Cnsl S. Lin

1 -- the words mean what they say. The debt is
2 transferred to the assignee and becomes as
3 though it had been his from the beginning ...
4

5 So the Alberta courts have adopted this English
6 position.

7 And then on page -- on tab 3, later on the
8 Alberta court of appeal -- page 163 of that -- of
9 that case at the bottom:

10 This section of the *Judicature Act* in my
11 opinion has the effect not only of
12 transferring the legal right to the debt but
13 of arming the assignee with all the legal
14 remedies for the recovery of the debt as
15 well.
16

17 Again citing *Read v. Brown* of the England and
18 Wales court of appeal.
19

20 **[PROCEEDINGS FROM 2:53:28 PM TO 2:57:22 PM]**
21

22 THE COURT: Sorry. In the same tab?
23

24 CNLS S. LIN: The same tab.

25 THE COURT: Yes.

26 CNLS S. LIN: Page 8 at the bottom. Again, my friend's
27 references to "debt" are rather narrow. Here this
28 authority confirms that debt includes things that
29 may be payable on or before a specified future
30 date within a limited time on demand or on the
31 occurrence of a specified event.

32 And we do have the -- the liquidated amount
33 written right into the contract. They -- my
34 friend confirmed it's in his tariff -- it's his --
35 clients' tariff. They've copy and pasted the APPR
36 obligations right into their own tariff, so we do
37 have a written instrument. It's not the typical
38 credit card debt or mortgage debt, but it's not --
39 it's certainly supported by the -- the -- the
40 common law definitions here.

41 And then this author also talked about
42 section 36 of the *Law and Property Act* -- *Law of*
43 *Property Act*, which again is equivalent to the
44 section 36 of the *Law and Equity Act* we have. And
45 I would draw the court's attention to the bottom
46 of page -- the bottom -- the number's 49. Again,
47 this author cites *Read v. Brown*, which we just

Reply by Cnsl S. Lin

1 went through.

2
3 The debt is transferred to the assignee and
4 becomes as though it had been his from the
5 beginning. It is no longer the debt of the
6 assignor.

7
8 **[PROCEEDINGS FROM 2:58:45 PM TO 3:00:53 PM]**
9

10 CNSL S. LIN: And to -- to the extent my friend is
11 correct about -- about standing, it's a mere
12 irregularity similar to the *Fredrickson* --

13 THE COURT: Well, standing is not an irregularity.

14 CNSL S. LIN: No.

15 THE COURT: Standing is substantive.

16 CNSL S. LIN: Well, irregularity in the sense that it
17 can be cured, because if we don't have standing,
18 the Boyds have standing. And section 2 of the
19 assignment actually confirms they will assist us
20 to -- whatever is necessary to -- to defend or
21 advance any -- any -- anything in relation to the
22 claim. So simply including the Boyds as a
23 possible co-petitioner would resolve the issue
24 right there if it's an issue to begin with, which
25 I say it is not. And I will --

26 THE COURT: I'm not sure this is all proper reply,
27 Mr. Lin. You're going -- you're going over
28 arguments that you already made. But -- so if you
29 could just deal with new points that came up or --

30 CNSL S. LIN: Okay. I won't go -- I won't --

31 THE COURT: I appreciate the stuff on chose in action
32 arose from a question I raised, but I think on
33 what a debt is -- I think you've addressed that.

34 CNSL S. LIN: Yes. And I'm not going to repeat that.

35 THE COURT: Okay.

36 CNSL S. LIN: And tab 6, this is what I found in
37 *Halsbury's Laws of England* about transfer of
38 remedies, which doesn't -- doesn't change much
39 from what we saw in the *Read* case. It does
40 confirm that it's everything.

41 THE COURT: Right.

42 CNSL S. LIN: And I think tab 7 is key here. My friend
43 has taken you to some case law on standing, but I
44 think the most comprehensive one is this one, the
45 *Force -- Force of Nature Society* in 2021 from --

46 THE COURT: M'mm-hmm.

47 CNSL S. LIN: -- Madam Justice Tucker. And I think we

Reply by Cnsl S. Lin

1 need to look at the wording that Madam Justice
2 Tucker used carefully that's in paragraph 102.
3 It's an excerpt.
4

5 The *JRPA* is silent on standing --
6

7 We -- we agree on that.
8

9 -- leaving the test to the common law.
10

11 So just the judicial review standing is based on
12 common law.
13

14 The law was recently summarized in *Gonzales*
15 *Hill Preservation Society* ...
16

17 And here we have the cited passages from that
18 case, and I think paragraph 59 -- the passage
19 within -- is key.
20

21 Who may be heard on an application for
22 [JR]? Generally, only persons who were
23 parties before the tribunal --
24

25 We accept that. That's common.
26

27 -- or who are directly affected by the
28 tribunal's decision may apply for
29 judicial review.
30

31 So if the assignment stands --
32

32 THE COURT: Yes.

33 CNSL S. LIN: -- APR --

34 THE COURT: That -- that's clear.

35 CNSL S. LIN: Yes.

36 THE COURT: Your friend's argument rests on both the
37 assignment being invalid and therefore no
38 standing.

39 CNSL S. LIN: Yes. And I would also say, if we look at
40 paragraph 60, it does seem to suggest that
41 judicial review is a legal remedy because it's --
42 talks about:
43

44 At common law a person will have
45 standing to seek a remedy in proceedings
46 of judicial review ...
47

Reply by Cnsl S. Lin

1 So judicial review is part of the legal remedies
2 package, is -- is what I take this to mean, and it
3 does talk about affected persons. I won't go
4 further than that.

5 I guess the question is if we flip the
6 scenario and let's say the assignment -- there's
7 an assignment of the whole claim to air passenger
8 rights and West Jet comes in and tries to
9 challenge the \$353. Who has the right to defend?
10 Is it the assignee or is it the assignor?

11 THE COURT: I don't know what you're saying, Mr. Lin.

12 CNSL S. LIN: Oh, I'm saying let's flip the scenario.
13 My friend is arguing standing, but let's flip the
14 scenario where the assignment took place --

15 THE COURT: M'mm-hmm.

16 CNSL S. LIN: -- July 24th, but West Jet doesn't like
17 the \$353 judgment. They seek the judicial review.

18 THE COURT: Right.

19 CNSL S. LIN: Who would be the one defending it?

20 THE COURT: The Boyds.

21 CNSL S. LIN: But they already assigned --

22 THE COURT: If -- that's only if the assignment's
23 valid.

24 CNSL S. LIN: Yeah, if the assignment's valid. I
25 appreciate that, but I'm just trying to illustrate
26 that point.

27 And my friend from the CRT mentioned that,
28 well, the court needs to be careful in terms of
29 assignment. I think one important point is -- it
30 was originally in my original case book, but I
31 took it out. I -- I will just give you the
32 citation here. My friend referred to the *Civil*
33 *Resolution Tribunal Act* and said well, it should
34 be the person themselves acting for themselves to
35 advance a case and allowing assignments may
36 somehow be problematic.

37 THE COURT: Yes.

38 CNSL S. LIN: 2020 BCCRT.

39 THE COURT: M'mm-hmm.

40 CNSL S. LIN: 2020 BCCRT 1097.

41 THE COURT: Okay.

42 CNSL S. LIN: 1097. It's *Davison v. Wikjord*,
43 paragraph 25.

44 THE COURT: Why am I looking at a CRT decision?

45 CNSL S. LIN: Because in that case precisely --

46 THE COURT: M'mm-hmm.

47 CNSL S. LIN: -- they dealt with an assignment scenario

Reply by Cnsl S. Lin

1 where someone had their damage deposit assigned to
2 another person and the other person came in to
3 enforce it essentially like a debt. And the --

4 THE COURT: But, Mr. --

5 CNSL S. LIN: -- CRT --

6 THE COURT: -- Lin, that -- you're missing the point.

7 The CRT's point is about judicial review.

8 CNSL S. LIN: Judicial review and also how it affects
9 the -- the --

10 THE COURT: Yes.

11 CNSL S. LIN: -- right to be --

12 THE COURT: Judicial review.

13 CNSL S. LIN: -- to self --

14 THE COURT: People coming --

15 CNSL S. LIN: -- represent --

16 THE COURT: -- in who weren't in front of the tribunal
17 now seeking to judicially review the tribunal.

18 That is her point.

19 CNSL S. LIN: And I guess my -- my answer would be that
20 it goes to the assignment again. If the --

21 THE COURT: Yeah.

22 CNSL S. LIN: -- assignment is valid --

23 THE COURT: What -- the --

24 CNSL S. LIN: -- then --

25 THE COURT: -- assignment has to be valid for you to
26 succeed.

27 CNSL S. LIN: And -- and then if the assignment is
28 valid, we basically go back to the beginning, and
29 we will be in a scenario where we could simply go
30 to the tribunal and say please change the name to
31 reflect the legal assignment and --

32 THE COURT: There's no way that's going to happen,
33 Mr. Lin. You have a big problem, and that is that
34 it's a judicial review.

35 CNSL S. LIN: Well, and we say tabs 1 through 5 in the
36 reply is the answer. It's -- it's all legal
37 remedies including --

38 THE COURT: It's a judicial review. It's a judicial
39 review. It is -- the allegation is the tribunal
40 exceeded its jurisdiction by making a legal error.

41
42 **(EXCERPT ENDS) ([3:07:09 PM])**

43 **(PROCEEDINGS ADJOURNED TO APRIL 1, 2025, AT**
44 **2:00 PM) ([3:24:25 PM])**

45
46
47

Reporter certification

REPORTER CERTIFICATION

I certify that the proceedings from
(a) timestamp 10:54:38 AM to timestamp 11:01:08 AM
and from timestamp 12:05:48 PM to timestamp
12:13:55 PM inclusive on March 24, 2025, and
(b) timestamp 10:07:41 AM to timestamp
10:09:11 AM, from timestamp 10:23:54 AM to
timestamp 10:25:41 AM, from timestamp 10:51:00 AM
to timestamp 10:58:07 AM, from timestamp
2:47:02 PM to timestamp 2:53:28 PM, from timestamp
2:57:22 PM to timestamp 2:58:45 PM, and from
timestamp 3:00:53 PM to timestamp 3:07:09 PM, on
March 25, 2025, inclusive, are a true and accurate
transcript of these proceedings recorded on a
sound recording apparatus, transcribed to the best
of my skill and ability in accordance with
applicable standards.



Jennifer Friesen
Authorized Reporter