



COURT OF APPEAL FILE NO. CA51094
Air Passenger Rights v. WestJet Airlines Ltd.
Appellant'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)

APPELLANT'S FACTUM
(Air Passenger Rights)

EVOLINK LAW GROUP 4388 Still Creek Drive, Suite 237 Burnaby, British Columbia, V5C 6C6 Tel: 604-620-2666 Email: simonlin@evolinklaw.com SIMON LIN Counsel for the Appellant	ALEXANDER HOLBURN BEAUDIN + LANG LLP 2700 - 700 West Georgia Street Vancouver, BC V7Y 1B8 Tel: 604-484-1700 E-mail: mdery@ahbl.ca and kmcgoldrick@ahbl.ca MICHAEL DERY and KATHRYN MCGOLDRICK Counsel for the Respondent, WestJet Airlines Ltd.
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	CIVIL RESOLUTION TRIBUNAL PO BOX 9239 STN PROV GOVT Victoria, BC V8W 9J1 Tel : 236-475-4597 E-mail : eliza.mccullum@crtbc.ca ELIZA MCCULLUM Counsel for the Respondent, Civil Resolution Tribunal
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CHRONOLOGY

<u>DATE</u>	<u>RELEVANT EVENT</u>
May 23, 2018	<i>Transportation Modernization Act</i> , SC 2018, c 10 enters into force, with additions to the <i>Canada Transportation Act</i> , S.C. 1996, c. 10 in particular s. 86.11 enabling subsequent regulations to be passed in relation to carrier's obligations towards passengers, including standardized compensation for passenger inconvenience
July 15, 2019	Portions of the <i>Air Passenger Protection Regulations</i> , SOR/2019-150 (the " APPR "), enacted pursuant to s. 86.11 of the <i>Canada Transportation Act</i> , enter into force.
December 15, 2019	The remaining portions of the <i>APPR</i> enter into force.
August 2022	Air Line Pilots Association (" ALPA ") and WestJet begins collective agreement bargaining.
November 2022	Mrs. Anne Boyd and Mr. Robert Boyd (hereafter the " Boyd s") purchase tickets with WestJet for travel on May 18, 2023 from Kelowna, B.C. to Rome, Italy, with one 2-hour stopover in Calgary, Alberta.
May 15, 2023	Both the ALPA and WestJet issue a 72-hour strike notice and lock-out notice, respectively.
May 18, 2023 morning	The Boyds receive an email notification from WestJet that their flight from Calgary, Alberta to Rome, Italy is cancelled by WestJet with the stated reason of "strike or work stoppage." WestJet still transports the Boyds from Kelowna, B.C. to Calgary, Alberta but the Boyds are informed via email the same day that there is no alternative flight available onwards to Rome, Italy. The Boyds are not provided with hotel accommodations or meals in Calgary. The Boyds pay for a hotel and a meal out-of-pocket.
May 19, 2023 morning	The strike notice and lock-out notices are cancelled as the parties reached a tentative agreement.

May 19, 2023	WestJet transports the Boyds to Rome, Italy on other airlines with two additional stopovers in Portland, Oregon and then Amsterdam, Netherlands, instead of directly to Rome, Italy from Calgary, Alberta.
June 14, 2023	WestJet rejects the Boyds' request for : (a) reimbursement of hotels and meal expenses; and (b) payment of the \$1,000/person standardized compensation for delay of more than nine hours to their destination.
July 4, 2023	The Boyds submit a Dispute Notice to the B.C. Civil Resolution Tribunal (the " CRT "), seeking from WestJet: (a) payment of the \$1,000/person standardized compensation for delay to their destination; (b) reimbursement of \$277.25 of hotel and meal expenses; and (c) filing fees for the dispute.
July 31, 2023	CRT issues the Dispute Notice.
August 30, 2023	WestJet submits its response to the Dispute Notice
September 20, 2023	Sections 85.01 to 85.16 are added into the <i>Canada Transportation Act</i> , S.C. 1996, c. 10 to provide for the "complaint resolution officer" process.
September 30, 2023	The Canadian Transportation Agency (the " CTA ") implements the "complaint resolution officer" process for handling air travel complaints.
July 5, 2024	The CRT issues a decision and reasons: (a) granting the Boyds \$277.25 for hotel and meal expenses, plus prejudgment interest and filing fees; and (b) denying the Boyds's claim for the \$1,000/person standardized compensation on the basis that the cancellation was "outside carrier's control."
July 24, 2024	The Boyds absolutely assign their claim, including the entire CRT judgment, to Air Passenger Rights, a non-profit organization that advocates on behalf of air travellers. The assignment is executed under seal.
July 29, 2024	Air Passenger Rights gives WestJet written notice of the absolute assignment.
July 29, 2024	Air Passenger Rights files a Petition to the Court seeking judicial review of the CRT's denial of the claim for standardized compensation.

July 30, 2024	The CTA is informed of the Petition to the Court and is provided with a courtesy copy of the Petitioner's filed court materials.
August 1, 2024	The Senior General Counsel and Secretary of the CTA acknowledges receipt of the filed court materials.
August 19, 2024	WestJet files its Response to Petition.
August 30, 2024	The CRT files its Response to Petition, including a tribunal record of the proceedings before the CRT.
October 4, 2024	The Supreme Court of Canada issues reasons for judgment in <i>International Air Transport Association v. Canada (Transportation Agency)</i> , 2024 SCC 30.
October 15, 2024	Petitioner files a Notice of Hearing, fixing the hearing of the Petition on November 21, 2024 (a date that was canvassed and agreed upon by all parties).
October 15, 2024	WestJet amends its Response to Petition.
November 14, 2024	WestJet files an application seeking to adduce further evidence and to cross-examine the Petitioner's affiant. WestJet raises for the first time that it seeks an adjournment of the Petition hearing.
November 21, 2024	No judge is available for hearing the Petition.
January 22, 2025	The Petitioner files the Application Response to WestJet's application to adduce further evidence and to cross-examine the Petitioner's affiant.
March 24-25, 2025	The Petition is heard before the Honourable Madam Justice Sharma. At the conclusion of the hearing, Madam Justice Sharma schedules oral reasons for judgment to be issued on April 1, 2025.
March 31, 2025	Madam Justice Sharma advises that she would deliver her decision in writing.
September 25, 2025	Madam Justice Sharma issues a memorandum to counsel indicating there is a possibility that the court would seek further submissions from the parties.
October 30, 2025	Madam Justice Sharma issues written Reasons for Judgment.
October 30, 2025	Notice of Appeal is filed in this Court.

OPENING STATEMENT

This appeal involves the *Air Passenger Protection Regulations* (“**APPR**”), which provides Canadian travellers with minimum levels of treatment and standardized compensation for flight disruptions. These legal obligations are incorporated into the contract of carriage. The chambers judge refused to apply the Supreme Court of Canada’s specific guidance on the *APPR*, and foreclosed access to the courts for Canadians’ air travel claims. The decision also creates jurisdictional chaos for inferior provincial courts for other civil claims.

First, despite the parties’ agreement that the claim before the Civil Resolution Tribunal (“**CRT**”) was a debt claim, the chambers judge proceeded *sua sponte* to analyze and decide that issue. Without the benefit of submissions, the judge departed from established law on the meaning of debt in this Court, the Supreme Court of Canada, and other courts. The judge overlooked WestJet’s admission that its contract *expressly* reproduces the *APPR* obligations, and would be enforceable in a breach of contract action. Moreover, the CRT’s jurisdiction was never in dispute but the chambers judge decided the issue without any submissions. The judge’s ruling undercuts the subject-matter jurisdiction of every inferior provincial court, contrary to established Supreme Court of Canada cases.

Second, despite the parties’ agreement that the Canadian Transportation Agency (“**CTA**”) does not have exclusive jurisdiction for air travel complaints and the judge’s concern in deciding substantive issues in the CTA’s absence, the judge proceeded *sua sponte*. The judge’s ruling is contrary to this Court’s guidance in numerous cases that a statutory regime cannot exclude common law rights to bring a court action for debt or breach of contract when the legal obligations are legally incorporated into the underlying contract.

Finally, the chambers judge’s erroneous analysis on the nature of the CRT claim as not a debt cascaded down to her analysis of the assignment. As this Court noted decades ago, an assignment of a debt or liquidated chose in action pursuant to s. 36(1) of the *Law and Equity Act* cannot give rise to champerty or maintenance. This provision provides the appellant “all legal and other remedies” to enforce the assigned debt or chose in action.

The appellant requests that the remaining substantive legal issue regarding “outside control” under the *APPR* be remitted back for *de novo* hearing before a different judge.

PART I - STATEMENT OF FACTS

A. The Boyds's One-Day Travel Disruption on their WestJet Itinerary

1. Mrs. Anne Boyd and Mr. Robert Boyd (hereafter “**the Boyds**”) are a retired couple residing in Kelowna, British Columbia. In November 2022, the Boyds bought tickets on WestJet-operated flights for travel from Kelowna, B.C. to Rome, Italy on May 18, 2023.¹ The Boyds’ trip involved a connecting flight: (a) Kelowna, B.C. to Calgary, Alberta departing at 2:00 p.m. on May 18, 2023; and (b) approximately a two-hour wait in Calgary, Alberta until 6:05 p.m. on May 18, 2023 for a connecting WestJet flight to Rome, Italy.²
2. WestJet incorporated the *APPR* legal obligations and rights as terms of its own contract of carriage and also self-identified therein as a “large carrier” for the *APPR*.³
3. Starting August 2022, the Air Line Pilots Association (“**ALPA**”) engaged in collective bargaining with WestJet Airlines Ltd. (“**WestJet**”) for the pilots’ contract.⁴
4. Around nine months into the collective bargaining, on May 15, 2023, ALPA issued a notice under the *Canada Labour Code* informing WestJet that ALPA would be in a legal position to withdraw its services on May 19, 2023 at 3:00 a.m. MDT. In return, WestJet also issued a notice under the *Canada Labour Code* informing ALPA that the pilots would be legally locked out at the same time. Neither ALPA nor WestJet followed through with their legal notices as a tentative agreement was reached on May 19 at 1:00 a.m.⁵ There was no strike or work stoppage when the Boyds were supposed to travel.

¹ *Boyd v. WestJet Airlines*, 2024 BCCRT 640 [**CRT Decision**] at para. 9(a); *Air Passenger Rights v WestJet Airlines*, 2025 BCSC 2145 [**RFJ**] at para. 10.

² *CRT Decision* at para. 9(a); Affidavit of Samantha Lawrence on Sept. 12, 2024 [**Tribunal Record**] at Exhibit E, Evidence #17-19 (Appellant’s Appeal Book [**AAB**], Tab 3, p. 93-94).

³ Tribunal Record at Exhibit F, Evidence #23 WestJet’s International Tariff, Rule 12(E) WestJet’s self-identification as a “large carrier” and Rule 100 (AAB, Tab 3, pp. 124, 186).

⁴ Tribunal Record at Exhibit E, Evidence #8 referring to negotiating for 9 months and Exhibit F, Evidence #22 (AAB, Tab 3, pp. 84 and 107-108).

⁵ *CRT Decision* at para. 9(b)-(d); *Chambers Decision* at paras. 12 and 16; Tribunal Record at Exhibit E, Evidence #3-4, 6-7 (AAB, Tab 3, pp. 79-80 and 82-83).

5. On the morning of May 18, 2023, although the Boyds' flight was scheduled to depart before the strike could legally begin, WestJet sent the Boyds a standardized email stating their connecting flight to Rome was cancelled "*due to a strike or work stoppage*."⁶ WestJet also advised the Boyds that WestJet was unable to offer an alternative WestJet flight.⁷

6. The Boyds proceeded to complete the first leg of their trip, from Kelowna, B.C. to Calgary, Alberta.⁸ After some effort on the part of the Boyds, WestJet rebooked them to travel with two additional stopovers from Calgary to Portland, Oregon on WestJet Airlines, then from Portland to Amsterdam on Delta Airlines, and finally from Amsterdam to Rome on Italia Tranporto.⁹ The Boyds were stranded in Calgary, Alberta overnight on May 18, 2023 and incurred a meal expense of \$92 and hotel expense of \$185.25.¹⁰

7. It was undisputed that the Boyds were ultimately transported to their destination in Rome, Italy with a delay of 24 hours from the scheduled arrival time.¹¹

8. The Boyds requested that WestJet reimburse the \$277.25 of out-of-pocket hotel and meal expenses, and also demanded the standardized compensation of \$1,000/person that is owed in s. 19 of the *APPR* for delays beyond 9 hours. The **same** *APPR* obligations are included in WestJet's tariff as a contract term.¹² On June 14, 2023, WestJet refused to pay stating that the flight was cancelled "*due to a strike or work stoppage*."¹³

⁶ *CRT Decision* at para. 9(f); *Chambers Decision* at para. 13; Tribunal Record at Exhibit E, Evidence #10 (AAB, Tab 3, p. 86).

⁷ Tribunal Record at Exhibit E, Evidence #11 (AAB, Tab 3, p. 87).

⁸ *CRT Decision* at para. 9(e); *Chambers Decision* at para. 13.

⁹ *CRT Decision* at para. 9(g); *Chambers Decision* at para. 14; *Chambers Decision* at para. 13; Tribunal Record at Exhibit E, Evidence #19-20 (AAB, Tab 3, pp. 95-96).

¹⁰ *CRT Decision* at paras. 9(i) and 22; *Chambers Decision* at paras. 18(a)-(b) and 19; Tribunal Record at Exhibit E, Evidence #15-16 (AAB, Tab 3, pp. 91-92).

¹¹ *CRT Decision* at para. 9(h); *Chambers Decision* at para. 15.

¹² Tribunal Record at Exhibit F, Evidence #23 WestJet's International Tariff, Rule 100 incorporating the text of the relevant *APPR* provisions in its entirety (AAB, Tab 3, p. 186).

¹³ Tribunal Record at Exhibit E, Evidence #12-14 (AAB, Tab 3, pp. 88-90).

B. Small Claims Dispute was Filed at the Civil Resolution Tribunal in July 2023

9. On July 4, 2023, the Boyds filed a Dispute Notice with the B.C. Civil Resolution Tribunal (“**CRT**”) seeking payment of the \$277.25 of out-of-pocket meal and hotel expenses, and standardized compensation of \$1,000/person.¹⁴ WestJet filed a *pro forma* Dispute Response on August 30, 2023, asserting that the Boyds are:¹⁵

...bound by the terms and conditions (the "Terms and Conditions") of the airline passenger ticket, and the terms and conditions of WestJet's International Tariff (the "Tariff"), which together comprise the contract of carriage and limit and or/ proscribe the Applicants' right of recovery against WestJet."

10. The *APPR* obligations to pay standardized compensation is explicitly reproduced within WestJet's tariff as a contractual term of the contract of carriage.¹⁶

11. The CRT issued its decision on the Boyds's claim on July 5, 2024 noting that:

- (a) WestJet failed to provide evidence of taking steps to secure alternative flights for the Boyds and avoiding the overnight stay in Calgary, Alberta, and awarded the Boyds the \$277.25 in expenses, plus filing costs and interest.¹⁷
- (b) “Labour disruption”, an undefined term in the *APPR*, should be legally interpreted to cover the period of time where a strike/lockout notice was issued before a potential strike or work stoppage may occur. Consequently, the claim for \$1,000/person standardized compensation was denied.¹⁸

12. To date, the \$355.53 monetary order made by the CRT, consisting of \$277.25 judgment, plus \$15.78 prejudgment interest, and \$62.50 filing fees, has not yet been paid.

¹⁴ Tribunal Record at Exhibit A (AAB, Tab 3, pp. 43-47); *Chambers Decision* at para. 18.

¹⁵ Tribunal Record at Exhibit B (AAB, Tab 3, pp. 48-55, particularly p. 51).

¹⁶ Tribunal Record at Exhibit F, Evidence #23 WestJet's International Tariff, Rule 100 incorporating the text of the relevant *APPR* provisions in its entirety (AAB, Tab 3, p. 186).

¹⁷ *CRT Decision* at paras. 22, 23, and 25(a).

¹⁸ *CRT Decision* at paras. 11-19 and 27.

C. The Boyds Absolutely Assigns their Claim to Air Passenger Rights

13. On July 24, 2024, the Boyds absolutely assigned to Air Passenger Rights, under seal, their entire flight disruption claim, including the monetary judgment of \$355.53.¹⁹

14. Air Passenger Rights is a Canadian non-profit entity established to continue the work of Dr. Gábor Lukács, a long-standing advocate for the rights of air passengers. Its mandate includes educating for passengers and the public of their rights in relation to air travel, enforcing those rights, appearing before Parliamentary committees on passenger protection, participating in *Canadian Transportation Agency* (“CTA”) consultations, and advancing public interest cases before Canadian courts.²⁰ Air Passenger Rights’ public interest advocacy work is spearheaded by Dr. Lukács,²¹ with oversight of a three-member board that includes two outside directors.²² Counsel for Air Passenger Rights, Mr. Lin, is one of the outside directors on the board.²³ WestJet was specifically advised that Mr. Lin did not take part in the Air Passenger Rights’ corporate decision to accept the absolute assignment of the claims of the Boyds and to bring the underlying judicial review.²⁴

15. On July 29, 2024, WestJet was given written notice of the absolute assignment.²⁵ WestJet did not dispute that it was in receipt of the notice of the absolute assignment.

¹⁹ Affidavit #1 of Dr. Gábor Lukács on July 29, 2024 [**Lukács Affidavit**] at Exhibit B (AAB, Tab 1, p. 13); *Chambers Decision* at para. 22.

²⁰ *Air Passenger Rights v. Canada (Attorney General)*, 2024 FCA 128 at para. 2; *Air Passenger Rights v WestJet Airlines Ltd.*, 2025 BCSC 155 at para. 10; *Chambers Decision* at para. 20; Lukács Affidavit at paras. 2-6 (AAB, Tab 1, pp. 1-3).

²¹ Lukács Affidavit at para. 6 (AAB, Tab 1, p. 3).

²² Affidavit #3 of Brittany Dieno on January 22, 2025 [**Dieno Affidavit #3**] at Exhibit A showing Air Passenger Rights is a “soliciting” non-profit corporation; Exhibit B stating that soliciting corporations are to have at least three directors, two of whom are outside directors; Exhibit C article on inside and outside directors (AAB, Tab 6, pp. 383, 388, 393).

²³ Lukács Affidavit at Exhibit A (AAB, Tab 1, p. 12).

²⁴ Affidavit #1 of Brittany Dieno on November 18, 2024 [**Dieno Affidavit #1**] at Exhibit H (AAB, Tab 5, pp. 364-365).

²⁵ Lukács Affidavit at Exhibit C (AAB, Tab 1, p. 14).

C. Relevant Procedural History before the Supreme Court of British Columbia

16. On July 29, 2024, Air Passenger Rights filed the Petition and supporting affidavit in the Supreme Court of B.C.²⁶ Immediately after filing the Petition, the CTA was provided a courtesy copy of all of the filed materials and the CTA's Secretary confirmed receipt.²⁷

i. Responses to Petition filed by WestJet and the CRT

17. On August 19, 2024, WestJet filed its Response to Petition opposing the relief sought on various bases.²⁸ In addition to supporting the CRT's interpretation of "labour disruption" in the *APPR*, WestJet also challenged Air Passenger Rights' standing to bring judicial review, challenged the absolute assignment as "invalid at law," and WestJet alleged that counsel breached the Code of Professional Conduct by not obtaining advance approval from the Law Society in order to remotely administer Dr. Lukács's oath for his affidavit.²⁹

18. In WestJet's Response, WestJet admitted that the *APPR* obligation was a term within its contract with passengers.³⁰ WestJet acknowledged that the CRT had jurisdiction to adjudicate the claim for flight disruptions.³¹ WestJet reiterated that it was a "large carrier" under the *APPR*, and that the "labour disruption" interpretation was a question of law.³²

19. Shortly thereafter, the CRT filed its Response to Petition, taking no position on the outcome of the Petition, and also filed an affidavit containing the record of proceedings.³³ The CRT similarly noted that small claims of less than \$5,000 was within its jurisdiction.³⁴

²⁶ Petition to the Court filed July 29, 2024 (Appeal Record [**AR**], Tab 1, p. 1).

²⁷ Dieno Affidavit #1 at Exhibits A-B (AAB, Tab 5, pp. 349-353).

²⁸ WestJet Response to Petition (Aug. 19, 2024) [**WestJet Response**] (AR, Tab 2, p. 16).

²⁹ WestJet Response at paras. 36-46, 47-56, 94-98 (AR, Tab 2, pp. 21-23, 23-24, 29-30).

³⁰ WestJet Response at paras. 15(a)-(b) (AR, Tab 2, p. 18).

³¹ WestJet Response at paras. 20-23, and 28 (AR, Tab 2, pp. 19-20).

³² WestJet Response at paras. 59 and 90 (AR, Tab 2, pp. 24 and 28).

³³ CRT Response to Petition filed August 30, 2024 [**CRT Response**] (AR, Tab 3, p. 31); Tribunal Record at Exhibits A-G (AAB, Tab 3).

³⁴ CRT Response at paras. 7-10 (AR, Tab 3, p. 33).

ii. WestJet Brings an Application One Week Before Petition Hearing

20. The hearing of the Petition was scheduled for November 21, 2024, after canvassing availability of all parties and hearing date reserved with Scheduling, and a Notice of Hearing was served on October 15, 2024.³⁵ On the same day, WestJet amended its Response to Petition noting that the allegation that Petitioner's counsel breached the Code of Professional Conduct was made in error,³⁶ after WestJet was advised that approvals from the Law Society were not required to administer each affidavit oath.³⁷

21. One week before the scheduled hearing, WestJet proceeds to file an application seeking to adduce further evidence and to cross-examine Dr. Lukács on sixteen (16) topics, returnable one week *after* the scheduled Petition hearing.³⁸ WestJet did not explain why its application was brought three months after its Response to Petition.³⁹

22. The November 21, 2024 Petition hearing did not proceed as no judge was available. The parties then reserved March 24-25, 2025 for a hearing at the Vancouver registry.

23. Prior to the hearing in March, WestJet filed a "reply" for its application to adduce evidence and cross-examination and made new allegations that appellant's counsel breached fiduciary duties, and acted in conflict of interest contrary to the duty of loyalty.⁴⁰

iii. Hearing of the Petition on March 24-25, 2025

24. At the Petition hearing, WestJet abandoned the allegations that Petitioner's counsel breached his fiduciary duties or acted contrary to the duty of loyalty. WestJet also advised the chambers judge that its application was not essential to resolving the Petition.

³⁵ Notice of Hearing (AR, Tab 4, pp. 46-47).

³⁶ WestJet Amended Response to Petition (October 15, 2024) [**WestJet Amended Response**] (AR, Tab 2, p. 16).

³⁷ Dieno Affidavit #1 at Exhibits C-D (AAB, Tab 4, pp. 354-362).

³⁸ WestJet's Notice of Application filed November 14, 2024 [**WestJet Application**] at para. 52 (AR, Tab 6, pp. 70-71).

³⁹ Dieno Affidavit #1 at Exhibits J-M (AAB, Tab 4, pp. 366-379).

⁴⁰ WestJet's "Reply" at paras. 54-56 (AAB, Tab 8, p. 420).

25. The following material and relevant exchanges occurred during the Petition hearing.

26. At the outset of the Petition hearing, WestJet admitted that the Boyds' claim for standardized compensation under the *APPR* before the CRT was a claim in debt.⁴¹

27. WestJet admitted that the *APPR* provisions for payment of standardized compensation were incorporated into and replicated in WestJet's tariff. WestJet further confirmed that passengers can elect to claim the standardized *APPR* compensation either through the courts or as a complaint to the CTA. All parties agreed that the CTA's jurisdiction to determine claims for standardized *APPR* compensation was not exclusive (i.e., there was no exclusivity clause), and the chambers judge made specific note of it.⁴²

28. The chambers judge specifically asked WestJet if it was challenging the CRT's jurisdiction to decide claims for standardized compensation under the *APPR*, and WestJet stated without any ambiguity that "we are not." The chambers judge repeated at least twice during the Petition hearing that she would not be deciding if the CTA has exclusive jurisdiction to determine claims for standardized compensation under the *APPR*.⁴³

29. The chambers judge appeared confused that a legal claim based on a federal law was adjudicated in a provincial forum, but stated she would not be addressing that point.⁴⁴

30. The CRT noted that "*the nature of APPR claims and the CRT's jurisdiction to resolve them were not at issue in the Final Decision; they are also not at issue in this judicial review*" and "*the CRT acknowledges that claims in debt can validly be assigned at law, without violating the rule against champerty* [citing *Argo Ventures Inc. v Choi*, 2019 BCSC 86, para. 18 and *Interclaim Holdings Limited v. Down*, 2001 BCCA 65, para. 26]."⁴⁵

⁴¹ Lower Court Transcript [**Transcript**]: p. 12, line 42 "...while the claim was for a debt.."

⁴² Transcript: p. 11, lines 33-34; p. 12, lines 19-22; p. 14, lines 36-44; p. 15, lines 8-14 and 30-32 and 44; p. 16, lines 8-12 and 34-35; p. 17, lines 26-28.

⁴³ Transcript: p. 15, lines 13-28; p. 17, lines 26-28.

⁴⁴ Transcript: p. 14, line 21-40; p. 15, lines 27-29; see relevant analysis in para. 91 below.

⁴⁵ [emphasis added] CRT's Written Submissions at paras. 5-6 (AAB, Tab 10, p. 443); see also *RFJ* at para. 28.

iv. Scheduled Dates for Release of the Reasons for Judgment

31. At the conclusion of the hearing on March 25, 2025, the chambers judge indicated that oral reasons for judgment would be delivered April 1, 2025.⁴⁶ On March 31, 2025, the parties were notified that the reasons for judgment would be delivered at a later date.

32. On September 25, 2025, the chambers judge issued a Memorandum to Counsel indicating that “[t]here is a possibility I will ask the parties to provide further submissions. If so, I will send another memo by October 10, 2025. However, if I do not seek further submissions, I anticipate the judgment will be released by October 31, 2025.”⁴⁷

v. Reasons for Judgment Rendered on October 30, 2025

33. The reasons for judgment for the Petition hearing were issued on October 30, 2025, and an appeal to this Court was immediately filed the same day on an expedited basis.

34. In the reasons for judgment, the chambers judge made the following determinations:

- (a) The chambers judge decided that a claim for standardized *APPR* compensation is not a debt, when parties have not raised or disputed it.⁴⁸
- (b) The chambers judge noted that the CTA is to exclusively decide claims for standardized *APPR* compensation, while that issue was not before her.⁴⁹
- (c) Since the claim was not for a debt, the assignment was invalid.⁵⁰
- (d) As the assignment was not valid, the appellant had no standing.⁵¹

⁴⁶ Lower Court Transcript: p. 25, bottom; BCSC Scheduling Emails (AAB, Tabs 11-12).

⁴⁷ Memorandum to Counsel on September 25, 2025 (AAB, Tab 14, p. 449).

⁴⁸ *RFJ* at paras. 62-74 and 110(a); CRT’s Written Submissions at para. 5 (AAB, Tab 10, p. 443); Transcript: p. 12, line 42 where WestJet stated “...while the claim was for a debt...”; Application Response of Air Passenger Rights at para. 2 (AR, Tab 7, p. 78).

⁴⁹ *RFJ* at paras. 79-89, 101-110(d); Transcript: p. 15, lines 13-28; p. 17, lines 26-28.

⁵⁰ *RFJ* at paras. 91-96 and 110(b).

⁵¹ *RFJ* at paras. 97-100 and 110(c).

35. After deciding these four issues, the chambers judge invited submissions on granting a remedy to quash the *entire* CRT decision for lack of jurisdiction.⁵² However, one aspect of the CRT's decision (i.e., reimbursement of \$277.25 in out-of-pocket expenses⁵³) was based on an international treaty providing that a claim may be made in a court of law.⁵⁴

36. The chambers judge also invited further submissions on whether to decide the legal issue of whether a strike/lockout notice was "outside control" under the *APPR*, when she already expressed hesitation to opine on the merits in the absence of the CTA.⁵⁵

vi. Immediate Aftermath of the Release of the Reasons for Judgment

37. On the day after the chambers judge's reasons for judgment was released, the CRT sent an email to an unknown number of claimants with a pending claim against airlines, requesting those claimants to elect between: (a) withdrawing their claim; (b) providing submissions why the CRT has jurisdiction; and (c) for some claimants, the option to pause their claim for a couple of months to await the outcome of this appeal.

38. WestJet advised that it considers the chambers judge ruling to not give rise to an appealable "order."⁵⁶ However, the appellant is aware that WestJet also immediately proceeded to seek dismissal of small claims cases against it in other provinces, relying on the chambers judge's ruling that standardized *APPR* compensation is not a "debt."⁵⁷

⁵² *RFJ* at paras. 111 and 113(c)(i).

⁵³ *CRT Decision* at paras. 22, 23, and 25(a);

⁵⁴ *Carriage by Air Act*, RSC, 1985, c. C-26, Schedule VI [***Montreal Convention***], art. 33.

⁵⁵ *RFJ* at paras. 33 and 113(c)(ii).

⁵⁶ "order" is all-encompassing and defined using the word "includes" in the *Court of Appeal Act*, RSBC 1996, ch. 77. An "order" captures decisions that determines rights (procedural or substantive) or that makes declarations of law (see *Grewal v. Grewal*, 2017 BCCA 261 at paras. 18-22).

⁵⁷ It remains unclear how WestJet could on the one hand claim that the chambers judge's ruling could be used as precedent in other jurisdiction but, at the same time, the chambers judge's ruling not actually determining rights (procedural or otherwise) or making a declaration of law. It cannot go both ways.

PART II – ERRORS IN JUDGMENT

39. Appellant submits cascading errors were made on the issues in para. 34(a)-(d) above.

40. Legal Error #1 – Erroneous Interpretation that Standardized APPR Compensation is Not Debt. The chambers judge misremembered that the parties were *ad idem* that the obligation to pay standardized APPR compensation was a debt, but still proceeded to decide the issue when it was not even before her and without the benefit of submissions. The judge did not cite *any* case on the common law meaning of “debt” or “debt” under s. 118 of the *Civil Resolution Tribunal Act*. The judge’s analysis of “debt” was contrary to established law in this Court, the Supreme Court of Canada, and other Canadian courts. Most Canadian small claims court have jurisdiction to adjudicate “debt or damages.” The judge’s reasoning would create access to justice chaos across Canada.

41. Legal Error #2 – Error in Conferring Exclusive Jurisdiction on the Canadian Transportation Agency in the Absence of Any Exclusivity Clause: The parties agreed that the CTA did not have exclusive jurisdiction and the chambers judge *explicitly* stated during the hearing she would not be addressing that issue. However, the judge proceeded to analyze the issue, again, without the benefit of any submissions. The judge’s analysis again did not cite *any* jurisprudence on when an administrative process would be regarded as “exclusive.” The judge’s reasoning is contrary to multiple decisions of this Court, and the Supreme Court of Canada’s specific guidance on the APPR.

42. Legal Error #3 – Erred in Law in Departing from Long-Established and Binding Jurisprudence on Assignments. The chambers judge’s erroneous interpretation of “debt” cascaded down to the analysis regarding the assignment. The chambers judge also did not refer to jurisprudence that absolute assignments of liquidated sums pursuant s. 36(1) of the *Law and Equity* does not attract concerns of champerty and maintenance.

43. Legal Error #4 - Erroneously Finding the Appellant Had No Standing. The judge overlooked that assignments under s. 36 of the *Law and Equity* confers the right to seek “*all legal and other remedies for the debt or chose in action.*” If the assignment was valid, the judge’s novel reasoning would mean that no one has standing to seek judicial review.

PART III - ARGUMENT

44. Overall, the chambers judge began to fall into error when she overlooked or forgotten that whether the claim was for “debt” and whether the CTA had exclusive jurisdiction were not even issues before her. As such, the judge did not have proper assistance in analyzing those issues. The lack of submissions is plain on its face as the judge does not cite any case on “debt”, nor any case on when a statutory scheme is regarded as “exclusive.”

45. The chambers judge also proceeded to make significant findings or inferences about the CTA when those findings were, on their face, contrary to the factual record before her.

46. **Firstly**, the chambers judge inferred that the Boyds were avoiding the CTA’s complaint resolution process.⁵⁸ However, without the benefit of submissions, the judge was not made aware that the CTA’s new complaint resolution process only existed after September 30, 2023,⁵⁹ and the Boyds’s CRT claim was filed July 4, 2023.⁶⁰ At the time, the Boyds only had access to the courts or the *former* CTA process in para. 68 below.

47. **Secondly**, the chambers judge also indicated she was reluctant to opine on substantive issues without the CTA to appearing before her.⁶¹ The judge overlooked that the CTA was given notice of the Petition at the outset, provided with the materials, and the CTA acknowledged receipt.⁶² The chambers judge’s reliance on the absence of the CTA is also self-contradictory. On the one hand, the chambers judge expressed concern that the CTA was absent. On the other hand, the judge did not see much difficulty in opining that the CTA had exclusive jurisdiction over various claims in the CTA’s absence.

⁵⁸ *RFJ* at paras. 86-88.

⁵⁹ *Canada Transportation Act*, SC 1996, c 10, s. 85.01-85.16 [***Canada Transportation Act***] that created the “complaint resolution process” only came into force on September 20, 2023 and implemented by the CTA on or about September 30, 2023 – see *Guideline on the Canadian Transportation Agency’s Complaint Resolution Office air travel complaints process*.

⁶⁰ Tribunal Record at Exhibit A (AAB, Tab 3, pp. 43-47); *Chambers Decision* at para. 18.

⁶¹ *RFJ* at para. 32.

⁶² *Dieno Affidavit #1* at Exhibits A-B (AAB, Tab 5, pp. 349-353).

A. Applicable Passenger Protection Laws for Travel to, from, or within Canada

48. As noted above, the chambers judge did not have the benefit of submissions on the core issues that she proceeded to decide, since it was acknowledged at the hearing that these were not even at issue (i.e., whether claims for standardized *APPR* compensation was a “debt”; and whether the CTA has exclusive jurisdiction over such claims⁶³). As such, the appellant will briefly outline the applicable passenger protection laws in Canada, and fill in the gaps that the chambers judge overlooked or erred on.

i. Common law and underlying contract of carriage (tariff)

49. The tariff is a contract between the carrier and its passengers setting out the terms and conditions of carriage.⁶⁴ WestJet’s international tariff **explicitly** incorporates and reproduces the *APPR* obligations to pay compensation as contractual terms. WestJet acknowledged it is relying on the tariff and it is bound by the terms of its own contract.⁶⁵

50. Historically, the contracts of carriage between an air carrier and passengers were governed solely by the common law of contracts, bailment, and tort, with carriers setting terms they find favourable.⁶⁶ As international travel developed, countries entered into international conventions such as the *Warsaw Convention*, and later superseded by the *Montreal Convention*, to provide some consumer protection measures and certainty.⁶⁷

51. The judge overlooked that the law of contracts remains the backbone of the airline’s legal relationship with passengers, with statutory adjustments to protect passengers.

⁶³ See paragraphs 25-30 of this factum (above).

⁶⁴ *Trotman v. WestJet Airlines Ltd.*, 2022 BCCA 22, para. 5 upholding *Bergen v WestJet Airlines Ltd.*, 2021 BCSC 12, para. 4; *Air Transportation Regulations*, SOR/88-58, s. 110(4) (international tariff); *Canada Transportation Act*, s. 67(3) (domestic tariff); *Lukács v. Canada*, 2015 FCA 269, paras. 20-21 and *Lukács v. Canada* 2016 FCA 314, para. 8.

⁶⁵ Tribunal Record at Exhibits B and F - Evidence #23 International Tariff (AAB, Tab 3, pp. 48-55, particularly p. 51 and p. 111).

⁶⁶ See *Foord v. United Air Lines Inc.*, 2006 ABPC 103 [**Foord ABPC**] at paras. 32-36.

⁶⁷ *Carriage by Air Act*, R.S.C., 1985, c. C-26, Schedules V and VI; *International Air Transport Association v. Canada* (T.A.), 2024 SCC 30 [**IATA SCC**] at paras. 8-9.

ii. *Montreal Convention Applies to International Travel to/From Canada*

52. The *Montreal Convention* is superimposed on the common law of common carriage, and does not eliminate the underlying contract of carriage between the airlines and passengers.⁶⁸ The *Montreal Convention* applies to international carriage, including domestic connections if booked with the international portion as a single itinerary.⁶⁹ In this case, the Boyds had a single itinerary for round-trip travel from Kelowna to Rome, with domestic connections. There was no dispute that the *Montreal Convention* applied.⁷⁰

53. The hallmark of the *Montreal Convention* is the principle of restitution that ensures a passenger is made whole for any damages or loss causally connected to the carriage.⁷¹

54. Air carriers cannot contractually limit their obligations or monetary liability under the *Montreal Convention*, nor rely on terms that conflict with the *Montreal Convention*.⁷²

55. Article 33 of the *Montreal Convention* empowers a passenger to elect to bring a lawsuit in a court in the country of the air carrier's domicile or principal place of business, at the place of destination, or the place of business that the contract was made. The chambers judge overlooked this in para. 111 when she suggested the entire CRT decision (including the *Montreal Convention* expenses) may be quashed for lack of jurisdiction.

⁶⁸ *Foord ABPC* at para. 35; *Gervais c. WestJet*, 2025 QCCQ 2321 at paras. 28-29.

⁶⁹ *Montreal Convention*, art. 1(3); *Huxley v. Aquila Air Ltd.*, 1995 CanLII 1008 (BCSC), para. 3; *IATA SCC* at para. 33.

⁷⁰ *CRT Decision* at paras. 20-22; also WestJet's submissions before the CRT where there was no submission on the *Montreal Convention* not applying (AAB, Tab 2, p. 33-38).

⁷¹ *Montreal Convention*, preamble; *IATA SCC* at paras. 48-49 and 94; *International Air Transport Association v. C.T.A.*, 2022 FCA 211 [**IATA FCA**] at para. 96; *Brink's, Incorporated v. Air Canada*, 2025 FC 110, para. 62; The *Montreal Convention* provided a broad basis for recovery / restitution - *Turmero v. Air Canada*, 2025 FC 673 at para. 90-100 [**Turmero FC**] and *West v. WestJet Airlines Ltd.*, 2025 BCCRT 1156 at paras. 31-32.

⁷² Articles 25-27 of *Montreal Convention*; *IATA SCC* at para. 34 cited in *Air Passenger Rights v WestJet Airlines Ltd.*, 2025 BCSC 155 at paras. 54-55, an unrelated consumer protection case with the appellant as a public interest plaintiff. This succinct summary of the legal framework for air travel was brought to the judge's attention but not cited.

56. Before the CRT, the Boyds relied on article 19 of the *Montreal Convention* for recovery of the \$277.25 in out-of-pocket expenses:⁷³

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents 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.

57. In *IATA SCC*, the Supreme Court of Canada confirmed that the *Montreal Convention* is not comprehensive and only exclusive in relation to matters that it actually covers (i.e., rules for *damages* liability for international travel).⁷⁴ In other words, the Supreme Court of Canada confirmed that there was room for Parliament to enact the *APPR* which operates alongside the *Montreal Convention*, so long as these instruments do not legally conflict.

iii. Canada's Passenger Protection Laws – the *ATR* and the later *APPR*

58. Prior to the 2019 enactment of the *APPR*, some consumer protection measures were available in the *Air Transportation Regulations*, SOR/88-58 [***ATR***]. For example, s. 107 specifies categories of contract terms an airlines' domestic tariff must contain; s. 122 similarly specifies the contract terms in an international tariff; s. 110 requires filing an international tariff with the CTA and the terms and conditions therein must be applied; s. 116-116.1 requires international tariffs to be available for public inspection and displayed prominently on airlines' websites; and s. 111(1) requires tariff terms to be reasonable.⁷⁵

59. In 2018, Parliament enacted the *Transportation Modernization Act*, S.C. 2018, c. 10 that introduced s. 86.11 into the *Canada Transportation Act*, to standardize and set minimum monetary compensation to unify the patchwork of different air carrier tariffs.⁷⁶

⁷³ *CRT Decision* at para. 20; also *Turmero FC* at paras. 90-100.

⁷⁴ *IATA SCC* at para. 99.

⁷⁵ E.g., *Berenguer v. Sata Internacional - Azores Airlines, S.A.*, 2023 FCA 176 [***Berenguer FCA***] at paras. 62-63.

⁷⁶ *Air Passenger Protection Regulations – Regulatory Impact Analysis Statement*, Executive Summary (Exhibit F, Evidence #26 (AAB, Tab 3, p. 220)); *IATA SCC*, para. 10.

60. The chambers judge did not have the benefit of any submissions on this background that led up to the *APPR*, which situates how the *APPR* comes into play in this complex regulation of air transportation. Section 86.11 enabled the CTA to make regulations on some enumerated passenger protection measures including standardized amounts of compensation for flight delays, cancellations, and denial of boarding. The *APPR* was the regulation that was subsequently enacted, and intended as a “floor”, not a “ceiling.” The *APPR* did not eliminate the narrower measures in the *ATR* in para. 58 above.

61. The Supreme Court of Canada recognized the *APPR* as a consumer protection scheme that is legally incorporated into the contract of carriage (i.e., implied into the contract by law), working alongside the *Montreal Convention*.⁷⁷ WestJet also **reproduced** the same *APPR* obligations as express terms of its contract of carriage.⁷⁸ A carrier’s tariff continues to apply with the *APPR* serving only as a “floor”, not a “ceiling”, and the *more advantageous* tariff terms prevail for inconsistencies between the tariff and the *APPR*.⁷⁹

62. Hence, in air carrier and passenger disputes, courts consider the following instruments chronologically:⁸⁰ (a) the air carrier’s tariff (i.e., contract of carriage); (b) the more advantageous protections amongst the *APPR* and the tariff will apply; and (c) for international travel, the *Montreal Convention* prevails over any conflicting tariff provisions.

63. At its core, whether adjudicated in a small claims court or superior court or at the CTA (in the nature of ordering the air carrier to “apply the relevant terms and conditions”⁸¹), the dispute still rests on the contract of carriage. In substance, these are all breach of contract claims, based on a contract with specific statutory adjustments, not dissimilar to how consumer protection laws overlay on top of a run-of-the-mill consumer contract.

⁷⁷ *IATA SCC*, paras. 4, 10-12, 27, 31, and 89-90.

⁷⁸ Tribunal Record at Exhibit F, Evidence #23 WestJet’s International Tariff, Rule 100 incorporating the text of the relevant *APPR* provisions in its entirety (AAB, Tab 3, p. 186).

⁷⁹ *IATA SCC* at paras. 36, 62 and 80.

⁸⁰ *Douglas v. WestJet Airlines Ltd.* (SC-22-00161182-0000) at paras. 17-18; also *Berenguer FCA* at paras. 44 and 63.

⁸¹ *IATA SCC* at para. 87, noting the “complaint resolution process” after Sept. 20, 2023.

iv. The CTA's Narrow Jurisdiction in Addressing Air Travel Complaints

64. The chambers judge did not have the benefit of relevant submissions from any party on the CTA's role in addressing passenger complaints. The chambers judge proceeded to conduct the analysis *sua sponte* and overlooked important background, developments, and binding jurisprudence. The chambers judge's analysis also overlooked her own concern about ruling on substantive legal issues without the CTA present.⁸²

65. Prior to June 22, 2007, s. 85.1 of the *Canada Transportation Act* was titled "Air Travel Complaints Commissioner" and the Commissioner was considered to be a separate body within the National Transportation Agency, which was the predecessor of the CTA.⁸³ The Commissioner's mandate was to accept complaints and attempt to resolve those complaints "for which no other remedy exists" including mediation.⁸⁴ In other words, the Commissioner did not have an adjudicative role and it was recognized that passengers have recourse to other avenues, such as the courts. The Commissioner was also required to publish a semi-annual report summarizing the complaints.⁸⁵

66. Subsequently, the Commissioner was absorbed into the CTA's operations and the CTA had the *discretion* to adjudicate the air passenger complaints.⁸⁶ The body that adjudicated those complaints would be the "Agency", which consisted of no more than five permanent members and three temporary members.⁸⁷ The adjudication of a passengers' complaint by the Agency's members is subject to appeal on a question of law or jurisdiction, with leave of the Federal Court of Appeal.⁸⁸ As detailed below, this changed along with the "complaint resolution process" in September 2023.

⁸² *RFJ* at para. 32.

⁸³ *Canada Transportation Act*, s. 85.1 (as it read prior to June 22, 2007).

⁸⁴ *Canada Transportation Act*, s. 85.1(3) (as it read prior to June 22, 2007).

⁸⁵ *Canada Transportation Act*, s. 85.1(6) (as it read prior to June 22, 2007).

⁸⁶ *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, paras. 10-14 (CTA may refuse to hear complaint); *IATA FCA*, paras. 128-130; *Canada Transportation Act*, s. 85.1(3) (former).

⁸⁷ *Canada Transportation Act*, s. 7(2) and 9(3) (as it read after June 22, 2007).

⁸⁸ *IATA SCC* at para. 25.

67. In a considered and detailed judgment in 2012, the Supreme Court of British Columbia expressly **rejected** “*the Airlines’ argument that the federal legislation has as its purpose making the Agency the exclusive and final decision-making authority with respect to matters relating to air travel.*”⁸⁹ This Court upheld those findings.⁹⁰ The chambers judge did not cite any of these detailed and considered authorities, nor had the benefit of submissions on them. The chambers judge had charted out a new legal path without first demonstrating that the judge knew the existing territory or landscape.⁹¹

68. The *APPR* came into force in 2019, while air travel complaints continued to be dealt with by the few CTA members. After travel resumption post-COVID, the number of complaints skyrocketed, with a significant backlog of outstanding complaints with wait times of years. In the 2023 budget bill, Parliament enacted ss. 85.01-85.16 of the *Canada Transportation Act* to “replace the current process for resolving air travel complaints with a more streamlined process designed to result in more timely decisions.”⁹²

69. The CTA’s new “complaint resolution” process would instead be handled mostly by a large number of civil servants at the CTA. There is nothing in the legislation, nor any legislative debate or related publication suggesting that Parliament intended this new “complaint resolution” process to be exclusive of existing rights or remedies. The judge was advised that none of the parties were claiming the CTA had exclusive jurisdiction.⁹³

70. Indeed, the procedural rules in the new ss. 85.01-85.16 that the judge alluded to as an indication of “exclusivity” are inconclusive. When complaints were previously dealt with

⁸⁹ [emphasis in original] *Unlu v. Air Canada*, 2012 BCSC 60 at paras. 35, 59, 73 and 76.

⁹⁰ *Unlu v. Air Canada*, 2013 BCCA 112 [**Unlu BCCA**] at para. 25 (leave to appeal denied); see also *Union des consommateurs c. Air Canada*, 2022 QCCS 4254 at para. 137, this finding upheld in *Union des consommateurs c. Air Canada*, 2025 QCCA 480 and other parts of trial judgment reversed in favour of the plaintiff, and leave to appeal is pending.

⁹¹ *R. v. Pereira et al*, 2007 BCSC 472 at paras. 54-55.

⁹² [emphasis added] *Budget Implementation Act*, 2023, No. 1 S.C. 2023, c. 26

⁹³ See the parties’ agreement Transcript: p. 11, lines 33-34; p. 12, lines 19-22; p. 14, lines 36-44; p. 15, lines 8-14 and 30-32 and 44; p. 16, lines 8-12 and 34-35; p. 17, lines 26-28.

by the CTA's small team of members, similarly detailed procedural rules existed.⁹⁴ A mere codification of procedural rules does nothing to override the previous judicial rejections of the "*argument that a purpose of the federal legislation is to make the Agency the exclusive and final decision-making authority with respect to matters relating to air travel.*"⁹⁵

71. In para. 51 of the reasons, the chambers judge conflated the appeal path for the *previous* adjudication process involving CTA members that would be appealed with leave of the Federal Court of Appeal, with the *new* complaint resolution process. Section 85.06 of the *Canada Transportation Act* expressly provides that an order from the complaint resolution process is not an order/decision of the CTA. As such, a complaint resolution officer's order is not subject to direct review to the Federal Court of Appeal. Instead, it must first be judicially reviewed at the Federal Court under the reasonableness standard.

72. With this background of the applicable laws, the judge's legal errors are apparent.

B. Legal Error #1: Interpretation that Standardized APPR Compensation is Not Debt

73. This first error gives rise to a question of law, subject to review for correctness.⁹⁶

74. As noted above, WestJet acknowledged that the Boyds' claim was for debt, and whether the claim before the CRT was a debt was not in dispute.⁹⁷ As such, the issues were not even properly before the judge and "*a court will not make a ruling beyond what is requested by the parties.*"⁹⁸ At minimum, the parties and the CRT should be able to provide submissions before an issue is actually decided, which did not occur in this case.

75. As such, for this reason alone, the chambers judge's decision on debt cannot stand.

⁹⁴ E.g., *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104.

⁹⁵ *Unlu BCCA* at para. 25 (leave to appeal denied).

⁹⁶ *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at paras. 47 and 50; *Bennison v. Bennison*, 2025 BCCA 195 [**Bennison BCCA**] at para. 23.

⁹⁷ See paragraph 34(a) and footnote 48 of this Factum above.

⁹⁸ *Canadian Private Copying Collective v. Canadian Storage Media Alliance*, 2004 FCA 424, para. 173; *Paladin Labs Inc. v. British Columbia*, 2022 BCCA 365, paras. 22-23.

i. APPR Standardized Compensation is a Claim for Contractual Debt

76. The chambers judge refused to apply the Supreme Court of Canada's guidance that the APPR compensation is a claim "for payment of an amount that is already owed as a matter of standardized entitlements provided for under a consumer protection scheme," which is an obligation incorporated in the contract of carriage.⁹⁹ This articulation is clearly within all courts' articulation of a debt.¹⁰⁰ Notably, the judge overlooked that WestJet also inserted the APPR provisions as express contract terms,¹⁰¹ enforceable at common law.

77. Indeed, this Court previously stated that the legal meaning of "debt" is:¹⁰²

That which is owed by one person to another, and particularly money payable arising from and by reason of a prior promise or contract but also from and by reason of any other ground of obligation, e.g. statute or order of court. The moral and legal obligation is on the debtor to pay his creditor, but in many cases the existence or extent of the obligation to pay must be determined judicially.

78. In a more recent decision, this Court also noted that "debt" refers to:¹⁰³

...any claim, legal or equitable, on contract, express or implied, or under a statute on which a certain sum of money, not being unliquidated damages, is due and payable, through an enquiry be necessary to ascertain the exact amount due...

79. Notably, at paras. 66-67 of the reasons, the judge fell into error in not starting the analysis with the legal meaning of a debt. The underlying claim involved a legal obligation incorporated into the contract of carriage to pay a liquidated sum of \$1,000 (i.e., a debt).

⁹⁹ [emphasis added] *IATA* SCC at paras. 97 and 86 ("deemed to form part of...").

¹⁰⁰ E.g., *Barejo Holdings ULC v. The Queen*, 2015 TCC 274 at paras. 59-62 citing cases in other courts including the Supreme Court of Canada; *Diwold v. Diwold*, 1940 CanLII 52 (SCC) at p. 39; *Rayner v Mizier*, 2023 ABKB 521 at para. 16; *Knight v. Calgary Suzuki Inc.* (1996), 1996 CanLII 19921 (AB CJ) at paras. 17-21; *Connors v. Egli*, 1923 CanLII 663 (AB KB) and appeal dismissed in *Connors v. Egli*, 1924 CanLII 301 (AB CA).

¹⁰¹ See paragraphs 10, 26, and 27 of this Factum above.

¹⁰² [emphasis added] *Winmil Holidays Co. Ltd. (Re)*, 1984 CanLII 3090, para. 42; *Deloitte, Haskins & Sells Ltd. v. P.R.D. Travel Investments Inc.*, 1984 CanLII 441, para. 41.

¹⁰³ [emphasis added] *British Columbia v. Aquilini*, 1998 CanLII 6518 (BCCA), para. 63.

80. The appellant appreciates the general rule that “*rights conferred by statute are to be enforced in the statutory regime.*” However, an exception applies when the rights are enforced in a court of law as part of a recognized cause of action, such as debt or breach of contract.¹⁰⁴ This recognized exception was reiterated in this Court’s recent decision.¹⁰⁵

81. In *Macaraeg BCCA*, this Court’s ruling was premised on the finding that the employment-standard statutory obligations were not implied terms of the employment contract,¹⁰⁶ so cannot be enforced as a breach of contract claim or debt claim. In the present case, by law, Parliament provided that the *APPR* obligations be incorporated or implied into the contract of carriage,¹⁰⁷ enabling enforcement for breach of contract. As noted in para. 79 of this Factum, WestJet made the same *APPR* obligations express terms of the contract, reinforcing the right to bring breach of contract actions in a court.¹⁰⁸

82. At paras. 77-78 of the reasons, the chambers judge refused to acknowledge that both the Federal Court of Appeal and the Supreme Court of Canada accepted as a fact that the “*claims payable pursuant to the [APPR] can be vindicated by way of an action in court.*”¹⁰⁹ The chambers judge’s reliance on the “assuming without deciding” misreads what the Supreme Court said since that phrase comes two sentences after the Supreme Court’s statement of fact that *APPR* claims can be filed as part of an action in court. Reading this phrase back into a statement two sentences earlier is wholly unsupportable.

83. Finally, at paras. 81-82 of the reasons, the judge suggested that various “factors” requiring determination would take such claims outside the scope of a debt. Respectfully, as noted in para. 77 of this Factum, this Court noted that even for debt claims “*in many cases the **existence or extent of the obligation to pay must be determined judicially.***”

¹⁰⁴ *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182 [**Macaraeg BCCA**] at paras. 45, 70, 73, and 101, particularly para. 73 detailing the exceptions.

¹⁰⁵ *Bank of Montreal v. Cheetham*, 2025 BCCA 374 [**BMO BCCA**] at paras. 90 and 95.

¹⁰⁶ *Macaraeg BCCA* at paras. 5 and 78.

¹⁰⁷ *RFJ*, paras. 62 and 80; *Canada Transportation Act*, s. 86.11(4); *IATA SCC*, para. 86.

¹⁰⁸ *BMO BCCA*, paras. 27-30, 72-96; see BCCA cases in footnote 128 below.

¹⁰⁹ *IATA FCA* at para. 133; *IATA SCC* at para. 97.

84. The three factors that the judge identified, namely, amount of advance notice, length of delay, and size of the carrier, are obvious from the documents in this case. Passengers have records of if and when they were notified.¹¹⁰ The length of the delay is easily gleaned from a revised itinerary or boarding pass.¹¹¹ WestJet already admitted in its tariff that it is a “large carrier.”¹¹² Even for considering if the delay was within the carrier’s control or not, it is presumed that the delay is within the carrier’s control unless proven otherwise.¹¹³

85. The situation here is no different than a credit card agreement requiring payment of an overlimit fee of \$50 for exceeding the limit three times in a month, for example. If the bank seeks recovery of this fee in a small claims court, the court would also need to decide: whether the customer is bound by the terms of the agreement; whether this fee was disclosed; whether the customer actually used the card three times that month; and whether the credit limit was exceeded three times. The customer’s mere denial of liability does not distract from the character of the contractual sum of \$50 as a liquidated debt.

86. Similarly, in foreclosure court, a judge would adjudicate similar issues in a summary way: whether the mortgage was duly granted; whether funds were advanced; whether payments were made; and whether a demand was sent. The mortgage is still a “debt.”

87. WestJet is expected to rely on cases for pre-judgment garnishment of liquidated claims. That is easily answered as *Court Order Enforcement Act* narrowly defines “debt.”

ii. The CRT or Small Claims Courts Have Jurisdiction Over APPR Claims

88. It is apparent that the chambers judge did not consider a single decision on what constitutes a “debt” under the *Civil Resolution Tribunal Act*. As noted above, “debt or damages” is a term of art in the enabling legislation of many Canadian small claims courts. As noted above, “debt” is an established legal term, which was overlooked.

¹¹⁰ Tribunal Record at Exhibit E, Evidence #10 (AAB, Tab 3, p. 86).

¹¹¹ *CRT Decision* at para. 9(g); *Chambers Decision* at para. 14; *Chambers Decision* at para. 13; Tribunal Record at Exhibit E, Evidence #19-20 (AAB, Tab 3, pp. 95-96).

¹¹² Tribunal Record at Exhibit F, Evidence #23 WestJet’s International Tariff, Rule 12(E) WestJet’s self-identification as a “large carrier” and Rule 100 (AAB, Tab 3, pp. 124, 186).

¹¹³ *Westjet v. Lareau*, 2025 FCA 149 at paras. 80-149.

89. The New Brunswick Court of Appeal previously dealt with a similar question of whether there was an alleged debt within the small claims court's jurisdiction.¹¹⁴ When the enabling legislation does not define the term (i.e., "debt"), the first step is to consider if the claim falls within the well-established common law meaning of a "debt."

90. After ascertaining the common law meaning of "debt", the next step is to consider whether the legislature intended the use of the term "debt" in s. 118 of the *Civil Resolution Tribunal Act* to be narrower than the common law definition. The same "debt" terminology also appears in the B.C. *Small Claims Act*. The New Brunswick Court of Appeal's statutory interpretation analysis equally applies here.¹¹⁵ There is nothing in the *Civil Resolution Tribunal Act* to suggest the legislature intended to depart from the common law definition of "debt", and the legislature is presumed not to intend to depart from the common law.

91. The chambers judge's comments in para. 105 of the reasons appear to be based on a misunderstanding of the unitary character of the Canadian court system. While it was open for Parliament to assign exclusive jurisdiction over *APPR* claims to a specific court, it did not do so. That does not detract from the provincial legislatures' powers under s. 92(14) of the constitution to grant inferior provincial courts general jurisdiction to hear disputes in the province even when it includes adjudicating issues under federal law.¹¹⁶ The judge's approach effectively limits the small claims court's subject-matter jurisdiction to B.C. laws only, to the exclusion of other laws. This means that the small claims courts cannot adjudicate on an Alberta contract, even when there is jurisdiction *simpliciter*.

92. In para. 105 of the reasons, the judge also did not consider that "debt or damages" is a broadly construed term of art, capturing claims based on federal aeronautics statutes:¹¹⁷

¹¹⁴ *New Brunswick Association of Real Estate Appraisers/Association des évaluateurs immobiliers du Nouveau-Brunswick v. Poitras*, 2005 NBCA 112 [**NBAREA**].

¹¹⁵ **NBAREA** at paras. 13-17.

¹¹⁶ *Ontario v. Pembina Exploration Canada Ltd.*, 1989 CanLII 112 (SCC), paras. 21-26; *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27 at paras. 35-40 (majority) and paras. 324-328 (dissent), particularly the authorities summarized in paras. 324-326 ; also *Sanis Health Inc. v. British Columbia*, 2024 SCC 40 at paras. 79-80.

¹¹⁷ *Wijeyasekara et al v. Singapore Airlines Limited*, 2007 BCPC 392 at para. 3.

[3] Section 3(1)(a) of the Small Claims Act contains a generally-worded, broad-scope provision on jurisdiction. It permits the claimant to bring a claim for debt or damages. A claim under the Carriage of Air Act and related Convention may consist of a claim for debt or damages. The Small Claims Act need not list a multitude of federal and provincial Acts that may apply when a debt or damages claim is brought. The absence of a reference to the Act and Convention does not, in my view, limit a claimant bringing a claim to which the Act and Convention apply in the B.C. Provincial Court.

93. Finally, even if the Boyds' claim was not for "debt,"¹¹⁸ the chambers judge erred in summarily determining that it was outside of the CRT's small claims jurisdiction. Other than jurisdiction over "debt or damages", s. 118(1)(c) of the *Civil Resolution Tribunal Act* grants the CRT jurisdiction for "*specific performance of an agreement relating to personal property or services*." The underlying claim could also be characterized as specific performance of Rule 100 of the tariff to pay the liquidated sum of \$2,000 already owed.

94. Similar to *NBAREA*,¹¹⁹ if the underlying claims for standardized *APPR* compensation cannot be adjudicated in the CRT or small claims court, it would necessarily mean that passengers wishing to proceed with an action would be forced to file in a superior court and follow the detailed procedural requirements of the superior court, directly undermining the legislature's intent for small claims to be pursued in a layperson's forum. Those small monetary claims would also be appealed as of right to some provincial appellate courts.

iii. Conclusion on the "Debt" Issue and the CRT's Jurisdiction

95. WestJet admitted the CRT claim was for debt, which was not even a disputed issue before the judge. The judge erred in deciding the issue *sua sponte* and did not consider the legal meaning of "debt." The judge also erred in finding that liquidated compensation claims based on express contract terms cannot be adjudicated by the CRT or a small claims court. Since the decision seeks to shrink the jurisdiction of s. 92(14) courts/tribunals, the judge further erred in deciding the issue in the AGBC's absence.¹²⁰ The erroneous reasoning must be swiftly corrected before chaos ensues across Canada.

¹¹⁸ WestJet admitted it was a "debt", Transcript: p. 12, line 42 "...the claim was for a debt.."

¹¹⁹ *NBAREA* at paras. 8 and 16.

¹²⁰ *Judicial Review Procedure Act*, RSBC 1996, c. 241, s. 16. The appellant served the Petition on AGBC. However, AGBC would not be aware of the unexpected developments.

C. Legal Error #2 – CTA Does Not Have Exclusive Jurisdiction over APPR Claims

96. The second error is also a legal question, reviewable for correctness. As noted above, WestJet accepted that the CTA's jurisdiction to deal with air travel complaints is not exclusive of passengers' right to pursue legal remedies via the courts.¹²¹ The CRT noted that the Boyds' claim was within its jurisdiction, and this was not disputed.¹²² As noted in para. 82 above, both the SCC and FCA accepted that such claims can be heard in court.

97. Even if it was suitable to consider if the Boyds' claim was within the CRT's jurisdiction, it was not necessary to further opine on whether the CTA has exclusive on air travel complaints, when the judge expressed concern for deciding issues in the CTA's absence.

98. The chambers judge was essentially providing novel legal interpretations of issues that were not even before her and without the benefit of any submissions. This is telling as the judge does not cite any case law in support of her finding that the CTA has exclusive jurisdiction. As such, for this reason alone, the judge's decision cannot stand.

99. In any event, the chambers judge's finding that the CTA has exclusive jurisdiction necessarily means that the jurisdiction of section 96 courts have also been ousted. However, the Supreme Court of Canada has repeatedly stated that "*the superior courts have jurisdiction in all cases except where jurisdiction has been removed by statute,*"¹²³ and there must be "*clear and explicit statutory wording to this effect.*"¹²⁴

100. It was common ground that the *Canada Transportation Act* does not have an exclusivity clause for the CTA to exercise exclusive jurisdiction over air travel complaints. An example of "clear and explicit statutory wording" is found in s. 18 of the *Federal Courts*

¹²¹ Transcript: p. 11, lines 33-34; p. 12, lines 19-22; p. 14, lines 36-44; p. 15, lines 8-14 and 30-32 and 44; p. 16, lines 8-12 and 34-35; p. 17, lines 26-28.

¹²² CRT's Written Submissions at paras. 5-6 (AAB, Tab 10, p. 443).

¹²³ [emphasis in original] *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54 at para. 32; also *Québec Téléphone v. Bell Telephone Co. of Canada*, [1972] SCR 182 at 190.

¹²⁴ *Ordon Estate v. Grail*, 1998 CanLII 771 (SCC) at para. 46; *Canada (A.G.) v. TeleZone Inc.*, 2010 SCC 62 [**TeleZone SCC**] at para. 42; *Strickland v. Canada (A.G.)*, 2015 SCC 37 at para. 68 (concurring); *Choi v. Westbank Projects Corp.*, 2024 BCCA 410 at para. 9.

Act that “*the Federal Court has exclusive original jurisdiction...*,” which ousts section 96 courts from the judicial review of decisions of federal tribunal and administrative bodies.¹²⁵

101. The chambers judge’s legal reasoning that the CTA has exclusive jurisdiction cannot stand in the face of the longstanding Supreme Court of Canada guidance above.

102. It is expected that WestJet may assert that the “exclusivity” of the CTA is to the exclusion of only small claims courts and the B.C. CRT, but not the section 96 courts.

103. Respectfully, there is no authority for that approach. Moreover, nothing in the *Canada Transportation Act* suggests that Parliament would have such nuanced and absurd intent. It would be mean that air passenger claims with small sums would need to be filed in the superior courts and, indirectly, defeat the intent of all provincial legislatures that monetary claims of a small value are dealt with in a layperson friendly forum.¹²⁶

104. In any event, one day after the chambers judge’s decision, this Court provided guidance on a nearly identical issue. Even if, implicitly, a legislature is presumed to intend a statutory scheme to be “exclusive”, the fact that the statutory obligations were expressly incorporated into a contract permits a breach of contract claim to be advanced in court.¹²⁷

105. The chambers judge’s findings that Parliament implicitly intended the CTA to have exclusive jurisdiction is also inconsistent with this Court’s earlier guidance that a comprehensive scheme alone would not be sufficient to convey intent for exclusive jurisdiction – Parliament must state their intent explicitly.¹²⁸ The chambers judge also did not consider this Court’s ruling in 2013 that the federal law does not make the CTA the exclusive adjudicative body for air travel complaints, as detailed in para. 67 of this factum.

106. The judge’s ruling that the CTA has exclusive jurisdiction is clearly erroneous.

¹²⁵ *TeleZone SCC* at para. 45.

¹²⁶ See *NBAREA* at paras. 8 and 16 for a similar comment.

¹²⁷ *BMO BCCA* at paras. 90 and 95.

¹²⁸ *Lewis v. WestJet Airlines Ltd.*, 2019 BCCA 63 at paras. 45-47; *WestJet v. Gauthier*, 2025 BCCA 134 at paras. 44-48 and 84-98.

D. Legal Error #3 – Erred in Departing from Established Law on Assignments

107. This third error deals with whether the Boyds’ claim could be legally assigned to the appellant. The appellant submit this is also a legal question, reviewed for correctness.

i. Assignment of Debt and Liquidated Chose of Action Not Champertous

108. The CRT asserted “*that claims in debt can validly be assigned at law, without violating the rule against champerty* [citing *Argo Ventures Inc. v Choi*, 2019 BCSC 86, para. 18 and *Interclaim Holdings Limited v. Down*, 2001 BCCA 65, para. 26].”¹²⁹ Before the chambers judge, WestJet sidestepped these clear authorities and attempted to create confusion with scattershot issues including allegations that appellant’s counsel was in breach of fiduciary duty, which was abandoned at the hearing; allegation of champerty and maintenance; and allegations that the \$2,000 compensation being a windfall profit.

109. Notably, should this Court overrule the chamber judge’s finding at para. 91 that the underlying claim was not a debt, this Court has stated that such assignments are not champertous. WestJet’s position was a red herring, and undermines established law.¹³⁰

110. Even if the underlying claim is not a debt, the judge’s comment that the appellant’s position rests **solely** on the claim as a debt was not correct. The appellant’s position was that both debts and choses in action, particularly liquidated choses, can be assigned under s. 36(1) of the *Law and Equity Act* without attracting champerty or maintenance.¹³¹

111. In *Argo Ventures*, Shergill J. found that assignment of a liquidated \$300,000 claim against a real estate buyer for breach of a contractual term to pay a deposit did not attract concerns of champerty or maintenance, emphasizing the liquidated nature of the claim.¹³²

¹²⁹ CRT’s Written Submissions at para. 6 (AAB, Tab 10, p. 443).

¹³⁰ *Interclaim Holdings Limited v. Down*, 2001 BCCA 65 [***Interclaim BCCA***] at paras. 2, 26, and 33; see also *Clark v. Werden*, 2011 ONCA 619 [***Clark ONCA***] at paras. 11-16.

¹³¹ Submissions at the Petition Hearing at paras. 5(e)-(f) (AAB, Tab 9, p. 426).

¹³² *Argo Ventures Inc. v Choi*, 2019 BCSC 86 [***Argo Ventures***] at paras. 11-25, particularly paras. 14-16; 22-23 (decision in the course of trial); *Argo Ventures Inc. v Choi*, 2019 BCSC 85 at para. 1 (trial), upheld in *Argo Ventures Inc. v. Choi*, 2020 BCCA 17.

112. *Argo Ventures* was brought to the chambers judge's attention¹³³ and would have been binding on the basis of *horizontal* stare decisis, but *Argo Ventures* was not mentioned in the chambers judge's reasons for judgment. *Argo Ventures* is consistent with previous decisions of this Court suggesting that the concerns over champerty and maintenance would not apply to liquidated contractual claims.¹³⁴ English courts similarly found that unliquidated damages were more likely to attract concerns of champerty and maintenance, and assignment of liquidated claims cannot really prejudice the debtor.¹³⁵

ii. Statutory Assignments Includes Right to All Legal or Other Remedies

113. At paras. 92, the chambers judge stated “[t]he petitioner provided no authority supporting the notion that one could assign a right to seek judicial review and only addressed the ability to assign claims in debt.” The judge may have misremembered that the appellant relied on the text in s. 36(1) of *Law and Equity Act* (below) as a complete answer.¹³⁶ The judge overlooked to cite this provision and analyze the legislative text.

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.

[emphasis added]

¹³³ Submissions at the Petition Hearing at para. 5 (AAB, Tab 9, pp. 425-426); Transcript at p. 7, line 47 to p. 8, line 6.

¹³⁴ *Fredrickson v. I.C.B.C.*, 1986 CanLII 1066 (BCCA) [***Fredrickson BCCA***] (per McLachlin J.A., as she then was) at para. 50, upheld in *I.C.B.C. v. Fredrikson*, 1988 CanLII 38 (SCC), [1988] 1 SCR 1089 for the same reasons of McLachlin J.A.; see also *Interclaim BCCA* at para. 26 where the formulation of “debt” would clearly capture liquidated claims based on a contract.

¹³⁵ *Fitzroy v. Cave*, [1905] 2 K.B. 364; see also *Mulkerrins v. PricewaterhouseCoopers*, [2003] UKHL 41 at paras. 14-15; see also *Clark ONCA* at paras. 15-16.

¹³⁶ Transcript at p. 5, lines 1-5; p. 6, lines 23 to p. 7, line 35; p. 8, lines 30-35.

114. This Court has interpreted s. 36(1) of the *Law and Equity Act* as recognizing that an assignee of a debt or chose in action is entitled to assert “all legal and other remedies”. An assignee is the only person with all of the rights and interests that inhere in a judgment and is the only person entitled to act on the judgment,¹³⁷ and is a complete answer here.

115. The appellant recognizes that *Capital One BCCA* and *Capital One BCSC* were not brought to the chambers judge’s attention. However, the appellant brought to the judge’s attention other established cases to the same effect,¹³⁸ with detailed submissions.¹³⁹

116. Had the chambers judge turned her mind to the statutory language “*all legal and other remedies for the debt or chose in action*” in s. 36(1) of *Law and Equity Act*, it is plain that an absolute statutory assignment enables the appellant to step into the Boyds’ shoes and advance (or defend) the claims/chose in action as necessary. The chambers judge’s finding at paras. 92-96 that judicial review is somehow a unique right is not supported by any case law. The judge may have overlooked that judicial review has its origins as a common law remedy.¹⁴⁰ The text “*all legal and other remedies*” is sufficiently broad to cover all common law and statutory remedies, as evident in *Capital One BCCA*.

¹³⁷ *Capital One, National Association v. Solehdin*, 2020 BCCA 182 [***Capital One BCCA***] at paras. 21 and 53 in particular upholding *Capital One, National Association v. Solehdin*, 2019 BCSC 1593 (per Gomery J., as he then was) [***Capital One BCSC***] at para. 25.

¹³⁸ *Read v Brown*, (1888) 22 QBD 128 (England and Wales Court of Appeal) at p. 130 (the nearly identical legislative text in England was considers the assignee to have obtained a personal right to enforce the chose in action by any legal remedy) and pp. 131-132 (“*they transfer the legal right to the debt as well as the legal remedies for its recovery. The debt is transferred to the assignee and becomes as though it had been his from the beginning.*”), adopted in *Magrath v. Collins (No. 2)*, 1916 CanLII 1075 (AB KB) at pp. 488-489; *Rex v. Cook*, 1931 CanLII 368 (AB CA) at pp. 163-164; *Guardian Trust Co. v. Gaglardi*, 1989 CanLII 5211 (BC SC) at para. 48; Halsbury Laws of England, Choses in Action (Volume 13 (2021)), 2.5(iii) Notice and Effect of Assignment.

¹³⁹ Transcript at pp. 17-21.

¹⁴⁰ *Yang v. Real Estate Council of British Columbia*, 2019 BCCA 43 at para. 11; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 19; *Penney v. The Co-operators General Insurance Company*, 2022 ONSC 3874 at para. 16.

117. In any event, the text of the assignment was all-encompassing with reference to the ability to bring and defend legal proceedings so as to ensure that it was an “absolute” assignment under s. 36(1).¹⁴¹ The judge also overlooked para. 3 of the assignment which requires giving effect to the assignment to the maximum extent legally permissible.

118. Finally, the appellant appreciates that the CRT noted that even if the assignment is valid, the chambers judge “*may still need to consider how the assignment will impact the CRT process going forward.*”¹⁴² The CRT’s concern may be overrated as the CRT previously enforced assignments in a situation similar to *Argo Ventures*.¹⁴³ Even should there be any residual concerns on the effect to the self-representation nature at the CRT, it is a matter for the legislature to consider and resolve since assignment is a substantive legal right under the *Law and Equity Act* that cannot be overridden by procedure rules.

E. Legal Error #4 – Appellant Clearly has Standing to Seek Judicial Review

119. Standing is a question of law that is reviewable on the correctness standard.¹⁴⁴

120. Notably, should this Court overrule the chamber judge’s finding that the assignment was invalid, the only possible legal outcome is that the appellant is entitled to “*all legal and other remedies*” to enforce or defend the underlying CRT judgment.¹⁴⁵ WestJet’s allegation of “assigning a judicial review” is another attempt at creating confusion. The assignment is plain that it is an assignment of an entire debt/chose in action that included the \$355.53 in expenses and interests/costs awarded.¹⁴⁶

121. It would be absurd if the Boyds effectively assigned their entire debt/chose in action, but still possess the right to seek judicial review. Private interest standing for

¹⁴¹ Absolute Assignment dated July 24, 2024 (AAB, Tab 1, p. 13).

¹⁴² CRT’s Written Submissions at para. 6 (AAB, Tab 10, p. 443).

¹⁴³ *Davison v. Wikjord*, 2020 BCCRT 1097 at paras. 3, 5, and 25.

¹⁴⁴ *Li v. Vancouver General Hospital*, 2025 BCCA 247 at para. 51; *Klassen v. Cornies*, 2023 BCCA 420 at para. 29.

¹⁴⁵ *Capital One BCCA* at paras. 21 and 53

¹⁴⁶ Absolute Assignment dated July 24, 2024 at para. 1 (AAB, Tab 1, p. 13).

judicial review is available for “*persons who were parties before the tribunal or who are directly affected by the tribunal's decision.*”¹⁴⁷ The appellant is “directly affected” by the CRT’s decision as the appellant is the only person with all of the rights and interests that inhere in the CRT judgment and the only person entitled to act on the CRT judgment,¹⁴⁸

122. Even if the judicial review was technically required to be initiated by the Boyds (i.e., the original party at the CRT), as an assignee the appellant is entitled to continue the Petition under Rule 6-2(3) of the *Supreme Court Civil Rules*. The Boyds have agreed to assist in pursuing the claim.¹⁴⁹ The situation is not dissimilar to the situation in *Fredrickson BCCA* at para. 8 where this Court appears to have treated the commencement of the proceeding by the assignee as merely a curable irregularity, not a nullity.¹⁵⁰

F. Remitting the Merits Question to be Heard De Novo before Another Judge

123. The underlying merits question that was subject of the judicial review petition (i.e., *CRT Decision* at paras. 11-19) remains to be judicially reviewed for correctness.¹⁵¹

124. At para. 113(c)(ii) of the reasons, the chambers judge invited submissions on whether the court can or should express an opinion on whether the flight disruption was caused by a labour dispute. However, the judge already expressed an opinion in para. 13 in stating “*their flight to Rome was cancelled due to the ongoing labour disruption.*” It would be unfair in these circumstances for the key merits question to be remitted back to the same judge when the judge already expressed a conclusive opinion on it while, at the same time, indicating that the matter was not within the judge’s jurisdiction.

PART IV - NATURE OF ORDER SOUGHT

125. The appeal be allowed and the relief in the Amended Notice of Appeal be granted.

¹⁴⁷ *Force of Nature Society v City of Surrey*, 2021 BCSC 2511 at para. 102.

¹⁴⁸ *Capital One BCCA* at paras. 21 and 53.

¹⁴⁹ Absolute Assignment dated July 24, 2024 at para. 2 (AAB, Tab 1, p. 13).

¹⁵⁰ *Capital One BCSC* at paras. 34-36.

¹⁵¹ *Civil Resolution Tribunal Act*, SBC 2012, c. 25, s. 56.8(2); *Amimer v Mills*, 2024 BCSC 1897 at paras. 40-44

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: November 17, 2025

A handwritten signature in cursive script that reads "Simon Lin".

Simon Lin, Counsel for the Appellant

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APPENDICES: ENACTMENTS**Air Transportation Regulations, s. 107, 110, 111, 116-116.1**

SOR/88-58

Contents of Tariffs**107 (1)** Every tariff shall contain

- (a) the name of the issuing air carrier and the name, title and full address of the officer or agent issuing the tariff;
- (b) the tariff number, and the title that describes the tariff contents;
- (c) the dates of publication, coming into effect and expiration of the tariff, if it is to expire on a specific date;
- (d) a description of the points or areas from and to which or between which the tariff applies;
- (e) in the case of a joint tariff, a list of all participating air carriers;
- (f) a table of contents showing the exact location where information under general headings is to be found;
- (g) where applicable, an index of all goods for which commodity tolls are specified, with reference to each item or page of the tariff in which any of the goods are shown;
- (h) an index of points from, to or between which tolls apply, showing the province or territory in which the points are located;
- (i) a list of the airports, aerodromes or other facilities used with respect to each point shown in the tariff;
- (j) where applicable, information respecting prepayment requirements and restrictions and information respecting non-acceptance and non-delivery of goods, unless reference is given to another tariff number in which that information is contained;
- (k) a full explanation of all abbreviations, notes, reference marks, symbols and technical terms used in the tariff and, where a reference mark or symbol

is used on a page, an explanation of it on that page or a reference thereon to the page on which the explanation is given;

(l) the terms and conditions governing the tariff, generally, stated in such a way that it is clear as to how the terms and conditions apply to the tolls named in the tariff;

(m) any special terms and conditions that apply to a particular toll and, where the toll appears on a page, a reference on that page to the page on which those terms and conditions appear;

(n) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

(i) the carriage of persons with disabilities,

(ii) the carriage of children,

(iii) unaccompanied minors, including those who are travelling under the carrier's supervision,

(iv) the assignment of seats to children who are under the age of 14 years,

(v) failure to operate the service or failure to operate the air service according to schedule,

(vi) flight delay,

(vii) flight cancellation,

(viii) delay on the tarmac,

(ix) denial of boarding,

(x) the re-routing of passengers,

(xi) whether the carrier is bound by the obligations of a large carrier or the obligations of a small carrier that are set out in the [Air Passenger Protection Regulations](#),

(xii) refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason,

- (xiii) ticket reservation, cancellation, confirmation, validity and loss,
 - (xiv) refusal to transport passengers or goods,
 - (xv) method of calculation of charges not specifically set out in the tariff,
 - (xvi) the carriage of baggage including the loss, delay or damaging of baggage,
 - (xvii) the transportation of musical instruments,
 - (xviii) limits of liability respecting passengers and goods,
 - (xix) exclusions from liability respecting passengers and goods,
 - (xx) procedures to be followed, and time limitations, respecting claims, and
 - (xxi) any other terms and conditions deemed under [subsection 86.11\(4\)](#) of the [Act](#) to be included in the tariff;
- (o) the tolls, shown in Canadian currency, together with the names of the points from, to or between which the tolls apply, arranged in a simple and systematic manner with, in the case of commodity tolls, goods clearly identified;
- (p) the routings related to the tolls unless reference is made in the tariff to another tariff in which the routings appear; and
- (q) the official descriptive title of each type of passenger fare, together with any name or abbreviation thereof.

(2) Every original tariff page shall be designated “Original Page”, and changes in, or additions to, the material contained on the page shall be made by revising the page and renumbering it accordingly.

(3) Where an additional page is required within a series of pages in a tariff, that page shall be given the same number as the page it follows but a letter shall be added to the number.

Filing of Tariffs

110 (1) Except as provided in an international agreement, convention or arrangement respecting civil aviation, before commencing the operation of an international service, an air carrier or its agent shall file with the Agency a tariff for that service, including the terms and conditions of free and reduced rate transportation for that service, in the style, and containing the information, required by this Division.

(2) Acceptance by the Agency of a tariff or an amendment to a tariff does not constitute approval of any of its provisions, unless the tariff has been filed pursuant to an order of the Agency.

(3) No air carrier shall advertise, offer or charge any toll where

(a) the toll is in a tariff that has been rejected by the Agency; or

(b) the toll has been disallowed or suspended by the Agency.

(4) Where a tariff is filed containing the date of publication and the effective date and is consistent with these Regulations and any orders of the Agency, the tolls and terms and conditions of carriage in the tariff shall, unless they are rejected, disallowed or suspended by the Agency or unless they are replaced by a new tariff, take effect on the date stated in the tariff, and the air carrier shall on and after that date charge the tolls and apply the terms and conditions of carriage specified in the tariff.

(5) No air carrier or agent thereof shall offer, grant, give, solicit, accept or receive any rebate, concession or privilege in respect of the transportation of any persons or goods by the air carrier whereby such persons or goods are or would be, by any device whatever, transported at a toll that differs from that named in the tariffs then in force or under terms and conditions of carriage other than those set out in such tariffs.

111 (1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

(2) No air carrier shall, in respect of tolls or the terms and conditions of carriage,

(a) make any unjust discrimination against any person or other air carrier;

(b) give any undue or unreasonable preference or advantage to or in favour of any person or other air carrier in any respect whatever; or

(c) subject any person or other air carrier or any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

(3) The Agency may determine whether traffic is to be, is or has been carried under substantially similar circumstances and conditions and whether, in any case, there is or has been unjust discrimination or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this section, or whether in any case the air carrier has complied with the provisions of this section or [section 110](#).

Public Inspection of Tariffs

116 (1) Every air carrier shall keep available for public inspection at each of its business offices a copy of every tariff in which the air carrier participates that applies to its international service.

(2) Every air carrier shall display in a prominent place at each of its business offices a sign indicating that the tariffs for the international service it offers, including the terms and conditions of carriage, are available for public inspection at its business offices.

(3) Every air carrier shall, for a period of three years after the date of any cancellation of a tariff participated in by the carrier, keep a copy of that tariff at the principal place of business in Canada of the carrier or at the place of business in Canada of the carrier's agent.

Display of Terms and Conditions on Internet Sites

116.1 An air carrier that sells or offers for sale an international service on its Internet site must also display on the site the terms and conditions of carriage applicable to that service and must post a notice to that effect in a prominent place on the site.

Budget Implementation Act, 2023, preamble

No. 1 S.C. 2023, c. 26

SUMMARY

...

Division 23 of Part 4 amends the *Canada Transportation Act* to, among other things,

- (a) broaden the authority of the Canadian Transportation Agency to set fees and charges to recover its costs;
- (b) replace the current process for resolving air travel complaints with a more streamlined process designed to result in more timely decisions;
- (c) impose a greater burden of proof on air carriers where it is presumed that compensation is payable to a complainant unless the air carrier proves the contrary;
- (d) require air carriers to establish an internal process for dealing with air travel claims;
- (e) modify the Agency's regulation-making powers with respect to air carriers' obligations towards passengers; and
- (f) enhance the Agency's enforcement powers with respect to the air transportation sector.

Canada Transportation Act (current), ss. 7-9, 67, 85.01-85.16

SC 1996, c 10

Continuation and Organization**Agency continued**

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

Composition of Agency

(2) The Agency shall consist of not more than five members appointed by the Governor in Council, and such temporary members as are appointed under subsection 9(1), each of whom must, on appointment or reappointment and while serving as a member, be a Canadian citizen or a permanent resident within the meaning of [subsection 2\(1\)](#) of the [Immigration and Refugee Protection Act](#).

Chairperson and Vice-Chairperson

(3) The Governor in Council shall designate one of the members appointed under subsection (2) to be the Chairperson of the Agency and one of the other members appointed under that subsection to be the Vice-Chairperson of the Agency.

Term of members

8 (1) Each member appointed under [subsection 7\(2\)](#) shall hold office during good behaviour for a term of not more than five years and may be removed for cause by the Governor in Council.

Reappointment

(2) A member appointed under [subsection 7\(2\)](#) is eligible to be reappointed on the expiration of a first or subsequent term of office.

Continuation in office

(3) If a member appointed under [subsection 7\(2\)](#) ceases to hold office, the Chairperson may authorize the member to continue to hear any matter that was before the member on the expiry of the member's term of office and that member is deemed to be a member of the Agency, but that person's status as a member does not preclude the appointment of up to five members under subsection 7(2) or up to three temporary members under subsection 9(1).

Temporary members

9 (1) The Minister may appoint temporary members of the Agency from the roster of individuals established by the Governor in Council under subsection (2).

Roster

(2) The Governor in Council may appoint any individual to a roster of candidates for the purpose of subsection (1).

Maximum number

(3) Not more than three temporary members shall hold office at any one time.

Term of temporary members

(4) A temporary member shall hold office during good behaviour for a term of not more than one year and may be removed for cause by the Governor in Council.

No reappointment

(5) A person who has served two consecutive terms as a temporary member is not, during the twelve months following the completion of the person's second term, eligible to be reappointed to the Agency as a temporary member.

Tariffs to be made public

67 (1) The holder of a domestic licence shall

(a) display in a prominent place at the business offices of the licensee a sign indicating that the tariffs for the domestic service offered by the licensee, including the terms and conditions of carriage, are available for public inspection at the business offices of the licensee, and allow the public to make such inspections;

(a.1) publish the terms and conditions of carriage on any Internet site used by the licensee for selling the domestic service offered by the licensee;

(b) in its tariffs, specifically identify the basic fare between all points for which a domestic service is offered by the licensee; and

(c) retain a record of its tariffs, and publish them on its Internet site, for a period of not less than three years after the tariffs have ceased to have effect.

Prescribed tariff information to be included

(2) A tariff referred to in subsection (1) shall include such information as may be prescribed.

No fares, etc., unless set out in tariff

(3) The holder of a domestic licence shall not apply any fare, rate, charge or term or condition of carriage applicable to the domestic service it offers unless the fare, rate, charge, term or condition is set out in a tariff that has been published or displayed under subsection (1) and is in effect.

Carrier's Obligation

Process for claims

85.01 (1) A carrier shall establish a process for dealing with claims related to a fare, rate, charge or term or condition of carriage applicable to the air service it offers.

Period to communicate decision

(2) The process shall include an obligation for the carrier, on receipt of a written request to deal with a claim, to communicate to the claimant its decision on the claim within 30 days after the day on which it received the request.

Air Travel Complaints

Complaint resolution officers

85.02 (1) The Chairperson, or a person designated by the Chairperson, shall designate, from among the members and staff of the Agency, persons to act as complaint resolution officers for the purpose of [sections 85.04](#) to [85.12](#).

Limits on powers and duties

(2) A member of the Agency or its staff who acts as a complaint resolution officer has the powers, duties and functions of a complaint resolution officer and not of the Agency.

Clarification — proceedings

(3) Proceedings before a complaint resolution officer are not proceedings before the Agency.

Non-application of certain provisions

85.03 Sections 17, 25 and 36.1 do not apply in respect of any matter that may be dealt with under [sections 85.04](#) to [85.12](#).

Complaints related to tariffs

85.04 (1) A person may file a complaint in writing with the Agency if

- (a) the person alleges that a carrier failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs;
- (b) the person is adversely affected by the failure to apply that fare, rate, charge or term or condition of carriage;
- (c) the person seeks compensation or a refund as set out in the carrier's tariffs or compensation for expenses incurred as a result of that failure; and
- (d) the person made a written request to the carrier to resolve the matters to which the complaint relates but they were not resolved within 30 days after the day on which the request was made.

Refusal to deal with complaint

(2) A complaint resolution officer may refuse to deal with a complaint or, at any time, cease dealing with it if they are of the opinion that

- (a) the criteria set out in subsection (1) have not been met;
- (b) it is clear on the face of the complaint that the carrier has complied with the obligations set out in its tariffs; or
- (c) the complaint is vexatious or made in bad faith.

Mediation

85.05 (1) If the complaint resolution officer does not refuse under [subsection 85.04\(2\)](#) to deal with a complaint, they shall mediate the complaint and start the mediation no later than the 30th day after the day on which the complaint is filed.

Filing of mediation agreement

(2) An agreement that is reached as a result of mediation may be filed with the Agency and, after filing, is enforceable as if it were an order of the Agency.

Decision on complaint

85.06 (1) If no agreement is reached as a result of mediation, and the complaint resolution officer does not cease dealing with the complaint under [subsection 85.04\(2\)](#), the complaint resolution officer shall, no later than the 60th day after the day on which the mediation started, and based on the information provided by the complainant and the carrier,

- (a)** make an order under subsection 85.07(1); or
- (b)** make an order dismissing the complaint.

Status of order

(2) An order referred to in subsection (1) is not an order or decision of the Agency.

Order related to tariffs

85.07 (1) If the complaint resolution officer finds that the carrier that is the subject of the complaint has failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs, the complaint resolution officer may order the carrier to

- (a)** apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs; and
- (b)** compensate the complainant for any expenses they incurred as a result of the carrier's failure to apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs.

Onus

(2) If a complaint raises an issue as to whether a flight delay, flight cancellation or denial of boarding is within a carrier's control, is within a carrier's control but is required for

safety reasons or is outside a carrier's control, it is presumed to be within the carrier's control and not required for safety reasons unless the carrier proves the contrary.

Filing of order and enforcement

(3) An order made under subsection (1) may be filed with the Agency and, after filing, is enforceable as if it were an order of the Agency.

Prior decisions to be taken into account

85.08 In regards to the issue of whether a flight delay, flight cancellation or denial of boarding is within a carrier's control, is within a carrier's control but is required for safety reasons or is outside a carrier's control, a complaint resolution officer who is dealing with a complaint in respect of a flight shall take into account any prior decision on that issue that is contained in an order made by a complaint resolution officer in respect of that flight.

Confidentiality of information

85.09 (1) All matters related to the process of dealing with a complaint shall be kept confidential, unless the complainant and the carrier otherwise agree, and information provided by the complainant or the carrier to the complaint resolution officer for the purpose of the complaint resolution officer dealing with the complaint shall not be used for any other purpose without the consent of the one who provided it.

Communication of information

(2) Subsection (1) does not apply so as to prohibit

- (a)** the communication of information to the Agency;
- (b)** the communication of information to complaint resolution officers for the purpose of assisting them in the exercise of their powers or the performance of their duties and functions; or
- (c)** the making public by the Agency of information under [sections 85.14](#) and [85.15](#).

Procedure

85.1 Subject to the procedure set out in the guidelines referred to in [section 85.12](#), a complaint resolution officer shall deal with complaints in the manner that they consider appropriate in the circumstances.

Assistance by Agency

85.11 The Agency may, at a complaint resolution officer's request, provide administrative, technical and legal assistance to the complaint resolution officer.

Guidelines

85.12 (1) The Agency may issue guidelines

(a) respecting the manner of and procedures for dealing with complaints filed under subsection 85.04(1); and

(b) setting out the extent to which and the manner in which, in the Agency's opinion, any provision of the regulations applies with regard to complaints.

Guidelines binding

(2) A guideline is, until it is revoked or modified, binding on any complaint resolution officer dealing with a complaint filed under subsection 85.04(1).

Publication

(3) Each guideline shall be published on the Agency's website, in the [Canada Gazette](#) and in any other manner that the Agency considers appropriate.

Statutory Instruments Act

(4) The *Statutory Instruments Act* does not apply to the guideline.

Referral to panel

85.13 (1) If no agreement is reached as a result of the mediation of a complaint under [section 85.05](#), the Chairperson or a person designated by them may, at the request of the complaint resolution officer who conducted the mediation, and if the Chairperson or person designated by them, as the case may be, considers that the complexity of the complaint requires it, refer the complaint to a panel of at least two members. Those members, none of whom is to be the complaint resolution officer who

conducted the mediation, shall act as the complaint resolution officers in respect of the complaint for the purposes of [sections 85.06](#) to [85.12](#).

Clarification – panels

(2) A reference in [subsections 85.02\(2\)](#) and [\(3\)](#) and [sections 85.06](#) to [85.12](#) to a complaint resolution officer is considered to include a reference to a panel.

Publication — order or summary of order

85.14 (1) The Agency shall make public

(a) in the case of an order made by a single complaint resolution officer

(i) the number of the flight to which the order relates,

(ii) the date of departure of the flight that is indicated on the complainant's ticket,

(iii) any decision contained in the order in regards to the issue of whether any flight delay, flight cancellation or denial of boarding was within the carrier's control, was within the carrier's control but was required for safety reasons or was outside the carrier's control, and

(iv) a statement as to whether or not the complaint resolution officer ordered the carrier to provide compensation or a refund as set out in the carrier's tariffs or compensation for expenses incurred; and

(b) subject to subsection (2), in the case of an order made by a panel, the entire order.

Exception

(2) The Agency may, at the request of a complainant or carrier, decide to keep confidential any part of an order, other than the information referred to in subparagraphs (1)(a)(i) to (iv).

Part of annual report

85.15 The Agency shall, as part of its annual report, indicate the number and nature of the complaints filed under subsection 85.04(1), the names of the carriers against whom the complaints were made, the number of complaints for which an order was made under subsection 85.07(1) and the systemic trends observed.

Fees and charges

85.16 (1) The Agency shall establish fees or charges for the purpose of recovering all or a portion of the costs that the Agency determines to be related to the process of dealing with complaints — other than complaints disposed of under [subsection 85.04\(2\)](#) — under [sections 85.05](#) to [85.12](#).

Carrier's liability

(2) The carriers that are the subject of complaints — other than complaints disposed of under [subsection 85.04\(2\)](#) — are liable for the payment of the fees or charges.

Consultation

(3) Before establishing fees or charges, the Agency shall consult with any persons or organizations that the Agency considers to be interested in the matter.

Publication

(4) The Agency shall publish the fees and charges on its Internet site.

Debt due to His Majesty

(5) Fees or charges required to be paid under this section constitute a debt to His Majesty in right of Canada and may be recovered as such in a court of competent jurisdiction.

Spending authority

(6) The Agency may spend the amounts obtained under this section in the fiscal year in which they are paid or in the next fiscal year.

Service Fees Act

(7) The [Service Fees Act](#) does not apply to the fees and charges referred to in subsection (1).

Canada Transportation Act (prior to June 22, 2027), s. 85.1

SC 1996, c 10

Air Travel Complaints Commissioner**Designation**

85.1 (1) The Minister shall designate a temporary member to act as the Air Travel Complaints Commissioner for the purposes of this section.

Filing of complaints

(2) A person shall file in writing with the Air Travel Complaints Commissioner a complaint against a licensee in respect of its air service if the person made the complaint to the licensee and the complaint was not resolved to the person's satisfaction.

Review and mediation

(3) The Commissioner, or a person authorized to act on the Commissioner's behalf, shall review and attempt to resolve every complaint filed under subsection (2) for which no other remedy exists and may, if appropriate, mediate or arrange for the mediation of a complaint filed under that subsection.

Production of documents

(4) On request by the Commissioner or a person authorized to act on the Commissioner's behalf, a person shall produce for examination by the Commissioner any document, record or thing that is in the possession or under the control of the person and is, in the opinion of the Commissioner, relevant to a complaint.

Report to parties

(5) The Commissioner or a person authorized to act on the Commissioner's behalf shall provide to the parties a report that outlines their positions and any settlement that they reached.

Publicly available report

(6) The Commissioner shall, at least semi-annually, prepare a report to the Governor in Council through the Minister setting out the number and nature of complaints filed under subsection (2), including the names of the licensees against whom the complaints were made and describing the manner in which they were dealt with and any systemic problems observed. The Agency shall include the Commissioner's reports in its annual report.

**Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules
Applicable to All Proceedings), see Book of Authorities**

SOR/2014-104

The entire regulation will be included in the Book of Authorities.

Carriage by Air Act, Schedule VI (Montreal Convention, arts. 1-3, 19, 25-27, 33)

RSC, 1985, c. C-26

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the “Warsaw Convention”, and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of **ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution**;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further **harmonization and codification** of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

Article 1 — Scope of Application

1 This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2 For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within

the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3 Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4 This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents 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.

Article 25 — Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27 — Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 33 — Jurisdiction

1 An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2 In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3 For the purposes of paragraph 2,

(a) “commercial agreement” means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) “principal and permanent residence” means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4 Questions of procedure shall be governed by the law of the court seised of the case.

Civil Resolution Tribunal Act, ss. 56.8 and 118

SBC 2012, c. 25

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.

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](#).

Court Order Enforcement Act, ss. 1-3

RSBC 1996, c. 78

Part 1 — Attachment of Debts**Definitions for Part****1** In this Part:

"debt or money accruing due", and any expression of similar import, includes wages or salary that would in the ordinary course of employment become due or payable within 7 days after the day on which an affidavit has been sworn under section 3 (2);

"judge" means a judge of the Supreme Court and, for proceedings in the Provincial Court, includes a judge of that court;

"registrar" means a district registrar or deputy district registrar of the Supreme Court and, for proceedings in the Provincial Court under the [Small Claims Act](#), a registrar appointed under section 20 (1) of that Act;

"wages" includes salary, commissions and fees, and any other money payable by an employer to an employee for work or services performed in the course of employment of the employee but does not include deductions from wages made by an employer under an Act of the Legislature of any province or the Parliament of Canada.

Delegation of functions

2 (1)The registrar may authorize a person employed in the registrar's office to exercise any or all of the powers and duties of the registrar under this Part.

(2)A power or duty exercised by a person authorized under subsection (1) is deemed to have been exercised by the registrar.

Attachment procedures and exemptions

3 (1)In this section:

"action" includes a family law case brought by the filing of a notice of family claim and any proceeding brought by the filing of a counterclaim;

"debt due" and **"debts due"** include debts, obligations and liabilities owing, payable or accruing due and wages that would in the ordinary course of employment become owing, payable or due within 7 days after the date on which an affidavit has been sworn under subsection (2) or subsection (3);

"debts, obligations and liabilities", subject to this Act, does not include an obligation or liability not arising out of trust or contract, unless judgment has been recovered on it against the garnishee but does include, without limitation, all claims and demands of the defendant, judgment debtor, or person liable under the order for payment of money against the garnishee arising out of trusts or contract if the claims and demands could be made available under equitable execution;

Court of Appeal Act, s. 1

SBC 2021, c. 6

Interpretation**1 (1) In this Act:**

...

"order" includes

(a) a judgment,

(b) a decree, and

(c) an opinion, advice, direction, determination, decision or declaration that is specifically authorized or required under an enactment to be given or made;

Judicial Review Procedure Act

RSBC 1996, c. 241

Notice to Attorney General

16 (1)The Attorney General must be served with notice of an application for judicial review and notice of an appeal from a decision of the court with respect to the application.

(2)The Attorney General is entitled to be heard in person or by counsel at the hearing of the application or appeal.

Law and Equity Acts, s. 36

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](#).

Small Claims Act, s. 3

RSBC 1996, c 430

Claims the court may hear

3 (1)The Provincial Court has jurisdiction in a claim for

(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

if the amount claimed or the value of the personal property or services is equal to or less than an amount that is prescribed by regulation, excluding interest and costs.

(2)The Provincial Court does not have jurisdiction in a claim for libel, slander or malicious prosecution.

(3)This section is subject to [sections 16.4](#) and 56.3 of the [Civil Resolution Tribunal Act](#).

Supreme Court Civil Rules, Rule 6-2(3)

B.C. Reg. 168/2009

Rule 6-2 – Change of Parties

...

Assignment or conveyance of interest

(3) If, by assignment, conveyance or death, an estate, interest or title devolves or is transferred, a proceeding relating to that estate, interest or title may be continued by or against the person on whom that estate, interest or title has devolved or to whom that estate, interest or title has been transferred.

Transportation Modernization Act, see Book of Authorities

S.C. 2018, c. 10

The entire statute will be included in the Book of Authorities.