

November 18, 2025

VIA ELECTRONIC FILING

Reply to: Michael Dery*
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E-mail: mdery@ahbl.ca
Matter No.: 1158370

British Columbia Court of Appeal
The Law Courts
400-800 Hornby Street
Vancouver, BC V6Z 2C5

Attention: Registrar Timothy Outerbridge

Dear Sirs/Mesdames:

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

We are counsel for the respondent WestJet Airlines Ltd. in the above-noted appeal. We write to request case management.

It is our client's position that the appeal has not been properly brought given that no order has been made in the BC Supreme Court. We have advised counsel for the appellant of our position that there is presently no appealable order, including in the enclosed letter sent to him on Friday, November 14, 2025. However, he proceeded to file his client's factum and other materials yesterday.

On October 20, 2025, Justice Sharma released reasons for judgment in which she found that the Civil Resolution Tribunal does not have jurisdiction over claims under the *Air Passenger Protection Regulations*, SOR/2019-150. However, she expressly declined to make any order, as she was of the view that she should not do so until the parties had the opportunity to make submissions regarding remedy. In that regard, an appearance is being scheduled for December 2, 2025.

Justice Sharma's reasons state:

[110] For the reasons stated in this judgment, I conclude:

- a) Compensation for delayed or cancelled flights under *CTA* and *Passenger Regulation* as incorporated into WestJet's tariff with the Passengers is not a debt enforceable at common law.
- b) The assignment entered into between the Passengers and the petitioner is invalid and unenforceable.

c) The petitioner does not have standing to bring the petition.

d) The Tribunal lacked jurisdiction to decide the Passengers' claim.

[111] The first three conclusions support a conclusion that the petition **should be dismissed**. **However**, the fourth conclusion suggests the Decision **should be quashed** for the Tribunal's lack of jurisdiction. I am mindful that the no party sought to quash the Decision based on what I have concluded is the Tribunal's lack of justification. **For that reason, it is my view that I should not grant any order** until the parties have had an opportunity to address the issue of remedy.

[Emphasis added.]

After being advised of our position that the appeal has not been properly brought, counsel for the appellant unilaterally attempted to schedule a date for the appeal hearing (January 22, 2026). We were advised by the Registry that this attempt was rejected due to the materials required to schedule an appeal for hearing not having been filed.

It is our position that the notice of appeal is a nullity, as the appeal cannot be properly brought until there is an order. We thus seek to have all timelines paused until such time as there is an order and a notice of appeal can be properly filed.

In light of the appellant's factum having been filed yesterday (and it presumably being the appellant's position that WestJet's factum must be filed within 30 days), we are available on short notice for a case management hearing at the Court's convenience.

Yours truly,

ALEXANDER HOLBURN BEAUDIN + LANG LLP

Per:

A handwritten signature in black ink, appearing to be 'Michael Dery', written over a horizontal line.

Michael Dery*
Partner
MAD/KAM
Encl.

*Professional Law Corporation

cc. Simon Lin, counsel for the appellant
Eliza McCullum and Zara Rahman, counsel for the Civil Resolution Tribunal

November 14, 2025

VIA E-MAIL

Reply to: Michael Dery*
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Matter No.: 1158370

Evolink Law Group
237 - 4388 Still Creek Drive
Burnaby, BC V5C 6C6

Attention: Simon Lin

Dear Mr. Lin:

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

We write with respect to the appeal in the above-noted matter.

As we have advised several times, it is clear from Justice Sharma's reasons that she did not make any order – she states as follows at paras. 110-111:

[110] For the reasons stated in this judgment, I conclude:

- a) Compensation for delayed or cancelled flights under *CTA* and *Passenger Regulation* as incorporated into WestJet's tariff with the Passengers is not a debt enforceable at common law.
- b) The assignment entered into between the Passengers and the petitioner is invalid and unenforceable.
- c) The petitioner does not have standing to bring the petition.
- d) The Tribunal lacked jurisdiction to decide the Passengers' claim.

[111] The first three conclusions support a conclusion that the petition **should be dismissed**. **However**, the fourth conclusion suggests the Decision **should be quashed** for the Tribunal's lack of jurisdiction. I am mindful that the no party sought to quash the Decision based on what I have concluded is the Tribunal's lack of justification. **For that reason, it is my view that I should**

not grant any order until the parties have had an opportunity to address the issue of remedy. [Emphasis added.]

It is not correct that she dismissed the petition – she expressly declined to do so, as she wished to obtain submissions from the parties as to whether it should be dismissed and/or the CRT's decision quashed.

The Court of Appeal is a statutory court whose jurisdiction is provided by the *Court of Appeal Act*. An appeal is taken from an order, not reasons for judgment. This appeal is premature; you have insisted on attempting to schedule a hearing date unilaterally and without consent. If you insist on pursuing the appeal at this time, we will write to the Registrar and seek case management.

In any event, you will not be able to schedule the appeal hearing without an entered order, and we fully expect Justice Sharma would not sign any order at this time given that she did not make any order.

Further to this, the Registry has advised that your attempt to reserve a hearing date of January 22, 2026 was rejected given that the *Court of Appeal Rules* require certain materials to be filed before an appeal can be scheduled for hearing. Such materials have not been filed. If there is any doubt remaining, we confirm again that we do not consent to having the appeal heard on January 22, 2026.

Yours truly,

ALEXANDER HOLBURN BEAUDIN + LANG LLP

Per:

A handwritten signature in black ink, appearing to be 'Michael Dery', with a long horizontal stroke extending to the left.

Michael Dery*
Partner
MAD/KAM

*Professional Law Corporation

cc. Civil Resolution Tribunal
Attention: Eliza McCullum and Zara Rahman