

November 20, 2025

VIA E-FILING

Court of Appeal for British Columbia

ATTN: Registrar Outerbridge

400-800 Hornby Street
Vancouver, BC V6Z 2C5



Dear Registrar Outerbridge,

RE: Air Passenger Rights v. WestJet Airlines Ltd. et al. CA51094 – Appellant’s Request to Expedite Appeal and Response to Registrar Directions on Nov. 18, 2025

We respectfully request under Rule 31 that the appeal be expedited for a hearing in January 2026, on a date convenient for the Court and the parties, considering the significant ramifications to access to justice across Canada as detailed below.

The appellant’s submissions in response to the Registrar’s Direction on November 18, 2025 are further below. WestJet’s assertion that there is no “order” to appeal misses the mark. While typical appeals have a formally entered “order” from the lower court, this Court has recognized that an “order” under the *Court of Appeal Act* is broader than that.

The appellant submits that case management is unnecessary. WestJet’s request for case management is an attempt to delay in order to defeat pending cases in other forums using the lower court ruling, which WestJet also asserts cannot be reviewed by this Court.

Appellant’s Request for Expediting the Appeal

The appellant respectfully submits that this Court expedite the appeal by fixing the earliest possible hearing in January 2026, to promptly restore order to the small claims courts/tribunals. An appeal may be expedited in order to minimize prejudice.¹

Nature of the Appeal: This is an appeal of an application for judicial review. The appellant seeks this Court’s review of a lower court ruling that shrunk the constitutional jurisdiction of inferior provincial courts/tribunals over civil claims based on a novel interpretation of the legal term “debt.” The civil jurisdiction of inferior provincial courts/tribunals are usually based on “debt or damages.” The lower court ruling does not cite any authorities for this reasoning and appears to be contrary to binding precedents.

¹ *Creative Wealth Media Lending LP 2016 v. Access Road Capital, LLC*, 2023 BCCA 208 at para. 28 (per Marchand, J.A., as he then was, in Chambers), cited in the B.C. Annual Practice for 2026 at page 1299.

Reasons for the Request: The lower court ruling directly undermines the jurisdiction of inferior provincial courts/tribunals to hear small claims matters involving many “debts,” and impedes access to justice for British Columbians and Canadians. If Canadians cannot proceed in a small claims court, they may turn to the superior courts at significant expense and further strain the resources of the superior courts. This jurisdictional vacuum must be promptly corrected to avoid undermining Canadians’ access to justice.

Insofar as claim against airlines are concerned, both the appellant and counsel have been receiving *numerous* inquiries from claimants before the Civil Resolution Tribunal, expressing concerns over the lower court ruling. The Civil Resolution Tribunal has also begun refusing to file such claims based on the lower court ruling.² The appellant is aware that WestJet is also utilizing the lower court ruling to seek dismissal in the small claims courts of another province. It would be highly inefficient use of judicial and public resources if the courts/tribunals later need to “reverse” a large number of decisions after a successful appeal of the lower court’s ruling. Some effects may also not be remediable if the limitation has passed, after the claim has been dismissed for jurisdiction reasons. Filing of a complaint at the Canadian Transportation Agency may not be an option for many claimants, as there are a years-long delays before any complaint is reviewed.³

A stay of the lower court ruling may not sufficiently ameliorate the prejudice that would ensue to claimants across Canada because the decision is still posted on CanLII and is citable by those whom wish to rely on it. This Court has recognized that expediting an appeal minimizes prejudice,⁴ which is consistent with this Court’s powers under s. 30(c) of the *Court of Appeal Act* to “*make interim orders to prevent prejudice to any person.*”

Parties’ Consent to Expedite: The appellant has written to all parties on November 7, 2025 indicating the appellant wishes to proceed in January 2026. WestJet has not substantively responded but, instead, filed the letter on November 18, 2026 seeking case management in order to sidestep the timelines under the *Court of Appeal Rules*.

Proposed Terms for Expediting Appeal: The appellant proposes as follows:

² CRT Decision refusing to accept a claim dated November 17, 2025.

³ [Air travel complaints backlog could soar to 126,000 by 2028](#), CBC Go Public (June 23, 2025).

⁴ *Creative Wealth Media Lending LP 2016 v. Access Road Capital, LLC*, 2023 BCCA 208 at para. 28 (per Marchand, J.A., as he then was, in Chambers), cited in the B.C. Annual Practice for 2026 at page 1299.

Respondents' factum: to be filed in accordance with the timelines under the *Court of Appeal Rules* by December 17, 2025 (i.e., thirty days from November 17, 2025)

Appellant's Reply: to be filed in accordance with the timelines under the *Court of Appeal Rules* by December 24, 2025 (i.e., seven days from December 17, 2025)

Joint Book of Authorities: to be filed by December 29, 2025, a truncation of time

Time Estimate for Hearing of Appeal: one day, maximum

Proposed Dates for the Hearing of the Appeal: The appellant proposes the following dates for this appeal, based on the availability on the Court's calendar for full-day hearings in **January 2026**: 5, 6, 7, 15,⁵ 27, or 29. Both the appellant and CRT's counsel are also available on January 22, 2025. WestJet's counsel stated on November 14 that he is unavailable,⁶ although that was not the case prior to that time, as detailed further below.

The appellant appreciates that on many appeals the parties are able to agree on a hearing date, or to expedite, without the court's assistance. However, it is not possible to expedite in this instance without the Court's assistance, as WestJet is refusing to cooperate and is seeking to delay even the usual timelines for filing their factum. The procedural history in the court below has some history of delay on the part of WestJet.⁷ The court recently highlighted WestJet's inexplicable disregard for court timelines in another case.⁸

Response to Direction About the Entry of Lower Court Order

The appellant had already exercised extensive efforts to settle the terms of the formal Supreme Court of B.C. "order," including sending the Order Signing Instructions to WestJet, based on an unconvertible "order" that simply states that the petition was dismissed. WestJet refused to sign, **and** also refused to provide what it proposes to be the terms of that "order," despite being the successful party. It appears to be an attempt to maximize the period of confusion before the lower court decision is reviewed.

⁵ Appellant is aware that WestJet's counsel should be available on this date as the parties were seeking to reserve a BCSC long-chambers for another matter in January 12-16, 2026 and also January 19-21, 2026.

⁶ Appellant is prepared to accommodate WestJet to the extent WestJet's counsel is no longer available.

⁷ See paragraphs 20-23 of the Appellant's Factum.

⁸ [*Lewis v WestJet Airlines Ltd.*](#), 2024 BCSC 2398 at paras. 12-13 and 47.

WestJet's assertion that there is no order to appeal is an attempt to create delay. Whether the court below describes the document in question as an "order" is not relevant to the inquiry of whether there is an "order" under the *Court of Appeal Act*.⁹ As such, WestJet's reliance on para. 111 of the lower court ruling does not assist. The key is para. 110.

As noted in paras. 37-38 of our Factum, under the *Court of Appeal Act*, an "order" broadly captures decisions that determines rights (procedural or substantive) or that makes declarations of law, or adjudicates some merits issue.¹⁰

[20] The scope of what constitutes an appealable "order" was considered by this court in *R. v. United Fishermen and Allied Workers' Union* (1967) [1967 CanLII 555 \(BC CA\)](#), 63 D.L.R. (2d) 356, there in the context of the former *Court of Appeal Act*, R.S.B.C. 1960, c. 82. At the time, the Act contained no definition of the word "order". Davey C.J.B.C. (Branca J.A. concurring) wrote:

the orders which are appealable to this court are only those orders which **make an adjudication upon some point arising during the course of a cause of action, or an adjudication upon the merits of the action or proceedings**. I do not think that it was ever intended by the word "order" or the word "Rule" to give a right of appeal against a mere process that makes no adjudication upon any point. [At 358; emphasis added.]

[21] The meaning of the word "order" was more recently considered in *First Majestic Silver Corp. v. Davila Santos* [2015 BCCA 452](#), where Groberman J.A., for the Court, wrote:

[33] ... This Court derives its jurisdiction from statute. It can only entertain the appeal in this matter if it is, under s. 6 of the *Court of Appeal Act*, an appeal from an "an order of the Supreme Court or an order of a judge of that court". The *Act* defines "order" as including "a judgment" and "a decree".

[34] It is clear that not every pronouncement of a judge of the Supreme Court constitutes an "order". Procedural rulings of the trial court, for example, are generally not "orders" for the purpose of appeals: see, for example, *Chaplin v. Sun Life Assurance Company of Canada*, [2002 BCCA 292](#) at paras 22-23. The fact that reasons are given for a court pronouncement, then, does not make it an "order".

...

[39] While **the word "order" in s. 6(1)(a) should not be narrowly construed**. I am of the view that it cannot extend beyond **decisions by the Supreme Court that determine rights (procedural or substantive) or that make declarations of law**. A letter of request that does no more than transmit an existing order to a foreign court is not an "order" within the meaning of s. 6 of the Act. [At paras. 33-4, 39; emphasis added.]

⁹ *Flynn v. Woodward*, 2023 BCCA 45 at para. 18; *Mead v. Mead*, 2018 BCCA 405 at para. 14 (Chambers).

¹⁰ *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2017 BCCA 287 at paras. 30 and 47 (5-judge division); *Grewal v. Grewal*, 2017 BCCA 261 at paras. 18-22 [emphasis added in bold].

[22] In light of these authorities, it seems to me that the fact the February 28 Order was made without regard to the merits of the underlying action does not preclude it from being treated as an “order” from which an appeal may be brought. The fact remains that the February 28 order reversed the earlier order: it set aside an order granting Harminder and Harbans the right to have certain trust monies paid out to them. In that sense it clearly affected the substantive rights of the parties. Also in a sense, **it was a decision on the merits – the “merits” here being that adequate disclosure had not been made in connection with the pronouncement of the earlier order. Consequently, the February 28 Order was in my opinion an appealable “order” within the meaning of the Act.**

Paragraph 110 of the lower court ruling is clear that the chambers judge concluded that the appellant has no standing and also definitively ruled on the assignment, both of which are merits rulings. The document also contains numerous declarations of the law.

To the extent WestJet still insists that there is no “order” to appeal, WestJet could bring an application under Rule 60, returnable before the division of the Court hearing this appeal. In light of the authorities above, the urgency of having this appeal promptly heard (as detailed above), and the relative “late” stage of WestJet’s request after the appellant’s factum was filed, it would create delays if an application is scheduled prior to the appeal.

Response to Direction Regarding WestJet’s Case Management Request

In respect of WestJet’s case management request, this appeal is not a complex matter with multiple parties that would require case management. WestJet’s true reason behind the request for case management is to create delay, and an indefinite extension of time to create more chaos before the lower court ruling is corrected by this Court. The appellant has prepared all materials and has been ready to proceed within about two weeks of the lower court ruling. There is no reason to extend timelines for WestJet when they would already have double the time (i.e., 30 days) as compared to the time that the appellant had to file all the materials (i.e. October 30, 2025 to November 17, 2025).

We also note that WestJet’s request on November 18, 2025 omits two material facts.

Firstly, the timing of the WestJet Letter is unusual as we had advised all parties more than a week ago in a letter dated November 7, 2025 (enclosed) that the appellant planned to proceed expeditiously and would be filing all materials by the end of last week.¹¹

¹¹ The appellant’s filing was unexpectedly delayed to first thing Monday morning, November 17, 2025.

Secondly, the appellant reserved the January 22, 2026 date as it was aware at that time that WestJet's counsel was also available, based on the fact that both parties have held the entire week for an unrelated trial that is in the process of being adjourned. In multiple exchanges with WestJet's counsel about this appeal (prior to WestJet's November 14 letter), WestJet's counsel did not indicate that he was not available on January 22, 2026. In any event, as detailed above in our request to expedite, the appellant is prepared to accommodate the availability of WestJet's counsel.

Conclusion

We respectfully request that the appellant's request for expediting the appeal be granted.

WestJet's request for case management should be refused. To the extent WestJet insists there is no "order" for appeal, WestJet should bring a formal application returnable before the division of the Court that would hear this appeal.

Should the Court have any Directions or require further information, please kindly advise.

Yours truly,

EVOLINK LAW GROUP



SIMON LIN, Barrister & Solicitor

Encls: (a) Appellant's Letter to All Parties on November 7, 2025;
(b) CRT Decision refusing to accept a claim dated November 17, 2025.

CC: Michael Dery and Kathryn McGoldrick, counsel for Respondent, WestJet Airlines Ltd.; and Eliza McCullum, counsel for the Civil Resolution Tribunal.



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November 7, 2025

VIA EMAIL

Alexander Holburn Beaudin + Lang LLP
**ATTN: Michael Dery and Katelyn
Chaudhary**
2700-700 West Georgia
Vancouver BC, V7Y 1B8

Civil Resolution Tribunal
ATTN: Zara Rahman

Dear Ms. Rahman, Mr. Dery and Ms. Chaudhary,

RE: Air Passenger Rights v. WestJet Airlines Ltd. et al. CA51094

We are writing in regards to the aforementioned appeal with the hope of not expending further scarce judicial resources on the issue.

The Appeal is Bound to Succeed

We reviewed the DARS recording for the hearing before Justice Sharma on March 24-25, 2025 and in the process of having the relevant portions transcribed. It was apparent that it was common ground that the underlying claim was for a debt, and there was no dispute as to the CRT's jurisdiction. Justice Sharma also indicated she would not be dealing with that issue, which unfortunately she may have overlooked.

It is apparent that, if Justice Sharma had the benefit of submissions, she would have been made aware that the underlying claim was clearly a debt and clearly within the CRT's jurisdiction. We draw your attention to [Winmil Holidays Co. Ltd. \(Re\)](#), 1984 CanLII 3090 (BC CA) at para. 42 where the Court of Appeal confirmed that a "debt" as:

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.

Similarly, in [British Columbia \(Milk Marketing Board\) v. Aquilini](#), 1998 CanLII 6518 (BC CA) at para. 63, the Court of Appeal again confirmed that a debt includes "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..."

Justice Sharma did not undertake the necessary legal analysis of what constituted a “debt” at law, which was a necessary step before analyzing the jurisdictional issue. Had the analysis been undertaken, like the New Brunswick Court of Appeal in a nearly identical circumstance, the outcome would have been plain and obvious (e.g., [*New Brunswick Association of Real Estate Appraisers/Association des évaluateurs immobiliers du Nouveau-Brunswick v. Poitras*](#), 2005 NBCA 112).

In the same vein, the parties made clear to Justice Sharma at the hearing that the Canadian Transportation Agency did not have exclusive jurisdiction over *APPR* claims. The prospect of filing such claims in a court was clearly acknowledged in [*International Air Transport Association v. Canada \(Transportation Agency\)*](#), 2024 SCC 30 at para. 97.

In any event, on the day immediately *after* Justice Sharma’s decision, the B.C. Court of Appeal released [*Bank of Montreal v. Cheetham*](#), 2025 BCCA 374 dealing with a nearly identical “exclusive jurisdiction” issue. We draw your attention to paragraphs 27-30 and 72-96. The underlying claim is clearly not barred by a “comprehensive” or “exclusive” statutory scheme when the statutory obligations at issue are already incorporated into the contract of carriage by virtue of section 86.11(4) of the *Canada Transportation Act*.

Independent of the *Canada Transportation Act*, WestJet actually included the relevant *APPR* provisions in their entirety in the written text of its tariff. This clearly falls within the scenario noted by the Court of Appeal where the statutory obligations were “specifically” incorporated into the contract and enforceable by a breach of contract claim.

Proposed Disposition for the Appeal

In light of the above, we would request your clients to consider consenting to the outcome of the appeal without costs to any party. As Justice Sharma noted, the “debt” issue seems determinative of the jurisdiction, assignment, and standing issues. As such, the appeal would involve confirming these issues are resolved and remitting back to a different judge to deal with the “labour disruption” issue, which has always been the main merits issue at hand.

We intend to amend our Notice of Appeal to reflect the following:

1. The appeal be allowed and the judgment from the court below be set aside.

2. The judgment from the court below be substituted with declarations that: (a) the claims were within the jurisdiction of the B.C. Civil Resolution Tribunal; (b) the absolute assignment of the claims between Mr. and Mrs. Boyd and Air Passenger Rights dated July 24, 2024 is valid; and (c) Air Passenger Rights has private interest standing to seek judicial review of the underlying B.C. Civil Resolution tribunal decision.
3. The dispute relating to the interpretation of “labour disruption” under the *Air Passenger Protection Regulations* be remitted back to the Supreme Court of British Columbia to be heard and decided by another judge.

We would request a response to the above by **November 21, 2025**.

Scheduling of the Appeal for Hearing

Finally, it has come to our attention that Justice Sharma’s decision is beginning to affect court operations and access to justice across the country.

We understand that the CRT has sent emails to claimants with an *APPR* standardized compensation claim to provide them with options to address their pending claims. In our view, whichever option those claimants choose, there would be a delay for them to have their adjudicated at the earliest opportunity on its merits. Moreover, there may be situations where the limitation periods for those claimants should they re-file in another forum now, or after the current appeal is finally determined.

We also understand that WestJet has raised Justice Sharma’s decision in courts of other provinces, challenging those court’s jurisdiction. This seems to be inconsistent with WestJet’s initial position on this appeal that there was no legal “order” for appeal but, on the other hand, rely on Justice Sharma’s decision as if there was a legal pronouncement that small claims courts in other provinces should follow.

In light of the above, we believe it would be in the interests of justice to schedule the appeal hearing for the earliest available date. Our client intends to file their Appeal Record, Appeal Book, Transcript, and Factum by next week.

We understand WestJet’s counsel is available on **January 22, 2026**, as we have another file where that date will be released imminently. Considering the urgency of this appeal, we have proceeded to reserve that date with the Court of Appeal for one day. Should

counsel for the CRT not be available that day, please advise immediately and we would consider other reasonable dates in January.

Should the respondents seek an adjournment to a hearing beyond January 2026, the appellant would consent to a short adjournment on the basis that Justice Sharma's judgment be stayed pending appeal.

We reserve the right to bring this letter to the Court's attention.

Yours truly,

EVOLINK LAW GROUP



SIMON LIN
Barrister & Solicitor



Civil Resolution Tribunal

Preliminary Decision – SC-2025-009327 – November 17, 2025

1. This is a preliminary decision of the Civil Resolution Tribunal (CRT), about a request to pause this dispute.
2. The applicant, Cindy Ashton, says the respondent airline, Delta Air Lines, Inc, cancelled her flight for reasons within its control and not for safety reasons. She claims \$3,000 for delays arriving at her destination under the *Air Passenger Protection Regulations* (APPR). She also seeks \$376.07 for reimbursement of out-of-pocket expenses and \$330.13 in lost wages.
3. The CRT has not yet issued a Dispute Notice.
4. On October 30, 2025, the BC Supreme Court (BCSC) released *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 2145, in which it considered APPR claims. The court found that claims relating to flight delays, cancellations, and denied boarding brought under the APPR must be handled by the Canadian Transportation Agency (CTA). The court specifically found that the CRT does not have jurisdiction to decide such claims.
5. Given this decision, the CRT advised the applicant that the CRT did not appear to have jurisdiction to decide her claims. It offered her the opportunity to withdraw her dispute and receive a refund for her application fee. Alternatively, she could provide submissions on why the CRT had jurisdiction to hear her claims.
6. Instead, the applicant has asked the CRT to pause this dispute for 6 months to permit her to obtain legal advice and await the outcome of an appeal of the BCSC decision.
7. Under *Civil Resolution Tribunal Act* (CRTA) section 6(1), on receiving a request for resolution, the CRT must issue a Dispute Notice if, on initial review, the claim appears to be within the CRT's jurisdiction, the request for resolution appears to

disclose a reasonable claim, and the claim meets all other requirements under the CRTA.

8. BCSC decisions are binding on the CRT. Given the recent BCSC decision, I find the CRT does not currently have jurisdiction to hear the applicant's claim. This means the CRT cannot issue a Dispute Notice under CRTA section 6(1).
9. I acknowledge that under CRT rule 1.17, the CRT has authority to pause the tribunal process and resume it at a future date. However, I find it would be impractical to pause this dispute at the intake stage. My reasons follow.
10. First, while Air Passenger Rights has filed a notice of appeal, there is no way to know when that appeal will be heard or how long it will take for the BC Court of Appeal (BCCA) to issue a decision. Further, the outcome of the appeal is unknown. If the BCCA upholds the BCSC decision, the CRT will still not have jurisdiction to decide APPR claims. The BCCA decision may also be further appealed to the SCC.
11. I note that the applicant refers to the SCC decision in *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30, and argues the recent BCSC decision appears inconsistent with that precedent. Specifically, she refers to paragraph 97, in which the SCC says that even though claims payable pursuant to the APPR can be "vindicated" by way of an action in court, it does not mean such actions are "actions for damages". She says this suggests the BCSC decision will be overturned on appeal.
12. However, the context of the SCC decision was to consider whether the CTA had the legal authority to enact the APPR. In determining that the APPR was validly enacted, the SCC made extensive comments about the CTA's authority to decide claims under the APPR. The only reference in the decision to venues other than the CTA considering APPR claims is the brief comment in paragraph 97. The SCC was not specifically asked to decide whether a court or tribunal like the CRT has jurisdiction to decide claims under the APPR, and I find it did not expressly make any findings on that issue. In other words, I find that paragraph 97 is insufficient to

conclude that the recent BCSC decision is inconsistent with the SCC decision, such that can find the BCSC decision is likely to be overturned.

13. Second, I find it is generally contrary to the CRT's mandate for speedy dispute resolution to put disputes on hold, essentially indefinitely, to await court decisions on legal issues relating to the CRT's jurisdiction.
14. Third, the CRT has not yet issued a Dispute Notice and cannot do so based on my finding that the CRT does not currently have jurisdiction to decide the applicant's claim. This means that the respondent has not yet been notified of the dispute. I find this potentially puts the respondent at a disadvantage, particularly if the appeal process extends beyond the applicable limitation period.
15. Finally, I find the applicant may also be placed at a disadvantage if the CRT agrees to pause this dispute during the intake process. Under CRTA section 15, a party to a CRT proceeding cannot commence or continue another legally binding process in relation to an issue or claim that is to be resolved in the CRT proceeding. Unless the applicant withdraws her application for CRT dispute, she is not permitted to file or continue a claim with the CTA for compensation under the APPR. I find it is possible the applicant may lose the opportunity to advance her claims for compensation at the CTA due to an applicable limitation period while this CRT dispute remains on hold.
16. Given all of these factors, I find it is not in the interests of justice and fairness to pause this dispute to await the outcome of an appeal on the CRT's authority to hear disputes under the APPR.
17. Because I have declined to pause this dispute at the intake stage, and I find the CRT does not have jurisdiction to decide the applicant's claim under the APPR, I decline to issue a Dispute Notice under CRTA section 6(1).
18. I note that the applicant's claim also includes a claim for lost wages, which is a claim for damages that may not fall under the APPR. It is unclear whether the CTA would consider that claim if the applicant pursues a CTA complaint. While this may

leave a gap in compensation available to the applicant, I find her claim for wage loss is integrally woven into her APPR claims and cannot reasonably be considered separately by the CRT. So, I decline to issue a Dispute Notice for the applicant's wage loss claim as well.

19. Nothing in this decision prevents the applicant from filing a fresh application for CRT dispute resolution if the BCCA overturns the recent BCSC decision, and finds the CRT has jurisdiction to decide claims under the APPR, subject to any applicable limitation period.

Conclusion

20. I decline to pause this dispute.
21. I also refuse to issue a Dispute Notice under CRTA section 6(1). This ends these CRT proceedings.



Kristin Gardner, Vice Chair