

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Air Passenger Rights v. WestJet Airlines Ltd.*,
2026 BCSC 1585

Date: 20260821
Docket: S254494
Registry: New Westminster

Between:

Air Passenger Rights

Plaintiff

And

Westjet Airlines Ltd.

Defendant

Before: The Honourable Justice Morishita

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
July 28-30, 2026

Place and Date of Judgment:

New Westminster, B.C.
August 21, 2026

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Introduction

[1] The defendant, WestJet Airlines Ltd., applies to strike portions of the Amended Notice of Civil Claim, filed November 27, 2024.

[2] The plaintiff, Air Passenger Rights, is a non-profit organization that advocates for air travellers' interests. It brings this action against WestJet under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*].

[3] In *Koubi v. Mazda Canada Inc.*, 2012 BCCA 310, the Court of Appeal summarized the *BPCPA*'s objectives, and the powers, remedies, and sanctions it provides. At para. 63, the Court writes (emphasis added):

[...] A close examination of the statute's legislative objectives and provisions reveals a clear intent to provide an exhaustive code regulating consumer transactions, directed to both protection of consumers and fairness and consistency for all parties in the consumer marketplace. The Act has over 200 provisions that comprehensively establish, administer, and enforce statutory rights and obligations directed to the regulation of consumer transactions in a multitude of circumstances. It provides extensive powers and remedies to a statutory director and investigative staff to ensure compliance with its requirements. These include investigation, collection of evidence, and enforcement through undertakings, compliance orders, prohibition orders, court-appointed receivers or property freezing orders, in addition to recourse to court proceedings as set out in ss. 171 and 172. It also enacts a panoply of statutory sanctions for suppliers and other offenders who breach the statutory rights of consumers, including administrative penalties of up to \$50,000 for a corporation, and offences with penal consequences that include fines of up to \$100,000 for a corporate offender.

[4] Air Passenger Rights seeks relief under s. 172 of the *BPCPA*. Section 172(1) of the *BPCPA* provides that the statutory director or a "person" may bring a Supreme Court action against a "supplier" for:

- (a) A declaration that an act or practice engaged in or about to be engaged in by a supplier in respect of a consumer transaction contravenes the *BPCPA*; and/or
- (b) An interim or permanent injunction restraining a supplier from contravening the *BPCPA*.

[5] Any person, other than a “supplier,” may bring a claim under s. 172(1), whether or not the person has a special interest or any interest under the *BPCPA*, or is affected by the consumer transaction at issue.

[6] Under s. 1(1) of the *BPCPA*, a “supplier” is a person who, in the course of business, participates in a consumer transaction by:

- (a) supplying goods, services, or real property to a consumer; or
- (b) soliciting, offering, advertising, or promoting the supply of goods, services, or real property to a consumer for purposes that are primarily personal, family, or household.

[7] In sum, the *BPCPA* grants standing to an organization such as Air Passenger Rights to seek a declaration that a supplier such as WestJet has engaged in an act or practice that contravenes the *Act*, and to seek an injunction restraining WestJet from doing so.

[8] If the Court makes a declaration or grants an injunction under s. 172(1), section 172(3)(a) provides that the Court may make a restoration order. The subsection states:

(3) If the court grants relief under subsection (1), the court may order one or more of the following:

- (a) that the supplier restore to any person any money or other property or thing, in which the person has an interest, that may have been acquired because of a contravention of this *Act* or the regulations;

[9] Air Passenger Rights seeks remedies under s. 172(1) and 172(3)(a). In other words, it seeks declarations that WestJet engaged in an act or practice that contravened the *Act*; an injunction restraining WestJet from contravening the *Act*; and a restoration order against WestJet.

[10] WestJet seeks to strike only those portions of the Amended Notice of Civil Claim that relate to the restoration order and the related relief claimed by Air

Passenger Rights. In the Notice of Application, WestJet states that the application is brought under Rule 9-5(1) of the *Supreme Court Civil Rules*. Rule 9-5(1) provides:

At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding...

[11] In the Notice of Application, WestJet does not directly state whether it is relying on Rule 9-5(1)(a), 9-5(1)(b), or 9-5(1)(c), or some combination. Nevertheless, their analysis only addresses 9-5(1)(a). Accordingly, the issue for me to determine is whether the portions of the Amended Notice of Civil Claim relating to Air Passenger Rights' claim for a restoration order and related relief should be struck on the basis that those pleadings disclose no reasonable claim.

Air Passenger Right's Claims

[12] The core of Air Passenger Rights' claim is that WestJet's practice of reimbursing air passengers for expenses caused by flight delays is deceptive and therefore contravenes the *BPCPA*. Both parties agree that an airline's obligations to passengers experiencing flight delays are set out in the *Air Passenger Protection Regulations*, SOR/2019-150, a federal enactment, and in the *Montreal Convention*. The *Montreal Convention* is an international treaty that governs carriers' liability to passengers for flight delays when passengers are travelling on an international itinerary.

[13] In late 2024, the parties appeared before Mr. Justice Gibb-Carsley for the hearing of Air Passenger Rights' application for an interlocutory injunction. In his reasons, indexed as *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 155, Gibb-Carsley J. summarized some of the background facts relevant to this application. In particular, Gibb-Carsley J. noted that in 2024, WestJet maintained a

page on its website setting out its guidelines for WestJet passengers seeking reimbursement for expenses caused by flight delays:

[12] On or about July 26, 2024, [Air Passenger Rights] became aware that on WestJet’s website (“WestJet’s Website”) there was a page titled “Submit a request for reimbursement” (the “Original Reimbursement Webpage”). The Original Reimbursement Webpage included the following instructions for passengers seeking reimbursement:

Our general guidelines are:

- Hotel costs: in situations where WestJet was unable to secure a hotel room, or you did not accept the hotel re-accommodation option WestJet has offered (and you book your own hotel), WestJet will reimburse you up to \$150.00 CAD (\$200.00 CAD for non-Canadian destinations) per night/per reservation. In-room movie costs, tips/gratuities and long distance telephone charges will be excluded.
- Meals: In the unlikely event meal vouchers are not available during a controllable delay, we will reimburse meal expenses to a maximum of \$45 CAD per day/per guest. Alcoholic beverages and tips/gratuities will be excluded.
- Transportation: if transportation was not available by WestJet, we will reimburse the cost incurred for transportation between the airport and the hotel.
- WestJet does not reimburse expenses for cellular roaming charges, missed entertainment /sporting/excursion events, lost wages or missed connections to non-partner airlines or cruises.

[14] WestJet passengers seeking reimbursement for expenses incurred due to a flight delay could submit an online claim under these guidelines.

[15] Air Passenger Rights asserts that the *Air Passenger Protection Regulations* and the *Montreal Convention* do not set an upper limit on reimbursement for hotel costs and meals, nor do they limit an air passenger’s right to claim reimbursement for roaming costs, lost wages, or missed prepaid events. Air Passenger Rights contends that, by setting such limits in its general guidelines, WestJet engaged in deceptive practices, in contravention of the *BPCPA*.

The Impugned Pleadings

[16] As noted, WestJet has no objection to the pleadings seeking declaratory and injunctive relief. It does, however, take issue with the pleadings relating to a

restoration order. More specifically, WestJet seeks an order striking the following portions of the Amended Notice of Civil Claim:

- (a) Part 1: Statement of Facts: paragraphs 4, 41-47;
- (b) Part 2: Relief Sought: paragraphs 1d and 1f;
- (c) Part 3: Legal Basis: paragraphs 10-11, 14-15, and 17-18.

[17] The impugned paragraphs in Part 1: Statement of Facts allege the following:

- Air passengers who travelled during a specific period, submitted reimbursement claims to WestJet, and had their hotel and food claims capped, or had their roaming charges, lost wages, or prepaid events claims refused, have a liquidated damages claim against WestJet under the *Montreal Convention* and/or a breach of contract claim under the *Air Passenger Protection Regulations* and the *Montreal Convention*.
- Air passengers who travelled during a specific period and submitted hotel and meal reimbursement claims have a claim under the *Montreal Convention* and/or a breach of contract claim under the *Air Passenger Protection Regulations* and the *Montreal Convention* for the monetary difference between the amount WestJet already reimbursed them and the amount the passengers actually paid.
- Air passengers who travelled during a specific period have a claim under the *Montreal Convention* and/or for breach of contract under the *Air Passenger Protection Regulations* for the cost of roaming charges.
- Air passengers who travelled during a specific period have a claim under the *Montreal Convention* and/or for breach of contract under the *Air Passenger Protection Regulations* for their lost wages and salaries due to a delay, cancellation, or denial of boarding by WestJet.

[18] The impugned paragraph in Part 2: Relief Sought reads:

An order under s. 172(3)(a) of the *BPCPA* that WestJet restore monies to the Affected Passengers including a referral to an associate judge, registrar or special referee to inquire, assess or account for those monies.

[19] The impugned paragraphs in Part 3: Legal Basis assert the following:

- Affected passengers have the right to seek damages from WestJet under the *BPCPA*, the *Montreal Convention*, the *Air Passenger Protection Regulations*, and the common law.
- Affected passengers have an interest in funds retained by WestJet following WestJet's failure to pay their full reimbursement entitlements, or as a result of WestJet's unconscionable acts causing the affected passengers not to pursue their full entitlements; accordingly, the Court can make a restoration order under s. 172(3)(a) of the *BPCPA* to restore the monies that would be owing.
- That s. 172 of the *BPCPA* enables persons other than affected consumers to seek relief on behalf of those affected consumers and that the *Montreal Convention* does not preclude public interest claims.

Legal Framework

[20] On an application to strike under Rule 9-5(1)(a), the question for the Court is whether, assuming the pleaded facts are true, the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 17.

[21] Put differently, the test is whether the claim has any reasonable prospect of success: *Imperial Tobacco* at para. 17.

[22] The novelty or complexity of a claim is not a basis for striking it unless it is plainly doomed to fail; the approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial: *Pearce v. 4 Pillars Consulting Group Inc.*, 2021 BCCA 198 at para. 56; *Imperial Tobacco* at para. 17.

[23] A claim should not be struck if, when amended, it could disclose a reasonable cause of action; however, where a claim is so defective that it is incapable of amendment, striking it is appropriate: *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10.

Discussion

[24] I heard lengthy submissions and was presented with voluminous materials, including numerous case authorities. Nevertheless, in my view, the issue before me turns on two questions:

(a) Does the law allow for Air Passenger Rights, as a party with no special interest or any interest under the *BPCPA*, to bring an action on behalf of interested persons for an order restoring money that WestJet acquired because of a contravention of the *BPCPA*; and

(b) If so, whether the remedies sought by Air Passenger Rights constitute a restoration order.

[25] WestJet says the answer to both questions is no. Air Passenger Rights says the answer to both questions is yes.

A. Can Air Passenger Rights Bring a Claim for a Restoration Order?

[26] Air Passenger Rights says that if the Court grants a declaration that WestJet contravened the *BPCPA* or grants an injunction, the Court may also order under s. 172(3)(a) that WestJet restore to any person any money in which the person has an interest that WestJet acquired because of the contravention. Put differently, even though Air Passenger Rights has no special interest, no interest under the *BPCPA*, and was not affected by any consumer transaction giving rise to the action, it says s. 172(3)(a) provides that it can seek a restoration order on behalf of non-parties who have a special interest, an interest under the *BPCPA*, or were affected by a consumer transaction giving rise to the action. Air Passenger Rights submits that this is the proper interpretation of s. 172(3)(a) when the words of the provision are considered in their entire context and in their grammatical and ordinary sense,

having regard to the scheme of the legislation, its purpose, and the Legislature's intention: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 2.

[27] More specifically, Air Passenger Rights points to the wording of s. 172(3)(a), which provides for restoration to "any person," not just the named plaintiff (i.e., Air Passenger Rights) or the persons the plaintiff is representing in a representative or class action capacity.

[28] In addition, Air Passenger Rights relies on the Court of Appeal's decision in *Ileman v. Rogers Communications Inc.*, 2015 BCCA 260. In *Ileman*, the plaintiff sought to certify a class action against the defendant telecommunications companies on the basis that the defendants misled consumers into believing that the system access fee charged by the defendants was a government levy. Mr. Ileman's claim was brought primarily under the *BPCPA* and sought remedies under s. 171 and a restoration order under s. 172(3)(a). In finding that Mr. Ileman's claim for a restoration order under s. 172(3)(a) was bound to fail, the Court of Appeal held, at para. 53, that there are four prerequisites to the granting of a restoration order (underline emphasis added):

- (a) The court must make a declaratory or injunctive order under s. 172(1) before it can make an order under s. 172(3) – this requirement is set out in the opening words of s. 172(3);
- (b) The supplier must have acquired something ("money or other property or thing") because of a contravention of the legislation – this requirement is explicit in s. 172(3)(a);
- (c) The beneficiary of an order under s. 172(3) must have been the source of money or some other thing acquired by the supplier – this requirement is a necessary implication of the use of the word "restore"; and
- (d) The beneficiary must have "an interest" in the thing to be restored – this requirement is explicit in s. 172(3)(a).

[29] Air Passenger Rights submits that the Court of Appeal's choice of the term "beneficiary" is "no accident," and that its use of the term "beneficiary" rather than "plaintiff" or "claimant" reflects the view that a non-interested party can bring a claim for restoration on behalf of interested parties.

[30] Air Passenger Rights states that this interpretation of s. 172(3)(a) is consistent with the purpose of the *BPCPA*, which is to encourage private enforcement in the public interest and to promote adherence to the consumer standards set out in the *Act*: *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 32.

[31] On its face, the Court of Appeal's reasoning in *Ileman* (at paras. 45-62) may support the plaintiff's argument on this issue. Nevertheless, in context, the case does not, in my view, hold that a public interest organization can bring an action for a restoration order under s. 172(3)(a). *Ileman* was an appeal from the chambers judge's refusal to certify a class action. The issue the chambers judge and the Court of Appeal were grappling with was not whether a non-interested party could seek a restoration order on behalf of interested parties, but rather whether the plaintiff had "an interest" in any of the money in the defendant's hands.

[32] I agree with WestJet that the Supreme Court of Canada and the Court of Appeal have addressed this issue more directly in *Siedel and Knight v. Imperial Tobacco Canada Limited*, 2006 BCCA 235. Like *Ileman*, *Siedel and Knight* were appeals from chambers judges' decisions on class action certification applications. In deciding whether to certify the actions, the court in each case had to determine whether the plaintiff could bring a representative proceeding under s. 172 of the *BPCPA* as an alternative to a class proceeding. In each case, the respective appellate courts held that s. 172 does not permit a person to bring an action under that section as a representative of anyone else.

[33] In *Knight*, para. 10, the Court of Appeal wrote (bold emphasis in the original):

[10] It seems to me doubtful that it could be said that a proceeding under s. 172 of the ***BPCPA*** could properly be described as that type of action that could be brought in a representative capacity. There is no provision in this section that is similar in effect to s. 18(3) of the [*Trade Practice Act*, R.S.B.C. 1996, c. 457]. While an individual may bring an action under s. 172 without having a special interest or indeed any interest under the statute, I do not consider that the section provides for the individual bringing the action to act as a representative of anyone else. Section 172 merely provides that the individual bringing the action does not have to have a specific interest in the consumer transaction that might give rise to an action [...]

[34] The *Trade Practice Act* was the predecessor to the *BPCPA*. Section 18 of the *Trade Practice Act* is similar to s. 172 of the *BPCPA*, with one key distinction: section 18(3) of the *Trade Practice Act* provided that any person, including the director, could “sue on the person’s own behalf and, at the person’s option, on behalf of consumers generally” in relation to an action for a declaration or injunction. In other words, the *Trade Practice Act* expressly permitted a person like Air Passenger Rights to bring an action on behalf of consumers generally.

[35] In *Seidel*, the Supreme Court of Canada addressed the same issue as the Court of Appeal in *Knight* and concluded:

[49] Reference was made to s. 41(a) of the *CPA* which provides that no class action can be instituted where a representative action is available. However, under the *BPCPA*, only the director may bring a representative action. Ms. Seidel may not do so. While consumer activists may bring actions despite the fact that they have not personally suffered any damage, such actions cannot be brought as representative actions under the *BPCPA*. This is to be contrasted with the situation under the now repealed [*Trade Practice Act*], where s. 18(3) allowed consumer-brought representative actions [...]

[36] In my view, the Court of Appeal in *Knight* and the Supreme Court of Canada in *Seidel* have held that s. 172(3)(a) does not permit non-interested parties, such as Air Passenger Rights, to bring actions under that section on behalf of anyone else. Accordingly, Air Passenger Rights’ claim for a restoration order for affected passengers has no reasonable prospect of success.

B. Does the Relief Sought by Air Passenger Rights Constitute a Restoration Order?

[37] If I am wrong in my interpretation of *Knight and Seidel*, the claim for a restoration order must still fail because the relief sought by Air Passenger Rights is not a restoration order but rather a claim for damages.

[38] In the Amended Notice of Civil Claim, Air Passenger Rights seeks an order requiring WestJet to “restore” monies to the affected passengers, including a referral to an associate judge, registrar, or special referee to inquire into, assess, or account for those monies.

[39] As indicated in *Ileman*, there are four prerequisites for granting a restoration order under s. 172(3)(a):

- a) The court must make a declaratory or injunctive order under s. 172(1) before it can make an order under s. 172(3) – this requirement is set out in the opening words of s. 172(3);
- b) The supplier must have acquired something (“money or other property or thing”) because of a contravention of the legislation – this requirement is explicit in s. 172(3)(a);
- c) The beneficiary of an order under s. 172(3) must have been the source of money or some other thing acquired by the supplier – this requirement is a necessary implication of the use of the word “restore”; and
- d) The beneficiary must have “an interest” in the thing to be restored – this requirement is explicit in s. 172(3)(a).

[40] The Amended Notice of Civil Claim does not plead any facts alleging that WestJet acquired money as a result of a contravention of the legislation. In the Statement of Facts, the relevant pleadings can be summarized as follows:

- Air passengers who submitted reimbursement claims to WestJet for specified expenses and whose claims were refused have a claim for damages against WestJet.
- Air passengers who submitted reimbursement claims to WestJet for specified expenses and whose claims were not fully reimbursed have a claim against WestJet for the difference between the amount they actually paid for various expenses and the amount WestJet reimbursed them.

[41] In the Legal Basis, Air Passenger Rights pleads that the affected passengers have an interest in the funds retained by WestJet when WestJet failed to pay them their full reimbursement entitlements, or that WestJet’s actions caused them not to pursue their entitlements; accordingly, the Court can make a restoration order to restore the monies owing.

[42] Nowhere does Air Passenger Rights plead that WestJet acquired money, property, or other thing from the affected passengers.

[43] Overall, despite Air Passenger Rights' denial, the substance of its pleadings is a claim for damages rather than for a restoration order.

[44] Finally, the relief sought, namely an order referring the matter to an associate judge, registrar, or special referee for an inquiry, assessment, or accounting of the monies claimed, has no basis in law. In essence, Air Passenger Rights seeks an order under Rule 18-1 that an associate judge, registrar, or special referee determine entitlement to damages and quantify those damages. These judicial officers do not have jurisdiction to make such decisions. In submissions, counsel for Air Passenger Rights suggested that the associate judge, registrar, or special referee's assessment could be in the form of a report and recommendation to the Court, pursuant to Rule 18-1(3). It is plain and obvious to me that any claim seeking to have the Court order an associate judge, registrar, or special referee to provide a report assessing both entitlement to and the quantum of damages has no reasonable prospect of success

Conclusion

[45] The following parts of the Amended Notice of Civil Claim, filed on November 27, 2024, are struck pursuant to Rule 9-5(1)(a):

- (a) Part 1: Statement of Facts: paragraphs 4, 41-47;
- (b) Part 2: Relief Sought: paragraphs 1d and 1f;
- (c) Part 3: Legal Basis: paragraphs 10-11, 14-15, and 17-18.

[46] With the exception of the claim for an inquiry, assessment, or accounting by an associate judge, registrar, or special referee, I am not satisfied that the claim is so defective as to be incapable of amendment. Accordingly, I will grant Air Passenger Rights leave to amend the Amended Notice of Civil Claim.

[47] The parties requested a further appearance to make submissions on costs. I am not granting that request. WestJet has been substantially successful in this application and is therefore provisionally entitled to its costs of this application in the

cause. If either or both parties wish to deviate from this provisional order, they may file written submissions by October 1, 2026, and response submissions by October 15, 2026. Written submissions must not exceed 2,500 words. Response submissions must not exceed 1,500 words. The parties may file one affidavit each in support of their submissions. Each affidavit must not exceed 15 pages, including exhibits. Parties may rely on a maximum of five case authorities. If no submissions are filed by October 1, 2026, WestJet will have its costs of this application in the cause.

“Morishita J.”