

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Air Passenger Rights v. WestJet Airlines Ltd.*,
2026 BCCA 357

Date: 20260826
Docket: CA51094

Between:

Air Passenger Rights

Appellant
(Petitioner)

And

WestJet Airlines Ltd.

Respondent
(Respondent)

And

Civil Resolution Tribunal

Respondent

Before: The Honourable Justice Fleming
The Honourable Mr. Justice Riley
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated
October 30, 2025 (*Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 2145,
New Westminster Docket S254452).

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Place and Date of Judgment:

Vancouver, British Columbia
August 26, 2026

Written Reasons by:

The Honourable Mr. Justice Riley

Concurred in by:

The Honourable Justice Fleming

The Honourable Justice Mayer

Summary:

Two airline passengers brought a claim against WestJet Airlines Ltd. in the Civil Resolution Tribunal (“CRT”) seeking: (i) standardized compensation for a flight delay under the Air Passenger Protection Regulations and (ii) recovery of out-of-pocket expenses during the delay period. The CRT dismissed the claim for standardized compensation because the flight delay was caused by a “labour disruption” arising from the delivery of a 72-hour strike notice by the pilot’s union and allowed the claim for out-of-pocket expenses. The passengers assigned their claim to the appellant, Air Passenger Rights (the “Association”), which initiated a judicial review challenging the CRT decision on standardized compensation. A judge of the Supreme Court dismissed the judicial review, finding that: (i) the assignment of the claim was invalid, (ii) the Association had no standing to bring the judicial review, and (iii) the CRT lacked jurisdiction to decide the standardized compensation claim, which, in the judge’s view, fell within the exclusive jurisdiction of the Canadian Transportation Agency. On appeal, the Association challenges each of those conclusions, and argues that the CRT erred in dismissing the standardized compensation claim.

Held: Appeal allowed in part. The judge erred in finding that: (i) the assignment of the claim was invalid, (ii) the Association did not have standing, and (iii) the CRT lacked jurisdiction to decide the standardized compensation claim. The judge’s order quashing the CRT decision for lack of jurisdiction is set aside. The CRT did not err in dismissing the claim for standardized compensation on its merits, because the flight was cancelled due to a labour disruption created by the delivery of a 72-hour strike notice by the pilot’s union. The judge’s order dismissing the judicial review is therefore affirmed.

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Reasons for Judgment of the Honourable Mr. Justice Riley:

Introduction

[1] This appeal concerns a Civil Resolution Tribunal (“CRT”) decision in a small claims matter brought by two airline passengers in connection with WestJet Airlines Ltd. (“WestJet”)’s cancellation of an international flight. The CRT allowed the claim in part, granting damages for out-of-pocket expenses arising from the flight cancellation, but dismissing the claim for standardized compensation for flight delay under the *Air Passenger Protection Regulations*, SOR/2019-150 [*Passenger Regulations*]. The tribunal member dismissed the latter component of the claim on the basis that the delivery of a 72-hour strike notice by the pilot’s union created a “labour disruption” beyond WestJet’s control.

[2] After the CRT’s decision, the passengers assigned all of the rights in the claim, including any right to seek judicial review, to the appellant, Air Passenger Rights (the “Association”), which then initiated the judicial review that led to the British Columbia Supreme Court decision now under appeal. In that decision, the judge found that: (i) the assignment was invalid, (ii) the Association lacked standing to bring the judicial review because it had no interest in the CRT proceedings between the passengers and WestJet, and (iii) the CRT lacked jurisdiction to decide the claim for standardized compensation because it fell within the exclusive jurisdiction of the Canadian Transportation Agency (“CTA”), the federal agency responsible for enacting and administering the *Passenger Regulations*.

[3] This appeal raises issues falling into three broad categories.

[4] The first set of issues has to do with the Association’s ability to bring the judicial review. The Association says the judge erred in failing to recognize that the standardized compensation claim was for an assignable “debt”, or alternatively in failing to appreciate that the assignment did not “savour of maintenance or champerty” in any event, given the Association’s purposes and its prior relationship

with the passengers. The Association says the assignment gave it standing to seek judicial review of the CRT decision denying the standardized compensation claim.

[5] The second set of issues pertain to jurisdiction. The Association contends that the judge erred in deciding the jurisdictional issues without giving the parties the opportunity to make submissions, and that on a proper analysis, the standardized compensation claim for flight disruption falls within the CRT's jurisdiction over either "debt or damages", or alternatively "specific performance" of the contract between the passengers and WestJet. The Association says the judge further erred in finding that the CTA has exclusive jurisdiction over standardized compensation claims for flight disruptions, because there is nothing in the *Passenger Regulations* or their authorizing statute removing a passenger's right to bring a civil claim grounded in contract, based on WestJet's international airfare tariff, which incorporates the standardized compensation scheme.

[6] The third set of issues has to do with the merits of the CRT's decision. The Association's position is that the CRT erred in denying the claim for standardized compensation on the ground that the strike notice gave rise to a "labour disruption" within the meaning of the *Passenger Regulations*. The Association argues that on a proper interpretation of the relevant provisions, mere delivery of a strike notice by the pilot's union did not qualify as an actual "labour disruption" beyond WestJet's control.

Background

[7] A proper understanding of the history of these proceedings requires some familiarity with Canada's consumer protection regime for air travel as provided for under the *Canada Transportation Act*, S.C. 1996, c. 10, and its relationship with Canada's commitment to international standards for air carrier liability as set out in the *Convention for the Unification of Certain Rules for International Carriage by Air*, 2242 U.N.T.S. 309 [*Montreal Convention*].

Domestic Consumer Protection for Airline Passengers

[8] The CTA, a statutory body continued under the *Canada Transportation Act*, is the agency responsible for administration and oversight of all transportation industry matters under the legislative authority of Parliament. It has two essential functions. One is to regulate aspects of the transportation industry falling under federal jurisdiction. This includes issuing licences and determining industry standards. The other is to act in a quasi-judicial capacity in the resolution of commercial and consumer-related transportation disputes under its jurisdiction: *Lukács v. Canada (Transportation Agency)*, 2014 FCA 76 at paras. 50–52; *Lukács v. Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140 at paras. 48–49.

[9] In 2018, Parliament introduced amendments to the *Canada Transportation Act*, furnishing the CTA with a statutory mandate to develop and implement new regulations addressing air carrier obligations to passengers in relation to various matters, including flight delays, flight cancellations, denial of boarding, and loss or damage to baggage for flights to, from, and within Canada. Acting on this mandate, the CTA promulgated the *Passenger Regulations*, which came into force in 2019.

[10] The *Passenger Regulations* establish minimum air carrier service obligations toward passengers. Because this appeal pertains to a flight disruption, I will limit the discussion that follows to that specific topic.

[11] Sections 8 to 21 of the *Passenger Regulations* set out carrier obligations pertaining to flight delays, cancellations, and boarding denials (collectively, “flight disruptions”). Sections 10 to 12 effectively create three categories of flight disruptions.

[12] Section 10 deals with flight disruptions for “situations outside the carrier’s control”, “including but not limited to” the situations listed in s. 10(1)(a) through (l). One of the listed “situations” is “a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider”: s. 10(1)(j). Section 10(3) sets out the carrier’s obligations where a flight is disrupted for reasons outside the carrier’s control. The carrier must give passengers

prescribed information about the disruption: s. 10(3)(a). Where, for reasons beyond the carrier's control, a flight is delayed for more than three hours or is cancelled, the carrier must provide alternate travel or a refund upon request: ss. 10(3)(b)–(c).

[13] Section 11 deals with flight disruptions that are “within the carrier's control”, but “required for safety purposes”. It sets out the carrier's obligations in the case of delay (s. 11(3)), cancellation (s. 11(4)), or denial of boarding (s. 11(5)), none of which need to be discussed further because safety-related flight disruptions are not in issue in this case.

[14] Section 12 deals with flight disruptions “within the carrier's control”, for reasons other than safety. For all disruptions falling into this category, the carrier must provide passengers with prescribed information: ss. 12(2)(a), (3)(a), 4(a). Further, where the passenger is informed of the delay or cancellation less than 12 hours before the scheduled departure, the carrier must provide the passenger with food and drink and access to means of communication: ss. 12(2)(b), (3)(b); s. 14. The carrier must also provide the passenger with alternate travel arrangements, or a refund upon request: ss. 12(2)(c), (3)(c), 4(c). In addition to all of this, where the passenger receives notice of the delay or cancellation less than 14 days before the flight, the carrier must provide the “minimum compensation for inconvenience” as set out in s. 19: ss. 12(2)(d), 3(d).

[15] Section 19 sets out the minimum compensation for flight disruptions to which ss. 12(2)(d) and (3)(d) apply. The rate of compensation depends on the carrier's classification as either a “small carrier” or a “large carrier”. For applicable flight disruptions involving a “large carrier” such as WestJet, s. 19(1)(a) prescribes the “minimum compensation” the carrier must provide to the passenger as follows: (i) \$400 for delays of more than three hours but less than six hours, (ii) \$700 for delays of more than six hours but less than nine hours, and (iii) \$1,000 for delays of nine hours or more. To obtain the prescribed compensation, the passenger must file a request with the carrier before the anniversary date of the disrupted flight: s. 19(3).

Within 30 days of receiving a passenger's request, the carrier must "provide the compensation or an explanation as to why compensation is not payable": s. 19(4).

[16] Pursuant to s. 86.11(4) of the *Canada Transportation Act*, the obligations imposed on carriers under the *Passenger Regulations* are "deemed to form part of the terms and conditions set out in the carrier's tariffs", unless the carrier's terms and conditions are "more advantageous" to the passenger. Further, carriers are required to incorporate these obligations into their tariffs for international carriage: *Air Transportation Regulations*, SOR/88-58, s. 122(c)(xxi). Thus, the standardized compensation regime is incorporated into the carrier's terms of carriage.

[17] If a carrier does not provide standardized compensation following a request under s. 19(3) of the *Passenger Regulations*, the passenger can file a complaint with the CTA. A complaint resolution officer will then either refuse to deal with the complaint under s. 85.04(2) of the *Canada Transportation Act*, resolve the complaint through mediation under s. 85.05, or adjudicate it under s. 85.06. If the resolution officer finds in the passenger's favour, the officer can order the carrier to pay standardized compensation or comply with other relevant terms of carriage. Separate and apart from these complaint resolution powers, the CTA also has authority to investigate and penalize carrier non-compliance with the *Passenger Regulations* under the *Canada Transportation Act*'s administrative monetary penalty provisions.

International Standards for Air Carrier Liability

[18] International standards for air carrier liability were originally settled in the *Convention for Unification of Certain Rules Relating to International Carriage by Air*, 137 L.N.T.S. 11 [*Warsaw Convention*], ratified in 1929, and given the force of law in Canada by virtue of what is now s. 2 of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. The *Warsaw Convention* strove to balance the interests of the then-fledgling international airline industry in creating uniform rules and limitations on liability and the interests of airline passengers in securing reliable redress for compensable

losses: *Thibodeau v. Air Canada*, 2014 SCC 67 at para. 41 per Justice Cromwell for the majority; paras. 151–153 per Justice Abella in dissent, but not on this point.

[19] The *Warsaw Convention* was modified by the *Montreal Convention*, ratified in 1999 and implemented in Canada by amendments to the *Carriage by Air Act* that came into force in 2003. The stated purpose of the *Montreal Convention*, as set out in its preamble, was to “modernize and consolidate the *Warsaw Convention* and related instruments” in view of the many developments in the international air transportation industry over the 70 years between the two conventions. These developments included a “growing recognition that liability limitations set by the *Warsaw Convention* were too low and a broader shift in the attention of governments towards a more passenger-friendly legal regime resulted in patchwork efforts to expand carrier liability”: *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 at para. 48 [ITA].

[20] Insofar as flight delays are concerned, the most relevant provisions of the *Montreal Convention* can be summarized as follows:

- (a) Article 19 sets out the terms and limits on carrier liability for flight delays. It provides that carriers will be liable for damages due to delay of passengers, baggage, and cargo, subject to a due diligence defence.
- (b) Article 22(1) sets out a liability limit for damages due to passenger delay, by reference to universal “Special Drawing Rights”, or SDRs. (The formula for conversion of SDRs to national currencies is found in Article 23.)
- (c) Article 22(5) provides that the damages limits are not applicable to losses caused by intentional misconduct or recklessness.
- (d) Article 22(6) provides that the damages limits are exclusive of court costs.
- (e) Article 25 allows a carrier to stipulate that its contract of carriage is subject to higher damages limits than those provided for in the *Convention*.

- (f) Article 26 states that any contract “tending to” relieve the carrier of liability or fix liability limits lower than those laid down in the *Convention* are “null and void” to that extent.
- (g) Article 27 states that nothing prevents a carrier from refusing to enter a particular contract of carriage, waiving any defence available under the *Convention*, or setting conditions that do not conflict with the *Convention*.
- (h) Article 29 embodies what is often referred to as the exclusivity principle. It provides that “any action for damages, however founded, whether under this *Convention* or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this *Convention*”, and further that “[i]n any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable”.

Supreme Court of Canada’s Decision in *IATA*

[21] The relationship between Canada’s consumer protection regime and the *Montreal Convention* was addressed in considerable detail by the Supreme Court of Canada in *IATA*. In that case, an association of international air carriers argued that the standardized compensation scheme in the *Passenger Regulations* was invalid because it conflicted with the exclusivity principle found in Article 29 of the *Montreal Convention*. The Court disagreed, finding that the *Montreal Convention* is exclusive within the scope of matters it addresses, but did not preclude the establishment of a parallel “consumer protection scheme” for fixed compensation of air travellers based on a carrier’s breach of certain minimum standards in the *Passenger Regulations*: *IATA* at paras. 27, 90.

[22] In reaching this conclusion, the Court held that the standardized compensation scheme in the *Passenger Regulations* did not intrude upon Canada’s commitment to ensure that any action for “damages” is subject to the conditions and liability limitations set out in the *Montreal Convention*. Writing for the Court, Justice Rowe reasoned that the standardized compensation provided for in the *Passenger Regulations* did not amount to “damages”, because standardized compensation

“does not seek to measure a passenger’s loss”, and does not require any case-by-case assessment of compensation for harm incurred by a particular passenger: *IATA* at paras. 94, 97.

[23] The *IATA* decision was released on 4 October 2024, after the CRT decision in this case, but before the judicial review decision which is now under appeal. As explained in more detail below, *IATA* had implications for the manner in which this case proceeded.

[24] Prior to the *IATA* decision, the CRT’s jurisdiction to determine standardized compensation disputes between passengers and airlines appears to have been assumed, most likely because on its face, it appeared to fit within the CRT’s jurisdiction to determine small claims matters involving contractual “damages”. The Court’s conclusion in *IATA* that standardized compensation under the *Passenger Regulations* was not a form of “damages” meant that such claims no longer fit into that branch of the CRT’s small claims jurisdiction. As a consequence, questions about the CRT’s jurisdiction over claims for standardized compensation based on flight delays emerged part way through these proceedings.

Facts

[25] The basic facts of the case have never been in dispute between the parties. They were summarized in the CRT tribunal member’s decision (indexed as *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640 at para. 9) as follows:

- a. The Boyds [the applicants in the CRT proceeding] bought tickets from WestJet to fly from Kelowna to Rome, Italy. They were to leave Kelowna on May 18, 2023 at 2:00 pm, and arrive in Rome on May 19 at 11:55 am. This included a stopover in Calgary of approximately 2 hours the evening of May 18.
- b. On May 15 the Air Line Pilot’s Associate (ALPA) issued a 72-hour strike notice. Under this notice, WestJet’s pilots would be authorized to strike beginning 3:00 am MDT on May 19.
- c. Also on May 15, WestJet issued a lockout notice, which would have been effective as early as 3:00 am MDT on May 19.
- d. At around 1:00 am ET on May 19, the ALPA and WestJet came to a tentative agreement and the strike and lockout were averted.

- e. The Boyds made the initial flight to Calgary.
- f. The Boyds were advised by email the morning of May 18 that their flights to Rome had been cancelled.
- g. WestJet provided alternative flights to Rome through both WestJet and other airlines.
- h. The Boyds arrived in Rome May 20, over 24 hours after their intended arrival.
- i. Due to this delay, the Boyds stayed in a hotel in Calgary overnight and had dinner at the hotel's restaurant. The Boyds spent \$92 on dinner and \$185.25 on the hotel.

[26] The Boyds took the view that mere delivery of a strike notice was not a “labour disruption”. Their position was that, because the prospective strike was averted before it began, there was never any “labour disruption”, such that their flight to Rome was cancelled due to reasons that were within WestJet’s control. The Boyds submitted a request to WestJet for standardized compensation of \$1,000 per passenger under ss. 12(2)(d) and 19(1)(a)(iii) of the *Passenger Regulations*. WestJet responded with an email advising that no compensation was owed because the flight was cancelled due to labour action that was outside its control.

[27] Dissatisfied with this outcome, the Boyds submitted a claim to the CRT, seeking: (i) standardized compensation of \$1,000 per passenger, for a total of \$2,000, as contemplated in the *Passenger Regulations*, and (ii) reimbursement of meals and hotel expenses totalling \$277.25. WestJet opposed the claim, maintaining that the strike notice created a labour disruption, warranting cancellation of the flight for reasons beyond its control. A CRT tribunal member heard the claim in writing under s. 39 of the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 [CRT Act].

CRT Reasons

[28] On 5 July 2024, the tribunal member issued written reasons, allowing the claim in part.

[29] The tribunal member’s reasons began by addressing several preliminary matters, including jurisdiction. She was satisfied that the claim fell within the CRT’s jurisdiction over small claims under s. 118 of the *CRT Act*. She considered it

appropriate to proceed with a hearing in writing only, taking into account the CRT's mandate to decide claims proportionately and speedily, and the absence of any difficulty in making necessary factual findings, since the dispute was not about "what happened", but only about "how the law applies to the facts".

[30] The tribunal member identified two issues for determination, namely whether the Boyds were entitled to: (i) standardized compensation for the delayed flight, and (ii) reimbursement of out-of-pocket expenditures for hotel and meals during the travel delay.

[31] With regard to the standardized compensation claim, the outcome turned on whether the flight cancellation was within or beyond WestJet's control. If the flight cancellation was within WestJet's control, the Boyds would be entitled to standardized compensation under s. 19 of the *Passenger Regulations*. If the cancellation was not within WestJet's control, then WestJet was required to re-schedule the flight under s. 10 of the *Passenger Regulations* (which it did), but was not required to pay standardized compensation.

[32] The tribunal member noted that a "labour disruption within the carrier" was one of the enumerated situations said to be beyond the carrier's control under s. 10(1) of the *Passenger Regulations*. She considered the argument advanced by the Boyds that since no strike actually occurred, there was no "labour disruption". She also considered WestJet's counter-argument, that the term "labour disruption" should not be interpreted so narrowly as to apply only upon occurrence of a "work stoppage", or an "actual strike".

[33] The tribunal member cited *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837, for its summary of the modern approach to statutory interpretation, under which the words of the statutory instrument in issue must "be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": at para. 21. She also considered the need to adopt a remedial construction in service of the object of the legislation.

[34] The tribunal member consulted the Regulatory Impact Analysis Statement produced in conjunction with the *Passenger Regulations*. In this document, the CTA recounted that following consultation with stakeholders, the definition of “labour disruption” was expanded to include those “within the carrier”, due to concerns about how the *Passenger Regulations* could influence the collective bargaining process. In the tribunal member’s view, this aspect of the regulatory impact analysis provided “insight into the intentions” of the drafters in defining the scope of the term “labour disruption”.

[35] The tribunal member also considered it relevant that the description of “labour disruption” in s. 10(1) made no reference to “strikes or lockout orders”. In her view, this supported WestJet’s submission that the term “labour disruption” could not be limited to active strikes. She reasoned that on a plain reading, the term could not be interpreted as narrowly as the Boyds suggested. She concluded that the 72-hour strike notice qualified as a “labour disruption”. In her view, the existence of the lockout notice did not alter that conclusion, because with or without the lockout notice, WestJet had no control over whether the union would take strike action.

[36] On this reasoning, the tribunal member determined that the flight was delayed by a situation beyond WestJet’s control. Consequently, WestJet’s obligations in relation to the delay were governed by ss. 10 and 18 of the *Passenger Regulations*, and WestJet was not required to pay standardized compensation under ss. 12 and 19. The tribunal member therefore dismissed this aspect of the claim.

[37] The tribunal member went on to consider the Boyds’ claim for recovery of out-of-pocket hotel and meal expenses. She accepted that the *Montreal Convention* applied, noting that it is part of Canada’s domestic law under the *Carriage by Air Act*.

[38] The tribunal member considered that under Article 19 of the *Montreal Convention*, a carrier will not be held liable where it is proven that the carrier and its agents took all measures reasonably required to avoid the damage. Although she had already determined that the flight delay was outside WestJet’s control for the purposes of standardized compensation under the *Passenger Regulations*, this did

not relieve WestJet from its burden to establish due diligence to avoid liability for damages under the *Montreal Convention*. WestJet did not tender evidence “of the steps it took in securing alternative flights for the Boyds”, and there was no evidence in the record to show that there were no earlier flights available that would have allowed the Boyds to avoid the costs they incurred. Nor did WestJet dispute that the Boyds actually incurred these out-of-pocket costs.

[39] The tribunal member concluded that the Boyds were entitled to their out-of-pocket meal and hotel expenses of \$277.25, plus pre-judgment interest of \$15.78. She also held that the Boyds were entitled to reimbursement of \$62.50, representing half of their CRT fees, under s. 49 of the *CRT Act*.

Assignment of the Claim

[40] On 24 July 2024, the Boyds granted the Association an assignment in writing of their entire claim against WestJet in connection with the flight disruption.

[41] The Association is essentially an advocacy group for air travellers’ rights. It is incorporated under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23. According to its articles of incorporation, its stated purposes include education of air travellers as to their rights and the means of enforcing them and making representations to governing authorities on matters of public concern and interest with respect to air passenger rights. The Association’s founder is Gábor Lukács, a longstanding advocate for the rights of air passengers.

[42] Under the terms of the assignment, the Boyds assigned to the Association “all their right, title and interest in respect of the [c]laim and the right to bring and defend legal proceedings (including actions, complaints, appeals and judicial review)”. The assignment included a commitment by the Boyds to “reasonably assist” the assignee in pursuing the claim. It was signed, under seal, by each of the Boyds and by Mr. Lukács.

[43] In an affidavit filed in the petition proceeding, Mr. Lukács averred that, prior to the assignment, the Association had been assisting the Boyds in the CRT dispute

resolution process, by providing them with information to advance their claim, “without any [remuneration] or expectation thereof”.

Petition for Judicial Review

[44] On 29 July 2024, the Association filed a petition in the British Columbia Supreme Court, seeking judicial review of the CRT decision.

[45] In its response to the petition, filed on 19 August 2024, WestJet took issue with the Association’s standing to bring the petition, and challenged the validity of the assignment. WestJet did not raise any question about the CRT’s jurisdiction to decide the standardized compensation claim. On the merits, WestJet argued that the CRT made no error in dismissing the Boyds’ claim for standardized compensation.

[46] The CRT filed its response to the petition on 30 August 2024, identifying as preliminary issues: (i) the validity of the assignment and (ii) the Association’s standing, and taking no position on the merits of the petition. Like WestJet, the CRT did not raise any concern about the tribunal’s jurisdiction to determine the standardized compensation claim.

[47] The petition hearing proceeded over two days, commencing on 24 March 2025. The parties took positions consistent with their pleadings.

[48] When the topic of the CRT’s jurisdiction was raised, counsel for WestJet advised the judge that, in the wake of the *IATA* decision, the CRT had to consider the basis for its jurisdiction over standardized compensation claims. Despite this, WestJet’s position continued to be that: (i) passengers had the choice to bring standardized compensation claims either before the CRT or the CTA, (ii) there was no “exclusivity clause” in the *Passenger Regulations* or its authorizing statute giving the CTA exclusive jurisdiction over standardized compensation claims, and (iii) WestJet was not suggesting the CRT lacked jurisdiction over such claims. At the conclusion of an exchange with WestJet’s counsel, the judge confirmed “no one ... is challenging that jurisdiction”, to which counsel responded “[n]o, we are not”.

Supreme Court Judge's Reasons

[49] The judge's reasons, indexed as *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 2145, were released on 30 October 2025.

[50] Near the outset, the judge explained that while the parties disagreed about what issues had to be decided, in her view, the issues arising from the submissions were whether: (a) the Association had standing to bring the petition for judicial review, (b) the assignment was valid, and (c) the CRT's denial of the claim for standardized compensation should be set aside due to lack of jurisdiction.

[51] In the judge's view, the question of whether the claim for standardized compensation arising from the flight delay could properly be characterized as a debt was determinative of all the issues raised in the petition. The judge concluded that it was not a claim for debt. This meant the assignment was invalid, and the Association did not have standing to bring the petition.

[52] The judge's conclusion that the standardized compensation claim was not a debt also led her to question "whether the [CRT] had jurisdiction over the [Boyd's] claim in the first place". The judge reasoned that although the parties did not raise or squarely address this issue, it "cannot be avoided because it is inexorably linked to the issues raised by the petition".

Whether Standardized Compensation for Flight Disruption is a Debt

[53] After a thorough review of the standardized compensation scheme in the *Passenger Regulations*, the judge set out her reasons for concluding that a claim for standardized compensation could not be characterized as a debt. She rejected the Association's argument that the point had been decided conclusively in its favour in *IATA*, reasoning that the Supreme Court of Canada's decision went no further than deciding that the standardized compensation scheme in the *Passenger Regulations* did not create an action for damages and therefore did not offend the *Montreal Convention's* exclusivity principle.

[54] In the judge's view, the fact that standardized compensation claims were found not to be claims in damages did not make them claims in debt. She characterized the Association's argument as an effort to parse Rowe J.'s comment at para. 97 of *IATA* that standardized compensation amounts to a claim for "payment of an amount that is already owed", thereby overlooking the context in which that statement was made. The judge gave several reasons for concluding that the Association's position was based on a "misreading" of *IATA*.

[55] More fundamentally, the judge also found that the Association's position "fail[ed] to account for the juridical basis of the standardized minimum compensation", which was in her view, "not a contractual term to which the airlines agreed to be bound" but was instead a "statutorily imposed scheme". The incorporation of the standardized compensation scheme into the carrier's international tariff did not have the effect of making the carrier's obligations "contractual in nature". In the judge's view, the resolution of standardized compensation claims under the *Passenger Regulations* was "not merely a private law dispute between carriers and passengers", because "[d]etermining whether compensation is payable requires interpreting and applying a federal statute and its regulations over which the [CTA] has expertise".

[56] The judge also reasoned that the claims resolution process in the *Passenger Regulations* has "all the hallmarks of an exhaustive and comprehensive scheme". Nothing about that scheme suggests that standardized compensation is "merely a contractual obligation owed by carriers to be resolved privately by small claims actions".

[57] The judge concluded that in bringing their claim against WestJet before the CRT, the Boyds "completely side-stepped the comprehensive scheme created by the federal government" on the "erroneous premise that WestJet owed them compensation as a matter of private contract law". In the judge's view, that route was "not available to them". She held that standardized claims for flight disruptions are

“not enforceable as a contractual debt” and must be resolved through the CTA under the process provided for in the *Passenger Regulations*.

Validity of the Assignment Agreement

[58] The judge then turned to the validity of the assignment. She rejected the Association’s submission that it was a permissible assignment of a debt claim, for the reasons she had already given. On my reading, the unstated premise of her conclusion was that assignment of a “debt” is a recognized exception to the rule against maintenance and champerty, which generally prohibits assignment of the right to sue because the law will not countenance “trafficking in litigation”. Having rejected the Association’s argument that the standardized compensation claim was an assignable “debt”, the judge endorsed WestJet’s position that the assignment was invalid because it offended the rule against maintenance and champerty.

[59] The judge went on to find that even if the assignment of the underlying debt claim was valid, the Boyds still had no authority to assign their right to judicial review from the CRT decision. In the judge’s view, parties cannot confer, by agreement or otherwise, the right to seek judicial review. She explained that judicial review is not akin to resolution of a private law dispute, because it involves an exercise of remedial supervision over the work of administrative officials and tribunals.

The Association’s Standing to Bring the Petition

[60] The judge went on to hold that, independent of her conclusion that the assignment was invalid, the Association had no standing to bring the petition for judicial review. She cited a collection of cases holding that the right to seek judicial review is limited to a person aggrieved, affected by, or suffering some exceptional prejudice as a result of the decision which is sought to be reviewed.

[61] In the judge’s view, the only parties directly affected by the CRT decision were the Boyds and WestJet. The Association was not a party to the CRT proceeding and had no direct interest in it. The judge further held that the Association should not be granted public interest standing to enforce what it

characterized as a private law remedy. The judge cited *Sierra Club of Canada v. Canada (Minister of Finance) (T.D.)*, [1999] 2 F.C. 211, 1998 CanLII 9124 [*Sierra Club*], for the proposition that “[p]ublic interest standing should not be extended where there are individuals more directly affected who are not before the court”.

CRT’s Jurisdiction Over the Standardized Compensation Claim

[62] Earlier in her reasons, the judge acknowledged and then rejected the position of the parties that because jurisdiction had not been raised before the CRT, it was not a live issue in the judicial review. She explained that under s. 2(2) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*], an application for judicial review seeks to invoke the superior court’s power to grant prerogative, declaratory, or injunctive relief “in relation to the exercise of a statutory power”. This relief is discretionary and is concerned primarily with ensuring that an administrative body’s decisions are “only made within the strict bounds of the applicable legislation”. The legislative authority for the administrative body’s decision is therefore fundamental to the judicial review process. As a corollary, a judge tasked with deciding a petition for judicial review must be satisfied that the administrative body had jurisdiction to make the decision under review.

[63] The parties referred the judge to several cases decided after *IATA*, in which the CRT found that it had jurisdiction to adjudicate claims against airlines for standardized compensation based on flight disruptions, namely *Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278, and *Pansegrau v. Air Canada*, 2024 BCCRT 1297. In both cases, tribunal members held that standardized compensation claims fit within the CRT’s jurisdiction to adjudicate small claims actions in debt.

[64] The judge held that these CRT decisions were wrong for all the reasons expressed earlier in her analysis. She added that while the amount of standardized compensation for flight delays is “pre-determined” under the *Passenger Regulations*, “the obligation to pay” depends on whether the delay or cancellation was outside the carrier’s control within the meaning of the *Passenger Regulations*. In the judge’s

view, the resolution of that question involves “interpretation and application of federal legislation” over which the CTA, and not the CRT, has expertise.

[65] The judge also found the CRT’s reasoning in *Reshaur* and *Pansegrau* that the right to bring an action in debt for flight delays can co-exist in parallel with the regulatory scheme “simply because it was not explicitly removed” by the *Passenger Regulations* or the authorizing statute to be “tautological”. She added that both the Provincial Court and CRT are statutory tribunals with only the jurisdiction assigned to them by the legislature, such that they could not acquire jurisdiction by “assuming there is a lacuna in federal legislation”.

[66] The judge also expressed the view that permitting tribunals other than the CTA to interpret and apply the *Passenger Regulations* “opens the door to conflicting interpretations across the country”, potentially undermining the CTA’s ability to administer the standardized compensation scheme as part of its regulatory mandate.

Further Submissions Invited

[67] Near the end of her reasons, the judge invited further submissions from the parties on two issues. The first was whether, in view of her decision that the CRT lacked jurisdiction to decide the standardized compensation claim, that aspect of the CRT decision should be quashed. The second was whether, despite her finding that the CRT lacked jurisdiction, she should go on to undertake an analysis of whether the CRT erred in dismissing the Boyds’ standardized compensation claim on the basis that the flight cancellation was due to a “labour disruption” beyond WestJet’s control.

Final Order

[68] After receiving input from the parties on the two outstanding issues, the judge: (i) granted an order quashing the CRT’s determination of the standardized compensation claim, and (ii) declined to undertake any analysis on the question of whether the CRT erred in its interpretation of the phrase “labour disruption”.

Issues

[69] The appeal raises the following issues:

- (1) As to the Association’s ability to bring the judicial review:
 - (a) Whether the judge erred in finding that the assignment of the claim was invalid?
 - (b) Whether the judge erred in finding that the Association lacked standing to bring the judicial review?
- (2) As to the CRT’s jurisdiction:
 - (a) Whether the judge erred in deciding the jurisdictional issues without affording the parties an opportunity to make submissions?
 - (b) Whether the judge erred in finding that the CRT lacked jurisdiction to decide the standardized compensation claim?
 - (c) Whether the judge erred in finding that claims for standardized compensation arising from flight delays fall within the exclusive jurisdiction of the CTA?
- (3) As to the merits of the judicial review:
 - (a) Whether the Association’s challenge to the soundness of the CRT decision should be remitted to the Supreme Court?
 - (b) Whether the CRT erred in finding that the flight cancellation was due to a “labour disruption” within the meaning of the *Passenger Regulations*?

Analysis

Issue (1): The Association's Ability to Seek Judicial Review

Issue (1)(a): Validity of the Assignment

[70] The Association says the judge's finding that the assignment of the standardized compensation claim is invalid is a legal conclusion reviewable on a correctness standard. The CRT supports this position. I agree.

[71] The judge found the assignment to be invalid on two grounds. First, having rejected the Association's characterization of the standardized claim as a debt, she effectively acceded to WestJet's argument that the assignment offended the common law rule against maintenance and champerty. Second, the judge reasoned that even if the assignment of the claim itself was valid, it was not open for the Boyds to assign their right to seek judicial review of the CRT decision. I will address each of these points in turn.

[72] The common law rule against maintenance and champerty is intended to prevent abuse of the administration of justice arising from improper "trafficking in litigation": *Fredrickson v. I.C.B.C.*, 1986 CanLII 1066 at para. 21, 3 B.C.L.R. (2d) 145 (C.A.), aff'd [1988] 1 S.C.R. 1089, 1988 CanLII 38. The terms "maintenance" and "champerty" are aptly described in the following passage in *Silverado Oilfield Ventures Ltd. v. Davidson*, 2014 ABQB 218 at para. 26, cited in *Nathanson, Schachter & Thompson LLP v. Boss Power Corp.*, 2016 BCCA 1 at para. 20:

[26] "Maintenance" is directed against those who become involved with the litigation of others in which the maintainer has no interest and for an improper motive, which may include but is not limited to "officious intermeddling" or "stirring up strife". "Champerty" is an egregious form of maintenance where the maintainer shares in the profits of the litigation. Without maintenance, there can be no champerty. There is no maintenance if the alleged maintainer has a justifying motive or excuse: *McIntyre Estate* [full citation *McIntyre Estate v. Ontario (Attorney General)*, [2002] 61 O.R. (3d) 257, 2002 CanLII 45046 (C.A.).]

[73] A detailed discussion of the modern rule as it relates to the assignability of causes of action in tort and contract can be found in *Fredrickson*. In that case, an insured party who was a defendant in a motor vehicle action brought a separate

claim in negligence and breach of contract against his insurer for failing to properly negotiate a resolution of the motor vehicle action, and then assigned his claim against the insurer to the plaintiff in the motor vehicle action. Justice McLachlin, then of this Court, found that both the tort claim and the contract claim were assignable as they did not “savour of maintenance”: *Fredrickson* at paras. 42, 46, 51.

[74] With regard to causes of action in contract, McLachlin J.A. identified six categories of contracts that are “considered to be unassignable” for various reasons: (1) contracts which by their terms expressly preclude assignment, (2) mere rights of action, “savouring of maintenance and champerty”, (3) contracts the assignment of which would cast “uncontemplated burdens” onto a debtor, (4) personal contracts, (5) assignments which are void by public policy, for example assignments of spousal or child support, and (6) assignments prohibited by statute: *Fredrickson* at para. 44.

[75] Justice McLachlin’s analysis in *Fredrickson* reveals that the rules against maintenance and champerty have multiple exceptions: at paras. 23, 25, 47, 48, 50. She explained that “the categories of exceptions are not closed”, and “[i]n each case the court must ask itself whether the assignment can fairly be seen as prompted by a desire to advance the cause of justice rather than as intermeddling for some collateral reason”: *Fredrickson* at paras. 23, 50.

[76] Many of the recognized exceptions pertain to circumstances where the mischief underlying the rule is simply not present. Thus, an assignment will not be invalidated where the assignee has a “genuine and substantial interest” in the success of the litigation, a “genuine commercial interest in taking the assignment”, or a “sufficient pre-existing interest in the litigation to negate any taint of champerty or maintenance”: *Fredrickson* at paras. 31–33, 37.

[77] In relation to contractual causes of action, there is also a recognized exception for assignment of a claim in debt, even where liability for the debt is denied: *Fredrickson* at para. 50; *Interclaim Holdings Limited. v. Down*, 2001 BCCA 65 at para. 26 [*Interclaim*]. There are some cases extending this exception to liquidated claims for contractual damages: *Argo Ventures Inc. v. Choi*, 2019 BCSC

86 at paras. 22, 27, aff'd without reference to this point 2020 BCCA 17. The assignability of “unliquidated” damages claims is less certain, although McLachlin J.A. appeared to endorse the idea that the “best approach is to avoid generalisation and to ask in each case whether this assignment savours of maintenance”: *Fredrickson* at para. 50, citing Treitel, *The Law of Contracts*, 5th ed. at p. 523.

[78] The Association also points out, as it did in the court below, that s. 36(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, expressly provides for the assignment of a “debt or other legal chose in action”. Insofar as the assignment of debt is concerned, this is entirely consistent with the principles summarized in *Fredrickson*. With regard to other choses in action, it is unclear whether assignability as described in s. 36(1) is limited by the constraints on maintenance and champerty. In *Fredrickson*, after discussing the scope of the doctrine in both law and equity, McLachlin J.A. concluded, at para. 44, that “today our courts uphold assignments which the Court of Equity would have previously enforced”. She went on to articulate the contours of the maintenance and champerty doctrine as I have discussed them above. This implies that the assignment of a chose in action as contemplated in s. 36(1) of the *Law and Equity Act* must abide by the rules against maintenance and champerty. However, I need not conclusively resolve this point because, as explained below, the assignment in this case did not offend the rule against maintenance and champerty in any event.

[79] The case at bar concerns assignment of claims in contract. As in *Fredrickson*, the two categories of non-assignability in issue are: mere rights of action that savour of maintenance and champerty, and personal contracts. To the extent that the Boyds’ standardized compensation claims against WestJet fell into either of these categories, I have no difficulty concluding that on a proper application of the relevant principles, the assignment did not savour of maintenance or champerty. As explained below, this conclusion does not turn on whether the chose in action is characterized as a claim in contractual debt, contractual damages, or specific performance of a contractual obligation to pay.

[80] The rule against assignment of mere rights of action applies only where the claim savours of maintenance or champerty. The rule is not offended by an assignment in favour of a party with a pre-existing interest in litigation of such a nature as to negate the taint of maintenance or champerty.

[81] In *Fredrickson*, McLachlin J.A. cited two examples of pre-existing interests analogous to the Association's interest in the case at bar. In one case, the court upheld the assignment of an action in copyright to a society formed to protect intellectual property rights of performers: *Performing Rights Society v. Thompson* (1918), 34 T.L.R. 351 (K.B.). In the other, an association for the prevention of river pollution was permitted to maintain an action originally initiated by the owners and occupiers of a fishery: *Martell v. Consett Iron Co. Ltd.*, [1955] 1 All E.R. 481, 2 W.L.R. 463 (C.A.).

[82] In the case at bar, two airline passengers with a claim against an airline for standardized compensation due to flight delays assigned that claim to a non-profit society formed to advocate for airline passenger rights. The society's founder and director deposed that prior to the assignment, the society had been supporting the passengers in the prosecution of their claim. Given the nature of the pre-existing relationship, the assignment of the claim did not savour of maintenance or champerty and therefore did not run afoul of the rule against assignment of "mere causes in action".

[83] I turn next to the rule against assignment of personal contracts. The underlying rationale for this rule, beyond the basic aversion to officious intermeddling, resides in the notion that personal contractual obligations owed to a counterparty are not readily transferrable to others. As McLachlin J.A. stated in *Fredrickson* at para. 47, "[a]s a general rule contracts for personal services cannot be assigned".

[84] However, the rationale supporting non-assignability of personal contracts evaporates in the case of an executed contract where "all that remains" is a contractual obligation to pay money: *Fredrickson* at paras. 48–50. This reasoning

explains the assignability of claims in debt. The same logic supports the assignability of other liquidated claims in contract seeking nothing more than enforcement of an obligation to pay.

[85] In my view, the document executed by the Boyds did not run afoul of the rule against assignment of personal contracts. I have already explained why it does not have the taint of maintenance or champerty. And whether the underlying claim is characterized as an action in debt, or contractual damages, or specific performance of a contractual obligation to pay standardized compensation, it is a liquidated claim arising from an executed contract, where all that remains is an alleged contractual obligation for the payment of money. The claim is a readily transferrable chose in action, and there is no legal or equitable impediment to its assignment to a party with a genuine and pre-existing interest in the litigation.

[86] I conclude that the judge erred in finding that the assignment in favour of the Association was invalid based on her conclusion that the underlying claim did not arise from an action in debt. Regardless of whether the action is characterized as a claim in debt, or a claim to enforce some other form of contractual obligation to pay a liquidated sum, assignment to the Association did not offend the rule against maintenance and champerty, or any other legal or equitable rule of non-assignability.

[87] This brings me to the judge's conclusion that the claim was invalid because the Boyds' right to seek judicial review of the CRT decision was a personal right that they could not, in law, assign to the Association. The judge's reasoning was that judicial review is a public law remedy that can only be pursued by a party directly affected by the administrative law decision that is the subject of the review.

[88] On this point, I agree with the Association that the judge's conclusion overlooks s. 36(1) of the *Law and Equity Act*. This provision affirms that the assignment of a "debt or other legal chose in action" of which "express notice in writing has been given" to the debtor or person who is the subject of the claim is "effectual in law" and serves to "pass and transfer the legal right to the debt or chose in action" and "all legal and other remedies for the debt or chose in action".

[89] The Boyds brought a claim against WestJet. The claim was a “chose in action” which they assigned in writing to the Association, who then gave written notice to WestJet of the assignment. Section 36(1) of the *Law and Equity Act* makes it clear that the assignment gave the Association the right to the claim and all legal remedies in connection with it: *Capital One, National Association v. Solehdin*, 2020 BCCA 182 at paras. 21, 53. The Association effectively stood in the shoes of the Boyds insofar as legal enforcement of the claim was concerned. This included the right to seek judicial review of the CRT decision denying the claim.

[90] As Matthews L.J. stated in *Hughes v. Pump House Co. Limited*, [1902] 2 K.B. 190 at 193, 71 L.J.K.B. 630, “if it is clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or chose in action to the assignee, then the case will come within sec. 25 [of the *Judicature Act*] and the action must be brought in the name of the assignee”. To the same effect, see *Guardian Trust Co. v. Gagliardi*, 64 D.L.R. (4th) 351 at 363, 1989 CanLII 5211 (B.C.S.C.), citing *Read v. Brown* (1889), 22 Q.B.D. 128 at 132, 58 L.J.Q.B. 120 (E.W.C.A.); *Rex v. Cook*, 26 Alta. L.R. 156 at 163–164, 1931 CanLII 368 (S.C.A.D.).

[91] I appreciate the judge’s concern that judicial review involves a plea for a public law remedy, in which the superior court is called upon to exercise a supervisory role over the discharge of statutory duties by an administrative body or tribunal. I accept that many administrative law decisions are of such a nature as to have no relationship to a chose in action that is assignable under the *Law and Equity Act*. However, what is in issue here is not the assignment of a judicial review, but the assignment of a chose in action, which carries with it the right to pursue enforcement by means of legal proceedings. The Boyds’ liquidated claim against WestJet is a chose in action. It is capable in law of assignment, and under s. 36(1) of the *Law and Equity Act*, assignment of the claim to the Association includes the right to pursue any remedies pertaining to its enforcement, including the right to bring a judicial review from the CRT decision denying the claim.

[92] Given the Association's legitimate pre-existing interest in the litigation, it cannot fairly be characterized as an "intermeddler", and the assignment was not a form of impermissible trafficking in litigation. In these circumstances and given the nature of the chose in action that is sought to be enforced, there is no law or overarching policy consideration that would bar the Association from stepping into the shoes of the Boyds to pursue the judicial review. I conclude that the judge erred in law in finding otherwise.

[93] This conclusion should not be taken to express any limitation on the power to strike or stay a petition for judicial review in circumstances that involve an abuse of the court's process. However, there is no suggestion that the Association's role in this judicial review proceeding was in any way abusive.

Issue (1)(b): The Association's Standing to Seek Judicial Review

[94] The judge held that, independent of her finding that the assignment was invalid, the Association did not have standing to seek judicial review. She cited *Bradshaw v. Workers' Compensation Board*, 2017 BCSC 1092 at para. 89, for the proposition that only a person who is aggrieved or affected by, or who suffers some prejudice as a result of, a particular administrative law decision has the right to seek judicial review. She reasoned that since the Boyds and WestJet were the only parties directly affected by the CRT decision, these were the only parties who could seek judicial review of it.

[95] The judge went on to find that the Association could not be granted public interest standing, because it is "attempting to enforce what it characterizes as a private remedy". In the judge's view, the Association was "not entitled to that remedy because it did not suffer the flight delay or cancellation". Finally, the judge drew support from *Sierra Club* to hold that "[p]ublic interest standing should not be extended where there are individuals more directly affected who are not before the court".

[96] I agree with the Association that the judge's reasoning on standing failed to account for the legal effect of the assignment as provided for under s. 36(1) of the

Law and Equity Act. For its part, the CRT, while formally taking no position on the Association's standing, tacitly acknowledged in its factum that the validity of the assignment "may be determinative" of whether the Association has standing in the judicial review. I agree that the assignment is determinative.

[97] The assignment gave the Association a direct interest in the proceedings. After taking the assignment, the Association stepped into the shoes of the Boyds in seeking to enforce the liquidated claim against WestJet. Indeed, the authorities confirm that a party who takes an absolute assignment of a "debt or chose in action" must bring subsequent remedial legal proceedings in its own name: *Hughes* at 193; *Read* at 132. In the result, the judge erred in holding that the Association lacked standing to seek judicial review.

Issue (2): CRT's Jurisdiction Over Standardized Compensation Claims

Issue (2)(a): Deciding the Jurisdictional Issues Without Submissions

[98] The Association argues that the judge erred by ruling on the jurisdictional issues without giving the parties the opportunity to make submissions. At the hearing, the question of the CRT's jurisdiction over standardized compensation claims under the *Passenger Regulations* was discussed, but no one argued that the CRT lacked jurisdiction, or that the CTA had exclusive jurisdiction over such claims. In the Association's submission, it was a breach of basic rules of fairness for the judge to then decide these issues without allowing the parties the opportunity to make further submissions. In the result, the Association says the judge decided the jurisdictional questions without the benefit of relevant legal authorities that might have addressed her concerns.

[99] In a related point, the Association applies to strike the paragraphs of WestJet's factum that address the jurisdictional issues. In the Association's submission, WestJet should not be permitted to resile from the position it took at the hearing of the judicial review petition, in which WestJet's counsel told the judge that "no one ... is challenging" the CRT's jurisdiction to decide the standardized compensation claim.

[100] For its part, WestJet submits that as part of her judicial review function, the judge had an obligation to satisfy herself that the CRT had jurisdiction to determine the standardized compensation claim. WestJet says jurisdiction cannot be conferred on an administrative tribunal by silence, or even by consent. WestJet cites *Stora Enso Publication Paper GmbH & Co. KG v. Canada*, 2009 FC 625 (T.D.) at para. 14, in which it was held that the failure to object to jurisdiction “cannot cloak the Court with jurisdiction which has not been properly engaged”. WestJet also relies on *Canada (Attorney General) v. Boutilier*, [1999] 1 F.C. 459 at para. 49, 1998 CanLII 9111 (T.D.), in which the court reasoned that an administrative tribunal’s lack of jurisdiction cannot be overlooked merely because it was “disregarded” by the parties and the tribunal.

[101] I agree with WestJet that an administrative tribunal cannot exercise a jurisdiction it does not possess, and that statutory jurisdiction cannot be conferred by silence, or even by consent: *Boutilier* at paras. 49–50, citing *Byers Transport Ltd. v. Kosanovich*, [1995] 3 F.C. 354 at 373, 1995 CanLII 3515 (A.D.). As Chief Justice Isaac stated in *Beothuk Data Systems Ltd., Seawatch Division v. Dean*, [1998] 1 F.C. 433 at footnote 11, 1997 CanLII 6360 (A.D.), “[i]t is well-settled law that consent cannot give to a tribunal a jurisdiction which statutory authority denies”.

[102] However, as a matter of procedural fairness, where the jurisdictional basis for the tribunal decision is neither put in issue in the pleadings nor argued by the parties at the hearing, a reviewing judge should give the parties an opportunity to address any jurisdictional concerns before definitively pronouncing on them.

[103] In the cases cited by WestJet, the question of the administrative tribunal’s jurisdiction was squarely raised in the course of the judicial review proceedings, giving all parties the opportunity to make arguments on the point before a decision was rendered. By contrast, in the present case, no one raised any jurisdictional concern during the CRT proceedings, and at the judicial review both the Association and WestJet told the judge that jurisdiction was not in issue. The judge appeared to

accept that position at the time, confirming with counsel during the hearing that “no one ... is challenging [the CRT’s] jurisdiction”.

[104] In her subsequent reasons, the judge stated that although the parties did not squarely raise it, the question of the CRT’s jurisdiction to decide the standardized compensation claim “cannot be avoided because it is inexorably linked to the issues raised by the petition”. In my respectful view, if during her deliberations the judge determined that despite the positions taken at the hearing, there was a live issue as to the CRT’s jurisdiction such that she could not properly decide the case without pronouncing on it, she ought to have given the parties an opportunity to make further submissions. There were a number of ways in which she might have done so, including inviting supplementary written submissions, or directing the parties to schedule a further hearing for oral submissions on the point.

[105] I conclude that the manner in which the judge proceeded was unfair to the parties, particularly to the Association, whose petition was dismissed on jurisdictional grounds, among others. This brings me to the question of remedy. If the issue were one requiring the judge to make findings of fact, or to exercise some discretion, the appropriate remedy might have been to remit the matter to the court below. However, in this particular context doing so is not necessary. No deference is owed to the judge’s conclusion, and this Court is in a position to decide the jurisdictional issue discussed in the judge’s decision, with the benefit of full submissions from the two opposing parties and counsel for the CRT.

[106] Finally, I return to the Association’s application to strike the paragraphs in WestJet’s factum dealing with jurisdiction. I consider it relevant that statutory jurisdiction cannot be conferred on a statutory tribunal by consent. Jurisdiction is a question of law for the court to decide. Since the point is now squarely in issue as a consequence of the judge’s decision, in my view, this Court should have the benefit of full submissions from all parties on the topic. I would therefore dismiss the Association’s application to strike the relevant portions of WestJet’s factum.

Issue (2)(b): CRT's Jurisdiction to Entertain the Standardized Compensation Claim

[107] The CRT's jurisdiction over small claims matters is delineated in ss. 118 and 119 of the *CRT Act*:

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*.

Claims beyond jurisdiction of tribunal for tribunal small claims

119 The tribunal does not have jurisdiction under this Division in a claim

- (a) for libel, slander or malicious prosecution, or
- (b) despite section 9 [*government as party*], for or against the government.

[108] In its factum, the CRT explains that it has “historically” entertained claims against airlines for standardized compensation in connection with flight delays under its “small claims jurisdiction over debt and damages”. Before the Supreme Court of Canada’s decision in *IATA*, this approach appears to have been uncontroversial. As Vice Chair Regehr explained in *Reshaur* at para. 10, before *IATA* no airline had ever challenged the CRT’s authority to decide standardized compensation claims under its small claims jurisdiction.

Implications of the IATA Decision

[109] While the central issue in *IATA* was whether the standardized compensation scheme in the *Passenger Regulations* conflicted with the exclusivity principle in the *Montreal Convention*, in deciding that issue the Court reasoned that the scheme did not create an “action for damages”, because standardized compensation does not involve a case-specific inquiry intended to measure and compensate a passenger’s individual loss. As Rowe J. put it, “[a]n action for damages is distinct from standardized compensation”, in that the latter is “owed identically” to all affected passengers, “irrespective of the harm (if any) they have suffered”: *IATA* at para. 42, see also paras. 94–97.

[110] The Court in *IATA* expressly considered and rejected the argument that the ability to pursue claims for standardized compensation under the *Passenger Regulations* “in court” meant that the regulatory scheme violated the *Montreal Convention*’s exclusivity principle:

[97] Second, the appellants submit that, because claims for compensation under the *Regulations* can be vindicated in court, the *Regulations* do in fact give rise to “actions for damages” despite the primacy of the administrative enforcement mechanism under the CTA. But the fact that claims payable pursuant to the *Regulations* can be vindicated by way of an action in court does not change the nature of the compensation or the *Regulations* themselves. The *Regulations* make no provision for claims to be filed in court. And even assuming, without deciding, that judicial proceedings that seek to vindicate a claim under the *Regulations* amount to an “action” for the purposes of the *Montreal Convention*, the claim would not be for “damages”. Where such claims are filed in courts of law, the claim is not in the nature of one for damages, because the claim is not tied to any harm suffered by the claimant and does not require any “case-by-case assessment” or relate to “compensation for harm incurred” (*International Air Transport Association v. Department for Transport*, at para. 43; *Zicherman*, at p. 227). Instead, the claim is for payment of an amount that is already owed as a matter of standardized entitlements provided for under a consumer protection scheme.

[111] For current purposes, two points of particular relevance emerge from this passage. First, the Court assumed, without deciding, that standardized compensation claims could be advanced in “courts of law”, as an alternative to adjudication by the CTA under the claims process set out in the *Passenger Regulations*. Second, the Court held that if such claims could be advanced in “courts

of law”, they would not be claims for “damages”. Instead, they would be claims for payment of a standardized amount already owed to the passenger.

CRT’s Response to the IATA Decision

[112] In the wake of *IATA*, the CRT sought submissions from parties in pending cases involving claims against air carriers for standardized compensation based on flight disruptions, as to whether the tribunal had jurisdiction. In a series of cases, most notably *Reshaur* and *Pansegrau*, tribunal members held that the CRT could adjudicate these cases under its small claims jurisdiction over actions for “debt” as set out in s. 118(1)(a). This conclusion is by no means inconsistent with Rowe J.’s comment in *IATA* that if there is a basis for the courts to decide standardized compensation claims in connection with flight disruptions, they would be claims for “payment of an amount that is already owed”.

[113] In both *Reshaur* and *Pansegrau*, the tribunal members considered the following definition of “debt or liquidated demand” cited in *Standard Oil Co. of B.C. Ltd. v. Wood*, [1964] 47 W.W.R. 494 at 497, B.C.J. No. 40 (Co. Ct.), and *Drayton v. W.C.W. Western Canada Water Enterprises*, [1989] 63 D.L.R. (4th) 71 at 73, 1989 CanLII 5319 (B.C.S.C.), and subsequently relied upon by this Court in *Busnex Business Exchange Ltd. v. Canadian Medical Legacy Corp.*, 1999 BCCA 78 at para. 8:

“‘Debt or Liquidated Demand.’ - A liquidated demand in the nature of a debt, i.e., a specific sum of money due and payable under or by virtue of a contract. *Its amount must either be already ascertained or capable of being ascertained as a mere matter of arithmetic.* If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation, beyond mere calculation, then the sum is not a ‘debt or liquidated demand,’ but constitutes ‘damages.’” [Emphasis added in original]

[114] In *Reshaur*, Vice Chair Regehr accepted that a claim for standardized compensation under the *Passenger Regulations* fit within this definition. As he put it, “[o]nce liability is established, [*Passenger Regulations*] claims can be easily calculated knowing only the size of the airline (large or small) and the length of the delay”, and that “WestJet’s international tariff makes it even simpler, as it only

includes the compensation amounts for large airlines”: *Reshaur* at para. 19. Tribunal Member Carmody reached the same conclusion relying on comparable reasoning in *Pansegrau* at paras. 15–17.

[115] In both cases, the airlines argued that claims for standardized compensation are meant to be adjudicated by the CTA under the scheme set out in the *Passenger Regulations*, and that this scheme makes no provision for a distinct private law cause of action that could be pursued at the CRT. This argument did not find favour with the tribunal members. Both held that incorporation of the standardized compensation terms into the carrier’s international tariff allowed for a debt claim grounded in contract, falling within the CRT’s small claims jurisdiction: *Reshaur* at paras. 22, 27; *Pansegrau* at paras. 16–17.

[116] Tribunal Member Carmody cited cases drawing a distinction between “statutory obligations that are incorporated in a contract and those that are not”: *Pansegrau* at para. 16, citing *Cheetham v. Bank of Montreal*, 2023 BCSC 1319 subsequently rev’d in part, but not on this point 2025 BCCA 374, and *U.B.C. v. The Association of Administrative and Professional Staff on Behalf of Bill Wong*, 2006 BCCA 491. It was therefore open to the claimant to hold the carrier to the compensatory obligations explicitly incorporated into the carrier’s international tariff. This allowed for an efficient resolution of a “low dollar value breach of contract” claim, “consistent with the CRT’s mandate”: *Pansegrau* at para. 16.

[117] A related argument advanced by the airlines but rejected by the CRT in both *Reshaur* and *Pansegrau* was that the *Canada Transportation Act* created a complete code under which the CTA has exclusive jurisdiction over standardized compensation for flight disruptions. I will deal with this point separately, under the next heading.

Roadmap for Determining Whether the CRT Had Jurisdiction

[118] To determine whether the judge was correct in holding that the CRT had no jurisdiction over the Boyds’ standardized compensation claim, I will first discuss the nature of the underlying cause of action. I will then go on to address how that cause

of action fits within the CRT's jurisdiction to determine claims in "debt" within the meaning of s. 118(1)(a) of the *CRT Act*. Finally, I will address the Association's alternative submission that the claim can be fairly framed as a claim for specific performance within the meaning of s. 118(1)(c).

Nature of the Underlying Cause of Action

[119] One of the reasons the judge gave for embarking on a consideration of the CRT's jurisdiction over the claim was an apparent concern about what she referred to as the "juridical basis" for the standardized compensation claim. She found that the claim could not be grounded in contract because it was a "statutorily imposed scheme", rather than "a contractual term to which the airlines agreed to be bound". She added that the resolution of a standardized compensation claim was "not merely a private law dispute" between the passenger and the carrier, and determining such a dispute required interpreting and applying federal law over which the CTA has expertise. In effect, the judge held that the *Passenger Regulations* did not support a cause of action in contract, nor did they create a private law cause of action for enforcement of a statutory entitlement to standardized compensation.

[120] I respectfully disagree with the judge's conclusion that the Boyds could not advance a claim for standardized compensation grounded in contract. Rather, I agree with the tribunal members in *Reshaur* and *Pansegrau* that a claim brought by a passenger against an air carrier for standardized compensation based on flight disruption can be grounded in contract. The underlying cause of action is not civil enforcement of a statutory claim under the *Passenger Regulations*, but rather a claim in contract based on the incorporation of the standardized compensation scheme into the carrier's international tariff.

[121] This conclusion is supported by this Court's approach in *Lewis v. WestJet Airlines Ltd.*, 2019 BCCA 63. In that case, the plaintiff was a former flight attendant who sought to bring a class action against the airline for alleged breach of an anti-harassment promise that was expressly set out in the contract of employment. The airline applied to strike the claim on the basis that it was actually a complaint about

alleged breaches of its obligations toward employees under workers compensation and human rights statutes. A chambers judge dismissed the motion to strike, and this Court upheld that decision.

[122] In the course of his analysis, Justice Harris explained the clear overlap between the plaintiff's breach of contract claim and the employer's statutory obligations, as follows:

[18] There is substance to WestJet's suggestion that the plaintiff's claim calls into question whether it has failed to fulfil its human rights obligations under the governing statutes. It is possible that what is pleaded to be a breach of contract is conduct that, if true, fails to fulfil WestJet's obligations under the *CLC* and the *CHRA*.

[19] Moreover, the terms of the Anti-Harassment promise may reasonably be seen as derived from, and intended to implement, WestJet's statutory obligations. Without deciding the point, it also may be that WestJet has expressly incorporated into the contracts of employment alleged terms that correspond exactly to, and go no further than, its statutory obligations. In my opinion, however, standing alone, this is not sufficient to demonstrate that the court does not have jurisdiction to hear the plaintiff's claim.

[123] The Court went on to find that the plaintiff had a viable claim for breach of contract, based on the employer's express incorporation of the aforementioned statutory obligations into the employment contract. Justice Harris aptly explained the rationale for this conclusion, by use of the following analogy:

[27] In this respect, the plaintiff's case does not appear to me to be different from a case in which one party agrees to convey property that meets legislated building code standards, but fails to do so. The building code standards have been expressly incorporated into the contract, the standards have not been complied with, but the claim still sounds in contract. The alleged wrong remains the breach of the agreement.

[124] Applying the same reasoning in the case at bar, the Boyds had a claim in contract, based on the standardized compensation scheme incorporated into WestJet's international tariff. The international tariff set the terms of WestJet's contract of carriage with the Boyds, who were entitled to bring an action in contract to hold WestJet to its contractual obligation to provide standardized compensation in connection with the cancellation of their flight.

[125] I will add that nothing turns on the fact that the Boyds cited the relevant terms of the *Passenger Regulations* in their CRT claim documents. They could just as easily have cited the corresponding standardized compensation terms in WestJet's international tariff. The CRT's jurisdiction was never put in issue until the judge raised it in her decision. The resolution of the jurisdictional issue should not turn on a technical reading of the language used by the Boyds in their claiming documents, considering that CRT adjudication processes are meant to be informal and flexible.

CRT's Jurisdiction Over Debt Claims

[126] Having concluded that the Boyds had a cause of action in contract, I next consider the judge's conclusion that it did not qualify as a contractual claim for "debt" within the jurisdiction of the CRT. The Association argues that the judge erred in law in reaching this conclusion without a proper analysis of the scope and meaning of the term "debt" as it is used in s. 118(1)(a) of the *CRT Act*.

[127] The Association relies on Rowe J.'s description of a court action for standardized compensation as a claim for "payment of an amount that is already owed": *IATA* at para. 97. In the Association's submission, this description brings such a claim within the meaning of the term "debt" as defined in case law from this Court and others, namely: *Winmil Holidays Co. Ltd. (Re)*, [1984] 10 D.L.R. (4th) 572 at 584, 1984 CanLII 3090 (B.C. C.A.) [*Winmil Holidays*]; *British Columbia (Milk Marketing Board) v. Aquilini*, [1998] 165 D.L.R. (4th) 626 at 646, 1998 CanLII 6518 (B.C. C.A.); *Diewolf v. Diewolf*, [1941] S.C.R. 35 at 39, 1940 CanLII 52; *Rayner v. Mizier*, 2023 ABKB 521 at para. 16; *Knight v. Calgary Suzuki Inc.*, [1996] 180 A.R. 214 at 219–220, 1996 CanLII 19921 (P.C.); and *Connors v. Egli*, [1923] 3 W.W.R. 999, 1923 CanLII 663 (A.B. S.C.T.D.), aff'd [1924] 1 W.W.R. 1050, 1924 CanLII 301 (A.D.).

[128] There is little to be gained by cataloguing the many definitions of the term "debt" relied upon by the Association. As Justice Newbury stated in *Coast Capital Savings Credit Union v. British Columbia (Attorney General)*, 2011 BCCA 20 at

para. 54 [*Coast Capital*], “[t]he term ‘indebtedness’ and its root ‘debt’ may be used narrowly or broadly” and must be “given meaning consistent with their context”.

[129] In this case, the debate concerning the meaning of the term “debt” arises in the context of a dispute about the scope of the CRT’s small claims jurisdiction. The answer does not turn on abstract definitions of the term “debt”, but rather on the meaning to be ascribed to that term in s. 118(1) of the *CRT Act*.

[130] This is fundamentally an exercise in statutory interpretation. The Court’s role is to determine the scope of the CRT’s jurisdiction under s. 118(1)(a) of the *CRT Act* to “resolve a claim for relief in the nature of ... debt or damages”. These terms must be read in their entire context, and interpreted in their grammatical and ordinary sense, harmoniously with the scheme and object of the *Act*, and the intention of the legislature.

[131] In this regard, I find the discussion of the term “debt” in *Knight* to be most informative. The plaintiff in that case brought a small claims action to recover a deposit paid toward the purchase of a used car. The defendant auto dealership relied on the terms of the sales contract to say it had the right to retain the deposit after the purchase did not proceed, and the plaintiff’s argument was effectively a plea for “relief against forfeiture”, an equitable claim falling outside the Court’s small claims jurisdiction. The Court disagreed, finding that the plaintiff’s claim for recovery of all or a portion of the deposit fell within the Alberta Provincial Court’s statutory jurisdiction over claims for “debt” within the prescribed monetary limit.

[132] In reaching this conclusion, Provincial Court Judge O’Neil began with the provision in Alberta’s *Provincial Court Act* that set out the court’s small claims jurisdiction over claims for “debt”, and proceeded to interpret it as follows:

[17] The term “debt” has no precise meaning in law, taking its meaning from the context in which it is used and from a consideration of the purposes and circumstances surrounding its use. The [A]ct does not define it and I have not read any case in which the term as used in the *Act* or in a parallel act in another jurisdiction has been judicially considered or defined. ...

[133] He went on to consider authorities discussing various definitions of the term “debt”, of which I will describe only three. The first, from *Osborn’s Concise Law Dictionary*, is: “a sum of money due from one person to another”. The second, from the *Oxford Companion to Law*, is: “[t]hat 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 third, from the Supreme Court of Canada’s judgment in *Diewood*, is: “a sum payable in respect of a liquidated money demand, recoverable by action”.

[134] After canvassing the authorities, O’Neil P.C.J. instructed himself on the object and purpose of Alberta’s *Provincial Court Act*, and the requirement in s. 10 of the provincial *Interpretation Act* to construe the text remedially by giving it such “fair, large, and liberal” construction as “best ensures the attainment of its objects”: *Knight* at para. 19. Finally, he considered the object of the small claims provisions to provide “simple and inexpensive access to the court system for members of the public presenting claims within prescribed dollar limits” and concluded at para. 20:

... Given the purpose of the court and the use in the *Act* of the general expression “debt” to define the grant of jurisdiction and in the absence of any language restricting the sense in which the word is used, it is reasonable to adopt from the range of possible meanings a meaning best calculated to achieve the purpose of providing a forum and a remedy for claimants with money claims within the prescribed limits who are seeking a money judgment and no other remedy. ...

[135] In my view, the Boyds’ claim for standardized compensation in connection with the flight delay, under the tariff conditions forming part of WestJet’s terms of carriage, qualified as a contractual claim for “debt” within the meaning of s. 118(1)(a) of the *CRT Act*. It was a claim for a liquidated sum said to be due under the contract of carriage between the Boyds and WestJet.

[136] The judge’s concern, as I understand it, was that while the claim was for an ascertained or readily ascertainable sum, it was not a sum that was “due and payable” until a determination had been made that the flight delay was within WestJet’s control.

[137] In *Winmil Holidays* at 584, this Court adopted a definition of “debt” which includes a statement that “[t]he 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” (emphasis added). This definition supports the broader approach to the meaning of the term found in many authorities, in which the obligation to pay the debt need not necessarily be determined in advance of an action to enforce it, over the narrower meaning ascribed in others, in which debt is defined as a sum due and payable, implying an already existing obligation to pay. Certainly, the fact that a claim in debt may be disputed in court by the debtor cannot alter the nature of the claim itself: *Interclaim* at para. 26; *Fredrickson* at para. 50.

[138] I repeat Newbury J.A.’s observation in *Coast Capital* that the term “debt” may be given a broad or narrow definition, depending on the context. Here, we are concerned with the CRT’s jurisdiction to resolve “claims for relief” in respect of “debt or damages”. Taking into account that the object and purpose of the *CRT Act* small claims provisions is to furnish the CRT with jurisdiction to resolve disputes for claims of \$5,000 or less in a manner that is “accessible, speedy, economical, informal and flexible”, I would opt for a broader meaning of the term “debt” over a narrower one.

[139] The definition in *Winmil Holidays* includes, but is not limited to, “money payable arising from and by reason of a promise or contract”. The definition in *Diwold*, namely “a sum payable in respect of a liquidated money demand, recoverable by action”, is also apt. On either definition, the Boyds’ contractual claim for standardized compensation arising from the flight delay qualifies as a claim for relief in the nature of “debt” within the meaning of s. 118(1)(a) of the *CRT Act*.

CRT’s Jurisdiction Over Claims for Specific Performance

[140] The Association argues, in the alternative, that even if the standardized compensation claim does not qualify as a claim for “debt” under s. 118(1)(a), it fits within the CRT’s jurisdiction over claims for specific performance under s. 118(1)(c).

[141] Section 118(1)(c) gives the CRT jurisdiction to resolve claims for relief in the nature of “specific performance of an agreement relating to personal property or

services”. WestJet’s contract of carriage with the Boyds is an agreement relating to “services” within the meaning of the statute. The claim can fairly be framed as a demand for specific performance of a contractual commitment to pay standardized compensation in accordance with the terms of WestJet’s international tariff. This framing of the claim, though unconventional, brings it within the scope of the CRT’s jurisdiction over claims for specific performance of contractual obligations.

[142] One might ask how the Association, having taken an assignment of the Boyds’ claim, could maintain a claim to specific performance of a contract for services to which it was not a party. The issue of assignability has been addressed above and need not be revisited. It is enough to repeat that what is in issue here is an executed contract of carriage, under which all that remains is a liquidated contractual claim for standardized compensation. That claim is amenable to assignment, for the reasons given above.

Issue (2)(c): Ouster of Jurisdiction

[143] The second reason the judge gave for finding that the CRT lacked jurisdiction to decide the standardized compensation claim was that, in her view, the *Passenger Regulations* gave the CTA exclusive jurisdiction to adjudicate such claims. The Association argues that the judge’s reasons on this point do not address any of the leading cases dealing with the question of whether a particular legislative scheme establishes a complete code that effectively ousts the jurisdiction to adjudicate comparable or parallel claims in any other forum.

[144] Two recent decisions of this Court shed light on this issue, by setting out the relevant legal principles and identifying the factors relevant to deciding when a particular legislative regime effectively ousts the right to pursue parallel relief in another forum: *Tucci v. Peoples Trust Company*, 2020 BCCA 246, and *WestJet v. Gauthier*, 2025 BCCA 134 [Gauthier].

[145] In *Tucci*, the plaintiffs brought a class action arising from a data breach with respect to client information held by the defendant financial institution. One of the issues was whether federal privacy legislation created an “exhaustive code”

precluding a common law action for breach of privacy rights. This Court found that it did not. Justice Groberman reasoned that, far from suggesting an intent to create a complete code, the relevant federal statute expressly acknowledged that an aggrieved party might resort to other remedies or avenues of redress for the vindication of privacy interests. While the statute included a mechanism for resolution of individual complaints, it was “an adjunct to the legislative scheme, not its focus”: *Tucci* at paras. 27–29.

[146] In *Gauthier*, the plaintiffs brought a proposed class action alleging that the defendant airline’s standard form airfare contracts under which disabled passengers were charged for extra seating was unconscionable. The defendant argued, among other things, that the claims advanced by the plaintiffs were in substance allegations of discrimination, and that the *Canada Transportation Act* and associated regulations set up a “comprehensive legislative scheme for the protection of human rights” of air travellers, thereby ousting the jurisdiction of the courts to entertain overlapping common law claims: *Gauthier* at para. 84. This Court rejected that argument, holding that “nothing in the features of the scheme suggests a legislative intention ‘to deprive plaintiffs of access to the courts that they would otherwise enjoy’”: *Gauthier* at para. 98.

[147] Taken together, these cases tell us that “comprehensive codes” which completely oust the jurisdiction of the courts to entertain otherwise valid common law causes of action are “comparatively rare”: *Tucci* at para. 19; *Gauthier* at para. 44. There is a presumption that the legislature intended not to remove the right to pursue a recognized cause of action in the courts. However, the jurisdiction to determine a common law cause of action may be “ousted” where the legislation can be interpreted to rebut that presumption: *Gauthier* at para. 45.

[148] The intention to create an “exhaustive code” may be expressly stated in legislation, or it may be implied: *Tucci* at para. 25, citing *Hopkins v. Kay*, 2015 ONCA 112; *Gauthier* at para. 45. Where there is no express statement of intent, the court must consider whether the statute, even though “not in direct conflict with the

common law”, is drafted in such a way as to make it “clear that [it is] intended to comprehensively govern an area” of law, so as to “supplant rather than supplement the common law”: *Tucci* at para. 22.

[149] The court’s assessment of legislative intent to create an “exhaustive code” that displaces the common law can be organized around the following three factors, first articulated in *Pleau v. Canada (Attorney General)*, 1999 NSCA 159, later summarized in *Hopkins* at paras. 31–32, and ultimately endorsed by this Court in *Tucci* at para. 25 and *Gauthier* at para. 45:

[31] ... First, a court is to consider “the *process* for dispute resolution established by the legislation” and ask whether the language is “consistent with exclusive jurisdiction”. Courts should look at “the presence or absence of privative clauses and the relationship between the dispute resolution process and the overall legislative scheme”: *Pleau*, at para. 50 (emphasis in original).

[32] Second, a court should consider “the *nature of the dispute* and its relation to the rights and obligations created by the overall scheme of the legislation”. The court is to assess “the essential character” of the dispute and “the extent to which it is, in substance, regulated by the legislative ... scheme and the extent to which the court’s assumption of jurisdiction would be consistent or inconsistent with that scheme”: *Pleau*, at para. 51 (emphasis in original).

[33] The third consideration is “the capacity of the scheme to afford *effective redress*” by addressing the concern that “where there is a right, there ought to be a remedy”: *Pleau*, at para. 52 (emphasis in original).

[150] In the present case, the judge did not cite the relevant cases and did not appear to organize her analysis around the above-noted considerations, although she did address some of them at different points in her reasons. Regardless, no deference is owed to the judge’s analysis of the jurisdictional issues in the context of an appeal from a judicial review.

[151] The question is whether the *Passenger Regulations* evince a clear intent to create a comprehensive code under which the CTA has exclusive jurisdiction over standardized compensation claims against air carriers for flight disruptions. Such a grant of exclusive jurisdiction would remove the right of a passenger to pursue an action for breach of contract in any other forum, in connection with the standardized compensation terms included within the air carrier’s international tariff.

[152] Looking first at process considerations, the *Canada Transportation Act* and the *Passenger Regulations* set up a scheme for the establishment and enforcement of minimum service standards for air carriers. The scheme is administered by the CTA. The statutory provisions setting out the functions, powers, and responsibilities of the CTA do not contain a privative clause.

[153] One feature of the scheme is a process for passengers to obtain standardized compensation for flight disruptions. Passengers can request compensation directly from carriers. Where a carrier denies a request for standardized compensation, the CTA has authority to resolve and adjudicate the passenger's claim.

[154] Neither the statute nor the *Passenger Regulations* expressly state that the CTA has exclusive jurisdiction for determining entitlement to remedies for an airline's failure to meet relevant service standards. This can be contrasted with the administrative monetary penalty ("AMP") regime established under the *Canada Transportation Act*, which sets up a complete code for AMP proceedings, under which the CTA is given the role of adjudicator: ss. 176.1 to 181.

[155] In addition to setting up a process for standardized compensation of passengers for flight disruptions, the scheme requires carriers to incorporate the provisions for standardized compensation arising from flight disruptions into their international tariffs. In this way, the *Passenger Regulations* pave the way for standardized compensation claims grounded in contract, without expressly ousting the jurisdiction of the courts to entertain such claims.

[156] I next consider the nature of the dispute in this case, namely a dispute between passengers and an air carrier over standardized compensation for a flight disruption. The sphere in which this dispute arises has a fundamental public-private duality. On the one hand, air carriers operate in a highly regulated environment with public law dimensions. On the other hand, carriers deliver service to individual passengers under the terms of a contract of carriage which would normally be enforceable through private law remedies.

[157] Another feature of this environment is the overlay of the *Montreal Convention*, a central component of which is the exclusivity principle under which damages claims against air carriers must be adjudicated in courts and are subject to specified limitations on carrier liability. This too creates a fundamental duality, as explained in *IATA*. On the one hand, a regulatory scheme providing for standardized compensation of passengers in connection with a carrier's failure to meet minimum service standards does not run afoul of the exclusivity principle. On the other hand, compensatory claims — based on an assessment of a passenger's individual loss arising from a service disruption — can only be adjudicated by a “court” within the meaning of Article 29 of the *Montreal Convention*.

[158] Finally, I turn to the capacity of the scheme to provide effective redress. Here, I consider two points to be most relevant.

[159] The first point is a practical consequence of the duality articulated in *IATA*. If the Boyds had chosen to advance a claim to the CTA, it would have been limited to standardized compensation for the flight delay. The Boyds could not have pursued their claim for out-of-pocket expenses before the CTA. That claim — a plea for contractual damages within the meaning of the *Montreal Convention* — could only have been advanced in the court system.

[160] This means that if the CTA is found to have exclusive jurisdiction over standardized compensation claims, full vindication of a passenger's interests could only be attained by advancing two separate claims in two separate forums. To fully vindicate their interests, the Boyds would have been required to submit one claim to the CTA for standardized compensation of \$2,000 under the *Passenger Regulations*, and a second claim in the CRT for contractual damages of \$227.25 in connection with their out-of-pocket expenses.

[161] The second point has to do with the question of expertise. The chambers judge repeatedly emphasized that the CTA has a degree of expertise over the interpretation of the *Passenger Regulations* which the CRT does not possess. I accept that the CTA has “considerable regulatory expertise and experience in the

transportation sector”: *Westjet v. Lareau*, 2025 FCA 149 at para. 76 [*Lareau*]. However, in my view, the judge placed undue weight on this point.

[162] I agree with counsel for the CRT that decisions about standardized compensation for flight disruptions do not necessarily require specialized knowledge of air travel, or the regulated environment in which air carriers operate. In this regard, I note that CTA decisions on standardized compensation are subject to a statutory right of appeal, with leave, and that appellate standards of review apply, meaning that no special deference is owed to the CTA in this context: *IATA* at para. 25.

[163] There is no reason to assume the CTA is in a markedly better position than a court to adjudicate claims for standardized compensation. Because the standardized compensation regime is incorporated into the carrier’s international tariff, a civil court or tribunal — including the CRT — would be obliged to consider the very same concepts as a matter of contract interpretation. Furthermore, in adjudicating contractual claims for damages against air carriers under the *Montreal Convention*, civil courts and tribunals — including the CRT — are obliged to consider many aspects of air travel, including the question of whether liability for a particular flight delay is negated by “due diligence” within the meaning of Article 19 of the *Convention*.

[164] The CTA’s standardized compensation claims process is not the only means for effective redress of the interests at stake. A civil claim before the CRT seeking enforcement of a contractual obligation to pay standardized compensation for flight disruptions can be an equally effective means of redress. Indeed, the ability to advance a civil claim for standardized compensation will often provide added flexibility and efficiency because it can be adjudicated together with a compensatory claim for out-of-pocket expenses arising out of the same contractual relationship.

[165] After considering the regulatory process, the nature of the subject matter, and the regulatory regime’s capacity to provide effective redress, I conclude that the judge erred in law in finding that the CTA had exclusive jurisdiction over

standardized compensation claims against air carriers. The legislative scheme does not reflect an intention to oust the jurisdiction of the CRT to adjudicate contractual claims for standardized compensation.

Issue (3): Merits of the Judicial Review

Issue (3)(a): This Court's Ability to Assess the Merits of the CRT Decision

[166] In its petition for judicial review, the Association argued that the CRT erred in concluding the Boyds were not entitled to standardized compensation, because the flight delay was due to a “labour disruption” beyond WestJet’s control. However, after determining that the CRT lacked jurisdiction to decide the standardized compensation claim, the judge dismissed the petition for judicial review without addressing the Association’s argument on the merits.

[167] In its factum, the Association took the position that the matter should be remitted to the Supreme Court for a rehearing on the merits. The Association also applied to strike out the portions of WestJet’s factum seeking to uphold the CRT’s decision. The Association says it was not open to WestJet to make arguments on the merits of the CRT decision because: (i) when the judge invited submissions about whether she should opine on the merits, WestJet said she should not, and (ii) if WestJet’s position was that the judge ought to have ruled on the merits, it had to file a cross-appeal from the judge’s order quashing the CRT decision.

[168] WestJet’s response to the application to strike is twofold. First, WestJet says it would have served no purpose for the judge to opine on the merits of the CRT decision after concluding that the CRT had no jurisdiction. Second, WestJet says it was not required to file a cross-appeal, because its argument on the merits is put forward as a basis for upholding the judge’s dismissal of the petition for judicial review. I agree with WestJet’s position on both points. I would therefore deny the Association’s application to strike the relevant portions of WestJet’s factum.

[169] I also agree with WestJet that it is not necessary and would not be in the interests of justice to remit this matter to the Supreme Court. As explained below,

this case turns on a point of law reviewable on a standard of correctness based on the record that was before the CRT. On appeal from judicial review, this Court steps into the shoes of the reviewing judge. Further, the Association has availed itself of the opportunity to file supplementary written submissions on the merits of the CRT decision. Accordingly, this Court is in a position to rule on whether the CRT made any reviewable error in dismissing the Boyds' claim for standardized compensation.

Issue (3)(b): CRT's Determination that the Flight Delay was Due to a Labour Disruption

Standard of Review

[170] The standard of review for CRT decisions is set by its enabling statute and depends on the type of claim under review. For decisions on small claims matters, the CRT is not considered an expert tribunal, and the relevant standard of review under s. 56.8(2) of the *CRT Act* is correctness for all questions other than: (a) findings of fact, (b) exercises of discretion, or (c) the application of rules of natural justice and procedural fairness.

[171] The focal point of the CRT decision is on whether the cancellation of the Boyds' flight was due to a "labour disruption" within the meaning of the *Passenger Regulations*. Whether one frames this as a question of statutory interpretation or contractual interpretation of the terms of WestJet's international tariff (a standard form contract), the issue is a question of law, and the standard of review is correctness. To succeed on the appeal, the Association must show that the CRT's decision on the meaning of the term "labour disruption" was legally incorrect, or that the tribunal made some other error of law that yielded an unsound result.

[172] The Association focused its submissions on two alleged errors of law in the CRT's analysis of the standardized compensation claim. While these alleged errors are, to some extent, bound up with the question of whether the CRT's conclusion on the meaning of the term "labour disruption" was correct, I will deal with each of them as discrete points, to be responsive to the Association's arguments and because the

analysis will shed light on the key issue of whether the 72-hour strike notice qualified as a “labour disruption”.

CRT’s Approach to the Burden of Proof

[173] The Association submits that the tribunal member erred by placing the burden on the Boyds to prove that the flight was not cancelled due to a “labour disruption”. The Association says that on a proper understanding of the standardized compensation scheme, the burden rests on the carrier to show that a flight cancellation was due to circumstances beyond the carrier’s control as contemplated in s. 10(1) of the *Passenger Regulations*.

[174] The Association relies on a body of small claims tribunal decisions discussing the burden of proof in standardized compensation claims under the *Passenger Regulations*. These cases acknowledge that the overall burden is on the passenger to prove their case on a balance of probabilities but also recognize that in the context of a claim under the standardized compensation regime, that burden is met where the passenger shows that the flight was disrupted for the duration of time contemplated in the *Passenger Regulations*. Thereafter, the burden shifts to the carrier to show that the disruption was due to a situation beyond its control: see *Geddes v. Air Canada*, 2021 NSSM 27 at paras. 43–46, and *Welsh v. Flair Airlines Ltd.*, 2023 BCCRT 107 at para. 18, both of which have been repeatedly cited in subsequent rulings on standardized compensation.

[175] WestJet accepts that it bore the burden of showing the flight disruption was due to circumstances beyond its control. As WestJet states in its supplementary submission, “when a carrier claims a flight disruption was outside its control, it must provide evidence to support its characterization of the disruption”. I agree that this is the correct approach.

[176] Even when pursued by way of a civil action for breach of contract, the claim rests on the standardized compensation scheme incorporated into the carrier’s international tariff. Many features of the scheme reflect the informational asymmetry in which the facts necessary to determine the cause of a flight disruption are solely

within the carrier's knowledge. For example, the carrier is obliged to provide passengers with relevant information about flight disruptions, and to state the basis for the carrier's denial of a request for standardized compensation. This informational asymmetry is also relevant to the allocation of the burden of proof during the adjudication process. Since the relevant information rests solely with the carrier, fairness demands that the carrier bears the burden of demonstrating that the flight disruption was due to circumstances beyond its control.

[177] I return to the CRT decision in this case. Near the beginning of the reasons, the tribunal member stated that the burden was on the Boyds to prove their case on a balance of probabilities. She went on to observe in the next paragraph of her decision that the facts of the case were largely agreed. She proceeded to consider the arguments, reasoning that the outcome turned on whether the 72-hour strike notice qualified as a "labour disruption" within the meaning of the *Passenger Regulations*. She concluded that it did. This conclusion did not turn on a finding that the Boyds failed to meet their burden; it turned on a question of statutory interpretation. I would therefore not accede to the Association's argument the tribunal member erred by reversing the burden of proof.

CRT's Analysis of the Term "Labour Disruption"

[178] The Association argues that the tribunal member erred by using the terms "labour dispute" and "labour disruption" interchangeably in her analysis. The tribunal member used the term "labour dispute" three times in her reasons. She used the term "labour disruption" throughout the balance of her reasons. The Association stresses that the term "labour dispute" does not appear anywhere in the *Passenger Regulations*. Rather, s. 10(1)(j) of the *Passenger Regulations* provides that a "labour disruption" is a situation beyond the carrier's control.

[179] The Association relies on *Kassam v. 1129728 B.C. Ltd.*, 2026 BCCA 33, in support of the obvious point that it is an error to rely on text not found in the relevant statute in place of the legal standard contemplated in the statute. Accepting the soundness of this proposition, I do not agree that it applies in this case. Reading the

reasons as a whole, I find the tribunal member's use of the term "labour dispute" to have been a mere typographical error that did not affect the substance of her analysis. The reasons as a whole reflect that she was focused on determining the proper meaning to be assigned to the term "labour disruption".

Proper Interpretation of the Term "Labour Disruption"

[180] The Association contends that in light of the CRT's interpretive errors, this Court must undertake a "fresh analysis" of the scope and meaning of the term "labour disruption" under s. 10(1)(j) of the *Passenger Regulations*. While I do not agree that the tribunal member made the errors discussed above, I consider it open to the Association to argue that the tribunal reached a legally incorrect conclusion in finding that the delivery of a 72-hour strike notice by the pilot's union was a "labour disruption" within the meaning of the *Passenger Regulations*.

[181] It is necessary to comment briefly on the applicability of principles of statutory interpretation in the context of a claim grounded in contract. Although the court is dealing with the terms of WestJet's international tariff, which is a standard form contract, in my view it is still necessary to consider and apply principles of statutory interpretation, because the standardized compensation scheme is derived from the *Passenger Regulations*. None of the parties have argued for a contrary approach.

[182] As the tribunal member correctly observed, the court's role is to consider the words used in the legislation in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and purpose of the legislation, and the intention of the legislature. The court's role is to interpret the statute "according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole": *Piekut v. Canada (National Revenue)*, 2025 SCC 13 at para. 43, citing *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10.

[183] The particular provision at issue in this case is s. 10(1) of the *Passenger Regulations*, which defines situations "outside the carrier's control" for the purposes of the standardized compensation scheme. It states that situations outside the carrier's control include, but are "not limited to", those specifically enumerated in

subparagraphs (a) through (l). One of these, as provided for in s. 10(1)(j), is “a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider”.

[184] This text is used within a scheme that effectively creates three categories of flight disruption: (i) those outside the carrier’s control (s. 10), (ii) those within the carrier’s control but which are “required for safety purposes” (s. 11), and (iii) all others within the carrier’s control (s. 12). The carrier is obliged to pay standardized compensation for disruptions in the final category, but not for those in the former two categories (ss. 12, 19).

[185] One must consider the scope of the “labour disruption” provision in light of the purpose of the scheme as a whole, and the specific purpose of the provisions governing labour disruptions beyond the carrier’s control.

[186] The statutory authority for the regulatory scheme is found in the *Canada Transportation Act*, the overall purpose of which is to ensure a “safe and cost-effective transportation system” that serves the public interest: *Canada Transportation Act*, s. 5; *Lareau* at para. 98.

[187] The legislative mandate for the *Passenger Regulations* is found in s. 86.11 of the *Canada Transportation Act*, which required the CTA to develop and implement regulations setting out carrier obligations to passengers. The regulations were required to include, among other things, carrier obligations in connection with flight disruptions falling into the three categories listed above, and minimum compensation to passengers for flight disruptions within the carrier’s control.

[188] In *IATA*, Rowe J. addressed the purpose of the *Passenger Regulations*. He explained that one of the scheme’s objectives is to correct “an ‘acute imbalance in market power’ between air passengers and air carriers”: *IATA* at para. 89. The resulting “system of standardized compensation” is “best understood as providing for statutory entitlements under a consumer protection scheme”: *IATA* at paras. 89–90. As a consumer protection regime, the *Passenger Regulations* must be interpreted

“generously in favour of consumers”: *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 37.

[189] The standardized compensation provisions serve the broader legislative purpose of addressing the imbalance in market power and protecting the rights of passengers. Passengers are entitled to fixed amounts of compensation for inconvenience associated with flight disruptions due to situations within the carrier’s control, other than safety situations.

[190] The specific purpose of s. 10(1) of the *Passenger Regulations* is to delineate the circumstances in which a flight disruption is due to a situation beyond the carrier’s control. One of the specifically enumerated situations considered beyond the carrier’s control is a “labour disruption” as provided for in s. 10(1)(j). The scheme acknowledges that a labour disruption impacting a carrier’s ability to operate the subject flight is not within the carrier’s control.

[191] The key issue presented to the CRT in this case is whether a 72-hour strike notice delivered by the pilot’s association constituted a “labour disruption” within the meaning of s. 10(1)(j). In my view, on a proper interpretation of the text in the context of the overall scheme, and the purposes it is intended to serve, the answer to that question is a qualified “yes”.

[192] The Association says interpreting the phrase “labour disruption” to apply to a 72-hour strike notice overshoots the mark, because it would allow a carrier to justify the cancellation or delay of flights not actually impacted by a labour-related work stoppage. In the Association’s submission, mere delivery of a strike notice does not necessarily involve any “disruption” of the labour supply impacting the carrier’s ability to operate. Even where a strike notice is issued, there is no assurance that a strike will occur. It is, in the Association’s submission, a mere prelude to a labour disruption. In this case, for example, the strike was averted before the expiry of the 72-hour notice period, and no strike actually occurred.

[193] I do not find this submission convincing, for several reasons.

[194] First, the fact that no strike ever ensued is by no means dispositive, because it invites scrutiny of WestJet's conduct based on a form of hindsight analysis. The question is whether the situation faced by WestJet when it made the decision to cancel the Boyds' flight was a "labour disruption". At that time, WestJet had been served with a 72-hour strike notice. WestJet did not know and had no real means of exerting any control over, whether the strike notice would be acted upon.

[195] Second, s. 10(1)(j) uses the phrase "labour disruption", not "strike" or "labour stoppage". The *Merriam Webster Dictionary* defines "disruption" as "the act or process of disrupting something: a break or interruption in the normal course or continuation of some activity, process, etc.". Thus, the phrase "labour disruption" implies a break or interruption in the normal process by which labour is supplied.

[196] Third, it is important to consider the legal significance of a 72-hour strike notice. Section 87.2(1) of the *Canada Labour Code*, R.S.C. 1985, c. L-2, states that a trade union must deliver notice to an employer, at least 72-hours in advance, "indicating the date on which a strike will occur". This is the final step that a trade union must take before strike action as contemplated in s. 89. The employer is not entitled to any further formal notice before strike action begins.

[197] Taking all of this into account, I would interpret the phrase "labour disruption" in s. 10(1)(j) to include union action that interrupts or materially intrudes upon the supply of labour a carrier relies on to deliver flight services to its passengers. On this interpretation, I accept that the delivery of a 72-hour strike notice by a union whose members supply labour bearing directly on the carrier's delivery of flight service to passengers can qualify as a "labour disruption".

[198] However, in my respectful view, that is not necessarily the end of the analysis. Section 10(1) of the *Passenger Regulations* only applies to flight disruptions that are "due to" a "situation" described in any of the enumerated subparagraphs, or any other "situation" outside the carrier's control. The phrase "due to" connotes a link or causal connection between the "situation" and the "delay, cancellation or denial" of the particular flight.

[199] In any case where a passenger proves a flight disruption, the burden under s. 10(1) shifts to the carrier to show that the disruption was “due to” a “situation” listed in s. 10(1)(a) to (l), or some other “situation” beyond the carrier’s control. Proof of a “situation” described under s. 10(1) is not enough; the carrier would also have to show the passenger’s flight was disrupted “due to” that situation.

[200] On its face, the occurrence of a labour disruption at an airport in Italy would be unlikely to have any bearing on the carrier’s ability to deliver uninterrupted service to passengers travelling within continental North America. Similarly, on its face, the delivery of a 72-hour strike notice would be unlikely to have any bearing on a carrier’s ability to deliver uninterrupted service to passengers whose flights are scheduled to be complete within the first 24 hours of the notice period. In either of these instances, it would certainly not be easy for the carrier to establish that the flight delay or cancellation was “due to” the labour disruption, although the outcome would obviously depend on the evidence, and in particular on whether the carrier could demonstrate the required link between the labour disruption and its ability to operate the particular flight.

[201] The link in the case at bar was much more direct. On the undisputed facts of this case, the Boyds’ flight to Rome was scheduled to be in the air when the 72-hour notice period expired. WestJet could not exercise any legal control over whether the pilots chose to act on the strike notice. This constituted a disruption of WestJet’s labour supply in a manner that affected its ability to operate the flight in question. In these circumstances, the only reasonable conclusion was that the cancellation of the flight was “due to” a “labour disruption” as contemplated in s. 10(1) of the *Passenger Regulations*.

[202] The Association points to a WestJet document, tendered as evidence at the CRT hearing, stating the flight in question was cancelled “because of the schedule reduction during the negotiations” between WestJet and its pilots. This, in the Association’s submission, establishes that despite the 72-hour strike notice, WestJet still retained control over its staffing and scheduling decisions. I do not find this

argument convincing. The fact that WestJet retained final decision-making authority over its flight schedule does not mean it had any power to alter the “situation” affecting the Boyds’ flight, namely that it would be in the air when the 72-hour strike notice expired, at which point strike action could commence without further notice.

Conclusion on the Merits of the Judicial Review

[203] The CRT reached the correct result in finding that the Boyds’ flight was cancelled due to a labour disruption. This meant WestJet was not required to pay standardized compensation. Had the judge addressed the merits of the judicial review, she would have been bound to dismiss it on the basis that the CRT did not commit any reviewable error in dismissing the Boyds’ claim for standardized compensation.

Post-Hearing Request to File Fresh Evidence Application

[204] On 5 August 2026, the Association attempted to file a fresh evidence application. Since the appeal was on reserve, the registry rejected the application and invited the Association to submit a letter to the Registrar in accordance with the *Practice Directive on Supplementary Arguments* (18 July 2022). On 10 August 2026, the Association submitted a letter to the Registrar under the *Practice Directive*, requesting that the fresh evidence application be accepted for filing.

[205] The registry was right to reject the Association’s application. After judgment is reserved on an appeal, the pleadings are closed and the Court will not receive any unsolicited material from the parties, except in compliance with the *Practice Directive*. Parties should exercise restraint in proceeding with requests to present unsolicited material after judgment has been reserved. In this case, counsel for the Association submitted a total of five discrete requests to the Registrar. The principal effect has been to impede the Court in its effort to produce a timely decision.

[206] The division has now reviewed the Association’s letter, fresh evidence application, supporting affidavit, and memorandum of argument. Pursuant to the *Practice Directive*, the Association should only have submitted the letter to the

Registrar. Absent the Court granting leave to do so, the full application and supporting materials were improperly submitted. In any event, having now considered the entire package, I would refuse the Association's request to proceed with the proposed fresh evidence application. In my view, it is devoid of merit.

[207] The proposed fresh evidence relates to public statements made by WestJet in connection with the delivery of a 72-hour strike notice by its flight attendant's union, on or about 30 July 2026. The Association says the public statements include evidence of common usage of the term "labour disruption" that is relevant to the interpretation of that term within the meaning of the *Passenger Regulations*.

[208] The proposed fresh evidence could not possibly affect the result in this appeal as contemplated in the fourth component of the fresh evidence test set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, 1979 CanLII 8. I do not consider WestJet's public statements — which are vague and non-committal and allude to follow-up communication with directly-affected passengers — to be reliable evidence of "custom of the trade", or the "usual and ordinary meaning" of the phrase "labour disruption". At most, this is evidence regarding how a single carrier — a party to this very proceeding — has used the term in a public announcement which is open-ended and equivocal. This evidence is too ambiguous to assist the Court in any way and therefore could not possibly impact the outcome of the appeal.

Summary and Conclusion

[209] To summarize:

- (a) The Association's application to strike portions of WestJet's factum is dismissed;
- (b) The judge erred in finding that: (i) the assignment of the Boyds' claim to the Association was invalid, (ii) the Association lacked standing to seek judicial review from the CRT's dismissal of the standardized compensation claim, and (iii) the CRT lacked jurisdiction to decide the standardized compensation claim; and

- (c) The CRT reached the legally correct result in concluding that the Boyds' flight was cancelled due to a "labour disruption", such that WestJet was not required to pay standardized compensation.

[210] In the result, I would allow the appeal in part, by: (a) setting aside the order quashing the CRT decision for lack of jurisdiction, and (b) affirming the order dismissing the petition for judicial review from the CRT decision.

"The Honourable Mr. Justice Riley"

I AGREE:

"The Honourable Justice Fleming"

I AGREE:

"The Honourable Justice Mayer"