



COURT OF APPEAL FILE NO. CA51094
Air Passenger Rights v. WestJet Airlines Ltd.
Appellant's Written Submissions on Interpretation of the APPR

COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Madam Justice Sharma of the Supreme Court of British Columbia pronounced on the 30th day of October 2025.

BETWEEN:

AIR PASSENGER RIGHTS

APPELLANT
(Petitioner)

AND:

WESTJET AIRLINES LTD.

RESPONDENT
(Respondent)

AND:

CIVIL RESOLUTION TRIBUNAL

RESPONDENT
(Administrative Decision Maker)

APPELLANT'S WRITTEN SUBMISSIONS ON INTERPRETATION OF THE APPR
(Air Passenger Rights)

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OVERVIEW

1. WestJet failed to cite *Westjet v. Lareau*, 2025 FCA 149 [**Lareau FCA**], the only appeal case on classifying disruptions as “within” or “outside” control under the *Air Passenger Protection Regulations* [**APPR**]. While *Lareau FCA* is not binding on this Court, it is relevant to the issues in WestJet’s factum and should have been brought to the Court’s attention.¹ WestJet’s omission undercuts its own arguments for a uniform interpretation by the CTA alone, when WestJet omits a key authority from the appeal court that reviews CTA’s legal interpretations. *Lareau FCA* was not appealed. The Federal Court of Appeal’s [**FCA**] analysis is very persuasive and draws on Supreme Court of Canada jurisprudence.

2. The CRT did not have the benefit of the detailed analysis in *Lareau FCA*. As such, the arguments before the CRT and chambers judge should be considered *de novo* in light of *Lareau FCA*. The CRT’s analysis also appears to be inconsistent with subsequent Supreme Court of Canada guidance on how an administrative tribunal approaches statutory interpretation. Since the *APPR* obligations are contractually-incorporated, applying a contractual interpretation analysis would yield the same result in favour of the appellant.² Should WestJet seek to distinguish or raise *Lareau FCA* in its reply, that may be case splitting since para. 84 of the appellant’s factum already cited *Lareau FCA*.

3. WestJet failed its two-fold legal burden to prove that: (a) a pre-strike notice, where there was no work stoppage, is within the narrow “labour disruption” exception in s. 10 of the *APPR*; and (b) WestJet failed to prove that the “labour disruption” directly caused the flight cancellation, rather than WestJet’s business decision to offload its own costs on passengers. Airlines can make business decisions during labour negotiations, but such decisions cannot be at the passengers’ cost.³ There was no evidence that WestJet was deprived of its flight crew for the flight, a precondition noted in para. 86 of *Lareau FCA*.

4. The appeal should be allowed and the Petition be granted with costs to the appellant.

¹ *The Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie v Axa Insurance (Canada)*, 2015 ONSC 4755 at para. 16; *Ko v. Li*, 2025 ONSC 2965, para. 22.

² *Pepa v. Canada (C.I.C.)*, 2025 SCC 21 [**Pepa SCC**] for statutory interpretation; *Emond v. Trillium Mutual Insurance Co.*, 2026 SCC 3 [**Emond SCC**] for contractual interpretation.

³ *Lareau FCA* at paras. 4-5, 109, 135 on carriers bearing the costs of its own decisions.

PART I - RELEVANT FACTS FOR THE *APPR* INTERPRETATION

5. The facts relating to Mr. and Mrs. Boyd's one-day travel inconvenience are succinctly summarized in paras. 1-8 of the appellant's factum, which is incorporated by reference.
6. Mr. and Mrs. Boyd (the "**Boyd**s") filed four pieces of relevant evidence at the CRT. Firstly, a news release that the 72-hour notice is a deadline to negotiate an agreement before pilots can utilize all legal options available to them in the *Canada Labour Code*.⁴
7. Secondly, in response to the pilots association's 72-hour pre-strike notice, WestJet issued its own lockout notice, emphasizing that "[i]ssuing notice does not mean a work stoppage will occur" and the earliest work stoppage was May 19, 2023 at 3:00 a.m. MT.⁵
8. Thirdly, before any work stoppage, WestJet emailed the Boyds stating "we had to cancel one or more flights on your itinerary" and it was "due to a strike or work stoppage."⁶
9. Finally, when the Boyds sought *APPR* compensation and reimbursement of expenses, WestJet repeated that the cancellation was "due to a strike or work stoppage."⁷
10. WestJet's evidence of the reason for flight cancellation was thin. Firstly, an internal note that "[f]light was cancelled because of the schedule reduction during the negotiations between the WestJet Pilot group ...," and an aircraft swap just before flight cancellation.⁸
11. Secondly, a CTA website publication and the *APPR* regulatory impact statement.⁹
12. Finally, a Manitoba small claims case stating whether there is a "labour disruption" that caused a flight delay or cancellation is to be determined on a case-by-case basis.¹⁰

⁴ Affidavit of Samantha Lawrence on Sept. 12, 2024 [**Tribunal Record**] at Exhibit E, Evidence #3 (Appellant's Appeal Book [**AB**], Tab 3, p. 79).

⁵ [emphasis added] Tribunal Record at Exhibit E, Evidence #5 (AB, Tab 3, p. 81).

⁶ Tribunal Record at Exhibit E, Evidence #10-11 (AB, Tab 3, pp. 86-87).

⁷ [emphasis added] Tribunal Record, Exhibit E, Evidence #12-14 (AB, Tab 3, pp. 88-90).

⁸ [emphasis added] Tribunal Record at Exhibit E, Evidence #24 (AB, Tab 3, p. 231).

⁹ Tribunal Record at Exhibit E, Evidence #26-27 (AB, Tab 3, pp. 261-296 and 297).

¹⁰ Tribunal Record at Exhibit E, Evidence #28, see Tab 16 of Joint Book of Authorities.

PART II – ERRORS IN JUDGMENT

13. The appellant submits there were two legal errors:¹¹ (a) the CRT incorrectly reversing the burden of proof; and (b) the CRT erred in finding that the underlying case only turned on interpretation of the term “labour dispute,” when the *APPR* refers to “labour disruption.”

PART III - ARGUMENT

14. The CRT erred on both legal issues. It is open for this Court to conduct the correct statutory interpretation analysis *de novo*, using *Lareau FCA* as an aid. The *APPR* is a consumer protection regime that must be generously interpreted in favour of consumers.¹² WestJet’s technical approach sidesteps the consumer protection purpose, and many of WestJet’s arguments resemble those rejected in *Lareau FCA*.

A. Legal Error #1 - CRT Erroneously Placing the Burden of Proof on the Boyds

15. The CRT stated at para. 8 of its decision that “*the Boyds must prove their claims on a balance of probabilities.*” The CRT did not have the benefit of *Lareau FCA* at para. 51 that “*when a carrier claims that a flight disruption was within its control but required for safety purposes, or outside its control, it must establish the claim and provide evidence to support its categorization of the disruption. Decision at para. 7.*” [emphasis added]

16. It is expected that WestJet will attempt to claim that this burden of proof arises only because of the presumption in s. 85.07(2) of the *Canada Transportation Act [CT Act]* that applies only to CTA complaints. That argument has no merit for two strong reasons.

17. Firstly, that statutory presumption in s. 85.07(2) for CTA complaints only existed after June 23, 2023, and para. 7 of the CTA decision cited in *Lareau FCA* was from July 8, 2022.¹³ The *FCA* was not applying s. 85.07(2), but rather the common law (and common sense) approach that the party making the assertion bears the burden of proof. Secondly,

¹¹ *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640 at paras. 8 and 12 [**CRT Decision**].

¹² *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 [**IATA SCC**] at paras. 89-90; *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 [**Seidel SCC**] at para. 37; *Lareau FCA* at paras. 103-105.

¹³ Decision No. 89-C-A-2022 – *Lareau v. WestJet* at para. 7.

the CRT in this instance failed to even apply its own decision that the airline is to provide evidence and bear the burden to prove the reason for the flight cancellation.¹⁴

18. The CRT incorrectly placed the burden on the Boyds to prove their case, when it should be WestJet that must prove that the flight cancellation was outside its control. This is a legal error that would be reversible on appeal, or judicial review of a CRT decision.

B. Legal Error #2 - CRT Finding That the Case Only Turned on a “Labour Dispute”

19. The CRT stated at paras. 12-17 of its decision that this case only turns on interpreting “labour dispute” in s. 10 of the *APPR*. This Court noted that using the *wrong* statutory text (extenuating vs. exceptional) is a legal error.¹⁵ The CRT’s interchangeable use of “labour dispute” with “labour disruption” impermissibly broadens this exception to compensation.

20. Moreover, as noted in *Pepa SCC* at paras. 86-114, administrative tribunals must begin the interpretation from the modern rule analysis of the text, context, and purpose. The CRT here did not have the benefit of *Lareau FCA* at paras. 87-88 where the FCA noted, after conducting a full bilingual analysis, that there must be a causal connection between the situation and the flight cancellation. A mere “labour disruption” under the narrow exceptions in s. 10 of the *APPR* cannot suffice without finding that the event or situation had a causal connection to the flight cancellation.¹⁶ For example, if chefs in an airline’s executive cafeteria goes on strike, it is a “labour disruption within the carrier” in s. 10 of the *APPR*. However, such a strike could not plausibly cause flight cancellations.

21. The FCA noted that cancellations “within a carrier’s control” are situations caused by the carrier. In this case, the Boyd’s flight was not an uncontrolled mass cancellation from work stoppage. WestJet chose to run on a “*schedule reduction during the negotiation.*”¹⁷

¹⁴ *Welsh v. Flair Airlines Ltd.*, 2023 BCCRT 107 [**Welsh CRT**], para. 18; *Geddes v. Air Canada*, 2021 NSSM 27, paras. 43-6; *Baugh v. WestJet Airlines Ltd*, 2025 BCCRT 1046, para. 19; *Stefan v. Westjet*, 2025 BCCRT 1201, para. 21; *Kooner v. WestJet Airlines Ltd*, 2025 BCCRT 1276, para. 25; *Lee v. Westjet Airlines Ltd*, 2025 BCCRT 1200, para. 28.

¹⁵ *Kassam v. 1129728 B.C. Ltd*, 2026 BCCA 33.

¹⁶ This is similar to WestJet’s argument that was rejected in *Lareau FCA* at paras. 56-59.

¹⁷ [emphasis added] Tribunal Record at Exhibit E, Evidence #24 (AB, Tab 3, p. 231).

C. Interpreting and Applying Section 10(1)(j) of the APPR in these Circumstances

22. In light of the CRT's errors, it is open for this Court to conduct a *de novo* analysis.

i. Starting Point for Interpreting Delegated Regulations

23. The CRT and WestJet started from the wrong legal footing in its analysis. Both this Court and the Supreme Court of Canada noted that for interpretation of regulations, courts must first attend to the terms of the enabling statute.¹⁸ Accordingly, the starting point is not s. 10 of the *APPR*, but rather interpreting "due to situations outside the carrier's control, such as natural phenomena and security events" in s. 86.11(1)(b)(iii) of *CT Act*.

24. The FCA applied the same approach in interpreting "within a carrier's control". The FCA found that a cancellation "within control" involves a situation or event that "*a carrier can take actions to exercise restraining or directing influence over the occurrence or severity of the disruption,*" with a focus on the carrier's *ability* to exercise such influence. Specifically, the FCA noted that "*carriers generally exercise control over staffing.*"¹⁹ In this case, until an actual strike begins, WestJet's employees continue reporting to work as usual. They are under the influence/control of WestJet, until they legally walk off the job.

25. WestJet is conflating an actual strike when they have no control, with the notice *before* a *potential* strike when WestJet continues to have full control both practically and legally.

ii. Interpretation of "Outside the Carrier's Control" in Lareau FCA

26. The FCA also interpreted "outside the carrier's control" as a situation or event where "*a carrier cannot exercise restraining or directing influence over the occurrence or severity of the disruption*" and "by [the carrier's] actions alone, avoid the development of the situation that triggers the disruption, nor can it mitigate the disruption." **Specifically**, a "labour disruption" is a situation or event that "deprives an aircraft of its flight crew."²⁰

27. There was no evidence that WestJet was deprived of its crew for the Boyd's flight,

¹⁸ Coincidentally, *WestJet v. Gauthier*, 2025 BCCA 134 at para. 108 citing *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26 at para. 38.

¹⁹ [emphasis added] *Lareau FCA* at paras. 36 and 79-83.

²⁰ [emphasis added] *Lareau FCA* at para. 86.

which WestJet did not even dispute. It was within WestJet's control/influence to run all flights until an actual strike began, if it is not resolved by bargaining or otherwise. It was WestJet's "directing influence" (i.e., decision) that caused the cancellation of the Boyds' flight. WestJet provided no evidence of other flights being cancelled, nor evidence whether the plane and crew for the Boyds' flight remained idle, or used on other flights.

28. As noted in para. 11 above, WestJet chose to run on a "*schedule reduction during the negotiation*" as bargaining leverage. In para. 92 of its factum, WestJet misrepresented this as proof that a strike notice caused the cancellation,²¹ when the term "schedule reduction" actually implies that there was control or influence. In any event, it is plain from *Lareau FCA* at para. 53 that WestJet's say-so in its internal documents cannot simply be taken at face value, and courts must look behind what WestJet wrote to itself.²²

29. At para. 88 of its factum, WestJet acknowledged that returning planes and crew back to base is a matter of monetary costs – it was a deliberate decision to privilege its economic interests as illustrated in *Lareau FCA* at para. 135. It was Parliament's intent in tackling the acute imbalance of power between passengers and carriers, so carriers bear the cost of the inconveniences and costs are not offloaded to passengers.²³ WestJet's bald assertion of "employment status" of its employees was never raised before the CRT and, more fundamentally, it would be a matter of evidence for WestJet to prove that this assertion of a *future* possibility somehow deprived WestJet of its flight crew *in the present*.

30. A carrier's current business planning for *future* events cannot be "outside the carrier's control." WestJet is engaging in wordplay to extend the exceptions in a way not supported by s. 86.11(1)(b)(iii) of the *CT Act*. For example, if a carrier is to operate flights from Calgary to Toronto, and then return after an overnight stay. Assuming the weather report shows that on the return flight there would be a snowstorm in Toronto making it unsafe to depart; the carrier could rely on the CRT's decision to anticipatorily cancel the *first* flight from Calgary to Toronto claiming "due to weather," despite clear weather on the first trip.

²¹ CRT did not rely on this undated document and cannot do so - *Welsh CRT*, para. 20.

²² *WestJet v. Canadian Transportation Agency*, 2025 TATCE 22 at paras. 66-72 an airline's assertion of the reason for cancellation only its "belief," not a legal determination.

²³ *Lareau FCA* at paras. 34, 109-110, and 135.

31. At paras. 87-88, WestJet’s argument that a potential strike *may* begin one hour before the Boyds’ flight lands in Rome has no merit. There was again no evidence that pilots would refuse to operate a flight when it departs well before the legally permitted strike. WestJet also did not raise this before the CRT and was only inviting the CRT to *expand* the Manitoba small claims’ “case-by-case” approach to a categorical approach exempting compensation based on WestJet’s say-so of a “labour disruption.”²⁴ WestJet “*cannot rely on the absence of evidence to prove a fact; facts without evidence are bald assertions.*”²⁵

iii. “Labour Disruption” Cannot Be Given a Technical Interpretation

32. At paras. 84-85 of its factum, WestJet invites the Court to apply a technical interpretation to “labour disruption,” from provincial law and EI legislation. WestJet is misdirecting the Court to propound on the CRT’s error on “labour dispute,” when s. 10 of the *APPR* says “labour disruption.” It is plain that a “dispute” is broader than a “disruption.”

33. Most importantly, the *APPR* is a consumer protection law focused on communicating to “*passengers in simple, clear, and concise language.*”²⁶ Passengers would reasonably read the “labour disruption” exception in its plain, natural, and ordinary meaning, rather than a business-friendly or technical meaning.²⁷ The dictionary defines “disruption” as “to break apart” or “to throw into disorder.” A notice on a piece of paper does not create a disruption. WestJet’s interpretation drawing upon “labour dispute” means the bargaining process itself is covered, greatly expanding this narrow exception in s. 10 of the *APPR*.

34. As noted in paras. 23-26 of these submissions, the interpretation of “labour disruption” within the regulation cannot be divorced from the “outside the carrier’s control” in the enabling law, requiring that the carrier have *no influence* to avoid the flight cancellation.

35. To the extent “labour disruption” leaves any residual ambiguity,²⁸ as per *Seidel* SCC at para. 37, the exception is to be narrowly interpreted in favour of passengers. Since the

²⁴ Affidavit #1 of C. Machado at Exhibit G, particularly para. 33 (AB, Tab 2, pp. 35-37).

²⁵ *Berenguer v. SATA Internacional – Azores Airlines, S.A.*, 2021 FC 394 at para. 118.

²⁶ *IATA SCC* at paras. 89-90; *Lareau FCA* at paras. 10, 28, 101, and 103-105.

²⁷ *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1 at paras. 11, 14, 22-25.

²⁸ *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at paras. 29-32.

APPR obligations are contractually incorporated, *Emond SCC*, particularly para. 50, provides for narrowly applying exceptions in standard contracts and *contra proferentem*.

36. At para. 77 of its factum, WestJet cites a case from the Federal Court for the proposition that the *APPR* should not result in punishment for the carrier. WestJet omitted that this decision is currently pending appeal before the FCA. In any event, *Lareau FCA* at paras. 13, 39, and 63 implicitly rejects WestJet’s argument about punishment for the carrier. The *APPR* is designed to rectify the power imbalance between passengers and carriers by requiring carriers to pay compensation. It would effectively gut the protection in the *APPR* if its interpretation is based on the carriers’ concerns for revenue or profit.²⁹

iv. WestJet’s Inappropriate Reliance on the CTA’s Extrinsic Aids

37. Before the CRT, WestJet relied on the CTA’s non-binding web posting and the CRT correctly gave it little weight,³⁰ consistent with *Lareau FCA* at paras. 31-33 and 42. The face of the webpage is unclear what the CTA’s interpretation of “labour disruption” covers.

38. On this appeal, WestJet relies on the *APPR*’s regulatory impact analysis statement (the “**RIAS**”), as an extrinsic aid to interpret “labour disruption.” Courts repeatedly stated that extrinsic aids should be used with caution.³¹ Using extrinsic aids to determine the general mischief the legislature was remedying is totally different from using it to directly interpret an enactment; the latter case should be subject to more exacting scrutiny.³²

39. In this case, para. 17 of the *CRT Decision* referred to “*concerns around influencing the collective bargaining process*” in the CTA’s RIAS. However, these were the airlines’ consultation submissions, not the CTA’s formulated views.³³ Similar to WestJet’s rejected argument in *Lareau FCA* at para. 75, the fact the airlines’ comments are in the RIAS does not mean the CTA and Minister agreed with the airlines. In any event, “*influencing the collective bargaining process*” is too vague to be of any utility in the interpretation analysis.

²⁹ *Jiang v. Peoples Trust Company*, 2017 BCCA 119 [**Jiang BCCA**] at para. 53.

³⁰ Tribunal Record, Ex. E, Evidence #27 (AB, Tab 3, p. 297); *CRT Decision* at para. 10.

³¹ *Jiang BCCA*, para. 53; *Lareau FCA*, para. 107; *R. v. Sharma*, 2022 SCC 39, para. 89.

³² *R. v. Heywood*, 1994 CanLII 34 (SCC) at 787-88; E.g., *Lareau FCA* at para. 100.

³³ Tribunal Record at Exhibit E, Evidence #26 (AB, Tab 3, p. 272).

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: March 27, 2026

Simon Lin

Simon Lin, Counsel for the Appellant

APPENDICES: LIST OF AUTHORITIES

Authorities	Page # in factum	Para # in factum
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<i>Kooner v. WestJet Airlines Ltd</i> , 2025 BCCRT 1276	3	17
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<i>R. v. Heywood</i> , 1994 CanLII 34 (SCC)	8	38
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APPENDICES: ENACTMENTS**Air Passenger Protection Regulations,**

SOR/2019-150

Obligations — situations outside carrier's control

10 (1) This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations outside the carrier's control, including but not limited to the following:

- (a) war or political instability;
- (b) illegal acts or sabotage;
- (c) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;
- (d) instructions from air traffic control;
- (e) a *NOTAM*, as defined in subsection 101.01(1) of the Canadian Aviation Regulations;
- (f) a security threat;
- (g) airport operation issues;
- (h) a medical emergency;
- (i) a collision with wildlife;
- (j) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;
- (k) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and
- (l) an order or instruction from an official of a state or a law enforcement agency or from a person responsible for airport security.

Budget Implementation Act, 2023,

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

Order related to tariffs

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

(a) apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs; and

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

Onus

(2) If a complaint raises an issue as to whether a flight delay, flight cancellation or denial of boarding is within a carrier's control, is within a carrier's control but is required for safety reasons or is outside a carrier's control, it is presumed to be within the carrier's control and not required for safety reasons unless the carrier proves the contrary.

Canada Transportation Act,

SC 1996, c 10

Regulations — carrier's obligations towards passengers

86.11 (1) The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights,

(a) respecting the carrier's obligation to make terms and conditions of carriage and information regarding any recourse available against the carrier, as specified in the regulations, readily available to passengers in language that is simple, clear and concise;

(b) respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including

(i) the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier's control,

(ii) the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions,

(iii) the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events, and

(iv) the carrier's obligation to provide timely information and assistance to passengers;