No. *Court File No.* ***NEW-S-S-254452***
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, RSBC 1996, c 241

BETWEEN

AIR PASSENGER RIGHTS

Petitioner

AND:

WESTJET AIRLINES LTD.

Respondent

PETITION TO THE COURT

ON NOTICE TO:

WESTJET AIRLINES LTD.
c/o AHBL Corporate Services Ltd.
2700-700 West Georgia
Vancouver BC, V7Y 1B8

AND ON NOTICE TO:

CIVIL RESOLUTION TRIBUNAL
PO Box 9239 Stn Prov Govt
Victoria, BC V8W 9J1

AND ON NOTICE TO:

ATTORNEY GENERAL
c/o Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7

The **address of the registry** is: The Law Courts, 651 Carnarvon Street, New Westminster, BC V3M 1C9.

The Petitioner estimates that the hearing of the petition will take **ninety (90) minutes**.

This is **an application for judicial review**.

This proceeding is brought for the relief set out in Part 1 below, by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

a. file a response to petition in Form 67 in the above-named registry of this court within the time of response to petition described below, and
b. serve on the petitioners
    i. 2 copies of the filed response to petition, and
    ii. 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

a. if you were served with the petition anywhere in Canada, within 21 days after that service,
b. if you were served with the petition anywhere in the United States of America, within 35 days after that service,
c. if you were served with the petition anywhere else, within 49 days after that service, or
d. if the time for response has been set by order of the court, within that time.

1. The **ADDRESS FOR SERVICE** of the petitioner is:

    c/o Simon Lin
    4388 Still Creek Drive, Suite 237
    Burnaby, BC V5C 6C6
    Telephone: 604-620-2666
    Email address for service: simonlin@airpassengerrights.ca

2. The name and office address of the petitioner's lawyer is:

    Simon Lin
    4388 Still Creek Drive, Suite 237
    Burnaby, BC V5C 6C6

CLAIMS OF THE PETITIONER

Part 1: Orders Sought

1. The Petitioner applies for an Order: (a) setting aside the portion of the Civil Resolution Tribunal's order that dismissed the $2,000 claim under s. 19 of the *Air Passenger Protection Regulations* [***APPR***]; and (b) granting the $2,000 claim under s. 19 of the *Air Passenger Protection Regulations* with pre-judgment interest or, alternatively, remitting the $2,000 claim under s. 19 of the *APPR* back to the Civil Resolution Tribunal to be decided in accordance with this Court's reasons.

2. The Petitioner seeks costs against the Respondent.

3. The Petitioner seeks any other relief that this Honourable Court may permit.

Part 2: Factual Basis

Overview

1. This judicial review involves the legal interpretation of a material provision of the *APPR*, a question of law, that is reviewed by this Court on the correctness standard under s. 56.8(2) of the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 [***CRTA***].

2. The statutory interpretation question is whether the term "labour disruption" in s. 10(1)(j) of the *APPR* should be interpreted to also include the minimum seventy-two (72) hour statutory notice period in the *Canada Labour Code*, RSC 1985, c. L-2 [***Canada Labour Code***] before an actual strike or lockout occurs. During this statutory notice period employees are still working and being paid by WestJet.

3. The underlying legal interpretation has significant ramifications for the rights and protections for all passengers travelling to, from, and within Canada. The Civil Resolution Tribunal [**CRT**] adopted a business-friendly interpretation of the *APPR* deeming the "72-hour notice" issued before a strike or notice to be a "labour disruption." Lockout and strike notices are issued, sometimes multiple times, for strategic reasons during the collective bargaining process. The CRT's interpretation guts most of the legal protections for air passengers when any such notice has been issued, despite no work stoppage actually occurring.

4. The CRT determined that the statutory notice period for a strike notice or lockout notice was a "labour disruption."[1] The Petitioner says the CRT erred in three ways:

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[1] *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640 [***CRT Decision***] at para. 18.

a. **Core Interpretation Principle for Consumer Protection Laws:** The CRT failed to consider the purpose of the *APPR* is to protect passengers and that its terms are to be interpreted generously in favour of passengers.[2] Relatedly, laws for protecting passengers should not consider if it would result in an unprofitable venture for the air carrier and, to hold otherwise would effectively gut the very protection that law was intended to provide.[3]

b. **Overlooking Three Principles of Statutory Interpretation: (i)** the CRT overlooked that the focus of the interpretation was the preamble of s. 10(1) of the *APPR* on whether there were "*situations outside the carrier's control*," not the enumerated example of a "labour disruption;" **(ii)** the CRT impermissibly relied on extrinsic aids to override the plain meaning of "disruption" as covering a period when work stoppage has not yet occurred; **(iii)** the CRT overlooked the direct causation legislative wording that the flight disruption must be "**due to**" a situation outside the air carrier's control.

c. Deeming the Notice Period Before an Actual Strike or Lockout as a "Disruption" is Unworkable: The statutory notice period in the *Canada Labour Code* before an actual strike or lockout is expressed as a minimum of 72 hours. The CRT's interpretation would yield absurd results and mischiefs where the airline could pre-emptively issue lengthy or successive lockout notices (i.e., lockout in 30 days) and escape their *APPR* obligations.

5. The CRT's interpretation should be rejected, in favour of an interpretation that protects passengers, that best attains the of passenger protection, and is consistent with Parliament's intent in providing more robust consumer protection.

Background Facts

6. The CRT case was originally filed by Ms. Anne Boyd and Mr. Robert Boyd against WestJet for breach of contract relating to a May 18, 2023 WestJet flight to Rome.[4]

7. On May 15, 2023, WestJet and the air pilot's union issued a lockout notice and strike notice, respectively, that would authorize a lockout or strike starting at 3 a.m. on May 19, 2023[5], consistent with the 72-hour minimum statutory notice period under the *Canada Labour Code* before any actual work stoppage can occur.

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[2] *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 37.

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

[4] *CRT Decision* at para. 9(a).

[5] *CRT Decision* at para. 9(b)-(f).

8. It was common ground that:

    a. No actual strike or lockout occurred in accordance with associated notices.[6]

    b. Mr. and Mrs. Boyd's scheduled flight would have departed **before** the actual strike took place, although it fell within the 72-hour statutory notice period.[7]

    c. $2,000 compensation (i.e., $1,000/person) under section 19 of the *APPR* would be owed if the flight cancellation was within WestJet's control. Whereas, if the flight cancellation was outside of WestJet's control (as defined in s. 10 of the *APPR*), then the $2,000 compensation is not owed.[8]

9. The parties' dispute turns on whether during the minimum statutory notice period **before** actual work stoppage may constitute a "labour disruption" that would be outside of WestJet's control, despite the WestJet employees still on the job.

10. On July 5, 2024, the CRT dismissed the claim for $2,000 compensation under s. 19 of the *APPR* but granted the reimbursement of out-of-pocket expenses.[9]

11. On July 24, 2024, Mr. and Mrs. Boyd absolutely assigned[10] to the petitioner, Air Passenger Rights [**APR**], their claims against WestJet including the right to seek judicial review of the CRT Decision and the right to receive the owing payment(s).[11]

12. APR is a federally incorporated non-profit organization whose mandate is to advocate for the rights of air passengers.[12] During the CRT process, APR has also been assisting Mr. and Mrs. Boyd on a *pro bono* basis.[13]

13. The respondent, WestJet Airlines Ltd., has been given written notice of the absolute assignment to APR, before this Petition was filed.[14]

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[6] *CRT Decision* at para. 9(d).

[7] *CRT Decision* at para. 9(a)-(c).

[8] *CRT Decision* at paras. 11-12.

[9] *CRT Decision* at para. 25.

[10] *Law and Equity Act*, RSBC 1996, c 253, s. 36; *Guraya v. Kaila*, 2019 BCCA 367, paras. 15-18.

[11] Affidavit of Dr. Gábor Lukács on July 29, 2024 [**Lukács Affidavit**] at Exhibit B (exhibit p. 9).

[12] Lukács Affidavit at Exhibit A (exhibit p. 3).

[13] Lukács Affidavit at para. 8.

[14] Lukács Affidavit at Exhibit C (exhibit p. 9).

Part 3: Legal Basis

1. The petitioners will rely on the following: (a) *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 24; (b) *Administrative Tribunals Act*, R.S.B.C. 2004, c. 45; (c) *Civil Resolution Tribunal Act,* S.B.C. 2012, c. 25; (d) *Canada Transportation Act*, S.C. 1996, c. 10; (e) *Air Passenger Protection Regulations*, SOR/2019-150; (f) *Supreme Court Civil Rules*; and (e) inherent jurisdiction of this Court.

2. The claim before the CRT was that WestJet breached the terms of its contract of carriage (also known as tariff). The legal obligations in the *APPR* are incorporated into WestJet's tariffs, pursuant to s. 86.11(4) of the *Canada Transportation Act*.

Standard of Review of CRT Small Claims Decisions

3. A judicial review of a decision from the CRT for small claims matters is governed by s. 56.8 of the *CRTA*.[15] Section 56.8 of the *CRTA* provides that:

> **Standard of review — other tribunal decisions**
> **56.8** (1)This section applies to an application for judicial review of a decision of the tribunal other than a decision for which the tribunal must be considered to be an expert tribunal under section 56.7.
> (2)The standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting
> (a)a finding of fact,
> (b)the exercise of discretion, or
> (c)the application of common law rules of natural justice and procedural fairness.
> (3)The Supreme Court must not set aside a finding of fact by the tribunal unless
> (a)there is no evidence to support the finding, or
> (b)in light of all the evidence, the finding is otherwise unreasonable.
> (4)The Supreme Court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.
> (5)Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.
> [emphasis added]

4. The CRT's jurisdiction for small claims is governed by Part 10, Division 3 of the *CRTA*, which **does not** confer exclusive jurisdiction on the CRT, **nor** specify that the CRT has specialized expertise in small claims matters.

5. As a result, the standard of review under s. 56.7 of the *CRTA* has no application. The issue being reviewed involves statutory interpretation, a question of law, which is reviewed on the standard of **correctness** under s. 56.8(2) of the *CRTA.*

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[15] *Roy's Tile Installation & Decoration v Acoutera Renovations*, 2022 BCSC 2266 at para. 16.

The CRT's Legal Interpretation of Section 10 of the *APPR* is Erroneous

6. The Petitioner says that the CRT's statutory interpretation of s. 10 of the *APPR* is erroneous for **any** of the following three (3) reasons:

    a. **Core Interpretation Principle for Consumer Protection Laws:** The CRT failed to consider the purpose of the *APPR* is to protect passengers and that its terms are to be interpreted generously in favour of passengers.[16] Relatedly, laws for protecting passengers should not consider if it would result in an unprofitable venture for the air carrier and, to hold otherwise would effectively gut the very protection that law was intended to provide.[17]

    b. **Overlooking Three Principles of Statutory Interpretation: (i)** the CRT overlooked that the focus of the interpretation was the preamble of s. 10(1) of the *APPR* on whether there were "*situations outside the carrier's control*," not the enumerated example of a "labour disruption;" **(ii)** the CRT impermissibly relied on extrinsic aids to override the plain meaning of "disruption" as covering a period when work stoppage has not yet occurred; **(iii)** the CRT overlooked the direct causation legislative wording that the flight disruption must be "due to" a situation outside the air carrier's control.

    c. **Deeming the Notice Period Before an Actual Strike or Lockout as a "Disruption" is Unworkable:** The statutory notice period in the *Canada Labour Code* before an actual strike or lockout is expressed as a minimum of 72 hours. The CRT's interpretation would yield absurd results and mischiefs where the airline could pre-emptively issue lengthy or successive lockout notices (i.e., lockout in 30 days) and escape their *APPR* obligations.

CRT Failed to Apply the Core Interpretation Principle of Consumer Protection Laws

7. Section 12 of the federal *Interpretation Act*, RSC 1985, c I-21 provides that an "*enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects*." The CRT cited this principle but incorrectly referred to the provincial *Interpretation Act*.[18]

8. The CRT overlooked an important statutory interpretation principle for consumer protection laws that has long been recognized by the Supreme Court of Canada:[19]

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[16] *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 37.

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

[18] *CRT Decision* at para. 15.

[19] [emphasis added] *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 37.

> [37] As to statutory purpose, the *BPCPA* is all about consumer protection. As such, **its terms should be interpreted generously in favour of consumers:** *Smith v. Co-operators General Insurance Co*., 2002 SCC 30, [2002] 2 S.C.R. 129, and *ACS Public Sector Solutions Inc. v. Courthouse Technologies Ltd.*, 2005 BCCA 605, 48 B.C.L.R. (4th) 328. The policy objectives of s. 172 would not be well served by low-profile, private and confidential arbitrations where consumers of a particular product may have little opportunity to connect with other consumers who may share their experience and complaints and seek vindication through a well-publicized court action.

9. While the Supreme Court of Canada was dealing with the B.C. *Business Practices and Consumer Protection Act*, this interpretation principle equally applies to any laws with a consumer protection focus (i.e., for protection of weaker parties).[20]

10. It is plain that the purpose of the *Air Passenger Protection Regulations* (i.e., *APPR*) is to enhance consumer protection for passengers and, as such, should be generously interpreted in favour of the passengers:[21]

> **Executive summary**
>
> **Issues:** Currently, Canada does not have a standardized passenger protection regime for air travel. While the Air Transportation Regulations (ATR) establish the terms and conditions that air carriers operating in Canada must address in their tariffs, air carriers are permitted to establish their own policies in these areas. This approach has not always resulted in transparent, clear, fair, and consistent policies regarding the treatment of passengers. Regulations are required to establish air carrier obligations that achieve these objectives.
>
> …
>
> **Issues**
>
> The CTA, in consultation with the Minister of Transport, is defining in regulation air carriers' requirements to communicate clearly, as well as obligations toward passengers when issues arise, such as delayed or cancelled flights, denied boarding, tarmac delays, and damaged or lost baggage. The regulations also establish requirements regarding the seating of children under the age of 14 and require policies on the transportation of musical instruments. The new regulations ensure clearer, more consistent passenger rights by establishing minimum requirements, standards of treatment, and in some situations minimum levels of compensation that all air carriers must provide to passengers. The regulations also address other consumer-related issues such as the transportation of minors and a housekeeping change related to air services price advertising.
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> [emphasis added with underline]

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[20] *Pinto v. Revelstoke Mountain Resort Limited Partnership*, 2011 BCCA 210 at para. 17; *Harvey v Talon*, 2016 ONSC 370 at paras. 45-48; *Lin v. Airbnb, Inc.*, 2019 FC 1563 at para. 57.

[21] Air Passenger Protection Regulations - Regulatory Impact Analysis Statement; *International Air Transport Association v. Canadian Transportation Agency*, 2022 FCA 211 at para. 124.

11. Similarly, when Parliament passed the enabling provisions for the *APPR*, the Transport Minister emphasized at second reading the consumer protection goal.[22]

12. It is expected that the Respondent will cite a Federal Court decision, which is currently under appeal, to argue that the statutory interpretation principle to interpret consumer protection laws generously in favour of consumers "*should not result in punishment of a service provider*."[23]

13. However, the Federal Court's comments appear to be at odds with the guidance of the B.C. Court of Appeal that a service provider's unprofitability should not dictate the interpretation of consumer protection laws because to hold otherwise would effectively gut the protection for consumers.[24]

14. It is plain that merchants and consumers are on "opposite" ends with conflicting interests. A merchant would want to minimize any legal restriction so as to maximize profits. Whereas, a consumer would need protection of the laws, laws that would tend to decrease the merchant's profitability. The Supreme Court of Canada's guidance is clear that when such conflicts arise, the interpretation of the law must favour the consumer and not the merchant.

The CRT Overlooked Three Principles of Statutory Interpretation

i. CRT overlooked the statutory text "situations outside the carrier's control"

15. The CRT narrowly focused on the words "labour disruption" in the enumerated example in s. 10(1)(j) of the *APPR* and lost track of the big picture of s. 10(1).

> **Obligations — situations outside carrier's control**
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> 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:
>
> …
> (j) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;
>
> [emphasis added]

[22] House of Commons Debates, Vol. 148, No. 187, 42nd Parliament 1st session, p. 12059-12062 (June 5, 2017).

[23] *Lukács v. Air Canada Rouge LP*, 2023 FC 1358 at para. 56.

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

16. From the big picture perspective, the CRT should have first asked itself whether cancellation of a flight due to a strike/lockout notice for a *possible* strike or lockout in the *future* is a "situation outside the carrier's control." There is no dispute that during the period of the strike/lockout notice that employees were still working, and WestJet remain legally obligated to pay salaries of those employees. It is difficult to imagine how the prospect of a *future* strike/lockout, which ultimately did not occur, would serve as a present disruption that would cause cancellation of a flight.

17. Indeed, the statutory provision that enabled passage of the *APPR* narrowly circumscribes what is to be deemed as "situations outside the carrier's control":[25]

> **Regulations — carrier's obligations towards passengers**
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> 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,
>
> …
>
> (b) respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including
>
> …
>
> (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
>
> [emphasis added]

18. The *APPR*, as delegated regulations, must be read in the context of the enabling statute (i.e., s. 86.11(1) of the *Canada Transportation Act*).[26]

19. Under the associated words rule (*noscitur a sociis*), when two or more terms are used together, the reader is to look for a common feature amongst these terms.[27]

20. Applying *noscitur a sociis* to the terms "natural phenomena" and "security events" found in s. 86.11(1)(b)(iii), it is apparent that these two types of events would not be within an air carrier's ability to control, and an air carrier could not avoid these events even through expenditure of financial resources.

21. In the same vein, the twelve (12) enumerated examples in s. 10(1) of the *APPR* carries the same common feature in that even if an air carrier expends financial resources, they cannot change or avoid that event.

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[25] *Canada Transportation Act*, SC 1996, c 10, s. 86.11(1)(b)(iii).

[26] *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26.

[27] The Construction of Statutes, 7th Ed., R. Sullivan, section 8.06 associated words (p. 229-231).

22. The cancellation of a flight during the 72-hour strike or lockout notice, when employees are still working, is not an event that an airline could not avoid through expenditure of financial resources.

23. More specifically, during the 72-hour strike or lockout notice, the air carrier is still able to continue operations. It may be true that crews or aircraft may end up at a non-home location. That in itself is not a safety event or an event that cannot be avoided through expenditure of moneys. The air carrier could return their crews back to their home base through other carriers. The aircraft can be parked at the airport, albeit the parking fees could be higher than their home location.

24. At its core, WestJet's cancellation of its flights during the 72-hour strike or lockout notice is more properly characterized as a business decision, a decision to minimize the financial resources necessary to return crew/aircraft to a particular location. Passengers should not have to bear the cost of these business decisions.

25. Bearing in mind that a strike or lockout notice could be issued multiple times during the bargaining process with no actual strike or lockout occurring, it would effectively gut legal protections for air passengers if such notice would cause flight cancellations to be deemed as outside of an air carrier's control.

ii. CRT impermissibly relied on extrinsic aids to interpret the words "labour disruption"

26. The CRT did not cite any authority that interpreted "labour disruption" as including the statutory period of notice before an actual strike or actual lockout. It is commonly accepted that "labour disruption" refers to actual work stoppage. The CRT created new law with their interpretation based on a strained extrinsic aid.

27. The second error is that the CRT impermissibly relied on an equivocal portion of the Air Passenger Protection Regulations - Regulatory Impact Analysis Statement [**RIAS**] to directly interpret the scope and meaning of "labour disruption."[28]

> **c) Labour disruptions**
> Air industry stakeholders feel that the regulations should explicitly indicate that labour disruptions within an airline are "outside the carrier's control" to avoid influencing collective bargaining processes. The CTA agrees that it would be appropriate to give clarity in this area and has adjusted the regulations to specify that disruptions resulting from labour disruptions within the carrier or at an essential service provider (e.g., an airport) are considered outside the carrier's control.
>
> [emphasis added]

[28] *CRT Decision* at para. 17.

28. Use of extrinsic aids, such as Hansard, to determine the general mischief that the drafters intended to address is a totally different exercise from using extrinsic aids to specifically interpret a particular provision of an enactment. The latter should be subject to more exacting scrutiny.[29] Ultimately, the question is not what the Minister or drafter understood the enactment to mean, but what the enactment is, interpreted in its grammatical and ordinary sense and harmoniously with the scheme of the enactment and Parliament's intention.[30]

29. Moreover, extrinsic aids should be reviewed with caution when the contents are equivocal and the interpretation urged to be placed upon them would dramatically change the plain words of the enactment.[31]

30. In this instance, the CRT relied on the RIAS to dramatically scale back the protections for passengers and grant air carriers immunity from most of their legal obligations during the collective bargaining process, despite no actual work stoppage. It is trite that there could be multiple strike or lockout notices in a single collective bargaining session. There is **nothing** in the RIAS suggesting that the drafter intended to allow air carriers to avoid their obligations because of a notice.

31. Indeed, more recently, the Supreme Court of Canada has stated that extrinsic aids are not more important than the legislative text and weight should not be given to the extrinsic aid unless it is "clear and consistent."[32]

32. In the RIAS, the reference to "avoid influencing collective bargaining processes" is itself unclear and there is no consistency. More importantly, these were the air carriers' bald assertions and made no reference to the strike or lockout notices.

33. Similarly, the Canadian Transportation Agency's response thereto is equivocal, stating that "[t]*he CTA agrees that it would be appropriate to give clarity in this area and has adjusted the regulations to specify that disruptions resulting from labour disruptions within the carrier*."

34. The CRT should not have given any weight to the brief reference of "*influencing the collective bargaining process*" in the RIAS to dramatically limit protection for passengers.[33] In fact, the CRT's strained interpretation would have the capability

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[29] *R. v. Heywood*, 1994 CanLII 34 (SCC) at p. 787-88.

[30] *Murray v. British Columbia (Superintendent of Motor Vehicles)*, 2013 BCCA 363 at para. 26.

[31] *Jiang v. Peoples Trust Company*, 2017 BCCA 119 at para. 50.

[32] *R. v. Khill*, 2021 SCC 37 at paras. 110-111.

[33] *CRT Decision* at para. 17.

of "influencing the collective bargaining process." As detailed further below, it would indirectly encourage air carriers to issue lengthy or successive lockout notices for the purpose of avoiding their legal obligations under the *APPR*. There is no financial downside to issuing a lockout notice, and actually would give the air carrier the financial benefit of avoiding some obligations in the *APPR*.

iii. CRT impermissibly relied on extrinsic aids to interpret the words "labour disruption"

35. Finally, the CRT overlooked the causation element in the *APPR*. How did the strike notice or lockout notice **cause** an uncontrollable cancellation of the flight, when the employees are still working? The CRT did not consider this issue and erred.

36. Both s. 10(1) of the *APPR* and s. 86.11(1)(b)(iii) of the *Canada Transportation Act* use identical language stating that the cancellation needs to be "due to situations outside the carrier's control." This imports a direct causation element between the event and the cancellation.

37. Even the Air Passenger Protection Regulations - Regulatory Impact Analysis Statement specifies that there must be a causal link between the "labour disruption" and the flight disruption:

> **c) Labour disruptions**
> Air industry stakeholders feel that the regulations should explicitly indicate that labour disruptions within an airline are "outside the carrier's control" to avoid influencing collective bargaining processes. The CTA agrees that it would be appropriate to give clarity in this area and has adjusted the regulations to specify that disruptions resulting from labour disruptions within the carrier or at an essential service provider (e.g., an airport) are considered outside the carrier's control.
>
> [emphasis added]

Deeming the Notice Period as a "Disruption" is Unworkable

38. The CRT failed to consider the practical consequences and potential mischiefs arising from its interpretation.

39. Firstly, under s. 87.2(1) and (2) of the *Canada Labour Code*, a strike notice or lockout notice must be given "at least seventy-two hours in advance." If a strike or lockout does not occur on that date, section 87.2(3) specifies that "a new notice of at least seventy-two hours must be given."

40. In other words, the *Canada Labour Code* would permit a lockout notice be issued, for example, thirty days in advance. The CRT's interpretation would provide an

obvious incentive for air carriers to issue a lockout notice far in advance, and would indirectly serve as a "suspension" of their obligations under the *APPR* as it would be considered a "labour disruption" under the CRT's new interpretation.

41. Secondly, the *Canada Labour Code* obviously contemplates the possibility of an actual lockout or strike not occurring, therefore the need to issue a fresh notice. Again, the CRT's interpretation would provide an obvious incentive for air carriers to issue successive lockout notices for reasons other than collective bargaining.

42. The CRT's interpretation that the period of time before an actual disruption would similarly be considered a disruption would also have the effect of dramatically changing some of the other enumerated examples in s. 10(1) of the *APPR*.

43. For example, s. 10(1)(c) of the *APPR* refers to meteorological conditions (i.e., weather). Imagine a situation where WestJet has a scheduled flight from its home base Calgary to Tokyo, Japan on January 3, with a scheduled flight in the other direction on January 5. There is a weather report stating that there would be significant snowfall in Tokyo on January 5. Would this "advance notice" of meteorological conditions (i.e., the weather report) suffice as a reason to cancel the January 3 flight to Tokyo, when there are no weather issues on that day?

44. It is plain that exceptions to a consumer protection law must be interpreted restrictively. Otherwise, it opens the door to obvious mischiefs and litigation.

45. It is imperative that this Court swiftly intervene to correct the erroneous CRT interpretation of what constitutes a "labour disruption."

46. Such further legal basis as counsel may advise, and as this Honourable Court may permit.

Part 4: Materials to Be Relied Upon

1. Affidavit #1 of Dr. Gábor Lukács affirmed on July 29, 2024.

2. Such other materials as the petitioners may advise.

Date: July 29, 2024

Simon Lin

Signature of lawyer for petitioner
Simon Lin

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs …… of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

……..

……..

……..

……..

Date: ……. ……..

Signature of ☐ Judge ☐ Associate Judge