



December 10, 2025

VIA EMAIL

Court of Appeal for British Columbia

ATTN: Registrar Outerbridge400-800 Hornby Street
Vancouver, BC V6Z 2C5

Dear Registrar Outerbridge,

RE: Air Passenger Rights v. WestJet Airlines Ltd. et al. CA51094 – Renewal of Appellant's Request to Expedite Appeal dated November 20, 2025

We are counsel for the Appellant. On November 20, 2025, the Appellant made a request to expedite the appeal under Rule 31. On November 21, 2025, the Court indicated that the Appellant may renew the request after the terms of the Justice Sharma's Order has been resolved. We are pleased to advise that the Order has been entered on December 8, 2025, after a brief appearance before Justice Sharma on December 2 for directions.

By way of this letter, the Appellant respectfully requests the Court to re-consider the request to expedite the appeal. In light of recent developments, this Court's urgent intervention is necessary to provide clarity to British Columbians that are seeking to access justice quickly and efficiently at the Civil Resolution Tribunal.

Recent Developments Supporting the Urgency

Yesterday, the Civil Resolution Tribunal issued a decision refusing to hear a claimant's claim for standardized compensation based on the *Air Passenger Protection Regulations*. The Civil Resolution Tribunal noted:

20. Even if I am wrong that the court's decision in *Air Passenger Rights* is binding, I would still refuse to resolve this dispute. I find the court's decision raises sufficient doubt about the CRT's jurisdiction to hear any claims about flight delays and cancellations, that in my view, such claims are currently more appropriate for the CTA process. Given the court's comments that only the CTA should be responsible for interpreting legislation regulating air transportation disputes, until a higher court decides or legislation is enacted that expressly says the CRT has jurisdiction to decide APPR claims, I find such claims are more appropriately decided through the CTA process. I find this includes the applicant's claim for food and hotel expenses under the *Montreal Convention*.

21. For the above reasons, I refuse to resolve this dispute under CRTA sections 10(1) and 11(1)(a)(i). This ends these CRT proceedings.

[emphasis added]

Of note, as is apparent from the Order from the Court below in this appeal, the underlying BCSC ruling on jurisdiction did not extend beyond the claims for standardized compensation based on the *Air Passenger Protection Regulations* (i.e., claims under the *Montreal Convention*, a federal law based on an international treaty was unaffected). **However**, in the Civil Resolution Tribunal claim mentioned above, it appears WestJet invited the Civil Resolution Tribunal to go even beyond what Justice Sharma had decided and render **all** passenger claims beyond the Civil Resolution Tribunal's jurisdiction, even those not based on the *Air Passenger Protection Regulations*:¹

WESTJET AIRLINES LTD. (Doing Business As WESTJET) Response	<p>WESTJET AIRLINES LTD. (Doing Business As WESTJET) Response: Provide your response to the question(s) and to the submission of the other party(ies).</p> <p>The <i>Air Passenger Rights v. WestJet Airlines Ltd.</i> 2025 BCSC 2145 decision outlines that the BC CRT does not have jurisdiction to decide Dispute SC-2025-000929 (the "Dispute"). In paragraph 110, Justice Sharma concludes a) compensation... is not a debt enforceable of common law; and b) the BC CRT Tribunal lack(s) jurisdiction to decide the ... claim. WestJet submits that the BC CRT Tribunal does not have jurisdiction to adjudicate or make binding decisions on matters concerning the applicants' Air Passenger Protection Regulations complaint.</p> <p>WestJet further submits <u>that Dispute should be discontinued within the BC CRT Tribunal.</u></p>
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It appears the current state of affairs is being utilized by airlines to create confusion on where air passengers may seek recourse for their consumer claims, and claims are being dismissed summarily for jurisdictional reasons on the basis of the underlying BCSC ruling.

Involvement of the Attorney General of British Columbia

The Appellant had served the Attorney General of British Columbia (**AGBC**) with the appeal materials in this case. We understand that the AGBC will be making the decision whether to participate in this appeal after the Respondents' factums are due. Under the *Court of Appeal Rules*, the Respondents' factums are due on December 17, 2025.

Immediately after the appearance before Justice Sharma on December 2, the Appellant wrote to the Respondents to request their availability for the appeal hearing, requesting a response by Friday December 5, 2025. No responses were provided.

¹ The "..." that was omitted in WestJet's submissions is the reference to the *Air Passenger Protection Regulations*. It is also plain that WestJet was seeking for the *entire* claim be removed from the Civil Resolution Tribunal, even though WestJet was well aware that Justice Sharma's decision did not go so far.

Based on the Court's calendar posted online, the Appellant understands that the earliest full-day hearing is on January 5-7, 2026. In light of the urgency of this appeal, counsel for the Appellant is prepared to make adjustments to his calendar in order to appear for this appeal on **January 5-7, 2026**, assuming the Court is amenable to receiving the Book of Authorities less than 30 days in advance. If other available dates open up on the Court's calendar on the **week of January 12, 2026**, counsel for the Appellant is also prepared to make necessary adjustments to his other obligations to accommodate. While we do not have counsel for AGBC's specific availability in January 2026, we understand that the AGBC would be able to arrange for counsel to attend on any date that month.

Should January not be possible in the circumstances, counsel for the Appellant is prepared to proceed at the earliest available date in February or March. Counsel for the AGBC advised that she is available on February 9-27, March 2-20, or March 30-31, 2026. At this time, counsel for the Appellant can be available on the dates provided by counsel for the AGBC except February 19-20, 24-25 and 27 and March 16, 2026.

The Appellant respectfully request that the Court expedite this appeal for the earliest available one-day hearing.

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

Yours truly,

EVOLINK LAW GROUP



SIMON LIN

Barrister & Solicitor

Encls: (a) Order of Justice Sharma entered December 8, 2025;
(b) CRT Decision refusing to decide a claim dated December 9, 2025 (Dispute SC-2025-000929);
and (c) CRT Submissions in Dispute SC-2025-000929.

CC: Tyna Mason, counsel for the Attorney General of British Columbia; Michael Dery and Kathryn McGoldrick, counsel for Respondent, WestJet Airlines Ltd.; and Eliza McCullum, counsel for the Civil Resolution Tribunal.



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

BEFORE)	THE HONOURABLE)	October 30, 2025
)	JUSTICE SHARMA)	
))	

ORDER MADE AFTER APPLICATION

ON THE PETITION TO THE COURT of the Petitioner Air Passenger Rights coming on for hearing at Vancouver, British Columbia, on March 24-25, 2025 and on hearing Simon Lin, counsel for the Petitioner; and on hearing Michael Dery and Katelyn Chaudhary, counsel for the Respondent; Zara Rahman, counsel for the B.C. Civil Resolution Tribunal (the statutory decision maker of the decision under judicial review), AND on reading the materials and judgment being reserved to this date;

THIS COURT ORDERS that:


1. The Petitioner's Petition, filed on July 29, 2024, is dismissed.
2. The underlying Civil Resolution Tribunal decision, as it pertains to a claim for compensation pursuant to section 19 of the *Air Passenger Protection Regulations* - SOR/2019-150, is quashed.

3. The Respondent is awarded costs of this Petition payable by the Petitioner.
4. This Order may be signed in counterparts and may entered in the Vancouver Registry.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Simon Lin, Counsel for the Petitioner



Michael Dery, Counsel for the Respondent

BY THE COURT:



Eliza McCullum, Counsel for the B.C.
Civil Resolution Tribunal

Registrar



Civil Resolution Tribunal

Summary Decision – SC-2025-000929– December 9, 2025

1. This is a summary decision of the Civil Resolution Tribunal (CRT) refusing to resolve this dispute.
2. The applicant, Karl Hauer, says he was booked on flights from Victoria to Phoenix, with a connection in Calgary, operated by the respondent airline, WestJet Airlines Ltd. (dba WestJet). The applicant says he was delayed arriving in Phoenix by more than 9 hours for reasons within the respondent's control. He claims \$1,000 in statutory compensation under the *Air Passenger Protection Regulations* (APPR) for the delay, plus \$465.48 in reimbursement for hotel and meal expenses. In the alternative, the applicant claims only the \$465.48 for expense reimbursement under the *Montreal Convention*.
3. The respondent denies the applicant's claims. It says it did not breach the APPR and that if the applicant suffered any losses, it was for reasons outside its control or required for safety purposes.
4. On October 30, 2025, the BC Supreme Court (BCSC) issued a decision in *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 2145, in which it considered claims under the APPR. The court found that claims relating to flight delays, cancellations, and denied boarding brought under the APPR must be handled by the Canadian Transportation Agency (CTA). The court specifically found that the CRT does not have jurisdiction to decide such claims.
5. Given the *Air Passenger Rights* decision, the CRT advised the applicant that it may not have jurisdiction to decide his claims. It offered him the opportunity to withdraw his dispute, pause it for 6 months, or provide submissions on why the CRT has jurisdiction to hear his claims.

6. The applicant opted to proceed with his claim, so CRT staff referred this matter to me for a decision about whether the CRT should refuse to resolve this dispute because it is outside the CRT's jurisdiction.
7. Under *Civil Resolution Tribunal Act* (CRTA) section 10(1), the CRT must refuse to resolve a claim if it is not within the CRT's jurisdiction. Further, CRTA section 11(1) gives the CRT discretion to refuse to resolve a claim or dispute that is within its jurisdiction, under certain circumstances. Specifically, CRTA section 11(1)(a)(i) says the CRT can refuse to resolve a claim if it would be more appropriately resolved in another legally binding process.
8. The applicant argues that only his first claim about statutory compensation for delay engages the APPR, and that his claim for reimbursement of hotel and meal expenses can be decided by considering it under the *Montreal Convention*.
9. The Supreme Court of Canada recently considered the APPR's validity in *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30. At paragraph 90, the court said that the APPR provides statutory entitlements under a consumer protection scheme. This means that if a person has experienced an event or loss described by the APPR, they must make their claim within the confines of what can be compensated under the APPR. Put another way, passengers cannot opt out of the APPR.
10. APPR sections 10, 11, and 18 set out an airline's obligations when a flight is cancelled or delayed due to circumstances outside its control or required for safety purposes, and sections 12 to 14, 17, and 19 set out its obligations when the circumstances are within its control. These obligations may include providing food, accommodation, and compensation for delay. To decide what a passenger is entitled to, an adjudicator must first decide whether the flight delay was within the airline's control or required for safety reasons. According to the *Air Passenger Rights* decision, only the CTA can make those determinations.

11. The applicant claims reimbursement for food and hotel expenses, as well as compensation for delay. I find these are all claims that engage the respondent's obligations under the APPR.
12. While the *Montreal Convention* may also apply to the applicant's claim for food and hotel reimbursement, I find that determining whether he is entitled to that reimbursement will likely require an adjudicator to consider many of the same factors that would apply in an APPR claim. This is because Article 19 of the *Montreal Convention* says an airline is responsible for damage occasioned by delay, but not if it took reasonable measures to avoid the damage or if it was impossible for it to take such measures. So, I find the adjudicator will likely consider the reasons for the delay, whether it was required for safety purposes, and whether the circumstances were within the airline's control, in determining the applicant's claim under the *Montreal Convention*.
13. In paragraph 106 of the *Air Passenger Rights* decision, the court stated that permitting tribunals other than the CTA to interpret and apply the APPR opens the door to conflicting interpretations, which undermines the CTA's authority to regulate air transportation in Canada. The court said that this result would be contrary to the policy of objectives of both the APPR and the *Montreal Convention*, which include achieving uniformity in the rules governing the obligations and liability of air carriers. I find the necessary implication of the court's comments is that the CTA should decide all flight-related disputes against airlines to avoid the potential for inconsistent findings and conflicting interpretations of the relevant legislation.
14. Further, the court in the *Air Passenger Rights* decision commented that the regulation of air transportation is complex and comprehensive, and that the CTA processes in place appear to provide an exhaustive scheme to address passengers' right to compensation for flight delays, cancellation, or denial of boarding. The CTA's public website says that it decides claims about reimbursement for food and accommodation. So, I find the CTA can consider claims for damage occasioned by delay under both the APPR and the *Montreal Convention*.

15. The applicant also argues that the court's comments in the *Air Passenger Rights* decision about the CRT's jurisdiction to decide APPR claims were not binding in any event. He says the court made a threshold determination that the petitioner, Air Passenger Rights, lacked standing to bring the judicial review petition. So, the applicant says the court's comments about the CRT's jurisdiction were not necessary to the outcome and carry no binding force.
16. I agree with the applicant that a court's findings and legal analyses that are not essential to the result are generally considered *obiter dicta*. I also agree that *obiter dicta* is not necessarily binding on lower courts or tribunals and instead may provide general guidance on the issue.
17. However, I disagree with the applicant's argument that the court's comments about the CRT's jurisdiction to hear APPR claims were strictly *obiter dicta*. The court set out its conclusions in paragraph 110, including that compensation for a delayed or cancelled flight is not a debt enforceable at common law, and that the CRT lacks jurisdiction to decide APPR claims. At paragraph 111, the court indicated it was considering an order quashing the CRT's decision, regardless of whether the petitioner had standing to apply for judicial review. While the court has not yet issued a final order about that proposed remedy, I find that its analysis about the CRT's jurisdiction to decide APPR claims is essential for the end result, given it may quash the CRT's decision.
18. I also note that "order" is defined in the *Supreme Court Act* as including a judgment and a decree. I find the court's conclusions in paragraph 110, including that compensation for delayed flights under the APPR is not a debt enforceable at common law, and that the CRT does not have jurisdiction to decide APPR claims, are judgments, and are therefore effectively orders.
19. For these reasons, I find the *Air Passenger Rights* decision is binding on the CRT. That means the CRT does not currently have jurisdiction to hear APPR claims, contrary to the applicant's argument. As I find the applicant's claims require an adjudicator to consider and apply the APPR, I find the CRT does not have

jurisdiction to decide the applicant's claims, and I must refuse to resolve this dispute.

20. Even if I am wrong that the court's decision in *Air Passenger Rights* is binding, I would still refuse to resolve this dispute. I find the court's decision raises sufficient doubt about the CRT's jurisdiction to hear any claims about flight delays and cancellations, that in my view, such claims are currently more appropriate for the CTA process. Given the court's comments that only the CTA should be responsible for interpreting legislation regulating air transportation disputes, until a higher court decides or legislation is enacted that expressly says the CRT has jurisdiction to decide APPR claims, I find such claims are more appropriately decided through the CTA process. I find this includes the applicant's claim for food and hotel expenses under the *Montreal Convention*.
21. For the above reasons, I refuse to resolve this dispute under CRTA sections 10(1) and 11(1)(a)(i). This ends these CRT proceedings.



Kristin Gardner, Vice Chair



Civil Resolution Tribunal

Dispute SC-2025-000929

Parties to the Dispute

Applicant

KARL HAUER
Pronoun: He/Him/His

Respondent

WESTJET AIRLINES LTD. (Doing Business As WESTJET)

Matter for decision

Matter for submissions:

In [*Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 2145](#), the BC Supreme Court said CRT does not have authority to decide claims under the *Air Passenger Protection Regulations* (APPR). Under the APPR, an airline's obligations depend on whether the event at issue was within the airline's control or required for safety purposes. The Canada Transportation Agency has authority to decide those matters. In light of the court's recent decision, does the CRT have authority to decide this dispute?

Submissions

Karl Hauer Submission

Karl Hauer first submission: Provide your response to the question(s).

1. These submissions address the jurisdiction of the Civil Resolution Tribunal (“CRT”) to hear and determine this flight-related dispute in light of the recent decision of the British Columbia Supreme Court in ***Air Passenger Rights v. WestJet Airlines Ltd.***, 2025 BCSC 2145 (“*Air Passenger Rights*”).

2. This CRT dispute comprises two main claims: a claim for failure by WestJet to honour the applicant’s compensation claim under the Air Passenger Protection Regulations (“APPR”), and in the alternative, a claim for hotel and meal costs under the Convention for the Unification of Certain Rules for International Carriage by Air (the “Montreal Convention”).

3. Only the first claim potentially engages the reasoning in *Air Passenger Rights*. The Montreal Convention claim is unaffected by *Air Passenger Rights*.

4. Although the court in *Air Passenger Rights* stated the CRT lacks jurisdiction to adjudicate APPR claims (paras. 101–109), those remarks are not binding under the doctrine of *stare decisis*.

5. In *Air Passenger Rights*, the court held that the petitioner, Air Passenger Rights, lacked standing to bring judicial review because it was neither a passenger nor an airline involved in the underlying dispute. With that conclusion, there was no live controversy before the court. All further discussion therefore constitutes *obiter dicta*, not *ratio decidendi*.

6. Standing “is a threshold issue in litigation”: ***Webb v. Genaille***, 2023 BCCA 443 at para. 43. It “goes to the threshold question of whether a controversy even exists for decision by [the] [c]ourt: ***Fraser Valley Refrigeration Ltd. v. British Columbia***, 2009 BCCA 422 at para 47.

7. By finding in *Air Passenger Rights* “the petitioner has no standing to seek judicial review” (para 97) because “Only the Passengers or WestJet were directly affected by the Decision” (para 98), the threshold issue of standing was resolved and nothing further was necessary to the outcome.

8. Passages “not essential to the result ... are properly characterized as obiter” : ***Gichuru v. Purewal***, 2023 BCCA 345 at para. 48. Obiter dicta is “not binding... even *obiter dicta* of five law lords is not binding even in England itself”: ***Brew v. Rozano Holdings Ltd.***, 2006 BCCA 346 at para. 23.

9. Because standing is a prerequisite to a justiciable controversy, the absence of standing meant there was no matter properly before the Court capable of producing a binding ratio, except on standing. It follows that the court’s statements on the CRT’s jurisdiction to resolve APPR claims carry no binding force under *stare decisis*.

10. Even as *obiter*, the comments in *Air Passenger Rights* warrant little weight for two reasons. First, the issue of whether APPR compensation constitutes a “debt” was not raised by either party (paras. 4–5, 8, 25–26). Second, the court opined on

	<p>jurisdictional boundaries between the CRT and the Canadian Transportation Agency (“CTA”) despite acknowledging that the CTA was not a party to the proceeding (para. 32). Without the CTA’s participation, its views remain unknown; it may well have agreed with the CRT that the CRT’s jurisdiction was not at issue.</p> <p>11. Having determined that the petitioner lacked standing, and thereby answering with a “no” the threshold question of whether there was a controversy that the <i>Air Passenger Rights</i> petitioner could bring before the court on judicial review, the rest of the reasons, including the alternative holdings and rationale, are <i>obiter dicta</i>.</p> <p>12. Any persuasive force that might otherwise attach to the <i>obiter</i> in <i>Air Passenger Rights</i> is further diminished because (i) no party raised before the court the CRT’s jurisdiction to decide APPR claims, and (ii) the CTA was not present to state or argue its own (presently unknown) position on whether jurisdiction was in fact exclusive to the CTA.</p> <p>13. While the court’s <i>obiter</i> discussion in <i>Air Passenger Rights</i> may offer guidance as the first judicial discussion of the CRT’s jurisdiction under the APPR, such commentary cannot displace the Tribunal’s independent obligation to interpret its own statutory mandate.</p> <p>14. Accordingly, <i>Air Passenger Rights</i> neither binds nor is persuasive in respect of the CRT’s jurisdiction to adjudicate APPR compensation claims. The Tribunal therefore retains jurisdiction to hear and determine the applicant’s APPR claim. Respectfully submitted this 7th day of November, 2025.</p> <p>Karl Hauer</p>
<p>WESTJET AIRLINES LTD. (Doing Business As WESTJET) Response</p>	<p>WESTJET AIRLINES LTD. (Doing Business As WESTJET) Response: Provide your response to the question(s) and to the submission of the other party(ies).</p> <p>The <i>Air Passenger Rights v. WestJet Airlines Ltd.</i> 2025 BCSC 2145 decision outlines that the BC CRT does not have jurisdiction to decide Dispute SC-2025-000929 (the “Dispute”). In paragraph 110, Justice Sharma concludes a) compensation... is not a debt enforceable of common law; and b) the BC CRT Tribunal lack(s) jurisdiction to decide the ... claim. WestJet submits that the BC CRT Tribunal does not have jurisdiction to adjudicate or make binding decisions on matters concerning the applicants’ Air Passenger Protection Regulations complaint.</p> <p>WestJet further submits that Dispute should be discontinued within the BC CRT Tribunal.</p>
<p>Karl Hauer Final Reply</p>	<p>Karl Hauer Final Reply: Provide your response to the submissions of the other party.</p> <p>The “outlines” of the decision is not the law of the decision.</p> <p>The tribunal is mandated to determine its jurisdiction independently and according to law, not according to outlines or statements that are <i>obiter dicta</i> and do not form part of the law.</p> <p>Tribunals recognize they are not bound by <i>obiter</i>, including when it comes to nonbinding judicial statements about their jurisdiction. See for example:</p> <ol style="list-style-type: none"> 1. Rusakov v Canada (Citizenship and Immigration), 2024 CanLII 140694 (CA

IRB) at paras.17-20:

A distinction is made between the ratio decidendi of a case and obiter dicta (or simply 'obiter'). Ratio decidendi refers to the reasoning process that was necessary to reach a decision on the legal matters on which a case is based. All other comments of the judge are considered obiter dicta; they are the judge's opinion on matters that are not essential to the decision being made. While obiter may have persuasive value, particularly when emanating from the Supreme Court of Canada, it does not create binding precedent.... I find that the Court's analysis of the IAD's jurisdiction to hear the appeal is obiter.

2. **A1901783 (Re)**, 2021 CanLII 59932 (BC WCAT) at para. 76

The parties raised *Atkins v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCSC 1178 in their submissions. Arguably, the case supports the proposition that, once it is determined from an objective view that an event has occurred, the determination on whether it is traumatic is solely subjective to the claimant. I do not subscribe to this proposition because it is based upon obiter dicta which is not binding upon me.

All of which is respectfully submitted this 27th day of November, 2025

Karl Hauer