



COURT OF APPEAL FILE NO. CA51094
Air Passenger Rights v. WestJet Airlines Ltd.
Appellant's Consolidated Reply Factum

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 CONSOLIDATED REPLY FACTUM
(Air Passenger Rights)

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OVERVIEW IN REPLY

1. This is a consolidated reply to the facta filed by the Civil Resolution Tribunal [**CRT**] ("**CRT Factum**") and WestJet Airlines Ltd. ("**WestJet Factum**"). The appellant largely agrees with the CRT's position, as detailed further below, save for paras. 30 and 43. The CRT correctly notes that the chambers judge decided the issues of "debt" and scope of the jurisdiction of the Canadian Transportation Agency [**CTA**] without receiving pertinent submissions from the parties or considering relevant authorities. On the other hand, WestJet seeks to propound the chambers judge's fatal procedural and substantive errors.
2. WestJet's factum should be read with caution as it contains many misstatements. WestJet sidesteps the irrefutable fact that it made key concessions before the chambers judge: (a) that the *APPR* claim was for "debt"; (b) that the CTA's jurisdiction for *APPR* claims was not exclusive; and (c) the *APPR* is explicitly incorporated in WestJet's contracts. However, in its factum, WestJet improperly resiles from its own concessions.
3. One-third of the WestJet Factum argues statutory interpretation of the *APPR*, which is not properly before this Court. WestJet relies on that argument to seek relief different from the relief the appellant seeks. WestJet has not filed a cross-appeal, despite being reminded to do so. WestJet consciously omits that it abandoned the statutory interpretation issue before the chambers judge, and even urged the judge not to decide that issue. However, WestJet now invites this Court to decide that issue at first instance.
4. Concurrently with this reply, the appellant filed a Rule 60 application with a short affidavit to provide context for the two concerns above; firstly, striking paras. 65-68 and 72-97 of the WestJet Factum as the statutory interpretation issue was abandoned and is not properly before this Court; secondly, striking paras. 44-60 of the same factum to the extent WestJet is backtracking on its concession that the *APPR* claim was for a "debt."
5. The appellant has no further submissions for the application beyond paras. 20-23 and 42-43 below. The appellant's allotted time for the appeal should not be unduly consumed by the application.¹ The Court should reserve and rule on the application with the appeal.

¹ *R. v. Gatlley*, 1992 CanLII 2186 (BC CA) (per McEachern C.J.).

Attorney General of Canada and CTA were Given Notice of this Appeal

6. Out of abundance of caution, after filing its factum, the appellant delivered copies of the Notice of Appeal and its factum to both the Attorney General of Canada and the CTA.² When neither the Attorney General of Canada nor the CTA participates in the hearing to support WestJet’s unprecedented position on the expansive scope of the federal law (i.e., the *APPR*), the Court should exercise special caution with WestJet’s submissions.³

7. Indeed, as detailed in Issue #2 below, the WestJet Factum does not cite a single case from *any* Canadian jurisdiction where a court would “infer” that a federal administrative tribunal has sole jurisdiction to the exclusion of provincial superior and inferior courts, the backbone of the Canadian system for civil justice. In the *APPR*’s specific context, WestJet also fails to cite any case where a court adopted the chambers judge’s novel approach.

8. To the contrary, one Superior Court of Quebec judge refused to apply the chambers judge’s decision when an airline invoked it to argue that courts have no jurisdiction over *APPR* standardized compensation. After the chambers judge’s decision, the Divisional Court of Ontario also upheld a small claims award of standardized *APPR* compensation.⁴

Reply on Issue #1 – Standardized *APPR* Compensation is “Debt”

9. WestJet conflates and reverses the order of two distinct issues: (a) whether the claim was in “debt” as defined in the *Civil Resolution Tribunal Act* [*CRTA*]; and (b) whether Parliament had, under the *Canada Transportation Act*, conferred exclusive jurisdiction on the CTA for *APPR* standardized compensation claims. These two issues are distinct.⁵ At para. 47 of its factum, WestJet incorrectly uses the latter to interpret or answer the former.

10. Whether the legislature’s adoption of the longstanding term “debt” includes recovery for moneys stated in a contract must necessarily be considered from the “law of general

² Affidavit #1 of Brittany Connelly on Feb. 25, 2026 [**Connelly Affidavit**] at paras. 2-3.

³ *Unlu v. Air Canada*, 2012 BCSC 60 at paras. 60-61 citing *Ontario (Attorney General) v. OPSEU*, 1987 CanLII 71 (SCC) at para. 29.

⁴ *Dussault c Air Canada*, 2026 QCCS 60, para. 85; *Air Canada v Landry*, 2026 ONSC 222.

⁵ CRT’s Factum at heading above paras. 34, 44; Appellant’s Factum at paras. 40-41.

application” perspective: Did the legislature intend British Columbians to access the CRT for most monetary claims below \$5,000, except the narrow exclusions in *CRTA*, s. 119?

11. At para. 49 of its factum, WestJet starts from the faulty premise that if the CTA somehow has exclusive jurisdiction, then the longstanding legal term “debt” in the *CRTA* or similar provincial court legislation must be narrowly interpreted or “read down” to exclude *APPR* claims against airlines. WestJet’s reasoning is that the CTA’s exclusive jurisdiction prevents a court “action” from being filed, and therefore there can be no “debt.”

12. WestJet’s reasoning has never been applied in any court, and indeed WestJet cites no authority for this unprecedented reasoning. It also contradicts the Supreme Court of Canada’s guidance that statutory grants of jurisdiction to a court or tribunal should not be given a narrow interpretation, but should be given a fair and liberal interpretation.⁶

13. The CRT correctly notes that the chambers judge proceeded to decide the issue of whether claims for standardized *APPR* compensation are claims for a “debt”, when it was never disputed. The CRT’s cited decisions on this issue were all based on established case law, including guidance from this Court, while the chambers judge did not cite a single law.⁷ At para. 47 of its factum, WestJet accepts that the judge cited no law on “debt”, but WestJet fails to explain how that *per incuriam* decision on “debt” could stand.

14. At para. 47, WestJet makes the bald assertion that had the chambers judge actually considered the law on “debt”, she would have reached the same conclusion. WestJet only cites one generic case on “debt” at para. 49 of its factum, but fails to address any of the established and binding cases that the appellant cited at paras. 77-78 of its factum.

15. At para. 48 of its factum, WestJet appears to accept that if *APPR* compensation arises from a contract term, then it would be a “debt” claim within the CRT’s jurisdiction. WestJet makes a strained argument that the *APPR* standardized claims are not based on contract obligations. WestJet’s argument overlooks that in *Tucci BCCA* (below), which WestJet relied upon, this Court upheld the lower court’s rejection of WestJet’s very argument.

⁶ *Canada (H.R.C.) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC) at paras. 34-36.

⁷ CRT’s Factum at paras. 32, 50, 56, and 58; see also Appellant’s Factum at para. 88.

16. The *APPR* statutory provisions are incorporated into WestJet's contract in two distinct ways: (a) by operation of law, the *APPR* is deemed to be implied into WestJet's contract of carriage;⁸ and (b) WestJet's deliberate incorporation of the *APPR* into its contract of carriage. Either of these incorporations of the *APPR* is a complete answer here.

17. In *Tucci BCSC*, the court noted that legislation, including federal legislation such as *PIPEDA*, can be expressly or implicitly incorporated into a contract, noting “[i]t is always open to parties to incorporate legislative requirements into their contracts, absent of course some defence such as illegality.”⁹ This is **precisely** the situation here, as WestJet incorporated the *APPR* obligations into its contract of carriage. WestJet also papered over this Court's recent guidance in *Bank of Montreal v. Cheetham*, 2025 BCCA 374 [*Cheetham BCCA*] reiterating the same proposition that statutory provisions incorporated into a contract becomes part of the contract, and enforceable as a contractual obligation.

18. In paras. 56-57, WestJet heavily relies on *Macaraeg*, which was completely answered in *Tucci BCSC* at paras. 72-73 and upheld in *Tucci BCCA* at paras. 35-36. In *Macaraeg*, the plaintiff argued that the *Employment Standards Act* provisions were implied by law into the employment contracts, without statutory text to that effect. Here, s. 86.11(4) of the *Canada Transportation Act* explicitly incorporates the *APPR* into the carriage contract.

19. In any event, WestJet improperly links the “debt” issue as if it is conclusive of the CRT's jurisdiction. The CRT's jurisdiction extends to specific performance of contracts, as noted in para. 93 of the appellant's factum. None of the parties represented before the judge that “debt” was conclusive of the CRT's jurisdiction, as jurisdiction was undisputed.

20. Finally, while WestJet admits that the “debt” issue was not raised or disputed by the parties, WestJet sidesteps that it positively **admitted** before the judge that the underlying claim was for debt.¹⁰ WestJet is inviting this Court to ignore that admission.

⁸ Appellant's factum at paras. 61 and 81 and footnotes 77 and 107.

⁹ *Tucci v. Peoples Trust Company*, 2017 BCSC 1525 [*Tucci BCSC*] at paras. 70-75, upheld *Tucci v. Peoples Trust Company*, 2020 BCCA 246 [*Tucci BCCA*] at paras. 34-40.

¹⁰ WestJet's Factum at paras. 44-46; Appellant's Factum at para. 26 and footnote 41.

21. It is not permissible for a party to resile from a position that was deliberately adopted in the court below.¹¹ This is not a situation where the party was silent on the issue in the court/tribunal below, and then takes a position on appeal. The *Boutilier* Federal Court case at para. 45 of WestJet’s factum is not binding on this Court. Most importantly, *Boutilier* is not a situation where parties “disregarded” the issue in the court below – WestJet turned its mind to the issue and made a clear concession to that effect. *Boutilier* does not condone withdrawing concessions when the issue was not “disregarded.”

22. In this case, WestJet **admitted** there was a debt, but on appeal makes a U-turn to capitalize on the chambers judge’s legal errors. WestJet must live with the position that it had taken in the Court below.¹² The appellant recognizes that the courts are not bound by an admission of law made by the parties.¹³ However, whether the *APPR* standardized compensation sums expressly incorporated in WestJet’s contract of carriage are to be characterized as a “debt” is not a pure question of law, but a question of mixed fact and law.¹⁴ As such, WestJet’s “debt” admission is binding and cannot be unilaterally withdrawn. WestJet’s resiling from its admission, by papering over it rather than seeking leave in advance to withdraw it, is misleading and an abuse of process.

Reply on Issue #2 – Concurrent Jurisdiction for *APPR* Compensation

23. WestJet conceded before the chambers judge that the CTA did not have exclusive jurisdiction. Appellant accepts that whether Parliament conferred on the CTA exclusive jurisdiction is a legal question, where an admission does not bind the courts. However, it may still be an abuse of process for WestJet to take a contradictory position on appeal.

24. The CRT correctly notes at paras. 34-39 that nothing in the *Canada Transportation Act* or *APPR* confers exclusive jurisdiction on the CTA for *APPR* claims. The CRT notes instances where Parliament used explicit text to confer the CTA exclusive jurisdiction. However, for *APPR* claims, Parliament chose not to confer exclusive jurisdiction.

¹¹ *Argo Ventures Inc. v. Choi*, 2020 BCCA 17 at para. 31.

¹² *Protection Mutual Insurance Co. v. Beaumont*, 1991 CanLII 5728 (BC CA) at para. 26

¹³ *W. (V.) v. S. (D.)*, 1996 CanLII 192 (SCC) at para. 17.

¹⁴ E.g., cases where “debt” was a question of mixed fact and law: *Brown v. Garrison*, 1967 CanLII 849 (BC CA) at p. 251; *Barejo Holdings ULC v. Canada*, 2020 FCA 47 at para. 44.

25. On the other hand, WestJet is misquoting at para. 52 of its factum this Court's guidance in *Tucci BCCA*. In *Tucci BCCA*, this Court set out the general approach to determining if a particular regime is a "complete code." However, WestJet ignores the fact that both in *Tucci BCSC* and *Tucci BCCA*, the courts rejected the argument that the federal *PIPEDA* was a "complete code" that would preclude breach of contract claims. There is no reason to depart from the sound reasoning in *Tucci BCSC* and *Tucci BCCA*.

26. At para. 53 of its factum, WestJet cites an Ontario Court of Appeal decision on the factors for assessing "implied" legislative intent to confer exclusive jurisdiction, but fails to appreciate that the court also refused to impute such intent in that case.¹⁵ WestJet could not point to any case, other than *Macaraeg*, where a court found such a legislative intent. In two WestJet cases,¹⁶ this Court stated that *Macaraeg* does not preclude common law breach of contract claims based on a statutory breach as an element of that claim.

27. The chambers judge did not even consider the three factors for "implicit" legislative intent, and there was no factual finding to support item (d) in para. 54 of WestJet's factum. There must be "irresistible clearness" before a court implies such legislative intent.¹⁷ In any event, on a proper application, all factors favour concurrent jurisdiction.

28. ***Lack of Any Language Consistent with Exclusive Jurisdiction***: WestJet has not identified any language in the *APPR* or the *Canada Transportation Act* that is consistent with conferring exclusive jurisdiction on the CTA. To the contrary, Parliament specifically provided that the *APPR* is incorporated into the contract of carriage, which is language *inconsistent with* exclusive jurisdiction.¹⁸ Parliament did not need to incorporate the *APPR* terms in order for the CTA to enforce them, but rather the incorporation facilitates

¹⁵ *Hopkins v. Kay*, 2015 ONCA 112 [**Hopkins ONCA**] at para. 73.

¹⁶ *Lewis v. WestJet Airlines Ltd.*, 2019 BCCA 63 at paras. 22, 30, and 41; *WestJet v. Gauthier*, 2025 BCCA 134 [**Gauthier BCCA**] at paras. 34-35.

¹⁷ *Moore v. Sweet*, 2018 SCC 52 at para. 70 and *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 SCR 1298 at p. 1316, cited in *Nova Oculus Canada Manufacturing ULC v Sather*, 2025 ABKB 760 at para. 20.

¹⁸ *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 [**IATA SCC**] at paras. 86 and 97.

enforcement as a contract obligation in courts. In addition to the *Unlu* cases in paras. 67-68 of the appellant's factum, in another WestJet appeal case, the court rejected WestJet's argument for the CTA having exclusive jurisdiction in a very similar situation.¹⁹

29. Essential Character of the Dispute: The essential character of the dispute is a consumer claim for breach of contract seeking "*payment of an amount that is already owed as a matter of standardized entitlements...*"²⁰ At its core, it is not dissimilar to everyday consumer claims at the CRT or courts. WestJet was fully cognizant that the claim was based on the *APPR* obligations incorporated into its contract of carriage.²¹ WestJet's reliance on the *Canada Transportation Act* having an "Air Travel Complaints" section does not assist. In *Cheetham BCCA*, the *Canada Labour Code* had even more comprehensive provisions for filing and handling "Complaints" in ss. 251.01-251.19, but that still did not change the fact that there are contract terms for the courts to enforce.

30. Capacity of the scheme to afford effective redress: The CTA procedure is ineffective in two ways: (a) inability to award key substantive remedies, such as punitive damages, pain and suffering, or loss of income;²² and (b) the CTA is heavily backlogged.²³

31. In reply to para. 59 of its Factum, WestJet misquotes this Court's decision in *Unlu*. The word "all" is not found in para. 25, where this Court acknowledged the lower court decision. The word "all" only appears in Air Canada's argument at paras. 24 and 26.

32. In reply to para. 43 of the CRT Factum, the issue is not properly before this Court. The chambers judge left intact the hotel expenses reimbursements portion of the CRT decision awarded under the *Montreal Convention*. The *Montreal Convention* is an

¹⁹ *WestJet v. Chabot*, 2016 QCCA 584 at paras. 34-59, leave to appeal dismissed with costs 2016 CanLII 72704 (SCC), cited with approval in *Gauthier BCCA*, paras. 19 and 98.

²⁰ *IATA SCC* at paras. 27, 31, 90 and 97.

²¹ Affidavit of C. Machado on Aug. 19, 2024, Ex. G, paras. 2, 4, and 26 (AAB, p. 33, 35).

²² *Bergen v WestJet Airlines Ltd.*, 2021 BCSC 12 at para. 101, upheld in 2022 BCCA 22; CTA Decision No. 15-C-A-2023 at para. 4; CTA Decision No. 91-C-A-2023 at para. 5.

²³ *Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278 at para. 35. This fact would have been easily demonstrated had the judge not decided the issue without submissions.

international treaty and has the force of federal law. It cannot be derogated from, and article 33 of the *Montreal Convention* clearly states that passengers could file their claims in a court.²⁴ The “court” for British Columbians with claims less than \$5,000 is the CRT.

33. The CRT cites no legal basis to extend the chambers judge’s reasoning to permit the CRT to refuse adjudicating claims under the *Montreal Convention*. The CRT’s approach leaves a legal lacuna when British Columbians with *Montreal Convention* claims are foreclosed from the CRT, a forum designed for its citizens to seek justice for small claims.

34. The CRT’s emphasis of an overlap between claims based on the *APPR* and the *Montreal Convention* reveals the absurdity of the finding that the CTA is to have exclusive jurisdiction over *APPR* claims. Section 85.04 of the *Canada Transportation Act*, under “Air Travel Complaints”, provides that passengers *may* file complaints for general breach of the contract of carriage, and not limited to just claims for breach of the *APPR*. The chambers judge’s approach to rely on the general “Air Travel Complaints” section to infer exclusive jurisdiction for *APPR* claims specifically creates a legal quagmire. The judge’s reasoning suggests the CTA may also have exclusive jurisdiction for breach of contract claims. However, that tramples upon the constitutional jurisdiction of courts in s. 92(14) or s. 96 of the *Constitution*, and necessarily requires explicit statutory text that is absent.

Reply on Issue #3 – Appellant has a Valid Statutory Assignment

35. It is settled law that the right to judicial review is a chose in action,²⁵ and is assignable. This is established in the BC court’s Model Order for assigning a person into receivership that the right to legal proceedings includes “*pending or hereafter pending...applications for judicial review*” are assigned.²⁶ The judge did not refer to a single law stating that the legal remedies, such as judicial review, can somehow be severed and retained by an assignor, while the underlying chose in action has been assigned. The chambers judge’s reasoning throws decades of receivership cases into doubt, along with any other real estate or contract cases involving an assignment that requires some court adjudication.

²⁴ *Thibodeau v. Air Canada*, 2014 SCC 67; Appellant’s factum at para. 35, footnote 54.

²⁵ *1057863 B.C. Ltd. (Re)*, 2020 BCSC 1359 at para. 52.

²⁶ *Pandion Mine Finance Fund LP v Otso Gold Corp.*, 2022 BCSC 136 at para. 66.

36. Indeed, on January 20, 2026, the England High Court found that assignees of an absolute statutory assignment receive the “right to adjudicate” as part of the “all legal and other remedies” package.²⁷ Section 36 of the B.C. *Law and Equity Act* originated from England and is nearly identical to the text that the English court was interpreting.²⁸ WestJet fails to cite any authority at paras. 61-62 of its factum and avoids addressing the fact that a statutory assignment includes the right to “all legal and other remedies.”

37. In reply to para. 30 of the CRT Factum, the CRT overlooks that an assignment transfers the rights to the assignee “*and becomes as though it had been his from the beginning.*”²⁹ It is wholly proper for someone to advance a claim that belongs to them.

38. The CRT correctly notes that the assignment of a debt is valid at law and could not give rise to champerty and maintenance.³⁰ On appeal, WestJet appears to accept that a debt claim may be validly assigned, but it remains unclear if WestJet would continue its bald claims of champerty and maintenance. There can be maintenance only if there is an improper motive, and champerty is where the *sole* purpose for assigning was to profit.³¹ The chambers judge made no factual finding that the appellant had an improper purpose or was seeking to profit. WestJet’s profit assertion in a \$2,000 case is preposterous.

39. WestJet’s assertion at para. 61 of its factum that “[i]f the CRT did not have jurisdiction over the claim because it was not in “debt”, the assignment was invalid” is inaccurate. WestJet ignores that champerty/maintenance cannot prevent assigning of debt and liquidated claims. Even assigning *unliquidated* or specific performance claims that are not based on a tort may be permissible, as is common in assignments of real estate deals.³²

²⁷ *Paragon Group Limited v FK Facades Limited*, [2026] EWHC 78 (TCC), paras. 44-63.

²⁸ *Guraya v. Kaila*, 2019 BCCA 367 [**Guraya BCCA**] at paras. 16-17.

²⁹ Appellant’s Factum at para. 115 and footnote 138 in particular.

³⁰ CRT Factum at paras. 27-28; authorities in Appellant’s factum at paras. 30, 108-112.

³¹ *McIntyre Estate v. Ontario (A.G.)*, 2002 CanLII 45046 (ON CA) at para. 27; *Gateway Financial Services Limited v. Hawa*, 2005 CanLII 56210 (ON SC) at para. 15.

³² *DiGuilo v. Boland*, 1958 CanLII 92 (ONCA), pp. 18-19, cited in *Guraya BCCA*, para. 16; *Hirschholz v. The Owners, Strata Plan NW1357*, 2024 BCCRT 1030, paras. 52-59.

Reply on Issue #4 – Assignment Gives Appellant the Requisite Standing

40. At para. 63, WestJet fails to explain how it would make legal sense if the Boyds' interest in the underlying claim was assigned and severed,³³ but they maintained standing for a bare right to judicial review. Even if WestJet's absurd proposition is adopted, it would have been a mere irregularity that the lower court could easily rectify under Rule 6-2(7).³⁴

Reply on Remedy if Court Finds in Favour of the Appellant

41. In reply to para. 64 of WestJet's factum, the appellant is not alleging that the chambers judge was actually biased. It is not unusual for a reviewing court to remit the matter back to another decision maker to avoid *perceptions* of bias from pre-judgment.³⁵

42. Paragraphs 65-68 and 72-97 of WestJet's factum, arguing the statutory interpretation of the *APPR*, should be struck, as that issue is not properly before this Court. WestJet is not making an alternative argument to uphold the chambers judge's Order. WestJet is seeking to vary the judge's Order, as seen in para. 97 of its factum. Para. 2 of the judge's Order already quashed the relevant part of the CRT decision. WestJet is asking this Court to first vary the Order to unquash that CRT decision, and then affirm the CRT decision.

43. WestJet was required to file a cross-appeal in order to vary the order below, but it has failed to do so and it is now too late.³⁶ WestJet's maneuver is prejudicial, depriving the appellant of any opportunity to address the issues in a cross-appeal factum. **Most importantly**, WestJet is making an end-run, omitting that it actually urged the judge not to decide that issue but now requests this Court to do the opposite,³⁷ similar to WestJet's resiling from concessions already made in the court below. This is an abuse of process.

³³ *Main Acquisitions Consulting Inc. v Prior Properties Inc.*, 2017 BCSC 1912 at para. 28.

³⁴ *Prince George Airport Authority Inc. v. Roy*, 2025 BCCA 442 at para. 48.

³⁵ *Braun v Scholey*, 2025 BCSC 2528 at paras. 45-47.

³⁶ *Sinclair v. T.D.M.C. Holdings Ltd.*, 2025 BCCA 402, para. 17; *Shell Canada Ltd. v. Canada*, 1998 CanLII 19117 (SCC), para. 9; *Miller Thomson LLP v. Hilton Worldwide Holding LLP*, 2019 FCA 156; *Metro Paving and Roadbuilding Ltd. v. Fortitude Structures Inc.*, 2020 BCCA 126, para. 72. WestJet's Delay: Connelly Affidavit at Exhibits C-D; *The Law Society of British Columbia v. Cole*, 2022 BCCA 55, refusing an extension of time.

³⁷ Connelly Affidavit at Exhibit E (p. 19), WestJet's position item (e) on Dec. 1, 2025 email.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: February 25, 2026

Simon Lin

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APPENDICES: LIST OF AUTHORITIES

Case Law

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APPENDICES: ENACTMENTS

Canada Labour Code

RSC 1985, c L-2

Complaints

Making of complaint

251.01 (1) Any employee may make a complaint in writing to the Head if they believe that the employer has contravened

- (a) any provision of this Part or of the regulations made under this Part; or
- (b) any order.

Time for making complaint

(2) A complaint under subsection (1) shall be made within the following period

- (a) in the case of a complaint of non-payment of wages or other amounts to which the employee is entitled under this Part, six months from the last day on which the employer was required to pay those wages or other amounts under this Part; and
- (b) in the case of any other complaint, six months from the day on which the subject-matter of the complaint arose.

Extension of time

(3) The Head may, subject to the regulations, extend the period set out in subsection (2)

- (a) if the Head is satisfied that a complaint was made within that period to a government official who had no authority to deal with the complaint and that the person making the complaint believed the official had that authority;
- (b) in any circumstances prescribed by regulation; or
- (c) in the conditions prescribed by regulation.

Limitation

(3.1) An employee shall not make a complaint under subsection (1) if they have made a complaint that is based on substantially the same facts under any of subsections 240(1), 246.1(1) and 247.99(1), unless that complaint has been withdrawn.

Exception

(4) Despite subsection (3.1), the employee may file a complaint under subsection (1) if it relates only to the payment of their wages or other amounts to which they are entitled under this Part, including amounts referred to in subsections 230(1) and 235(1), but that complaint is suspended until the day on which the complaint made under subsection 240(1), 246.1(1) or 247.99(1), as the case may be, is withdrawn or resolved.

Limitation — section 177.1

(4.1) With respect to a request made under subsection 177.1(1), an employee may make a complaint under subsection (1) only on the grounds that the employer has refused the request on any ground other than those referred to in subparagraphs 177.1(3)(c)(i) to (v) or has failed to comply with any requirement set out in section 177.1(4).

For greater certainty

(5) For greater certainty, a complaint is not permitted under this section if it relates to a disagreement whose settlement is governed exclusively by a collective agreement under subsection 168(1.1).

Suspension of complaint

251.02 (1) If the Head is satisfied that the employee must take measures before the Head may continue to deal with the complaint made under section 251.01, the Head may, at any time, suspend consideration of the complaint, in whole or in part.

Notice

(2) If the Head suspends consideration of a complaint, the Head must notify the employee in writing and specify in the notice

(a) the measures that the employee must take; and

(b) the period of time within which the employee must take those measures.

Extension of time

(3) The Head may, upon request, extend the time period specified in the notice.

End of suspension

(4) The suspension ends when, in the Head's opinion, the measures specified in the notice have been taken.

Assistance — Head

251.03 After receipt of a complaint, the Head may assist the parties to the complaint to settle the complaint.

Settlement of amounts due

251.04 (1) If an employer and an employee who has made a complaint relating to the non-payment of wages or other amounts to which they are entitled under this Part reach a settlement in writing on the wages or other amounts to be paid, the employer may pay those amounts to the employee or to the Head.

If amount paid to Head

(2) If an employer pays the amounts to the Head, the Head must, without delay after receiving them, pay them over to the employee who is entitled to the amounts.

Minister's consent required for prosecution

(3) No prosecution for failure to pay an employee the wages or other amounts that were the subject of the complaint may be instituted against an employer, without the written consent of the Minister, if the employer has paid the amounts referred to in subsection (1) to the employee or the Head.

Rejection of complaint

251.05 (1) The Head may reject a complaint made under section 251.01, in whole or in part,

(a) if the Head is satisfied

(i) that the complaint is not within their jurisdiction,

(ii) that the complaint is frivolous, vexatious or not made in good faith,

(iii) that the complaint has been settled in writing between the employer and the employee,

(iv) that there are other means available to the employee to resolve the subject-matter of the complaint that the Head considers should be pursued,

(v) that the subject-matter of the complaint has been adequately dealt with through recourse obtained before a court, tribunal, arbitrator or adjudicator,

(vi) that in respect of a complaint other than a complaint of non-payment of wages or other amounts to which the employee is entitled under this Part, there is insufficient evidence to substantiate the complaint, or

(vii) that in respect of a complaint made by an employee who is subject to a collective agreement, the collective agreement covers the subject-matter of the complaint and provides a third party dispute resolution process;

(b) if consideration of the complaint was suspended under subsection 251.02(1) and if, in the Head's opinion, the other measures specified in the notice under subsection 251.02(2) were not taken within the specified time period;

(c) subject to the regulations, if an employee to whom notice is given under subsection (1.1) does not respond within the period set out in the notice.

Notice

(1.1) If the employee does not reply to a written communication from the Head within a period that the Head considers to be reasonable in the circumstances and a period of at least 30 days, or any longer period that may be prescribed by regulation, have elapsed from the day on which the complaint was made, the Head may give written notice to the employee that they have the period of 30 days, or any longer period that may be prescribed by regulation, set out in the notice to indicate in writing that they wish to pursue their complaint.

Notice of rejection of complaint

(2) If a complaint has been rejected, the Head shall notify the employee in writing, with reasons.

Request for review

(3) The employee may, within 15 days after the day on which the employee is notified of the rejection, request in writing, with reasons, that the Head review the Head's decision.

Review

(4) The Head may confirm the decision, or rescind it and re-examine the complaint.

Notice of Head's decision

(5) The Head shall notify the employee in writing of the Head's decision.

Reconsideration final

(6) The Head's confirmation or rescission is final and conclusive and is not subject to appeal to or review by any court.

Compliance order

251.06 (1) If the Head is of the opinion that an employer is contravening or has contravened a provision of this Part, its regulations or any condition of a permit issued under subsection 176(1), the Head may issue a compliance order in writing requiring the employer to terminate the contravention within the time that the Head may specify and take any step, as specified by the Head and within the time that the Head may specify, to ensure that the contravention does not continue or reoccur.

Limitation

(2) The Head shall not issue a compliance order under subsection (1) to take any measure that could be set out in an order made under subsection 242(4) or section 246.4 or to make any payment that may be the subject of an order made under subsection 251.1(1).

Service of order

(3) Service of an order or of a copy of it shall be by personal service, by registered mail or by any other means prescribed by regulation and, in the case of registered mail, the order or its copy shall be deemed to have been received by the addressee on the seventh day after the day on which it was mailed.

Proof of service

(4) A certificate purporting to be signed by the Head certifying that a document referred to in subsection (3) was sent by registered mail or by any other means prescribed by regulation to the addressee, accompanied by a true copy of the document and by an identifying post office certificate of the registration or other proof, prescribed by regulation, that the document has been sent or received, is admissible in evidence and is proof of the statements contained in the certificate, without proof of the signature or official character of the person appearing to have signed the certificate.

Payment order

251.1 (1) If the Head finds that an employer has not paid an employee wages or other amounts to which the employee is entitled under this Part, the Head may issue a written payment order to the employer, or, subject to section 251.18, to a director of a corporation referred to in that section, ordering the employer or director to pay the

amount in question, and the Head shall send a copy of any such payment order to the employee at the employee's latest known address.

Limitation

(1.1) A payment order must not relate to wages or other amounts to which the employee is entitled for the period preceding

(a) in the case where the employee made a complaint under subsection 251.01(1) that was not rejected under subsection 251.05(1), the 24 months, plus any extension of the period for making the complaint that is granted by the Head under subsection 251.01(3), immediately before the day on which the complaint was made or, if there was a termination of employment prior to the complaint being made, the 24 months immediately before the date of termination;

(a.1) in the case where the payment order was issued to the employer on the basis of, in whole or in part, a report provided under subsection 251.001(1), the 24 months immediately before the day on which the order to provide the report was served; and

(b) in any other case, the 24 months immediately before the day on which an inspection under this Part, during the course of which the Head made the finding referred to in subsection (1), began.

(1.2) [Repealed, 2017, c. 20, s. 361]

If complaint unfounded

(2) If the Head deals with a complaint of non-payment of wages or other amounts to which an employee is entitled under this Part, the Head must notify the employee in writing that their complaint is unfounded if the Head concludes that the employer has paid to the employee all wages and other amounts to which the employee is entitled under this Part for the period of six months, plus any extension of the period for making the complaint that is granted by the Head under subsection 251.01(3), immediately before the day on which the complaint was made.

Notice of voluntary compliance

(2.1) If the Head deals with a complaint of non-payment of wages or other amounts to which an employee is entitled under this Part, the Head shall notify the employee in writing that the employer has voluntarily paid to the employee all wages and other amounts owing if

(a) the Head concludes that the employer has, since the complaint was made, paid to the employee all wages and other amounts owing for the period of 24 months, plus any extension of the period for making the complaint that is granted by the Head under subsection 251.01(3), immediately before the day on which the complaint was made and for any subsequent period specified by the Head; and

(b) the Head has not issued a payment order or a notice of unfounded complaint with respect to the complaint.

Service of order or notice

(3) Service of a payment order or a copy of it, of a notice of unfounded complaint, or of a notice of voluntary compliance shall be by personal service, by registered mail or by any other means prescribed by regulation and, in the case of registered mail, the order, copy or notice shall be deemed to have been received by the addressee on the seventh day after the day on which it was mailed.

Proof of service of documents

(4) A certificate purporting to be signed by the Head certifying that a document referred to in subsection (3) was sent by registered mail or by any other means prescribed by regulation to the addressee, accompanied by a true copy of the document and by an identifying post office certificate of the registration or other proof, prescribed by regulation, that the document has been sent or received, is admissible in evidence and is proof of the statements contained in the certificate, without proof of the signature or official character of the person appearing to have signed the certificate.

Orders — Review and Appeal

Request for review

251.101 (1) An employer to whom a compliance order has been issued or a person who is affected by a payment order, a notice of unfounded complaint or a notice of voluntary compliance may send a written request with reasons to the Head for a review of the Head's decision

(a) subject to paragraph (b), within 15 days after the day on which the order or a copy of the order or the notice is served; or

(b) if a compliance order is served with a notice of violation issued under subsection 276(1) for the same contravention, within 30 days after the day on which they are served.

Payment of amount and administrative fee

(2) An employer or a director of a corporation is not permitted to request a review of a payment order unless the employer or director pays to the Head the amount indicated in the payment order and, in the case of an employer, the administrative fee specified in the payment order in accordance with subsection 251.131(1), subject to, in the case of a director, the maximum amount of the director's liability under section 251.18.

Security

(2.1) The Head may allow an employer or a director of a corporation to give security, in a form satisfactory to the Head and on any conditions specified by the Head, for all or part of the amount and fee referred to in subsection (2).

Review

(3) On receipt of the request for review, the Head may, in writing,

(a) confirm, rescind or vary, in whole or in part, the payment order or the compliance order; or

(b) confirm the notice of unfounded complaint or the notice of voluntary compliance, or rescind the notice, in which case the Head shall re-examine the complaint.

Service of documents

(4) Service of a decision made under subsection (3) shall be by personal service, by registered mail or by any other means prescribed by regulation on any person who is affected by the payment order, the notice of unfounded complaint or the notice of voluntary compliance or, in the case of a compliance order, on the employer. If the decision is served by registered mail, it shall be deemed to have been received by the addressee on the seventh day after the day on which it was mailed.

Proof of service

(5) A certificate purporting to be signed by the Head certifying that a decision referred to in subsection (4) was sent by registered mail or by any other means prescribed by regulation to the addressee, accompanied by a true copy of the decision and by an identifying post office certificate of the registration or other proof, prescribed by regulation, that the decision has been sent or received, is admissible in evidence and is proof of the statements contained in the certificate, without proof of the signature or official character of the person appearing to have signed the certificate.

Review is final

(6) Subject to the right of appeal under section 251.11, the decision made under subsection (3) is final and conclusive and is not subject to appeal to or review by any court.

Request treated as an appeal

(7) The Head may, if the Head considers it appropriate in the circumstances, treat the request for review as an appeal of their decision, in which case the Head shall so inform any person who is affected by the payment order, the notice of unfounded complaint or the notice of voluntary compliance — or, in the case of a compliance order, the employer — and shall refer the request for review to the Board, and the Board shall be considered to have an appeal before it for the purposes of section 251.12.

Appeal

251.11 (1) Subject to subsection (1.1), a person who is affected by a decision made under subsection 251.101(3), other than a decision to rescind a notice of unfounded complaint or a notice of voluntary compliance, may appeal the decision to the Board, in writing, within 15 days after the day on which the decision is served.

Exception — compliance order

(1.1) Only an employer to whom a compliance order has been issued may appeal a decision with respect to that order.

Scope of appeal

(1.2) Except in the case of a compliance order, the person may appeal the decision only on a question of law or jurisdiction.

Grounds of appeal

(2) The request for appeal shall contain a statement of the grounds of appeal.

Payment of amount and administrative fee

(3) An employer or director of a corporation is not permitted to appeal a decision confirming or varying a payment order unless the employer or director pays to the Head the amount indicated in the decision — and, in the case of an employer, the administrative fee specified in the decision in accordance with subsection 251.131(1) — less any amount and administrative fee paid under subsection 251.101(2).

Security

(3.1) The Head may allow an employer or a director of a corporation to give security, in a form satisfactory to the Head and on any conditions specified by the Head, for all or part of the amount and fee referred to in subsection (3).

Limitation

(4) In the case of a director, subsection (3) applies subject to the maximum amount of the director's liability under section 251.18.

Head informed of appeal

251.111 (1) The Board shall inform the Head in writing when an appeal is brought under subsection 251.11(1) and provide the Head with a copy of the request for appeal.

Documents provided to Board — decision

(2) In an appeal under this Part, the Head shall, on request of the Board, provide to the Board a copy of any document that the Head relied on for the purpose of making the decision being appealed.

Documents provided to Board — order or notice

(3) In an appeal under subsection 251.101(7), the Head shall, on request of the Board, provide to the Board a copy of any document that the Head relied on for the purpose of issuing the order or notice being appealed.

Documents provided to Head

(4) The Board shall, on request of the Head, provide to the Head a copy of any document that is filed with the Board in the appeal.

Power of Head

(5) The Head may, in an appeal under this Part, present evidence and make representations to the Board.

Board decision

251.12 (1) The Board may, in an appeal under this Part, make any order that is necessary to give effect to its decision, including an order to

(a) confirm, rescind or vary, in whole or in part, the decision being appealed;

(b) direct payment to any specified person of any wages or other amounts held in trust by the Receiver General that relate to the appeal;

(c) award costs in the proceedings; and

(d) order a party, whose conduct in the proceedings has, in the Board's opinion, unduly delayed the determination of the appeal, to pay to the Receiver General an amount that is equal to all or part of the expenses incurred in the proceedings by the Board.

Copies of decision to be sent

(2) The Board shall send a copy of the decision, with reasons, to each party to the appeal and to the Head.

Order final

(3) The order of the Board is final and shall not be questioned or reviewed in any court.

No review by *certiorari*, etc.

(4) No order shall be made, process entered or proceeding taken in any court, whether by way of injunction, *certiorari*, prohibition, *quo warranto* or otherwise, to question, review, prohibit or restrain the Board in any proceedings under this section.

Wages

(5) An employee who has been summoned by the Board to attend at an appeal proceeding under this Part and who attends is entitled to be paid by the employer at the employee's regular rate of wages for the time spent at the proceeding that would otherwise have been time at work.

Debt to Her Majesty

(6) The expenses to be paid in accordance with an order issued under paragraph (1)(d) constitute a debt due to Her Majesty in right of Canada and are recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act.

General Provisions — Orders

Order to debtor of employer

251.13 (1) The Head may issue a written order to a person who is or is about to become indebted to an employer to whom a payment order has been issued under subsection 251.1(1), to pay any amount owing to the employer, up to the amount and the administrative fee indicated in the payment order, directly to the Head within 15 days, in satisfaction of the payment order.

Order to debtor of director of corporation

(1.1) The Head may issue a written order to a person who is or is about to become indebted to a director of a corporation to whom a payment order has been issued under subsection 251.1(1) to pay any amount owing to the director of the corporation, up to the amount indicated in the payment order, directly to the Head within 15 days, in satisfaction of the payment order.

Banks, etc.

(2) For the purposes of this section, a bank or other financial institution that has money on deposit to the credit of an employer or a director of a corporation shall be deemed to be indebted to that employer or that director.

Administrative fee

251.131 (1) A payment order made to an employer under subsection 251.1(1), and any decision made under subsection 251.101(3) or section 251.12 with respect to that payment order ordering the employer to pay wages or other amounts to an employee, shall specify the amount of the administrative fee — which is equal to the greater of \$200 and 15% of the amounts indicated in the payment order or decision — that the employer is to pay.

Payment

(2) The employer is liable only for the administrative fee that is specified in a final decision and shall pay it — less any administrative fee paid under subsection 251.101(2) or 251.11(3) — to the Head. In the case of any overpayment, the employer is entitled to its reimbursement.

Debt to Her Majesty

(3) An administrative fee constitutes a debt due to Her Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act, including under subsection 251.13(1) and section 251.15.

Return of security

251.132 The Head, after a final decision has been made in respect of which security was given,

(a) may apply, in whole or in part, the security given under subsection 251.101(2.1) or 251.11(3.1) toward any amounts — and, if the security was given by

an employer, any administrative fee — owing under the final decision by the employer or a director of a corporation who gave the security; and

(b) shall return the security or, if it was applied under paragraph (a), any part that remains after the amounts and, in the case of an employer, the administrative fee have been paid.

Deposit of moneys

251.14 (1) If the Head receives moneys under this Division, the Head shall deposit those moneys to the credit of the Receiver General in the account known as the “Labour Standards Suspense Account” or in any other special account created for the purposes of this section and may authorize payments out of that account to any employee or other person who is entitled to that money.

Consolidated Revenue Fund

(1.1) The moneys that are equal to the administrative fees paid to the Head under this Part with respect to matters that are the subject of a final decision shall be debited from the account referred to in subsection (1) and credited to the Consolidated Revenue Fund no later than the fiscal year following the fiscal year in which the final decision is made.

Record

(2) The Head shall maintain a detailed record of all transactions relating to the account.

Enforcement of orders

251.15 (1) Any person who is affected by a payment order issued under subsection 251.1(1) or confirmed or varied under subsection 251.101(3) or by an order of the Board made under subsection 251.12(1), or the Head, may, after the day provided in the order for compliance or after 15 days following the day on which the order is issued, made, confirmed or varied, whichever is later, file in the Federal Court a copy of the payment order, or a copy of the order of the Board, exclusive of reasons.

Limitation

(1.1) However, a payment order is not to be filed while it is or may be the subject of a review under subsection 251.101(1) or an appeal under subsection 251.101(7) or section 251.11 or if an order of the Board is made under paragraph 251.12(1)(a) relating to the payment order.

Enforcement of orders to debtors

(2) After the expiration of the 15 day period specified in an order to a debtor of the employer or of the director of a corporation made under section 251.13, the Head may file a copy of the order in the Federal Court.

Registration of orders

(3) On the filing of a copy of an order in the Federal Court under subsection (1) or (2), the order shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order were a judgment obtained in that Court.

Regulations

251.16 The Governor in Council may make regulations respecting the operation of sections 251.001, 251.1, 251.101 and 251.13 to 251.15.

Statutory Instruments Act

251.17 The *Statutory Instruments Act* does not apply in respect of internal audit orders, compliance orders, payment orders, notices of unfounded complaint, notices of voluntary compliance or orders to debtors.

Civil liability of directors

251.18 Directors of a corporation are jointly and severally liable for wages and other amounts to which an employee is entitled under this Part, to a maximum amount equivalent to six months' wages, to the extent that

- (a) the entitlement arose during the particular director's incumbency; and
- (b) recovery of the amount from the corporation is impossible or unlikely.

Cooperatives

251.19 For the purposes of section 251.18 and subsection 257(3), cooperatives shall be deemed to be corporations.

Canada Transportation Act

RSC 1985, c L-2

Obligations deemed to be in tariffs

86.11(4) The carrier's obligations established by a regulation made under subsection (1) are deemed to form part of the terms and conditions set out in the carrier's tariffs in so far as the carrier's tariffs do not provide more advantageous terms and conditions of carriage than those obligations.

Civil Resolution Tribunal Act

SBC 2012, c 25

Division 3 — Tribunal Small Claims

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.

Law and Equity Act

RSBC 1996, c 253

Assignment of debts and choses in action

36 (1) An absolute assignment, in writing signed by the assignor, not purporting to be by way of charge only, of a debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, is and is deemed to have been effectual in law, subject to all equities that would have been entitled to priority over the right of the assignee if this Act had not been enacted, to pass and transfer the legal right to the debt or chose in action from the date of the notice, and all legal and other remedies for the debt or chose in action, and the power to give a good discharge for the debt or chose in action, without the concurrence of the assignor.

(2) If the debtor, trustee or other person liable in respect of the debt or chose in action has had notice that the assignment is disputed by the assignor or anyone claiming under the assignor, or of any other opposing or conflicting claims to the debt or chose in action, the debtor, trustee or other person

(a) is entitled to call on the persons making the claim to interplead concerning the debt or chose in action, or

(b) may pay the debt or chose in action into court, under and in conformity with the *Trustee Act*.

Law of Property Act 1925 (England)*

1925, c 20

* English equivalent of s. 36 of the *Law and Equity Act*, which was referred to in *Paragon Group Limited v FK Facades Limited*, [2026] EWHC 78 (TCC).

136 Legal assignments of things in action.

(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to such debt or thing in action;

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925.