



Court File No. **VLC-S-S-244546**

No.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ALEXANDRA FOX

PLAINTIFF

AND

WESTJET AIRLINES LTD.

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

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

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff,

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

CLAIMS OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview of this Action

1. This is a proposed class proceeding seeking compensation for inconvenience, reimbursement of out-of-pocket expenses, and/or refund on behalf of passengers affected by flight cancellations initiated by WestJet in June 2024, prior to actual work stoppage by the employees of the Aircraft Mechanics Fraternal Association. WestJet's published statements state that about 10,000 passengers were affected.
2. At the heart of this class action is a legal question of whether flight cancellations initiated by WestJet after receiving a strike notice, but before any work stoppage, would constitute a situation outside of the air carrier's control under the *Air Passenger Protection Regulations* (the "**APPR**"). The Plaintiff submits that the cancellations are WestJet's business decisions to save costs and are within WestJet's control.
3. Section 86.11(4) of the *Canada Transportation Act* provides that the *APPR* are deemed to form part of the contracts of carriage (the "**tariffs**") between WestJet and its passengers, and can be enforced as a contractual obligation.

4. Passengers' right to standardized compensation for inconvenience for flight cancellations within a carrier's control is provided for in s. 19 of the *APPR*, ranging from \$400-\$1,000 depending on the length of the delay (i.e., \$400 for delays of 3 hours or more; \$700 for delays of 6 hours or more; and \$1,000 for delays of 9 hours or more). If the passenger elects a refund, the passenger is still entitled to \$400.
5. Aside from compensation for inconvenience of the cancellation, passengers are entitled to reimbursement of out-of-pocket losses due to the flight cancellations pursuant to the *APPR*. For international flights, the *Carriage by Air Act*, RSC 1985, c. C-26, Schedule VI the *Convention for the Unification of Certain Rules for International Carriage by Air* ("**Montreal Convention**") provides a further basis for reimbursement.
6. WestJet refused to provide Class Members with the standard compensation for inconvenience, the reimbursement of out-of-pocket losses, and/or refund to original payment form, claiming that the cancellations were beyond WestJet's control despite no work stoppage. This class action seeks to enforce the Class Members' legal rights.

Parties

7. The Plaintiff, Alexandra Fox, is a resident of British Columbia, and has an address for service in this action at 237-4388 Still Creek Drive, in the City of Burnaby, in the Province of British Columbia.
8. WestJet Airlines Ltd. is a company formed under the laws of Alberta and has nominated an agent in British Columbia upon whom process may be served generally at c/o AHBL Corporate Services Ltd., 2700 – 700 West Georgia Street, Vancouver (hereafter "**WestJet**"). WestJet also has a place of business in British Columbia in the Vancouver International Airport at 3211 Grant McConachie Way, Richmond, BC.
9. WestJet is a commercial airline that operates domestic passenger flights within Canada and international passenger flights to/from Canada, pursuant to the *Canada Transportation Act*, SC 1996, c. 10 and related enactments.
10. WestJet is a large carrier under the provisions of the *APPR*.

The WestJet Initiated Flight Cancellations in June 2024

11. In the month of June 2024, WestJet engaged in collective bargaining with the Aircraft Mechanics Fraternal Association (“**AMFA**”) for the union’s first collective agreement.

12. On June 17, 2024, the AMFA issued a notice under the *Canada Labour Code* to inform WestJet that work stoppage would start 72-hours later on June 20, 2024 at 7 p.m. MDT (the “**First Notice**”). There was no work stoppage before this time.

13. Shortly after the First Notice, WestJet announced on June 18, 2024 that:

In response to WestJet’s request, AMFA issued a 72-hour strike notification, indicating intent for a work stoppage as early as Thursday, June 20 at 7:00 p.m. MT. This 72-hour notice does not mean travel disruption will occur.

[emphasis added]

14. Later on June 18, 2024 WestJet announced that it decided to park some of their aircraft in the next 48-hours resulting in around forty (40) cancellations between June 18 to 19, 2024, impacting approximately 6,500 passengers. The parking of aircraft before work stoppage was a business decision and was within WestJet’s control.

15. At or around 1 p.m. MST on June 19, 2024, WestJet announced that the cancellations were “*in preparation for labour action*” and published a list of flights that would be cancelled on June 19 and 20, 2024.

16. On June 19, 2024, AMFA rescinded the First Notice and work stoppage did not occur in accordance with the First Notice. The parties returned to the bargaining table.

17. On June 25, 2024, the AMFA issued a notice under the *Canada Labour Code* to inform WestJet that work stoppage would start 72-hours later on June 28, 2024 at 5:30 p.m. MDT (the “**Second Notice**”). There was no work stoppage before this time.

18. On June 26, 2024, shortly after the Second Notice, WestJet announced that it has decided to park some of their aircraft in the next 48-hours resulting in approximately twenty-five (25) cancellations between June 27 to June 28, 2024, impacting

approximately 3,300 passengers. The parking of aircraft before work stoppage was a business decision and was within WestJet's control.

19. The parties were unable to reach a collective agreement and a strike started on June 28, 2024 at 5:30 p.m. MDT. A collective agreement was reached a few days later.
20. This proposed class action does not relate to any flight cancellations that occurred after work stoppage pursuant to the Second Notice. This proposed class action relates to all cancellations initiated by WestJet between June 17-20, 2024 and June 25-28, 2024 before any actual work stoppage occurred.
21. The number of flight cancellations affected by WestJet's business decision to park their aircrafts, after receiving the First Notice or Second Notice, is greater than the sixty-five (65) flights that WestJet publicly announced.
22. The actual number of flight cancellations affected by WestJet's business decision is within WestJet's exclusive knowledge and will be further particularized after discovery

The Plaintiff's Circumstances

23. On or about May 27, 2024, the Plaintiff booked a trip to Calgary, Alberta with booking reference FBLGVP as follows: (a) June 14, 2024 from Vancouver to Calgary on WS 122; and (b) June 19, 2024 from Calgary to Vancouver on WS 131.
24. The Plaintiff flew to Calgary on WS 122 on June 14, 2024.
25. On the evening of June 18, 2024, the Plaintiff was informed by email that her return flight to Vancouver was cancelled and that she was rebooked on the next available flight which was an early morning flight on June 20, 2024. As compared to her original flight, this new flight would have resulted in a delay of more than 9 hours.
26. The Plaintiff preferred an afternoon flight and changed to a 1:00 p.m. flight on June 20, 2024.

27. On June 22, 2024, the Plaintiff submitted a claim pursuant to the *APPR* seeking the \$1,000 standardized compensation for inconvenience and reimbursement of out-of-pocket losses due to the delay. As a result of the delay, the Plaintiff lost one day's worth of wages/salaries.

28. On July 5, 2024, WestJet rejected the Plaintiff's claim on the basis that:

Upon review of your reservation, we are unable to approve your claim for compensation as the most significant reason for your flight interruption was due to a strike or work stoppage and outside of WestJet's control.

29. There was no actual strike or work stoppage on June 19, 2024.

30. On July 20, 2024, the Plaintiff responded to WestJet's email indicating that there was no actual strike on the day of her flight. WestJet did not respond.

The Class Members and their Circumstances.

31. The Plaintiff brings this proposed class action on her own behalf and on behalf of:

All persons, residing anywhere in the world, who had a confirmed reservation on a WestJet operated flight scheduled to depart between June 17-20, 2024 or June 25-28, 2024 that was cancelled including, but not limited:

(a) flights that were cancelled, in whole or in part, to park an aircraft before potential work stoppage; **or**

(b) flights where WestJet represented in writing to a passenger of such flights, whether at the time of cancellation or later on, that the flight was cancelled due to strike, lockout, work stoppage, or labour disruption.

(the "**Class**" or "**Class Member(s)**").

32. Based on WestJet's announcements, there are around 10,000 affected passengers.

The actual number of affected passengers are within WestJet's knowledge.

33. The Class Members are in the same or similar circumstances as the Plaintiff;

a. WestJet represented to the Class Members, whether at the time of the cancellation or when the Class Members contacted WestJet to make a

claim, that the flights were cancelled due to a strike, work stoppage, lockout, and/or labour disruption.

- b. WestJet refused to provide the Class Members the standard compensation for inconvenience under section 19 of the *APPR*.
 - c. Class Members suffered out-of-pocket losses including but not limited to: hotel accommodations, meals, cell phone roaming charges, missed prepaid events, costs of alternative transportation, and/or loss of income.
 - d. There was no actual strike or work stoppage during the seventy-two (72) hours immediately after the First Notice or Second Notice.
 - e. WestJet refused to make whole the Class Members that incurred loss from WestJet's business decision to cancel flights.
 - f. For Class Members that did not travel, WestJet has not voluntarily refunded the unused tickets.
34. WestJet sent emails to the Class, at the time of cancellation and thereafter, claiming that the cancellations were due to strike or work stoppage when it was not true. These emails were sent to cause passengers to believe that no compensation is owed.
35. All of the affected passengers are affected by at least three central legal questions that are at the heart of this proposed class proceeding:
- a. Whether decisions to cancel flights after receiving a strike notice but before work stoppage, constitutes a situation beyond control under the *APPR*.
 - b. If the cancellations were not beyond WestJet's control, what are the Class Members' legal entitlements under the *APPR* and/or contract of carriage.
 - c. Even if the cancellations were beyond WestJet's control, for passengers with international flights, whether WestJet is liable for out-of-pocket losses for WestJet's decision to cancel flights after receiving a strike notice.

Part 2: RELIEF SOUGHT

1. The Plaintiff claims, on her own behalf and on behalf of the Class Members the following relief.
2. An order pursuant to applicable provisions of the *Class Proceedings Act*, RSBC 1996, c 50 (“**CPA**”) including, but not limited to, ss. 2, 4 and 5-8:
 - a. certifying this action as a class proceeding;
 - b. defining the class as provided in paragraph 31 of Part 1 above, or other class definition that the Plaintiff may propose and that this Court approves;
 - c. appointing the Plaintiff as the representative plaintiff for the Class;
 - d. specifying that the period for opting-out shall be thirty (30) days;
 - e. deeming the initial service of this Notice of Civil Claim as a sufficient request for compensation under s. 19(3) of the *APPR* for Class Members that do not opt-out;
 - f. specifying the relief sought by the Class is monetary compensation and/or restitution for flights cancelled before work stoppage; and/or
 - g. setting out the common issues as specified in the Plaintiff’s notice of application for class action certification.
3. A declaration that WestJet:
 - a. has breached the terms of the contracts with the Class Members;
 - b. is liable for the loss and/or damages suffered by the Class Members including liability under Article 19 of the *Montreal Convention*;
 - c. is liable to the Class Members for standardized compensation under s. 19 of the *APPR*;

- d. is liable to refund the unused tickets for Class Members that have not travelled; and/or
 - e. breached ss. 52 and 52.01 of the *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**") when WestJet sent e-mails to the Class stating that cancellations were due to strike or work stoppage;
4. An Order for monetary compensation and/or restitution to the Class for:
- a. the standard compensation for inconvenience in s. 19 of the *APPR*;
 - b. reimbursement of all out-of-pocket losses or expenses arising from the flight cancellations that are the subject of this action;
 - c. refund to original payment form for Class Members that did not travel;
 - d. damages for breach of the duty of honest contractual performance;
 - e. damages under s. 171 of the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 [**BPCPA**];
 - f. damages, loss, and all legal and investigation costs under section 36 of the *Competition Act*;
 - g. nominal damages for breach of contract; and/or
 - h. punitive damages;
5. An Order pursuant to s. 29 for the *CPA* for the aggregate recovery of any monetary relief (including standard compensation for inconvenience in s. 19 of the *APPR*, refunds to some Class Members, damages for breach of duty of good faith, nominal damages, and/or punitive damages), and use of any statistical evidence if necessary and permitted, and distribution to the Class.
6. An Order pursuant to s. 27 of the *CPA* directing that the determinations of the Class Members' out-of-pocket losses or expenses be determined in the most expeditious

and just manner, with all necessary directions relating to the procedures to be followed in conducting such determinations.

7. Pursuant to s. 172 of the *BPCPA*:
 - a. a declaration under s. 172(1)(a) of the *BPCPA* that WestJet has engaged in “deceptive acts or practices”;
 - b. an interim injunction under s. 172(1)(b) of the *BPCPA* restraining WestJet from further engaging in “deceptive acts or practices” and in particular to refrain from referring to the flight cancellations between June 17-20, 2024 and June 25-28, 2024 as cancellations due to strike, work stoppage, lockout and/or labour disruption;
 - c. a permanent injunction under s. 172(1)(b) of the *BPCPA* restraining WestJet from engaging in “deceptive acts or practices” and in particular to refrain from referring to any flight cancellations during the 72-hour notice period before a strike or lockout as cancellations due to strike, work stoppage, lockout and/or labour disruption;
 - d. an order under s. 172(3)(c) of the *BPCPA* that WestJet, at its own cost, advertise the particulars of this Court’s judgment and injunction(s) including but not limited to sending an email, fax, or registered mail to notify the Class Members; and/or
 - e. an order under s. 172(3)(a) of the *BPCPA* that WestJet restore monies to the Class Members;
8. An Order pursuant to s. 13 of the *CPA* and/or s. 10 of the *Law and Equity Act* that any action, claim proceeding, and/or complaint filed by a Class Member in any court, tribunal, or regulatory body regarding the subject flight cancellation shall be stayed pending determination of this class proceeding.
9. An Order that WestJet, in communications with a Class Member in respect of the subject matter of this proceeding, shall clearly advise the Class Member of the

existence of this proposed class proceeding.

10. An Order that WestJet pay the costs of administering the plan for distribution of the monetary recovery in this proceeding.

11. An Order for pre-judgment and post-judgment interest.

12. Such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. It is settled law that “[a] party is required to include in the pleading a summary of the material facts, but it is not necessary to plead the legal result of those facts. The pleading party may raise any argument to be made from those facts.”

[Canned Heat Marketing Inc. v. CFM International Inc.](#), 1998 CanLII 6575 (BC SC) at para. 9
[Battrum v. MacKenzie](#), 2008 BCSC 829 at paras. 29-30
[Gill Tech Framing Ltd. v. Gill](#), 2012 BCSC 1913 at para. 256
[MacKinnon v. National Money Mart Company](#), 2007 BCSC 348 at para. 28

2. As such, the legal grounds stated in this section is intended only to be illustrative and not exhaustive. The Plaintiff reserves the right to raise any legal argument from the aforementioned pleaded facts.

British Columbia Court’s Jurisdiction over WestJet

3. WestJet is ordinarily resident in the province of British Columbia, having nominated an agent in British Columbia upon whom process may be served generally and also having a place of business in the province of British Columbia.

[Court Jurisdiction and Proceedings Transfer Act](#), SBC 2003, c. 28, s. 7(b)(ii) and (c).

4. The courts in British Columbia have territorial competence over a person that is ordinarily resident in British Columbia.

[Court Jurisdiction and Proceedings Transfer Act](#), SBC 2003, c. 28, s. 3(d).

5. This Court has certified class actions involving airline passengers that are subject to the same or similar tariff terms, irrespective of the passengers’ residency.

[Bergen v WestJet Airlines Ltd.](#), 2021 BCSC 12 at paras. 57-60; upheld in [Trotman v. WestJet Airlines Ltd.](#), 2022 BCCA 22

Standardized Compensation for Inconvenience under Section 19 of the APPR

6. Section 19 of the *APPR* provides that compensation for inconvenience be paid to passengers that experience a flight disruption.
7. Under the *APPR*, flight disruptions are categorized in three ways: (a) situations outside carrier's control; (b) situations within carrier's control but required for safety; and (c) situations inside carrier's control.
8. The Defendant bears the burden to proving the reason for cancelling a flight.

*44. The APPR does not set out a procedural framework for matters to be adjudicated under it, but because the only party with knowledge of the reasons for and circumstances surrounding a cancellation is the Defendant, fairness requires **the burden to shift to the Defendant to demonstrate, through evidence, that it was justified in cancelling the flight and denying compensation under the APPR.** It would not be fair, especially in interpreting legislation that is designed to provide consumer protection for airline passengers, for a claimant to be required prove anything about the reasons for a cancellation.*

[Geddes v. Air Canada](#), 2021 NSSM 27 at para. 44, upheld [Geddes v. Air Canada](#), 2022 NSSC 49 [Welsh v. Flair Airlines Ltd.](#), 2023 BCCRT 107 at para. 18 see also s. 85.07(2) of the [Canada Transportation Act](#)

9. For large carriers, such as WestJet, the standardized compensation would be:
 - a. \$400 for Class Members that are delayed more than three hours but less than six hours;
 - b. \$700 for Class Members that are delayed more than six hours but less than nine hours;
 - c. \$1,000 for Class Members that are delayed more than nine hours; and
 - d. \$400 for Class Members that choose to obtain a refund and not travel with that airline.
10. The length of time any Class Member was delayed, or if the Class Member elected a refund, can be determined by reference to WestJet's records.

Compensation and/or Restitution for Out-of-Pocket Losses or Expenses

11. For cancellations within WestJet's control, s. 14 of the *APPR* provides that WestJet would be liable for meals, a means of communication, and hotel accommodations.
12. The *APPR* applies to both domestic and international flights.
13. In addition to the *APPR*, Article 19 of the *Montreal Convention* applies to international flights and provides that the airline is liable for all damages due to the delay:

Article 19 – Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

[emphasis added]

14. Liability under Article 19 of the *Montreal Convention* does not use the three categorizations in the *APPR*. It is possible for a cancellation beyond the air carrier's control under the *APPR* to still attract liability under the *Montreal Convention*.

[*Boyd v. WestJet Airlines Ltd.*](#), 2024 BCCRT 640 (judicial review to BCSC pending)

Refund for Class Members that Elect Not to Travel

15. Irrespective of whether the cancellations are situations within WestJet's control or not, the Class Members that elect not to travel are entitled to a refund for service not rendered. The refund must be made to the original form of payment.
16. For domestic and international flights, respectively, sections 107(1)(n)(iii) and 122(c)(xii) of the *Air Transport Regulations* requires WestJet to state in its tariffs the terms for refund for services purchased but not used, whether in whole or in part,

either as a result of the Class Members' unwillingness or inability to continue or WestJet's inability to provide the service for any reason.

17. The *APPR* also stipulates that a refund is owed to Class Members.

Breach of Sections 52 and 52.01 of the *Competition Act*

18. WestJet's emails to the Class Members, at the time of the cancellation or at a later date in response to a Class Members' request for compensation, asserting that the cancellations were due to work stoppage or strike was not true. Such representations are false and misleading in a material respect and was made knowingly or recklessly.

19. WestJet made the false and misleading representation to further its own business interest (i.e., avoiding payment to Class Members).

20. WestJet has breached sections 52 and/or 52.01 of the *Competition Act*.

21. The Class Members are entitled to recover under section 36 of the *Competition Act*.

WestJet's Representations are a Deceptive Act or Practice under the *BPCPA*

22. WestJet's representations to the Class Members that their flight cancellations were due to strike, work stoppage, lockout, and/or labour disruption is a "deceptive act or practice" that has the capability, tendency, or effect of deceiving or misleading passengers about the true reason for those cancellations.

23. WestJet bears the burden of proving that it has not engaged in a deceptive act or practice.

[*BPCPA*](#), s. 5(2).

24. The Class Members have a right to seek damages against WestJet under:

- a. section 171 of the *BPCPA*;
- b. the *Montreal Convention*;
- c. breach of contract including the contractual terms being the incorporated provisions of the *APPR*; and/or
- d. breach of the duty of honest contractual performance ([C.M. Callow Inc. v. Zollinger](#), 2020 SCC 45),

25. The Class Members have an interest in the funds retained by WestJet when WestJet failed to fully compensate the Class Members. As a result, this Court could make a restoration order under s. 172(3)(a) of the *BPCPA* to restore the monies that are owing to the Class Members.

[Ileman v. Rogers Communications Inc.](#), 2015 BCCA 260 at para. 60.


Plaintiff's address for service: Evolink Law Group
ATTN: Simon Lin
237-4388 Still Creek Drive
Burnaby, BC V5C 6C6

Email address for service: simonlin@evolinklaw.com

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
Vancouver, BC

Dated: August 12, 2024



Signature of lawyer for plaintiff, Simon Lin

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A class action for breach of contract and/or breach of the *Air Passenger Protection Regulations* and/or *Montreal Convention*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- Aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

1. *Court Order Interest Act*, R.S.B.C. 1996, c. 79
2. *Air Passenger Protection Regulations*, SOR/2019-150
3. *Carriage by Air Act*, R.S.C. 1985, c. C-26