



Court File No. **VLC-S-S-250901**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**RICHARD ZELLER, LILIANE BERTRAND, and KYLE
BRANDSTAETTER**

PLAINTIFFS

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 plaintiffs 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 plaintiffs,

- (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 PLAINTIFFS

Part 1: STATEMENT OF FACTS

Overview of this Action

1. This is a proposed class action on behalf of passengers affected by flight cancellations after actual work stoppage by the Aircraft Mechanics Fraternal Association (the “**AMFA**”) in June/July 2024. WestJet’s published statements state that around 1,100 flights were cancelled, affecting more than 100,000 passengers.
2. There is another proposed class proceeding before this Court (*Fox v. WestJet Airlines Ltd.*, VLC-S-S-244546) in relation to the AMFA strike that relate to cancellations of flights scheduled to depart prior to actual work stoppage by the AMFA. The present proposed class action involves cancellations after actual work stoppage by the AMFA. The proposed class definition in these two proposed class actions do not overlap.
3. The Plaintiffs are seeking, on behalf of themselves and the class, compensation for breach of the *Air Passenger Protection Regulations* (the “**APPR**”) or breach of the same *APPR* obligations incorporated into WestJet’s contract of carriage; damages for breach of section 52.01 of the *Competition Act*, RSC 1985, c. C-34 (the “**Competition Act**”) or BC’s provincial consumer protection law; and/or damages for

“delay” in article 19 of the Schedule VI the *Convention for the Unification of Certain Rules for International Carriage by Air* in the *Carriage by Air Act*, RSC 1985, c. C-26, (“**Montreal Convention**”) including reimbursement of out-of-pocket expenses. Further, or in the alternative, the Plaintiffs are seeking, on behalf of themselves and the class, damages for breach of contract including nominal or punitive damages.

4. Section 86.11(4) of the *Canada Transportation Act* provides that the *APPR* obligations are deemed to form part of the contracts of carriage between WestJet and its passengers, and therefore can be enforced as contractual obligations.
5. WestJet systematically failed to rebook the affected passengers on other airlines, as WestJet was legally required to. WestJet caused the affected passengers to be stranded and caused those passengers to incur out-of-pocket expenses or losses.

The Parties

6. The Plaintiff, Richard Zeller, is a resident of Alberta, and has an address for service in this proceeding at 237-4388 Still Creek Drive, Burnaby, B.C., V5C 6C6.
7. The Plaintiff, Liliane Bertrand, is a resident of British Columbia, and has an address for service in this proceeding at 237-4388 Still Creek Drive, Burnaby, B.C., V5C 6C6.
8. The Plaintiff, Kyle Brandstaetter, is a resident of British Columbia, and has an address for service in this proceeding at 237-4388 Still Creek Drive, Burnaby, B.C., V5C 6C6.
9. 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.
10. 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 is a large carrier under the *APPR*.

The WestJet Flight Cancellations After Commencement of the AMFA Strike

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. 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.
13. For greater certainty, the Class does not include passengers on a flight that was originally scheduled to depart before June 28, 2024 at 5:30 p.m. MDT (i.e., the time of actual work stoppage).
14. Based on WestJet’s announcements, there are approximately 1,171 flights that were cancelled, affecting more than 100,000 passengers. The flight numbers of the affected flights, and the actual number of affected passengers for those flights, are within WestJet’s exclusive knowledge.
15. After the work stoppage, passengers were stranded and WestJet failed to re-book those passengers on the flights of other carriers when WestJet was unable to transport the passenger to their destinations using WestJet flights. The stranded passengers incurred expenses for last-minute hotel bookings, paying out-of-pocket to transport themselves to their destination, incurred additional meal expenses and cell phone roaming costs, and lost income from the delay in returning home.

The Plaintiff, Richard Zeller’s Circumstances

16. 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.
17. The Plaintiff Zeller had a confirmed itinerary for a return trip from Calgary to Chicago:
 - a. On Friday June 28, 2024, an outgoing flight on WS1588 from Calgary, Alberta to Chicago, Illinois.

- b. On Monday July 1, 2024, an incoming flight on WS1589 from Chicago, Illinois to Calgary, Alberta.

18. The Plaintiff Zeller was travelling on the same itinerary with his wife and two children.

19. WestJet transported the Plaintiff Zeller and his family to Chicago on June 28, 2024.

20. On June 30, 2024 at 4:55 p.m. MT, WestJet emailed the Plaintiff Zeller to check-in for his flight to return to Calgary scheduled for the next day.

21. On or about June 30, 2024 at 10:30 p.m. MT, WestJet confirmed that the AMFA had withdrawn their strike action.

22. On June 30, 2024 at 11:07 p.m. MT, WestJet emailed the Plaintiff Zeller as follows:

We understand that this cancellation will impact your plans and apologize for any inconvenience this disruption may cause. WestJet is attempting to secure hotel accommodation however, due to limited availability, we are unable to secure the number of rooms needed.

...

*If you need accommodations, please book your own hotel room, and WestJet will reimburse you up to **\$150.00** CAD for one night per adult listed on the reservation. In-room movie costs, tips/gratuities and long-distance telephone charges will be excluded.*

...

Please keep your receipts and [submit a request for reimbursement](#).

...

23. On June 30, 2024 at 11:08 p.m. MT, WestJet emailed the Plaintiff Zeller as follows:

One or more of the flights on your upcoming booking (EKMCXB) have been impacted due to a strike or work stoppage which may result in a change to your itinerary.

Situations surrounding flight disruptions can be complex and have multiple causes. This reason may change as the situation evolves, new issues arise, or new information is received.

Our teams are working diligently to find a new flight option for you. Most of our guests receive their new flight itinerary within one hour. In rare cases, the re-accommodation may take longer. If you don't receive a new itinerary or update within two hours of receiving this email, please contact us

....

24. On July 1, 2024 at 2:34 a.m. MT, WestJet emailed the Plaintiff Zeller as follows:

Your upcoming flight was impacted by a flight cancellation and we have sent a separate email detailing the reason why. Unfortunately, we do not have another WestJet or partner airline flight to offer within 48 hours of your original departure. As a next step, you can use our online self-serve [Manage Trips](#) tool or contact us via your preferred method to view alternate flight options or request a refund. For bookings made with a travel agent, online booking agency, or corporate travel arranger, please contact them directly to discuss your options for alternate flights, refund or [contact WestJet](#) directly.

We understand that this cancellation will impact your plans and apologize for any inconvenience this disruption may cause.

WestJet Vacations

For changes or cancellations to WestJet Vacation bookings, please contact your travel agent or [contact WestJet](#) directly to discuss cancellation guidelines for the remainder of your package (i.e. hotels and transfers).

Sunwing Vacations

For changes and cancellations to Sunwing Vacation bookings, please contact Sunwing directly to discuss cancellation guidelines for the remainder of your package (i.e. hotels and transfers) and/or to make alternate travel plans.

For your reference, your reservation code is: **EKMCXB**

Change or Cancel your reservation

Please use our online Manage Trips tool and follow the step-by-step directions to view alternate flight options, request a refund or contact us via your preferred method.

[Manage Trips](#)

Contact Us

If you are unable to complete your itinerary updates online, one of our agents will be happy to assist you.

[Contact us](#)

You may be entitled to [compensation and standards of treatment](#) for this disruption to your travel plans. For more information about our guest commitment and your passenger rights, visit [westjet.com/guestrights](https://www.westjet.com/guestrights) or contact us via your preferred method.

25. WestJet operated WS1589 from Chicago, Illinois to Calgary, Alberta on both July 2, 2024 and July 3, 2024, with available seats, but failed to rebook the Plaintiff Zeller and his family on these flights, or any other flight pairs that would connect them from Chicago to Calgary.

26. WestJet failed to rebook the Plaintiff Zeller and his family on:

- a. any WestJet operated flights;
- b. any flights operated by carriers for which WestJet has a commercial agreement; or
- c. any flights operated by any other carriers for which WestJet does not have a commercial agreement.

27. The Plaintiff Zeller had no other option and had to reserve, out of his own pocket at a cost of \$8,425.20 CAD, last-minute economy tickets with United Airlines and Air Canada in order to return home with his spouse and two children:

- a. On July 3, 2024, UA1958 from Chicago, Illinois to Vancouver, B.C.
- b. On July 3, 2024, AC220 from Vancouver, B.C. to Calgary, Alberta.

28. The Plaintiff Zeller also incurred the following additional out-of-pocket expenses:

- a. Hotel expenses in the amount of USD \$954.44 (CAD \$1,514.92) and USD \$801.92 (CAD \$1,638.43);
- b. Costs for meals in Chicago and Vancouver after WestJet informed the Plaintiff that their return flight was cancelled;
- c. Additional costs for parking the Plaintiff's vehicle at the Calgary airport; and
- d. Additional costs for boarding his pets for the additional two-days in Chicago;

29. The Plaintiff Zeller was able to work remotely and did not lose income but his spouse had to take two additional vacation days when his family was stranded in Chicago.

The Plaintiff, Liliane Bertrand's Circumstances

30. The Plaintiff Bertrand has a confirmed itinerary for travel from St. John's, Newfoundland to Vancouver, B.C. as follows:

- a. On Sunday, June 30, 2024, a flight on WS201 from St. John's, Newfoundland to Edmonton, Alberta; and
 - b. On the same day, a connecting flight WS169 from Edmonton, Alberta to Vancouver, B.C.
31. On June 29, 2024 at 12:21 p.m. PST, WestJet informed the Plaintiff Bertrand that the WS201 flight from St. John's Newfoundland to Edmonton, Alberta was cancelled.
32. WestJet initially failed to provide any alternative flights. After significant efforts, WestJet provided the Plaintiff Bertrand a flight on WS503 from St. Johns, Newfoundland to Calgary, Alberta but without any further connecting flight to her final destination in Vancouver, B.C.
33. WestJet abandoned the Plaintiff Bertrand in Calgary, Alberta, nearly 1000 km away from her final destination of Vancouver, B.C.
34. The Plaintiff Bertrand had no option but to book a last-minute ticket on Flair airlines the following day at a cost of \$731.25. The Plaintiff also incurred out-of-pocket expenses for a hotel, additional meal expenses, parking, and taxi expenses between the airport and hotel. Some, but not all, of these out-of-pocket expenses were covered by the Plaintiff Bertrand's trip interruption insurance.
35. WestJet refused to provide a refund for its failure to transport the Plaintiff Bertrand to her final destination.

The Plaintiff, Kyle Brandstaetter's Circumstances

36. The Plaintiff Brandstaetter and his wife have a confirmed itinerary for travel from Vancouver, B.C. to Puerto Vallarta, Mexico as follows:
- a. On June 26, 2024 departing from Vancouver, B.C. to Puerto Vallarta, Mexico on WS2152.

- b. On June 30, 2024 returning from Puerto Vallarta, Mexico to Vancouver, B.C. on WS2157.

37. On June 29, 2024 at 3:28 p.m., the Plaintiff Brandstaetter and his wife was checked in for flight WS2157 and a boarding pass was delivered to them.

38. On June 29, 2024 at around 9 p.m., the Plaintiff Brandstaetter was informed via email that:

One or more of the flights on your upcoming booking (LXAIUP) have been impacted [due to a strike or work stoppage](#) which may result in a change to your itinerary.

Situations surrounding flight disruptions can be complex and have multiple causes. This reason may change as the situation evolves, new issues arise, or new information is received.

Our teams are working diligently to find a new flight option for you. Most of our guests receive their new flight itinerary within one hour. In rare cases, the re-accommodation may take longer. If you don't receive a new itinerary or update within two hours of receiving this email, please contact us.

39. Later on June 29, 2024 at around 10:52 p.m., the Plaintiff Brandstaetter and his wife received a further email from WestJet indicating that:

Your upcoming flight was impacted by a flight cancellation and we have sent a separate email detailing the reason why. Unfortunately, we do not have another WestJet or partner airline flight to offer within 48 hours of your original departure. As a next step, you can use our online self-serve [Manage Trips](#) tool or contact us via your preferred method to view alternate flight options or request a refund. For bookings made with a travel agent, online booking agency, or corporate travel arranger, please contact them directly to discuss your options for alternate flights, refund or [contact WestJet](#) directly.

We understand that this cancellation will impact your plans and apologize for any inconvenience this disruption may cause.

WestJet Vacations

For changes or cancellations to WestJet Vacation bookings, please contact your travel agent or [contact WestJet](#) directly to discuss cancellation guidelines for the remainder of your package (i.e. hotels and transfers).

40. After receiving WestJet's email and WestJet being unreachable over the phone, the Plaintiff Brandstaetter was left with no other option and booked a return flight home with Alaska Airlines for himself and his wife as follows:

- a. On June 30, 2024 from Puerto Vallarta, Mexico to San Jose, California on Alaska Airlines 1333.
- b. On June 30, 2024 from San Jose, California to Seattle, Washington on Alaska Airlines 1047.
- c. On June 30, 2024 from Seattle, Washington to Vancouver, British Columbia on Alaska Airlines 2068.

41. The Plaintiff Brandstaetter paid USD\$1,420.90/person (CAD\$2,002.86/person) out-of-pocket for his flight bookings with Alaska Airlines, for a total of CAD\$4,005.72.

42. On June 30, 2024, the Plaintiff Brandstaetter demanded that WestJet reimburse him and his wife for the additional expense incurred with Alaska Airlines.

43. Instead, WestJet unilaterally initiated a partial refund of the Plaintiff Brandstaetter's and his wife's return tickets and asserted that WestJet was not required to reimburse them out-of-pocket expenses.

The Class Members and their Circumstances

44. The Plaintiffs brings this proposed class action on their own behalf and on behalf of:

All persons, anywhere in the world, that had a confirmed reservation on one or more of the 1,171 WestJet operated flights listed at <https://www.westjet.com/en-ca/news/2024/service-update--westjet-works-to-restore-full-operations-followi> that was scheduled to depart on or after June 28, 2024 at 7:30 p.m. ET and before the end of day on July 4, 2024,

excluding persons on a domestic reservation that WestJet had re-booked on WestJet operated flight(s) to the final destination and scheduled to depart within 48-hours of the original departure time, and the new flight(s) was not cancelled for reason of a strike, work stoppage, or labour disruption.

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

45. The Class Members are in the same or similar circumstances as the Plaintiffs;

- a. WestJet has acknowledged that all of the flights listed in <https://www.westjet.com/en-ca/news/2024/service-update--westjet-works-to-restore-full-operations-followi> were "*in relation to the labour events,*"
- b. WestJet has a policy to not re-book passengers on flights of competitors, contrary to s. 18(1.1)(a) of the *APPR*;
- c. WestJet systematically failed to re-book the Class Members on a flight within forty-eight hours of the original departure time, or any flight thereafter;
- d. WestJet sent mass emails to the Class Members:
 - i. admitting WestJet "*do[es] not have another WestJet or partner airline flight to offer within 48 hours of your original departure,*" and
 - ii. misrepresenting that the Class Members' only other option was to obtain a refund of the itinerary;
- e. WestJet also sent mass emails to the Class Members accepting liability or responsibility for the cancelled flight and at the same time purporting to cap the Class Members' hotel expenses at \$150CAD per night;
- f. Class Members suffered out-of-pocket losses including but not limited to: accommodations, meals, roaming charges, missed prepaid events, costs of alternative transportation, and/or loss of income or vacation days;
- g. WestJet unilaterally initiated partial refunds for the flights that WestJet had cancelled to avoid liability for the Class Members' out-of-pocket expenses; and
- h. Class Members, such as the Plaintiffs, used WestJet's services for non-business purposes.

46. WestJet designed the mass emails to cause the Class Members to believe that their only remedy was a refund, and/or to mislead Class Members to accept a refund, in order for WestJet to avoid liability for WestJet's breach of their *APPR* and/or contractual obligations.

47. WestJet's failure to rebook the Class Members, leaving them stranded for days, was WestJet's business decision to minimize costs including but not limited to:

- a. lowering costs for having insufficient customer service personnel to secure alternative travel and/or accommodations for the Class Members;
- b. avoiding the legal obligation to reimburse out-of-pocket expenses incurred by Class Members; and/or
- c. avoiding the legal obligation to fulfill WestJet's obligation to transport the Class Member to their destination.

48. WestJet's conduct was high-handed and intentional, and at a time where the Class Members were vulnerable and likely stranded in an unfamiliar location, and would warrant awarding of punitive damages.

Part 2: RELIEF SOUGHT

49. The Plaintiffs claim, on their own behalf and on behalf of the Class Members the following relief.
50. 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 44 of Part 1 above, or other class definition that the Plaintiffs may propose and that this Court approves;
 - c. appointing the Plaintiffs as the representative plaintiffs for the Class;
 - d. specifying that the period for opting-out shall be thirty (30) days;
 - e. specifying the relief sought by the Class is monetary compensation and/or restitution for flights cancelled; and/or
 - f. setting out the common issues as specified in the Plaintiffs’ notice of application for class action certification.
51. 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.
52. In respect of the *APPR* or the *APPR* obligations that are incorporated into the contract of carriage:
- a. a declaration that WestJet breached ss. 5 and/or 13 of the *APPR* in failing to inform the Class Members of their right to be transported, at WestJet’s costs on any carrier, if WestJet is unable to transport the Class Members within 48-hours of the original departure time;

- b. a declaration that WestJet breached s. 18(1) of the *APPR* in failing to rebook the Class Members on another WestJet operated flight or a flight operated by a carrier for which WestJet has a commercial agreement;
- c. a declaration that WestJet breached s. 18(1.1)(a) of the *APPR* in failing to re-book the Class Members on the flight of another carrier;
- d. a declaration that WestJet failed to perform the contract of carriage honestly, contrary to the duty of honest contractual performance;
- e. nominal damages for WestJet's breach of the *APPR* obligations in the amount of \$5,000 per Class Member; and/or
- f. in addition, punitive damages in the amount of \$1,000 to the extent that punitive damages is not precluded by the *Montreal Convention*.

53. Pursuant to the *Competition Act*:

- a. a declaration that WestJet breached s. 52.01 in misrepresenting that the Class Members did not have the right to be transported, at WestJet's costs, on any carrier if WestJet is unable to transport the Class Members within 48-hours of the original departure time;
- b. damages and/or loss, and costs of investigation and prosecution of this proceeding, pursuant to section 36 of the *Competition Act*, for WestJet's contravention of section 52.01 of the *Competition Act*.

54. 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 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

- c. an order under s. 172(3)(a) of the *BPCPA* that WestJet restore monies to the Class Members.

55. For Class Members on international travel, under the *Montreal Convention*, damages under art. 19 for the delay including but not limited to:

- a. out-of-pocket expenses incurred for accommodations,
- b. out-of-pocket expenses incurred for transport on an alternative carrier and/or alternative mode of transportation,
- c. missed prepaid events,
- d. roaming costs, and/or
- e. loss of income or vacation days.

56. Further, or in the alternative, breach of the contract of carriage:

- a. contractual damages for WestJet's fundamental breach and/or non-performance of some or all of the contract of carriage;
- b. alternatively, nominal damages; and/or
- c. punitive damages.

57. An Order pursuant to s. 29 for the *CPA* for the aggregate recovery of any monetary relief, and use of any statistical evidence if necessary and permitted, and distribution to the Class.

58. 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.

59. 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.

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

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

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

Part 3: LEGAL BASIS

British Columbia Court's Jurisdiction over WestJet

1. 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).

2. 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).

3. 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

WestJet's Breach of the APPR and/or the Contract of Carriage

4. Section 86.11(4) of the *Canada Transportation Act* provides that the APPR obligations are deemed to form part of the contracts of carriage between WestJet and its passengers. As such, WestJet's obligations under the APPR can be enforced directly, or as a breach of contractual obligations.
5. WestJet's conduct and dealings with the Class Members give rise to at least three (3) breaches of the APPR and/or the incorporated contractual terms:
 - a. Sections 5 and 13 of the APPR in failing to inform the Class Members of the compensation the Class Members may be entitled to; the standard of treatment for them; and the recourse available against WestJet;

- b. Section 18(1) of the *APPR* in failing to rebook the Class Members on another WestJet operated flight or a flight operated by a carrier for which WestJet has a commercial agreement; and/or
 - c. Section 18(1.1)(a) of the *APPR* in failing to re-book the Class Members on the flight of another carrier.
6. WestJet's breach of the aforementioned *APPR* obligations is a breach of the contracts of carriage between the Class Members and the Class Members are entitled to seek damages for the breach of the contract of carriage.
 7. WestJet's breach of the aforementioned *APPR* obligations and attempts to avoid the *APPR* obligations or its own contractual obligations is also contrary to the duty to perform contractual obligations honestly, and also gives rise to a claim for damages.
 8. WestJet's unilateral initiation of partial refunds is also contrary to the duty to perform contractual obligations honestly.

WestJet's Breach of the Competition Act

9. Section 52.01(2) of the *Competition Act* provides that:

No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly send or cause to be sent in an electronic message a representation that is false or misleading in a material respect.

10. WestJet's template emails to the Class Members were:

- a. "electronic messages" within the meaning of the *Competition Act*;
- b. sent knowingly or recklessly to advance WestJet's business interest in avoiding WestJet's obligations under the *APPR* towards the Class;
- c. contained representation(s) that gave the reader the general impression that the only available recourse is a refund of the itinerary; and

- d. the representation(s) were materially false or misleading, in that WestJet had the obligation to re-book passengers including on competitor airlines for which WestJet does not have a commercial agreement with.

11. WestJet's false or misleading representation(s) caused Class Members to believe that WestJet is not liable for any compensation or out-of-pocket expenses. WestJet's false or misleading representation(s) also caused Class Members to receive a refund, despite having incurred damages, loss, or out-of-pocket expenses for the flight cancellations that WestJet would have been legally required to pay.

12. The Class Members suffered damages or loss in an amount equivalent to the damages, loss, or out-of-pocket expenses for the flight cancellations that WestJet would have been legally required to pay.

13. The Class Members are entitled to seek damages or loss under s. 36 of the *Competition Act*, including all investigation and legal costs.

WestJet's Breach of the *Business Practices and Consumer Protection Act*

14. WestJet's template emails and conduct have the tendency to cause the Class Members to believe that the Class Members' remedy is limited to a refund of the airfare paid only, and constitutes a "deceptive act or practice."

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

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

16. The Class Members suffered damages or loss in an amount equivalent to the damages, loss, or out-of-pocket expenses for the flight cancellations that WestJet would have been legally required to pay.

17. 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).

18. 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.

WestJet's Breach of Article 19 of the *Montreal Convention*

19. The *APPR* applies to both domestic and international flights.

20. In addition to the *APPR*, Article 19 of the *Montreal Convention* applies to international flights and imposes presumptive liability on the air carrier for delays:

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.

[International Air Transport Association v. Canada \(Transportation Agency\)](#), 2024 SCC 30 at para. 33

21. 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)

WestJet's Breach of the Contracts of Carriage

22. 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.
23. 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.
24. The *APPR* also stipulates that a refund is owed to Class Members.
25. Furthermore, WestJet's failure to transport Class Members to their final destinations would itself be a breach of the contracts of carriage.
26. Class Members are entitled to claim contractual damages, nominal damages, and/or punitive damages.

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 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: February 4, 2025



Signature of lawyer for Plaintiffs
 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