DISPUTE NO. SC-2023-007669

IN THE CIVIL RESOLUTIONS TRIBUNAL

BETWEEN:

PAUL DAVID RESHAUR

APPLICANT

AND:

WESTJET AIRLINES LTD.

RESPONDENT

SUBMISSIONS OF THE RESPONDENT

Background

1. Paul David Reshaur (the "**Applicant**") seeks compensation pursuant to the *Air Passenger Protection Regulations*, SOR/2019-150 (the "**APPR**") and the Montreal Convention following an international delay in December 2022.

2. The Applicant and Respondent provided written final submissions, following which a Tribunal Member was assigned.

3. On or about November 6, 2024, the Tribunal Member requested submissions regarding whether the CRT has jurisdiction to resolve claims for standardized compensation amounts provided for in the APPR, and in particular:

   (a) Does an APPR claim fall within the CRT's jurisdiction over claims for damages?

      (i) Does the word "damages" have a broader meaning in the *Civil Resolution Tribunal Act*, SBC 2012, c 25 (the "**CRTA**") than the Supreme Court of Canada set out in *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 ("***IATA***")?

      (ii) Is APPR compensation "contractual damages" because the APPR's terms are incorporated into WestJet's contracts with its customer?

   (b) Does an APPR claim fall within the CRT's jurisdiction over claims for debt?

4. WestJet submits that a claim for APPR compensation is clearly not a claim "in the nature of" damages for the reasons of the courts in *IATA*.

5. If APPR statutory entitlements could be considered to be in the nature of a debt claim pursuant to the CRTA, WestJet submits that the CRT has no jurisdiction because Parliament intended that the Canadian Transportation Agency (the "**Agency**") have exclusive jurisdiction over such claims and provided a comprehensive administrative process under which these statutorily-created rights are enforced by the Agency. In the further alternative, the CRT ought to decline jurisdiction and defer to the Agency, a specialized tribunal.

The Air Passenger Protection Regulations

6. The Agency is a regulator and quasi-judicial tribunal. It is empowered by its enabling statute the *Canada Transportation Act*, S.C.1996, c. 10 (the "**CTA**"), to develop and apply rules that establish the rights and responsibilities of transportation service providers (including airlines) and users.

7. In 2014, the Minister of Transport launched a review of the CTA. The result of this review was a Report tabled in Parliament on February 25, 2016.[1] It described a suboptimal transportation system for "consumers and regulators alike",[2] and recommended that the government enhance passenger rights.

8. In May 2017, the Minister tabled Bill C-49 which mandated the Agency to develop new regulations enhancing air passenger rights in Canada. Parliament subsequently enacted the *Transportation Modernization Act*, S.C. 2018, c. 10, (the "**TMA**") which amended the CTA to include s. 86.11. This new provision required the Agency to make regulations in relation to commercial air travel.

9. The Agency then launched a consultation process to inform the development of the new air passenger protection regulations.[3] The Agency considered the results of the consultation process, as well as air passenger protection regimes in the European Union and United States, and the regime provided for in the *Montreal Convention*,[4] which is an international treaty transformed into Canadian domestic law through the *Carriage By Air Act*, R.S.C. 1985, c. C-26.

10. The proposed regulations were published in Part 1 of the Canada Gazette in December 2018 and were approved by the Governor in Council on May 21, 2019.

11. The APPR established obligations for carriers to provide specific information (s. 13), standards of treatment (s. 14), rebooking or refunds (s. 17 and s. 18), and standardized compensation amounts for inconvenience (s. 19 and s. 20) in circumstances determined to be within carrier control pursuant to s. 12.

12. The amount of standardized compensation available to a passenger depends on particular circumstances including the underlying cause of the travel interruption, the length of delay, and whether the carrier is a "small" or "large" carrier.

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[1] Canada Transportation Act Review, *Pathways: Connecting Canada's Transportation System to the World*, Vol. 1 (Ottawa: Department of Transport, 2015).
[2] *Ibid* at p. 203.
[3] Canadian Transportation Agency, *Air Passenger Protection Regulations Consultations: What We Heard* (Ottawa: Canadian Transportation Agency, 2018 (*Air Passenger Protection Regulations Consultations*)).
[4] *Ibid* at p. 2.

13. The amount of compensation ranges from $125 CAD to $2,400 CAD and is only available where the flight disruption is due to situations within the carrier's control.

14. Pursuant s. 86.11(4) of the CTA, the obligations flowing from the APPR are deemed to form part of the terms and conditions set out in the carrier's tariff, insofar as they are more advantageous than the terms and conditions of carriage already provided for in the carrier's tariff.

15. Where a carrier fails to comply with obligations set out in the APPR, the CTA provides that passengers may file a complaint with the Agency, which is tasked with determining whether the carrier failed to uphold its obligations. If found to not have complied with its obligations, carriers could be subjected to the Agency's corrective measures including an order to pay compensation under the APPR and administrative financial penalties under s. 22.

16. The APPR came into force on July 15, 2019, with the exception of ss. 14, 19, 22, 35 and 36, which came into force on December 15, 2019.

Applicable Decisions from the Federal Court of Appeal and Supreme Court of Canada

17. The International Air Transport Association ("**IATA**") and other parties filed a motion under s. 41 of the CTA before the Federal Court of Appeal for leave to appeal in respect of a challenge to the APPR.

18. The basis of this challenge was that the standardized compensation set out in the APPR contravened Canada's international legal obligations set out in the Montreal Convention. In particular, Article 29 of the Montreal Convention sets out the basis of permissible claims as follows:

> In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.
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> [Emphasis added].

19. In essence, claims for non-compensatory damages, whether based in breach of contract, tort, or otherwise, are strictly precluded in circumstances of international travel. As the APPR provide for non-compensatory compensation, IATA and other parties took the position that s. 19 and s. 20 contravened the aforementioned obligation.

20. The Federal Court of Appeal issued its decision in *International Air Transport Association v. Canadian Transportation Agency*, 2022 FCA 211 on December 6, 2022 (the "**FCA Decision**").

21. The FCA Decision noted at para. 92 that:

> The Agency has various enforcement and oversight powers with respect to its regulations … and may also sanction the contravention of its regulations with administrative monetary penalties…These powers are not available under the *Carriage by Air Act*.

22. It is noted that the Montreal Convention aims to address individualized damages. In contrast, the APPR compensation to which a passenger is entitled is fixed by the APPR and is "the same for all passengers on a particular flight, and it is payable as soon as certain objective conditions are met".[5]

23. Further, it confirms that APPR compensation is meant to "compensate for the inconvenience that delay causes, in and of itself and independently of any demonstrable loss due to a particular situation."[6]

24. The FCA Decision determined that claims for compensation pursuant to the APPR were not claims for damages, contractual or otherwise:

> [132] It appears to me, therefore, that the minimum compensation scheme set out in the CTA and the Regulations is markedly different from an action for damages. Not only is it based on a form of standardized and uniform compensation with a view to providing passengers with clear and transparent information and protection, and to avoiding the haphazard application of the various tariffs applicable to the carriers, but it is also enforced through an administrative mechanism rather than through an action for damages: see, by way of analogy, *Brake v. PJ-M2R Restaurant Inc.*, 2017 ONCA 402, 413 D.L.R. (4th) 284 at paras. 109-119. Such a scheme provides benefits to certain persons subject to objective conditions which are independent of any cause of action a person may have. Those benefits are not intended to diminish an injured person's damage claim, to which the usual principles of causation, remoteness and mitigation will apply.

25. IATA appealed the FCA Decision to the Supreme Court of Canada which granted leave and rendered its decision *in International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30, on October 4, 2024 (the "**SCC Decision**").

26. The SCC Decision confirms at para. 4 that the APPR "create statutory entitlements as part of a consumer protection scheme that operates irrespective of the harm (if any) suffered by the claimant."

27. At para. 90, Justice Rowe writing for the Court confirms that APPR claims are not claims for damages, but are rather claims for "statutory entitlements".

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[5] FCA Decision, para. 123.
[6] *Ibid.*

28. The SCC Decision finds, *intra alia*, that the APPR do not give rise to liability that is pre-empted by Article 29 of the Montreal Convention, and do not conflict with the Montreal Convention. The appeal was ultimately dismissed.

A. Does an APPR claim fall within the CRT's jurisdiction over claims for damages?

29. The FCA Decision sets out, and SCC Decision confirms, that claims pursuant to the APPR are for statutory entitlements and not damages. As such, APPR claims do not fall within the CRT's jurisdiction over claims for damages.

(i) Does the word "damages" have a broader meaning in the CRTA than the Supreme Court of Canada set out in SCC Decision?

30. WestJet submits that the word "damages" does not have a broader meaning in the CRTA than set out in the SCC Decision.

31. It submits that the CRTA ought to be considered in accordance with the ordinary meaning rule, which consists of three basic propositions:

(a) It is presumed that the ordinary meaning of a legislative text is the intended or most appropriate meaning. In the absence of a reason to reject it, the ordinary meaning prevails.

(b) Even where the ordinary meaning of a legislative text appears to be clear, the courts must consider the purpose and scheme of the legislation, and the consequences of adopting this meaning. They must take into account all relevant indicators of legislative meaning.

(c) In light of these additional considerations, the court may adopt an interpretation in which the ordinary meaning is modified or rejected. That interpretation, however, must be plausible; that is, it must be one the words are reasonably capable of bearing.[7]

32. The SCC Decision was tasked with considering the meaning of the words "any action for damages, however founded" with respect to Article 29 of the Montreal Convention. As such, a broad assessment of the meaning of damages was conducted and set out as follows:

> [41] *Black's Law Dictionary* defines "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury" or as "the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong" (p. 488, citing F. Gahan, *The Law of Damages* (1936), at p. 1). Barron's defines "damages" as "[m]onetary compensation the law awards to one who has suffered damage, loss, or injury by the wrong of another" (p. 89).
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> …

[7] Ruth Sullivan, *The Construction of Statutes,* 7th ed (Toronto: LexisNexis Canada, 2022) at ch. 3, § 3.01.

> [42] The "ordinary meaning" of an "action for damages" thus points towards an action that shares the characteristics of a judicial proceeding and that seeks individualized compensation that is tied to an injury caused by another. Damages awards are "individualized" in that they seek to compensate the plaintiff for the loss suffered as a result of an injury caused by another. An action for damages is distinct from standardized compensation which, as I explain below, may be owed identically to all claimants irrespective of the harm (if any) they have suffered.
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> [Emphasis added.]

33. The CRTA s. 118 sets out that the CRT has jurisdiction over claims for damages. The plain, ordinary meaning analysis suggests that a claim for damages in the CRTA is the same as the claims for damages which were assessed by the Federal Court of Appeal and the Supreme Court of Canada. There are no reasons, set out in the CRTA or otherwise, to reject the ordinary meaning.

34. Further, the FCA Decision and SCC Decision set forth a fulsome assessment of the legislative purpose and scheme to conclude that APPR compensation claims are not claims for damages. These assessments must be taken into account by the CRT in this proceeding, as FCA Decision and SCC Decision inform legislative meaning in this case.

35. The inclusion of the words "in the nature of" with respect to claims for damages in the CRTA cannot justify a different interpretation than that arrived at by the courts in *IATA*. These decisions were clear that claims for standardized compensation under the APPR in no way resemble a claim for damages.

(i) Is APPR compensation "contractual damages" because the APPR's terms are incorporated into WestJet's contracts with its customer?

36. APPR compensation is not "contractual damages" simply because the APPR's terms are incorporated into WestJet's tariffs.

37. The FCA Decision assessed whether APPR claims fell within Article 29 of the Montreal Convention, which applies to "any action for damages, however founded, whether under this Convention or in contract…" (emphasis added). Given the reasoning of the Federal Court of Appeal, as well as the Supreme Court of Canada, a claim pursuant to the APPR is not a claim for contractual damages.

38. Additionally, statutory obligations set forth in the APPR do not apply in circumstances where a breach of contract occurred. Rather, the APPR provides for statutory entitlement that applies regardless of contractual provisions and compliance. As such, APPR claims cannot be said to be claims for contractual damages.

39. If APPR compensation was considered "contractual damages", then s. 19 and s. 20 of the APPR would be a direct contravention of Canada's international legal obligation set forth in Article 29 of the Montreal Convention, because they would be claims for "damages", which are prohibited by the Montreal Convention.

B. Does an APPR claim fall within the CRT's jurisdiction over claims for debt?

40. WestJet submits that APPR claims are not claims for debt, but rather, are claims for statutory entitlements which the CRT does not have jurisdiction over.

41. The Supreme Court of Canada established in *Diewold v. Diewold*, [1941] S.C.R. 35 ("***Diewold***"), that a "debt" is a sum payable in respect of a liquidated money demand, recoverable by an action.

42. In British Columbia, the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, s.3 sets out at s. 3(1) the following definition which includes "debts":

> **"debts, obligations and liabilities"**, subject to this Act, does not include an obligation or liability not arising out of trust or contract, unless judgment has been recovered on it against the garnishee but does include, without limitation, all claims and demands of the defendant, judgment debtor, or person liable under the order for payment of money against the garnishee arising out of trusts or contract if the claims and demands could be made available under equitable execution.
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> [Emphasis added.]

43. While the terms of the APPR are required to be included in the applicable tariff, which in turn comprises part of the contract of carriage, WestJet submits that liability for APPR compensation does not arise out of contract, but rather, arises out of a statutory obligation. If the APPR were not included in a tariff, the statutory obligations set forth in the APPR would apply nonetheless.

44. This was illustrated by the CRT in *McNabb v. Air Canada*, 2021 BCCRT 100, with respect to s. 13 of the APPR, which requires carriers to provide information to passengers. There, the Tribunal Member, recognizing that s. 13 represented a statutory entitlement rather than debt or damage, held that it did not have jurisdiction to make any orders with respect to s. 13:

> 31. I find that Air Canada did not notify the McNabbs that AC1608 was cancelled for safety purposes until August 2020 and so did not comply with APPR section 13. However, a carrier's obligation to provide information to its passengers is enforced by the Canada Transportation Agency and does not come under the CRT's jurisdiction. And so I cannot award any damages for this contravention.

45. The *McNabb* decision was followed more recently by the CRT in *Tubajon-Sharma v. WestJet Airlines Ltd.*, 2023 BCCRT 966, as follows:

> 28. I note that the applicants also argue that WestJet failed to comply with APPR section 13, which requires an airline to provide certain information to passengers, including the reason for the delay or cancellation. However, the applicants did not request any compensation directly related to this alleged breach. Further, the CRT has previously held that a carrier's

> obligation to provide information to its passengers under the APPR is enforced by the CTA and does not fall within the CRT's jurisdiction: *McNabb v. Air Canada*, 2021 BCCRT 100. While not binding on me, I agree with the reasoning in *McNabb*. For these reasons, I decline to make any findings about whether WestJet breached APPR section 13.

46. Notably, the CRT has not viewed s. 13, or enforcement of that section, as enforcement of a contractual provision. Rather, it is evident that the CRT consistently views s. 13 as arising from the APPR which is enforceable by the Agency, and not the CRT.

47. WestJet submits that while some statutory entitlements may fulfil the aforementioned *Diewold* definition of a "debt", not all statutory entitlements that are demands for liquidated sums are debts that fall within the jurisdiction of the CRT.

48. In this regard, it is helpful to look to the treatment of statutory entitlements set forth in employment standards legislation. Notably, the SCC Decision looked to employment standards legislation for assistance in interpreting the characterization of APPR claims (at para. 95).

49. In British Columbia, the *Employment Standards Act*, RSBC 1996, c 113 (the "**ESA**") sets out statutory entitlements to overtime wages, vacation pay, and severance, and sets forth a variety of other obligations for employers and rights of employees. Pursuant to s. 74(1) of the ESA, an employee "may" complain to the director that a person has contravened requirements of the ESA. If an employee does so, they must deliver the complaint in writing to the office of the Employment Standards Branch.

50. Notably, the CTA contains similar provisions with respect to passenger complaints. Pursuant to s. 85.04 of the CTA, a person "may" file a complaint in writing to the Agency.

51. The Court has not treated ESA entitlements as debts subject to independent causes of action at common law, but rather, has followed a uniquely applicable path of analysis which requires the matter to be considered by the Employment Standards Branch, and not the court.

52. The BC Court of Appeal in *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182 was tasked with assessing a claim for unpaid overtime entitlements pursuant to the ESA. The Court stated:

> [73] The law is clear: the general rule is there is no cause of action at common law to enforce statutorily-conferred rights. The exception arises when, on a construction of the legislation as a whole, the court concludes the legislators intended that statutorily-conferred rights can be enforced by civil action.
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> …
>
> [74] In my view, in ascertaining the intention of the legislators an important indicium is whether the legislation provides effective enforcement

> of the right conferred by statute. If the statute does so, there is no need for enforcement outside the statute and prima facie there is no civil cause of action. If the statutory remedy is inadequate, a logical conclusion is the Legislature intended the right to be enforceable by civil action. If it were not, granting the right would be pyrrhic.

53. The Court held that:

> [102] When a statute provides an adequate administrative scheme for conferring and enforcing rights, in the absence of providing for a right of enforcement through civil action expressly or as necessarily incidental to the legislation, there is a presumption that enforcement is through the statutory regime and no civil action is available.
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> [103] In this case, the ESA provides a complete and effective administrative structure for granting and enforcing rights to employees. There is no intention that such rights could be enforced in a civil action.
>
> [Emphasis added].

54. In *Giza v. Sechelt School Bus Service Ltd. and Gould*, 2011 BCSC 669, (rev'd on other grounds, 2012 BCCA 18), the plaintiff brought a civil action for holiday pay under the ESA. Following *Macaraeg*, the Court stated:

> [71] The Court of Appeal addressed the rights of employees to recover sums payable under the ESA in the case of *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182. In that case, the court was considering a claim for unpaid overtime, rather than unpaid statutory holiday pay.
>
> [72] The court held, as set out in para. 104, that the former employee was not entitled to enforce her statutory right to overtime pay in a civil action, and that the exclusive jurisdiction to determine such claims lies with the Director of Employment Standards, subject to an appeal to the Tribunal, all pursuant to the provisions of the ESA.
>
> [73] The Court of Appeal considered the terms of the ESA, and they are the same terms which apply at present. The Court of Appeal concluded that the ESA provides an adequate administrative scheme for conferring and enforcing rights, and the legislation did not intend that such rights could be enforced in a civil lawsuit.
>
> [74] Both the overtime pay provisions and the statutory holiday pay provisions of the ESA are subject to the same administrative scheme.
>
> [75] Mr. Giza argued that his claim for statutory holiday pay was different from a claim for overtime, and that the Macaraeg case was not applicable. However, the reasoning of the Court of Appeal applies to claims for statutory holiday pay just as it does for overtime pay. The Court of Appeal concluded that the rights in the ESA can be enforced only through that Act, and not through a civil claim. The remedy available under that Act is limited

> to the period six months before the end of the employment, and in fact, Mr. Giza's claim for that period has been fully satisfied.

55. In *Belanger v Tsetsaut Ventures Ltd.*, 2019 BCSC 560, the Court relied upon *Macaraeg* and *Giza* to dispense with a claim for statutory entitlements:

> [33] In my view, *Macaraeg* and *Giza* are a complete answer to the Employees' claim for severance pay. Severance pay is subject to the same administrative scheme as overtime and holiday pay. The same reasoning applies to prevent the Employees from advancing a claim for statutory severance pay under the ESA in a civil action. The exclusive jurisdiction to determine that claim is through the complaint process pursuant to the provisions of the ESA. The claim for severance pay is dismissed.

56. The CRT has also recognized that it does not have jurisdiction over claims limited to statutory entitlements in numerous decisions including the oft-cited *Bellagamba v. International Tentnology Corp.,* 2018 BCCRT 549 at para. 5.

57. In that decision, it was noted that the CRT had jurisdiction over the claim because the applicant had already received the maximum statutory severance entitlement pursuant to the ESA, and the remedy sought was above this amount and only set out in the employment contract. As the remedy solely arose from the contract of employment, and not the ESA alone, the CRT exercised jurisdiction.

58. To determine whether an independent civil cause of action was intended, the question was framed by the BC Court of Appeal in *Macaraeg* as: did the legislators intend to depart from the general rule that statutory rights are enforced by statutory remedies provided in the act?

59. WestJet submits that Parliament and the Agency did not intend to depart from the general rule, in light of the fulsome and broad powers conferred to the Agency in s. 85.02 to s. 85.16 of the CTA, which includes a comprehensive administrative regime dedicated to passenger dispute resolution. The Agency is notably the only adjudicative body which is mandated with jurisdiction to hear passenger rights complaints set out in the CTA.

60. The FCA Decision sets out a fulsome overview of the enforcement mechanism set forth in the CTA, which specifies that the Agency shall hear complaints brought by passengers with respect to provisions of regulations and tariffs:

> [127] The other important characteristic of the Regulations that sets them apart from an action for damages is their enforcement mechanism. <u>The minimum compensation required by the Regulations is meant to be enforced by the Agency through administrative measures.</u> It is noteworthy that even before the advent of standardized minimum tariff introduced by the Regulations, the Agency was empowered to review individual carriers' terms and conditions of carriage, primarily on the basis of individual

complaints, to ensure that they were clear, just and reasonable (s. 111 of the *Air Transportation Regulations*).

[128] Pursuant to s. 85.1 of the CTA, the Agency shall review any complaint made by a person with respect to any issue dealt with in that part of the CTA (which obviously includes the terms and conditions set out in tariffs). If an air carrier refuses to compensate a passenger in accordance with the Regulations, for example, the Agency may attempt to resolve the complaint. Air travel complaints typically first follow an alternative dispute resolution process, whereby Agency staff will try to resolve the complaint through facilitation or mediation.

[129] If this informal process does not work to the complainant's satisfaction, the complainant may then ask for adjudication before a panel of Agency Members (ss. 37 and 85.1(3) of the CTA). This power is consistent, and indeed rooted, in the Agency's jurisdiction to determine whether a carrier has applied the terms and conditions set out in its tariff (see s. 67.1 of the CTA for domestic services and s. 113.1 for international services). It must be remembered that Parliament has deemed obligations established by the Regulations made under subsection 86.11(1) to form part of the terms and conditions set out in the carrier's tariffs (ss. 86.11(4)), and that the Regulations were so promulgated (see also s. 122 of the *Air Transportation Regulations*).

[130] If the Agency finds that a carrier has failed to apply its tariff, it can order the carrier to take corrective measures that the Agency considers appropriate, which could include the payment of the applicable amount set out in the Regulations, and compensation for any expense incurred by the passenger (s. 113.1 of the *Air Transportation Regulations* and subpara. 86(1)(*h*)(iii) of the CTA). Interestingly, the Agency has also been granted discretion to makes its decisions applicable to some or all passengers affected by a flight that is the subject of a complaint concerning the delay, cancellation and denied boarding provisions of the Regulations (subpara. 86(1)(*h*)(iii.1).

[131] Aside from its oversight role with respect to the application of tariff provisions, the Agency may also enforce the Regulations through administrative monetary penalties. Pursuant to subsection 117(1) of the CTA, the Agency may designate any provisions of the CTA or any regulation as a provision, which if contravened, is a violation under the CTA. The Agency exercised this power at section 32 of the Regulations by designating significant portions, including the compensation provisions at issue in this appeal, as subject to administrative monetary penalties (see Schedule to the Regulations). Administrative monetary penalties are issued by designated enforcement officers named under the CTA (s. 178),

> and notices of violation are reviewable before the Transportation Appeal Tribunal of Canada (ss. 180.3 to 180.6).
>
> [Emphasis added.]

61. The SCC Decision affirms the above, and notes at para. 97 that the APPR "make no provision for claims to be filed in court".

62. WestJet submits that while statutory entitlements may fulfil the *Diewold* definition of a debt, this alone does not provide the CRT with jurisdiction. Rather, following the BC Court of Appeal's decision in *Macaraeg* and subsequent applications of it by the CRT itself, the Agency is the intended forum for the determination of passenger complaints brought pursuant to the APPR. As such, the CRT does not have jurisdiction over claims for APPR statutory entitlements, and pursuant to s. 10 of the CRTA, must refuse to resolve disputes for APPR statutory entitlements.

63. In the alternative, if the CRT does not agree that the Agency has exclusive jurisdiction over claims for statutory entitlements under the APPR, WestJet submits that the CRT should refuse to resolve these disputes in any event as the Agency and the CTA provide for the more appropriate dispute resolution process.

64. Pursuant to s. 11(1)(a)(i) of the CRTA, the CRT may refuse to resolve a claim or dispute within its jurisdiction if it considers that the claim or dispute would be more appropriate for another legally binding process or dispute resolution process.

65. WestJet submits that the Agency is the appropriate body for dispute resolution of APPR claims. As per para. 127 of the FCA Decision, the minimum compensation standards set forth in the APPR are "meant to be enforced by the Agency".

66. The CTA sets out a comprehensive dispute resolution process specifically tailored for APPR claims. Further, claims brought before the Agency must be mediated within 30 days of submission (CTA s. 85.05), and must be determined within 60 days of the mediation (CTA s. 85.06).

67. In light of this, an APPR claim brought before the Agency is required to be determined on a fast timeline. WestJet submits that the CRT does not have the same operational capabilities to facilitate a resolution of small claims brought before it within the same time period, but rather, often takes many months to resolve APPR claims. Currently, the CRT website provides an estimate of 254 days from date of filing to final decision from a tribunal member.

68. Further, pursuant to s. 85.08 of the CTA, an Agency complaint resolution officer is required to take past Agency decisions into account when rendering passenger claim determinations – thereby creating a system of uniformity with respect to decision making.

69. In contrast, the CRT is not required to follow Agency determinations with respect to the cause of a flight delay or cancellation. If the CRT is to exercise concurrent jurisdiction over APPR claims, inconsistent findings are possible with respect to a particular flight (or with

respect to multiple flights where the circumstances causing the delay or cancellation are materially the same), if the CRT and the Agency reach different conclusions regarding, for example, whether a delay or cancellation was for safety purposes. This concurrent jurisdiction will thereby undermine the purpose of the APPR, being simplicity and uniformity with respect to passenger rights.

70. WestJet submits that the Agency provides an accessible, economic, informal and flexible dispute resolution mechanism for passengers. With respect to speed, WestJet submits that the Agency is far faster than the CRT with its 60-day decision timeline. The Agency is a specialized tribunal, and, WestJet submits, the only tribunal, with is statutorily empowered to hear APPR claims and resolve them expeditiously and fairly.

71. The Agency is also an expert body that is best-placed to make determinations such as whether a flight delay or cancellation was required for safety purposes or within/outside the carrier's control. The federal transportation network, particularly with respect to aviation, is a complex system with many players, and the Agency has the subject matter expertise to properly consider all of the circumstances of a flight in deciding which section of the APPR applies and whether the passenger is entitled to compensation.

72. Accordingly, the CRT should refuse to exercise jurisdiction over APPR claims pursuant to s. 11 of the CRTA.

Summary

73. CRTA s. 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness.

74. According to s. 10(1), the CRT must refuse to resolve a claim that is outside of CRT jurisdiction. In determining whether it has jurisdiction or not, the CRT must only look to its enabling statute and the issue over which the jurisdictional question arises (in this case, standardized APPR compensation). The Applicant's arguments regarding other courts and other causes of action (see section iii at page 5) are irrelevant to the CRT's consideration of jurisdiction in this case. In addition, the Applicant's reliance on the *Seidel v. Telus* decision to argue that the CRTA is akin to "consumer protection legislation" is illogical. The CRTA is the enabling legislation of an impartial tribunal. In *Seidel*, the legislation in question was the *Business Practices and Consumer Protection Act*, SBC 2004, which is obviously consumer protection legislation.

75. WestJet says that according to the FCA Decision, which was affirmed by the SCC Decision, APPR claims are not claims for damages, contractual or otherwise. Accordingly, APPR claims do not fall within the CRT's jurisdiction to hear claims for damages.

76. WestJet submits that claims for APPR statutory entitlements do not fall within the CRT's jurisdiction for claims over debts. The APPR does not provide for any other tribunal to exercise jurisdiction over the APPR. For the reasons above, the Agency is intended to

have exclusive jurisdiction over APPR statutory entitlement claims. The CRT must therefore refuse to resolve such claims, as they fall outside its jurisdiction.

77. In the alternative, if APPR claims do fall within the CRT's jurisdiction for claims over debts, WestJet submits that the CRT ought to refuse to resolve them pursuant to s. 11 of the CRTA as the Agency provides for the more appropriate dispute resolution mechanism which ensures expeditious, uniform resolutions of APPR claims. The intention as set out in the CTA is for the Agency to exercise jurisdiction over APPR claims through its comprehensive dispute resolution mechanism set out in the CTA.