

DEC 16 2022



S22 10020

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CAROL COSTELLO

PLAINTIFF

AND:

AIR CANADA,
AIR CANADA ROUGE LP, and
JAZZ AVIATION LP

DEFENDANTS

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 plaintiffs 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 reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

PART 1: STATEMENT OF FACTS

Overview

1. Air Canada, Air Canada Rouge LP, and Jazz Aviation LP (together “**Air Canada**”) are Canadian air carriers which operate passenger flights within Canada and international passenger flights to and from Canada. Airline passengers rely on Air Canada to provide fair and reasonable services and treatment when they agree to fly with the airline. The minimum standards of treatment owed by Air Canada to airline passengers are prescribed in the *Air Passenger Protection Regulations*, SOR/2019-150 (the “**APPR**”). As part of the APPR’s provisions to ensure that airline passengers are treated fairly, the APPR mandates minimum compensation to be paid by air carriers to passengers who have had their flights delayed and/or cancelled, or who have been denied boarding in prescribed scenarios.
2. This class action arises from Air Canada’s refusal to provide compensation to airline passengers in violation of the APPR. Air Canada is denying airline passengers compensation that they are legally entitled to receive under the APPR. Through this lawsuit, the Plaintiff and Class Members seek to hold Air Canada accountable for its conduct and to ensure that airline passengers receive the compensation to which they are entitled.

The Parties

3. The Plaintiff, Carol Costello, is a resident of British Columbia. The Plaintiff purchased a ticket for flight AC668 (reservation code 2LFJPR), operated by Air Canada that was scheduled to depart on Thursday, June 23, 2022 at 06:40 from Comox Valley Airport (YQQ), with transfers

at Vancouver International Airport (YVR) and Montréal-Pierre Elliott Trudeau International Airport (YUL), and a final destination of Halifax Stanfield International Airport (YHZ) scheduled to arrive on Thursday, June 23, 2022 at 21:04. As the Plaintiff's flight arrived at Montreal on June 23, 2022, the final segment of the Plaintiff's flight to Halifax was cancelled by Air Canada, which was less than two hours before it was scheduled to depart. The earliest replacement flight Air Canada offered the Plaintiff was scheduled to depart more than 48 hours after her initial scheduled flight to Halifax. The Plaintiff ended up accepting an alternative flight to Greater Moncton Roméo LeBlanc International Airport (YQM), which still arrived in Moncton over three hours after the original scheduled arrival in Halifax and necessitated alternate travel arrangements to Halifax. Air Canada advised the Plaintiff that the flight was cancelled because of staffing issues due to COVID-19 and therefore the Plaintiff would not be compensated for her flight cancellation.

4. The Plaintiff applied for compensation for a travel delay under the APPR and this was denied by Air Canada.
5. The information provided by Air Canada to the Plaintiff is silent about the nature of the crew constraints that form the basis of Air Canada's denial of the Plaintiff's claim for compensation.
6. From the information provided, it is impossible for the Plaintiff to understand how these crew constraints were not within Air Canada's control, and what made these constraints unforeseeable or an irresistible event, elements required by the APPR to be considered "required for safety-purposes".
7. The Plaintiff brings this claim on her own behalf and on behalf of the following class:

All passengers of Air Canada-operated or code-share flights subject to the APPR, between December 15, 2019 and the date this action is certified as a class action who reached their destination at least 3 hours after scheduled arrival because of a flight disruption resulting from staffing issues or crew constraints, of which they were informed within 14 days of their scheduled departure time, and for which they were

denied compensation for inconvenience by Air Canada on the basis that this flight disruption was required for safety purposes

(collectively, the “**Class**”, “**Class Members**” and “**Class Period**”).

8. The Defendant, Air Canada, is a company incorporated Federally with a registered head office at 7373 boulevard de la Côte Vertu Ouest, Saint-Laurent, QC, H4S 1Z3. Air Canada operates as Canada’s largest airline operating passenger flights within Canada (“Domestic Flights”) and international passenger flights to and from Canada (“International Flights”).
9. The Defendant, Air Canada Rouge LP (“Air Canada Rouge”), is a fully owned subsidiary of Air Canada, incorporated Federally, with a registered head office at 7373 boulevard de la Côte Vertu Ouest, Saint-Laurent, QC, H4S 1Z3.
10. The Defendant, Jazz Aviation LP (“Jazz Aviation”), is a company incorporated in Ontario, with a registered address of 380-3 Spectacle Lake Drive, Dartmouth, Nova Scotia, B3B 1W8, and a head office at 6100-100 King Street West, 1 First Canadian Place, Toronto, Ontario M5X 1B8. Jazz Aviation is a partner of Air Canada and provides domestic and transborder airline services to Air Canada under a capacity purchase agreement through the brand name Air Canada Express.
11. Together Air Canada, Air Canada Rouge, and Jazz Aviation are “**Air Canada**”.
12. Air Canada is a commercial airline that operates domestic passenger flights within Canada and international passenger flights to and from Canada, under the authority and requirements of the *Canada Transportation Act*, SC 1996, c 10 and related enactments. Air Canada is Canada’s largest airline and has a fleet of over 230 aircraft, in addition to those aircraft operated by Jazz Aviation under partnership agreement. Air Canada is also the largest foreign carrier in the United States, with up to 400 daily flights to 47 US airports.

The Canadian Transportation Agency

13. The Canadian Transportation Agency is an independent and quasi-judicial tribunal of the Government of Canada (the “**CTA**”). The CTA has responsibilities relating to, among other transportation matters, air transportation in Canada. These responsibilities include, but are not

limited to, administering acts and regulations related to Canadian transportation and implementing government-wide regulatory initiatives. One of the CTA's three mandates is to provide consumer protection for air passengers. The CTA derives its authority from legislation including the *Canadian Transportation Act*, SC 1996, c 10.

Domestic and International Flights

14. Flights operated by Air Canada which have both their departure and destination locations in Canada are domestic flights (a “**Domestic Flight**” and “**Domestic Flights**”). Flights operated by Air Canada which have a place of departure and a place of landing in more than one country or state are international flights (an “**International Flight**” and “**International Flights**”).

The Air Passenger Protection Regulations

15. The APPR were developed by the CTA in consultation with air carriers including Air Canada. The APPR set out the minimum obligations air carriers owe their passengers. A purpose of the APPR is to empower airline passengers to hold air carriers accountable for delaying and/or cancelling flights, which are rights that did not exist for Canadian travelers prior to the introduction of the APPR. However, due to extended processing times and blanket denials by air carriers, the APPR process has not been an efficient process for passengers seeking compensation under the regulations. As of August 2022, the backlog for APPR claims was at least 18,200.
16. The APPR were introduced in 2019 pursuant to s. 86.1 and s-ss. 86.11(1), 86(1) and 177(1) of the *Canadian Transportation Act* and were implemented in two stages. On July 15, 2019, provisions of the APPR came into effect requiring airlines to meet new obligations concerning communication, denied boarding, tarmac delay, baggage and the transportation of musical instruments. The remaining obligations on flight disruptions and seating of children came into effect on December 15, 2019.

When the APPR Apply

17. The APPR apply to all flights that land or take off in Canada. However, if a passenger's flight itinerary involves flights between two locations outside of Canada that connect with a flight

either to or from Canada, whether the APPR apply dependent on the type of fare and the airline operating that flight.

18. The APPR will apply to a flight with a destination and an arrival outside of Canada with a connection within Canada if the flight is: 1) part of a single through fare; and 2) at least one flight on that single through fare begins or ends in Canada. The CTA provides the following explanation of a single through fare: “[a]irlines have agreed to allow multiple flights to be booked by a passenger using one ticket. The passenger purchases this fare in one transaction, using a single currency (with no conversion).” If the flights on the passenger’s itinerary were not purchased in one transaction with a single currency, then the APPR do not apply.
19. If a passenger’s itinerary involves a single through fare, then any individual leg on that itinerary with a departure or a destination in Canada is covered by the APPR. For the individual leg on that itinerary without a destination or arrival in Canada, the APPR apply if one of two conditions are met:
 - a. the same airline operates the leg within Canada and the leg outside of Canada; or
 - b. two different airlines operate the two legs, but one airline is carrying the passenger on behalf of another airline under a commercial agreement as between the airlines.
20. For example, if a passenger’s flight itinerary, which constitutes a single through fare, involves a leg from Toronto to Frankfurt followed by a leg from Frankfurt to Munich, the leg between Frankfurt and Munich is covered by the APPR if the same air carrier operates both legs or if each leg is operated by a different airline, but one air carrier is operating their leg on behalf of another under a commercial agreement.

Mandatory Compensation Under the APPR

21. The APPR impose specific obligations on airlines and provides rights to passengers. Among the provisions mandating that airlines treat passengers fairly, the APPR require air carriers to provide passengers minimum levels of compensation in prescribed circumstances when passengers’ flights have been delayed and/or cancelled, or passengers have been denied boarding.

22. Whether an air carrier must compensate passengers depends on the reason for the delay and/or cancellation, or denial of boarding. Section 10 of the APPR prescribe a non-exhaustive list of situations in which the delay and/or cancellation or denial of boarding of a flight is deemed to be outside of an air carrier's control. The prescribed circumstances include: war or political instability; illegal acts or sabotage; and meteorological conditions or natural disasters that make the safe operation of the aircraft impossible. If a flight is delayed and/or cancelled for a reason outside of the carrier's control, the APPR at s. 18(1) mandate that the airline provides alternative travel arrangements or a refund to the passenger. If a passenger is denied boarding for a reason outside of the carrier's control, the airline must provide for the passenger alternative travel arrangements.
23. Section 11 of the APPR provide that air carriers do not owe passengers any mandatory minimum monetary compensation when a flight is delayed and/or cancelled or there is a denial of boarding for a reason that is "within the air carrier's control but is required for safety purposes".
24. Section 12 of the APPR provide that air carriers owe passengers mandatory minimum monetary compensation when a flight is delayed and/or cancelled or there is a denial of boarding that is within the air carrier's control but is not required for safety purposes.
25. The mandatory minimum compensation owed to passengers who has had their flight delayed and/or cancelled due to a circumstance within the air carrier's control and not required for safety purposes is set out in s. 19 of the APPR:

Compensation for delay or cancellation

19 (1) If paragraph 12(2)(d) or (3)(d) applies to a carrier, it must provide the following minimum compensation:

(a) in the case of a large carrier,

(i) \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,

- (ii) \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
 - (iii) \$1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and
- (b) in the case of a small carrier,
- (i) \$125, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,
 - (ii) \$250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or
 - (iii) \$500, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

Compensation in case of refund

(2) If paragraph 12(2)(c) or (3)(c) applies to a carrier and the passenger's ticket is refunded in accordance with subsection 17(2), the carrier must provide a minimum compensation of

- (a) \$400, in the case of a large carrier; and
- (b) \$125, in the case of a small carrier.

26. The mandatory minimum compensation owed to passengers who were denied boarding due to a circumstance within the air carrier's control and not required for safety purposes is set out in s. 20 of the APPR:

Compensation for denial of boarding

20 (1) If paragraph 12(4)(d) applies to a carrier, it must provide the following minimum compensation:

- (a) \$900, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by less than six hours;

(b) \$1,800, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours; and

(c) \$2,400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

27. Passengers are therefore entitled to mandatory minimum compensation when their flight was delayed and/or cancelled or when they were denied boarding for a reason that was within the carrier's control and not required for safety purposes.

Delays, Cancellations and Denials of Boarding due to Crew Constraints are not "Required for Safety Purposes"

28. The APPR, at s. 1(1), provide a definition of "required for safety purposes":

required for safety purposes means required by law in order to reduce risk to passenger safety and includes required by safety decisions made within the authority of the pilot of the aircraft or any decision made in accordance with a safety management system as defined in subsection 101.01(1) of the Canadian Aviation Regulations but does not include scheduled maintenance in compliance with legal requirements.

29. A decision by an airline to delay, cancel or deny boarding on a flight that is "required for safety purposes" means that the delay, cancellation or denial of boarding was: i) required by safety decisions made within the authority of the pilot of the aircraft; or ii) a decision made in accordance with a safety management system as defined in subsection 101.01(1) of the Canadian Aviation Regulations, SOR/96-433.

30. The *Canadian Aviation Regulations*, SOR/96-433 defines "safety management system" at s. 101.01(1) as:

safety management system means a documented process for managing risks that integrates operations and technical systems with the management of financial and human resources to ensure aviation safety or the safety of the public; (*système de gestion de la sécurité*)

31. The *Canadian Aviation Regulations*, SOR/96-433 sets out the requirement for a “safety management system” at s. 197.03:

107.03 A safety management system shall include

- (a) a safety policy on which the system is based;
- (b) a process for setting goals for the improvement of aviation safety and for measuring the attainment of those goals;
- (c) a process for identifying hazards to aviation safety and for evaluating and managing the associated risks;
- (d) a process for ensuring that personnel are trained and competent to perform their duties;
- (e) a process for the internal reporting and analyzing of hazards, incidents and accidents and for taking corrective actions to prevent their recurrence;
- (f) a document containing all safety management system processes and a process for making personnel aware of their responsibilities with respect to them;
- (g) a quality assurance program;
- (h) a process for conducting periodic reviews or audits of the safety management system and reviews or audits, for cause, of the safety management system; and
- (i) any additional requirements for the safety management system that are prescribed under these Regulations.

32. Further, Transport Canada describes the goals for “safety management systems”, which are to continue to reduce the total aircraft accident rate where this cannot be achieved by further improvements to technology. This includes the effectiveness of any “safety management system” in discovering hazards, rating hazards, finding the root causes of hazards, responding to hazards and their causes, and monitoring corrective actions to see if they worked. It is noted that if inspectors find that if a carrier does not take steps to correct problems found by inspectors in conjunction with a “safety management system”, the carrier will be fined or shut down.

33. Air Canada's Safety Management System is not available for passengers to review, but includes:

- Active involvement of management, employees and Safety and Health Committees.
- Continual development, monitoring and improvement of effective safety practices.
- Appropriate training and education programs.
- An inspection and audit process that provides feedback and results in timely corrective action.
- A safety performance system that provides timely feedback to all employees.
- A commitment to the communication and promotion of safe work practices and processes.

34. The Canadian Transport Agency has held that crew absences or shortages due to the action or inaction of the carrier are foreseeable, are within the air carrier's control, and do not constitute "required for safety reasons".¹

35. Following the language of the APPR s 1(1), a delay or cancellation is only "required for safety purposes" when proceeding with a flight would violate Air Canada's Safety Management System, or under the direction of the pilot of the specific aircraft involved in the delay or cancellation. Other reasons for the delay or cancellation of a flight that are within the control of the airline fall within the AAPR, s. 19.

The Tariffs

36. A tariff forms part of the contract of carriage between an air carrier and its passengers. Each air carrier has a tariff setting out passengers' rights and obligations, as well as the rights of the air carrier and the responsibilities it has towards passengers. Tariffs typically include information about fares, rates and charges, among other terms and conditions. Air carriers are permitted to set the terms and conditions in their tariffs, but tariffs must meet certain

¹ Canadian Transport Agency decisions No 122-C-A-2021, No 89-C-A-2022, and No 107-C-A-2022.

legislative requirements. The CTA mandates that air carriers respect and abide by their tariffs and the provisions therein.²

37. Tariffs can apply to either a Domestic Flight, an International Flight, or both. The CTA requires every air carrier that offers and/or sells air transportation to, from, and within Canada to have a tariff. Air carriers typically have separate tariffs for Domestic Flights and for International Flights as this makes it easier for air carriers to meet the different filing requirements for the two types of tariff.
38. Under section 67 of the *Canada Transportation Act*, and Part V, Division I of the Air Transportation Regulations, SOR/88-58, Air Canada is required by law to:
 - a. publish a Tariff in respect of flights travelling within Canada;
 - b. prominently display a notice that the Domestic Tariff is available for public inspection; and
 - c. include the terms and conditions of carriage, clearly stating the air carrier's policies *inter alia* regarding fares, charges and fees.
39. Under Part V, Division II of the Air Transportation Regulations, SOR/88-58, Air Canada is required by law to:
 - a. publish a Tariff in respect of itineraries with a destination outside of Canada;
 - b. prominently display a notice that the International Tariff is available for public inspection; and
 - c. include the terms and conditions of carriage, clearly stating the air carrier's policies *inter alia* regarding fares, charges and fees.
40. The duties which Air Canada owes to its passengers on Domestic Flights and on International Flights are set out in its domestic tariffs and its international tariffs, respectively.

² <https://otc-cta.gc.ca/eng/air-carrier-tariffs-posted-websites>

The Domestic Tariff

41. Air Canada’s domestic tariff in effect on the date this Notice of Civil Claim was filed has been in effect since October 16, 2022 (the “**October 2022 Domestic Tariff**”). Preceding the October 2022 Domestic Tariff included tariffs effective as of May 22, 2022 (the “**May 2022 Domestic Tariff**”), October 29, 2021 (the “**October 2021 Domestic Tariff**”), August 18, 2021 (the “**August 2021 Domestic Tariff**”), April 13, 2021 (the “**April 2021 Domestic Tariff**”), February 26, 2021 (the “**February 2021 Domestic Tariff**”) and September 16, 2020 (the “**September 2020 Domestic Tariff**”). All Air Canada domestic tariffs governing domestic flights departing or landing on or after December 15, 2019 are collectively the “**Domestic Tariffs**”.

42. The October 2022 Domestic Tariff prescribes the following definitions relevant to this claim:

“Air Canada Express” means Jazz Aviation LP (“Jazz”).

“Carriage”, which is equivalent to transportation, means carriage of passengers and/or baggage by air, gratuitously or for hire.

“Carrier” means the air carrier issuing the tickets or any carrier that carries or undertakes to carry the passenger and/or his baggage thereunder or performs or undertakes to perform any other services related to such air carriage.

“Date of Transaction” means the date of issuance of the ticket, MCO or PTA.

“Journey” means all travel between the origin to destination of an entire ticket.

“Passenger” means any person, except members of the crew, carried or to be carried in an aircraft with the consent of Carrier.

“Passenger Coupon” means that portion of the passenger ticket constituting the passenger’s written evidence of the contract of carriage.

“Passenger Ticket” means those portions of the ticket issued by the Carrier that provide for the carriage of the passenger.

“Rebooking” means change of reservation or other changes which do not require ticket reissuance.

“Ticket” means the “Passenger Ticket And Baggage Check“, including all flight, passenger and other coupons therein, issued by Carrier, which provide for the carriage of the passenger and his baggage.

43. The October 2022 Domestic Tariff, Rule 5, section A, states that the tariff applies to the carriage of all passengers on flights operated or marketed by Air Canada:

(1) This tariff shall apply to carriage of passengers and baggage, and to all services incidental thereto:

- a) Marketed (carrying an Air Canada flight number) by Air Canada and operated by Air Canada, Air Canada Express, or Air Canada Rouge; and
- b) For carriage on flights marketed by Air Canada but operated by another Carrier, unless otherwise stated in this tariff.

(2) Except as otherwise provided below, these general rules are subject to fare rule provisions, local or joint fares, including arbitraries, which are considered to be part of this tariff.

44. The Domestic Tariffs each contain a nearly identical clause incorporating the Domestic Tariffs into Air Canada’s contract of carriage of passengers as in the October 2022 Domestic Tariff.

45. The October 2022 Domestic Tariff, Rule 80, section B, sets out in which circumstances Air Canada must provide monetary compensation to passengers and in what amounts compensation is owed:

(2) In the event of a Schedule Irregularity that is within Air Canada’s control:

- a) Air Canada will provide alternate travel arrangements as set out in APPR. The alternate travel arrangement is deemed to be satisfactory to the passenger unless the passenger advises otherwise prior to the departure of the new travel arrangement. If the passenger refuses such arrangements because they do not accommodate their travel needs and chooses to no longer travel, the passenger is entitled to an Involuntary Refund in

accordance with RULE 100 - REFUNDS and compensation pursuant to APPR if requested within one year of the delay and cancellation;

b) If passenger has been informed of the delay or cancellation less than 12 hours before the initially scheduled departure, and has been delayed more than two hours after the initial scheduled departure time, Air Canada will provide food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger;

c) For a Schedule Irregularity lasting overnight, Air Canada will also provide hotel or other comparable accommodation for out-of-town passengers that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport, subject to availability;

d) Compensation

If, due to a delay or cancellation within Air Canada's control, passenger arrives with a delay at arrival of three hours or more, Air Canada will provide compensation in accordance with APPR. Only the operating carrier will provide compensation;

e) A passenger is not eligible for delay or cancellation compensation under APPR if:

- i. the passenger was delayed at arrival for reasons outside Air Canada's control or required for safety purposes, such as when the passenger's flight was delayed or cancelled due to weather;
- ii. the passenger has already been paid denied boarding compensation for the same event;
- iii. the passenger was informed of the delay or cancellation more than 14 days before the scheduled departure time;
- iv. the passenger did not submit their claim for compensation under APPR within one year of the delay or cancellation.

(3) In the event of a Schedule Irregularity that is required for safety purposes:

a) Air Canada will provide alternate travel arrangements as set out in APPR. The alternate travel arrangement is deemed to be satisfactory to the passenger unless the passenger advises otherwise prior to the departure of the new travel arrangement. If the passenger refuses such arrangements

because they do not accommodate their travel needs and chooses to no longer travel, the passenger is entitled to an Involuntary Refund in accordance with RULE 100 - REFUNDS;

b) If passenger has been informed of the delay or cancellation less than 12 hours before the initially scheduled departure, and has waited two hours after the initial scheduled departure time, Air Canada will provide food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger;

c) For a Schedule Irregularity lasting overnight, Air Canada will also provide hotel or other comparable accommodation for out-of-town passengers that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport, subject to availability.

46. The Domestic Tariffs confirm that the APPR's minimum mandatory compensation provisions form part of the contract between Air Canada and passengers on Domestic Flights. Air Canada is therefore contractually obligated to provide passengers with the compensation detailed therein when a flight is delayed and/or cancelled or boarding is denied due to a situation within Air Canada's control and not required for safety purposes.

The International Tariffs

47. Air Canada's international tariff in place on the date this Notice of Civil Claim was filed was effective as of October 16, 2022 (the "**October 2022 International Tariff**"). All Air Canada international tariffs governing international flights departing or landing on or after December 15, 2019, including the October 2022 International Tariff, are collectively the "**International Tariffs**", (collectively with the Domestic Tariffs, the "**Tariffs**").
48. The October 2022 International Tariff includes the following definitions relevant to this claim:

"Air Canada Express" means Jazz Aviation LP ("Jazz").

"Carriage", which is equivalent to transportation, means carriage of passengers and/or baggage by air, gratuitously or for hire.

“Carrier” means the air carrier issuing the ticket, the participating carrier, or any air carrier that carries or undertakes to carry the passenger and/or his baggage thereunder or performs or undertakes to perform any other services related to such air carriage.

“Date of Transaction” means the date of issuance of the ticket, MCO or PTA.

“Fare Component” means a portion of an itinerary between two consecutive fare construction points - the point of origin and the point of destination of the journey are fare construction points.

“Fare Construction Points” means the terminal points of a fare component (these are also termed fare break points).

“Flight Coupon” means a portion of the passenger ticket that indicates particular places between which the coupon is good for carriage.

“International Carriage” means (except when the convention is applicable) carriage in which, according to the contract of carriage, the place of departure and any place of landing are situated in more than one state. As used in this definition, the term "state" includes all territory subject to the sovereignty, suzerainty, mandate, authority or trusteeship the convention means any carriage in which, according to the thereof. International carriage as defined by contract of carriage, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two high contracting parties to the convention or within the territory of a single high contracting party to the convention, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power even though that power is not a party to the convention

“International Transportation” means any transportation or other services, furnished by any carrier, which are included within the scope of the term “International Transportation” as used in the convention for the unification of certain rules relating to international transportation by air signed at Warsaw, October 12, 1929, or such convention as amended, whichever may be applicable to the transportation hereunder and to which the said convention applies. For the purpose of determining the applicability of the term "international transportation"

Agreed Stopping Place. All stops between the original place of departure and the place of final destination scheduled by any carrier by air which

participates in the transportation between such places, as shown in the schedules or time tables of such carriers shall constitute "agreed stopping places;" but each participating carrier reserves the right to alter the "agreed stopping places" in the case of necessity without thereby depriving the transportation of its international character; and

“Single Operation. Transportation to be performed by several successive carriers by air, arrangements for which are made in advance, is regarded as "a single operation" and shall be deemed to be "one undivided transportation" whether one or more tickets or other documents are issued to cover such transportation, and whether or not all such tickets or documents are issued prior to the commencement of such transportation; but this provision shall not be deemed to contain an exclusive definition of transportation which is regarded by the parties as "a single operation".

“Journey” means all travel between the origin to destination of an entire ticket.

“On-line tariff data base” means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the "official D.O.T. Tariff database," and (2) the departmental approvals, disapprovals and other actions, as well as departmental notations concerning such approvals, disapprovals or other actions, that subpart w of the proposed part 221 requires the filer to maintain in its database. The term "official D.O.T. Tariff database" means those data records (as set forth in sections 221.283 and 221.286 of the rule) which would be in the custody of, and maintained by the Department of Transportation.

“Origin” means the initial starting place of the journey as shown on the ticket.

“Passenger” means any person, except members of the crew, carried or to be carried in an aircraft with the consent of carrier.

“Passenger Coupon” means that portion of the passenger ticket constituting the passenger's written evidence of the contract of carriage.

“Passenger Ticket” means those portions of the ticket issued by the carrier that provide for the carriage of the passenger.

“Routing” means the carrier(s) and/or the cities and/or class of service and/or type of aircraft (jet or propeller) via which transportation is provided between two points.

“Ticket” means the "Passenger Ticket and Baggage Check," including all flight, passenger and other coupons therein, issued by carrier, which provide for the carriage of the passenger and his baggage.

“Transfer” means a change from the flight on one carrier to the flight of another carrier; or a change from the flight of a carrier to another flight of the same carrier bearing the same flight number; or a change from the flight of a carrier to another flight (that is) of service bearing a different flight number of the same carrier, irrespective of whether or not a change of aircraft occurs.

“Transfer Point” means any point at which the passenger transfers from the services of one carrier to another service of the same carrier (bearing a different flight number) or to the service of another carrier.

“Transit Point” means any stop at an intermediate point on the route to be travelled (whether or not a change of planes is made) which does not fall within the definition of a stopover.

49. The October 2022 International Tariff, Rule 5, section A states that the tariff applies to the traffic and transportation of passengers and goods using aircraft operated by Air Canada in respect of international and transborder flights:

(1) This tariff shall apply to carriage of passengers and baggage, and to all services incidental thereto:

- a) Marketed (carrying an Air Canada flight number) by Air Canada and operated by Air Canada, Air Canada Express or Air Canada Rouge, including when flights are operated in conjunction with other participating carriers under joint fares, rates and charges contained in tariffs which make specific reference to this tariff for governing rules, regulations and conditions of carriage, and
- b) For carriage on flights marketed by Air Canada but operated by another carrier, unless otherwise stated in this tariff.

(2) International transportation shall be subject to the rules relating to liability established by, and to all other provisions of the Convention for the Unification of Certain Rules Relating to International Transportation by Air, signed at Warsaw, October 12, 1929, or the Convention for the Unification of Certain Rules International Carriage by Air, (Montreal Convention of 1999) or such convention as amended, whichever may be applicable to the transportation

hereunder. Any provision of these rules which is inconsistent with any provision of said convention shall, to that extent, but only to that extent, be inapplicable to international transportation.

(3) Except as otherwise provided below, these general rules are subject to fare rule provisions, local or joint fares, including arbitraries, which are considered to be part of this tariff.

(4) Except as otherwise provided herein, the rules, regulations and terms and conditions of carriage contained in this tariff apply to flights operated by Air Canada Rouge (Flight range: AC1500-1999).

(5) Unless otherwise stipulated, any contract for the carriage of passengers and baggage and all services incidental thereto governed by this tariff is deemed to be made and entered into in Calgary, Canada, without regard to conflicts of law principles.

50. The October 2022 International Tariff, Rule 80, section B, sets out in what circumstances Air Canada must provide monetary compensation to passengers and in what amounts:

(3) In the event of a Schedule Irregularity that is within Air Canada's control:

- a) Air Canada will provide alternate travel arrangements as set out in APPR. The alternate travel arrangement is deemed to be satisfactory to the passenger unless the passenger advises otherwise prior to the departure of the new travel arrangement. If the passenger refuses such arrangements because they do not accommodate their travel needs and chooses to no longer travel, the passenger is entitled to an Involuntary Refund in accordance with RULE 100 - REFUNDS and compensation pursuant to APPR if requested within one year of the delay and cancellation;
- b) If passenger has been informed of the delay or cancellation less than 12 hours before the initially scheduled departure, and has been delayed more than two hours after the initial scheduled departure time, Air Canada will provide food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger;
- c) For a Schedule Irregularity lasting overnight, Air Canada will also provide hotel or other comparable accommodation for out-of-town passengers that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport, subject to availability;

d) Compensation

If, due to a delay or cancellation within Air Canada's control, passenger arrives with a delay at arrival of three hours or more, Air Canada will provide compensation in accordance with APPR. Only the operating carrier will provide compensation;

e) A passenger is not eligible for delay or cancellation compensation under APPR if:

- i. the passenger was delayed at arrival for reasons outside Air Canada's control or required for safety purposes, such as when the passenger's flight was delayed or cancelled due to weather;
- ii. the passenger has already been paid denied boarding compensation for the same event;
- iii. the passenger was informed of the delay or cancellation more than 14 days before the scheduled departure time;
- iv. the passenger did not submit their claim for compensation under APPR within one year of the delay or cancellation.

(4) In the event of a Schedule Irregularity that is required for safety purposes:

- a) Air Canada will provide alternate travel arrangements as set out in APPR. The alternate travel arrangement is deemed to be satisfactory to the passenger unless the passenger advises otherwise prior to the departure of the new travel arrangement. If the passenger refuses such arrangements because they do not accommodate their travel needs and chooses to no longer travel, the passenger is entitled to an Involuntary Refund in accordance with RULE 100 - REFUNDS;
- b) If passenger has been informed of the delay or cancellation less than 12 hours before the initially scheduled departure, and has waited two hours after the initial scheduled departure time, Air Canada will provide food and drink in reasonable quantities, taking into account the length of the wait, the time of day and the location of the passenger;
- c) For a Schedule Irregularity lasting overnight, Air Canada will also provide hotel or other comparable accommodation for out-of-town passengers that is reasonable in relation to the location of the passenger, as well as transportation to the hotel or other accommodation and back to the airport, subject to availability.

51. The International Tariffs confirm that the APPR's minimum mandatory compensation provisions form part of the contract between Air Canada and passengers on International Flights. Air Canada is therefore contractually obligated to provide passengers with the compensation detailed therein when a flight is delayed and/or cancelled or boarding is denied due to a situation within Air Canada's control and not required for safety purposes.
52. The Tariffs are contracts of adhesion between Air Canada and each of its passengers, including the Plaintiff and Class Members. Travel on Air Canada-operated flights and flights operated by Air Canada's code-share partners where Air Canada was the "marketing carrier" are all subject to the Tariffs. The rights and obligations in the relevant tariffs governed the relationship between Air Canada and Class Members the moment that Class Members purchased their flight with Air Canada.

The Terms of the APPR are Mirrored in the Tariffs

53. The APPR, s. 19 states:

19 (1) If paragraph 12(2)(d) or (3)(d) applies to a carrier, it must provide the following minimum compensation:

(a) in the case of a large carrier,

(i) \$400, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by three hours or more, but less than six hours,

(ii) \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

(iii) \$1,000, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; . . .

54. Section 19 of the APPR applies in cases of delay or cancellation that is within the carrier's control (s. 12), and is not required for safety purposes (s. 11). In the case of either delay or cancellation, if the carrier does not inform the passenger more than 14 days before the delay

or cancellation occurs, the carrier must provide at least the minimum compensation as set out in s. 19.

55. The compensation schedule set out in s. 19 of the APPR is the same as in the Domestic Tariffs and the International Tariffs. According to s. 2(1) of the APPR, airlines must comply with the provisions in the APPR unless the terms in the airline's tariff are more favourable to passengers, in which case the airline's tariffs govern.
56. The October 2022 Domestic Tariff, Rule 80, section B, subsection (2)(d) states:

d) Compensation

If, due to a delay or cancellation within Air Canada's control, passenger arrives with a delay at arrival of three hours or more, Air Canada will provide compensation in accordance with APPR. Only the operating carrier will provide compensation;

57. Identical or substantially similar provisions are included in the October 2022 International Tariff, at Rule 80, section B, subsection (3)(d).
58. The APPR prescribe different mandatory minimum compensation depending on whether the carrier is a "large carrier" or a "small carrier" and provides the following definitions:

large carrier means a carrier that has transported a worldwide total of two million passengers or more during each of the two preceding calendar years.

small carrier means any carrier that is not a large carrier.

59. Air Canada states in the October 2022 Domestic Tariff at Rule 5, section C and in the October 2022 International Tariff at Rule 5, section D, the tariff states that Air Canada is a large carrier:

C. Air Passenger Protection Regulations ("APPR")

...

(2) For the purposes of APPR, Air Canada, Air Canada Rouge and any airlines operating under the Air Canada Express banner are all considered a large carrier.

The Tariffs can Provide More Favourable Terms than the APPR

60. The October 2022 Domestic Tariff at Rule 5, section C, and the October 2022 International Tariff at Rule 5, section D both confirm that passengers are entitled to rely on the more favourable of terms wherever there is overlap or conflict between the tariff and the APPR:

(1) The obligations of the carrier under APPR form part of this tariff and supersede any incompatible or inconsistent term and condition of carriage set out in the tariff to the extent of such inconsistency or incompatibility, but do not relieve the carrier from applying terms and conditions of carriage of this tariff that are more favorable to the passenger than the obligations set out in the APPR.

Air Canada's Misconduct

61. Air Canada has, for a period of time unknown to the Plaintiff but well known to the Defendant, pre-emptively taken the position with respect to passenger compensation claims that all delayed and cancelled flights and denial of boarding that are the result of Air Canada crew shortages were disruptions that are within Air Canada's control but required for safety purposes. As a result, Air Canada has denied compensation under the APPR to the Plaintiff and Class Members as the APPR's mandatory minimum compensation provisions do not apply if the disruption was within the carrier's control but required for safety purposes.
62. Air Canada controls all aspects of hiring, scheduling, and management of Air Canada staff, including the crews for all of Air Canada's flights. Air Canada's business decision to schedule flights when they knew or ought to have known that they would not have sufficient staff to ensure that booked flights are properly crewed is an issue entirely within the control of Air Canada, and any resulting crew shortages are of Air Canada's own. Air Canada cannot regularly and consistently fail to employ sufficient staff to crew flights, and then attempt to classify resulting disruptions as "required for safety purposes".
63. Air Canada's classification of disruptions due to crew shortages as being required for safety purposes does not align with the provisions of the APPR or with guidance provided by the CTA, both in decisions that it has rendered and in guidelines published by the Agency. Air Canada knows or ought to know this and has taken this position with respect to delays,

cancellations and boarding denials due to crew shortages in breach of its contract with Class Members.

64. On or around December 29, 2021, Air Canada issued an internal direction to its employees advising that all disruptions caused by cabin or flight crew shortages would be categorized as “within the carrier’s control – but required for safety purposes” (the “**Crew Shortages Memo**”).

65. The Crew Shortages Memo reads:

29 December

Flight Cancellations due to Crew Constraints are now “Within Carrier Control – For Safety” (Temporary)

Effective immediately, flight cancellations due to CREW are considered as ***Within Carrier Control – For Safety***. Upon close review by our Legal, Customer Relations and the Commercial teams, it has been deemed that these flight cancellations are tightly tied with COVID-19 causing cabin or flight crew shortages. This is implemented on a temporary basis only, any further updates will be communicated at a later date.

What this means for our customers:

Customers impacted by these flight cancellations will still be eligible for the standard of treatment such as hotel accommodations, meals etc. but will **no longer** be eligible for APPR claims/monetary compensation.

CASUAL CATEGORY	NETLINE 4- ALPHA CODE	3- ALPHA CODE	KEY WORD	INTERPRETATION	SCENARIOS	Refund (YES/NO)	Compensation	Standards of Treatment	Rebooking
Within Carrier Control – For Safety	CREW	FOC	CREW	Crew Constraints	Cancellation Due to crew constraints – COVID Restrictions	YES	NO	YES	YES

66. Despite the note that the Crew Shortages Memo is temporary, Air Canada acknowledged on July 25, 2022 that the policy remains in place.

67. Air Canada, through the Crew Shortages Memo, directed its employees to preemptively categorize flight disruptions resulting from crew shortages as situations that fall into section

11 of the APPR, rather than section 12 of the APPR. Whether Air Canada made the same or similar direction at an earlier point in time is unknown to the Plaintiff.

68. According to the CTA, not all flight disruptions due to crew shortages are “required for safety purposes”. The consequence of the directive contained in the Crew Shortages Memo therefore is that passengers who experienced flight disruptions due to crew shortages that were not required for safety purposes did not receive the compensation under the APPR that they are entitled to.
69. The APPR are incorporated by reference into each contract entered between Air Canada and each Class Member through the Tariffs.
70. Through its blanket approach of denying the Plaintiff and Class Members compensation that they are legally entitled to under the APPR, Air Canada has breached each contract that it has entered into with each individual Class Member.

Harm to the Plaintiff

71. As a result of Air Canada’s breach of contract, the Plaintiff and the Class Members have been denied compensation mandated by ss. 19-20 of the APPR for inconvenience caused by flights that were delayed and/or cancelled or for denial of boarding.

PART 2: RELIEF SOUGHT

72. The Plaintiff claims, on her own behalf and on behalf of the Class Members:
 - a. An order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c. 50 (the “*Class Proceedings Act*”);
 - b. a declaration that Air Canada breached the terms of its contract with each and every Class Member;
 - c. general damages;
 - d. punitive damages;

- e. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
- f. such further and other relief as this Honorable Court may deem just.

PART 3: LEGAL BASIS

Breach of Contract

- 73. The Tariffs are standard form contracts of adhesion drafted by Air Canada. When each of the Class Members purchased a ticket for a flight operated by Air Canada, each Class Member entered into a contract with Air Canada that included the Tariff applicable to that flight.
- 74. The rights and obligations of Class Members and Air Canada are governed by the Tariffs and the APPR.
- 75. The Tariffs included the mandatory compensation provisions of the APPR, and therefore the terms of the APPR formed part of the contracts entered into between Air Canada and each Class Member. Air Canada had a contractual obligation to comply with the APPR, which included providing compensation to the Plaintiff and Class Members if their flights were delayed and/or cancelled, or if they were denied boarding, for a reason within Air Canada's control and not required for safety purposes.
- 76. By refusing to comply with the provisions of the APPR by misclassifying the flight disruptions due to crew constraints as decisions made for safety purposes, Air Canada has breached the contracts between Air Canada and the Plaintiff and Class Members.
- 77. Further, as the Crew Shortages Memo demonstrates, Air Canada pre-emptively categorized all flight disruptions due to crew shortages as "within the carrier's control – but required for safety purposes". In doing so, Air Canada knowingly misled the Plaintiff and Class Members as to a matter directly linked to the performance of the contract, namely as to whether the reasons giving rise to the flight disruption were such that compensation was owed under the APPR. As a result, Air Canada has breached the duty of honesty owed to the Plaintiff and Class Members in the performance of its contracts with each of them.

78. The duty of honest performance breached by Air Canada is a general doctrine of contract law and an independent actionable wrong giving rise to damages.
79. Further, the decision to preemptively misclassify the flight disruptions as due to crew constraints was oppressive and high-handed misconduct by the Defendant that represents a marked departure from ordinary standards of decent behaviour. The Defendant's conduct, a breach of the duty of good faith and honest performance, rises to the level of an actionable wrong.
80. The Plaintiff and Class Members have suffered damages as a result of Air Canada's breaches of contract. The Plaintiff and Class Members are entitled to liquidated damages pursuant to their contracts by Air Canada whereby Air Canada complies with the terms of the APPR and provides for the Plaintiff and Class Members compensation as prescribed by ss. 19-20 of the APPR.
81. As a result of Air Canada's breach of its contractual duty of honesty, the Plaintiff and Class Members are entitled to an award of punitive damages.

Limitation Periods

82. The Plaintiff and Class Members plead and rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v. Godfrey*, 2019 SCC 42 to postpone the running of the limitation period until the date on which this Notice of Civil Claim was filed.
83. The Plaintiff and Class Members could not reasonably have known that Air Canada unjustly denied them compensation to which they were entitled. The Plaintiff and Class Members who have filed complaints with the CTA could not reasonably have expected that an adjudication by the CTA would take the length of time that it has and/or will and therefore should not be prejudiced by any delay, if there is any, in commencing civil proceedings. The harm is ongoing.
84. The Plaintiff and Class Members plead and rely on the *Limitation Act*, SBC 2012, c 13, and in particular on ss. 8 and 21(3). In the alternative, or in the addition, the Plaintiff and Class

Members rely on the *Limitation Act*, SBC 2012, c 13, s. 30 and the *Limitation Act*, RSBC 1996, c 266.

Service

85. The Plaintiff and Class Members have the right to service this Notice of Civil Claim on the Defendants pursuant to the Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28, s 10 (CJPTA), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.
86. The Plaintiff and Class Members rely on the following grounds, in that this action concerns a business carried on in British Columbia (CJPTA, s 10(h)).

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: December 16, 2022

A handwritten signature in black ink, appearing to read 'Anthony Vecchio', is written over a horizontal line.

Signature of lawyer for Plaintiff

Anthony Vecchio KC

Saro Turner

Sam Jaworski

Slater Vecchio LLP

Signature of lawyer for Plaintiff

Anthony Vecchio KC

Saro Turner

Sam Jaworski

Slater Vecchio LLP

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

(c) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claim the right to serve this pleading on the Defendant AIR CANADA, AIR CANADA ROUGE LP, and JAZZ AVIATION LP outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding loot boxes in video games.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

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:

[Check all boxes below that apply to this case]

☒ a class action

☐ maritime law

☐ aboriginal law

☐ constitutional law

☐ conflict of laws

☐ none of the above

☐ do not know

Part 4:

Class Proceedings Act, RSBC 1996, c 50

Court Order Interest Act, RSBC 1996, c 79