Federal Court  Cour fédérale

**Date: 20250120**

**Docket: T-2124-23**

**Citation: 2025 FC 110**

**Ottawa, Ontario, January 20, 2025**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**BRINK'S, INCORPORATED, BRINK'S GLOBAL SERVICES INTERNATIONAL INC., AND BRINK'S SHWEIZ AG**

**Plaintiffs**

**and**

**AIR CANADA**

**Defendant**

# JUDGMENT AND REASONS

[1] The matters before me are a motion and a cross-motion, both seeking summary judgment.

[2] Brink's, Incorporated, Brink's Global Services International Inc. and Brink's Schweiz AG [collectively, Brink's] contracted with Air Canada to transport by air a shipment of banknotes and a shipment of gold bars [collectively, the Shipments] from Zurich, Switzerland to Toronto, Canada. Immediately after its arrival in Toronto, the Shipments were stolen while they

were in Air Canada's possession. Brink's commenced an action against Air Canada seeking damages with respect to the stolen cargo. Brink's now brings a motion seeking an order granting summary judgement in its favour in the amount of Canadian dollars [CAD] equivalent to the cargo value, being 1,734,835 Swiss Francs [CHF] and $14,988,920.58 US Dollars [USD], on the basis that there is no genuine issue for trial. Alternatively, Brink's seeks an order directing a summary trial on the issue of whether the limit of liability set out in Article 22(3) of the *Convention for the Unification of Certain Rules for International Carriage by Air* [*Montreal Convention*], which is part of Canadian federal law by virtue of the *Carriage by Air Act*, RSC 1985, c C-26 [*Carriage by Air Act*], has application in this matter.

[3] On cross motion, Air Canada seeks summary judgement limiting its liability for Brink's' claim pursuant to and in the amount prescribed by Article 22(3) of the *Montreal Convention*, being 8,811 Special Drawing Rights of the International Monetary Fund [SDR] for the gold shipment, and 1,177 SDR for the banknotes shipment.

**Background**

*The Parties*

[4] Brink's, Incorporated, is a Delaware corporation which conducts business as a global provider of cash and valuables management, digital retail solutions, and ATM managed services. Brink's Global Services International, Inc. and Brink's Schweiz AG are subsidiaries of Brink's, Incorporated. Brink's Global Services International, Inc. is a Delaware corporation with its principal place of business located in Miami, Florida. Brink's Schweiz AG is a corporation

organized under the laws of the Canton of Zurich in Switzerland. Brink's provides, among other services, logistics and security solutions for the international transportation of high value cargo.

[5] Air Canada is a company continued under the *Canada Business Corporations Act*, RSC 1985, c C-44, and is licensed to carry on business as an air carrier within Canada and internationally.

*The Evidence*

[6] Brink's filed an affidavit of Mr. Simon Grimmett, Senior Business Systems Manager at Brink's, Incorporated, sworn on June 28, 2024 [Grimmett Affidavit], in support of its motion.

[7] Air Canada filed an affidavit of Mr. Sebastian Cosgrove, Director Global Customer Service for Cargo, Air Canada, affirmed on June 27, 2024 [Cosgrove Affidavit], in support of Air Canada's cross-motion as well as a second affidavit of Mr. Cosgrove, affirmed on June 28, 2024, responding to the Grimmett Affidavit [Cosgrove Responding Affidavit].

[8] Both affiants were cross-examined on their affidavits and the transcripts of those cross-examinations are included in the records before me.

*Events Leading Up to the Loss*

[9] The relevant facts preceding the theft of the Shipments are largely undisputed.

i. Booking Process

[10] The Grimmett Affidavit provides general background information describing the standard cargo booking process utilized by freight forwarders such as Brink's and air carriers such as Air Canada. It also provides the booking details of the subject Shipments.

[11] As the Grimmett Affidavit describes it, the first step in the booking process is the generation of air waybills of which there are two types: the Master Air Waybill [MAWB] and House Air Waybill [HAWB]. The MAWB is issued on a carrier form and contains pre-populated carrier identification details, as well as a unique 11-digit identification number. The first three digits identify the airline carrying the shipment, and the remaining eight digits represent the serial number of the package (cargo). The HAWB is issued by a freight forwarder, like Brink's, to the exporter, being the consignor/sender of the goods.

[12] In 2010, the International Air Transport Association [IATA] introduced the electronic Air Waybill [IATA e-AWB]. The IATA e-AWB permits MAWB and HAWB information to be sent electronically to air carriers. In 2019, the IATA e-AWB became the default contract of carriage for all air cargo shipments on enabled trade lanes.

[13] The IATA e-AWB is achieved through the interchange of electronic data [EDI] messages. Because airlines do not accept messages directly from freight forwarders, EDI messages are frequently exchanged between freight forwarders and air carriers by way of third party intermediaries, known as cargo community system [CCS] providers who offer integrated

platforms to air cargo stakeholders for data sharing and use. Among the EDI messages exchanged between freight forwarders and air carriers are Freight Waybill [FWB] and Freight House List [FHL] messages. According to the Grimmett Affidavit, the FWB is the electronic equivalent of a MAWB. The FHL is the electronic equivalent of a HAWB.

[14] To initiate the booking process, Brink's must first create a new MAWB. This is done by inputting specific information into the Brink's International Transport System [BITS], including shipper and airline details and the type of service required. Once inputted, BITS automatically populates the next MAWB number, available from a range of MAWBs pre-assigned by the applicable airline.

ii. Gold Shipment

[15] On April 13, 2023, Valcambi SA [Valcambi], a precious metals refining company, placed an order for Brink's to transport a shipment of gold bars with a gross weight of 400.19 kilos and a value of 13,612,696.75 CHF [Gold Shipment] from Zurich to Toronto. Upon receipt of the order, Brink's created a MAWB for the Gold Shipment by inputting information into BITS, which then automatically generated the next available MAWB number from the Air Canada range, being No. 014 6290 1182.

[16] That same day, Brink's sent a booking e-mail to Air Canada with the subject line "Brink's VAL Booking 014-6290 1182 / ZRH-YYZ" and, in the body of the email, included the words "10 Colli 250kg Gold VAL/EAW." The Grimmett Affidavit states that "VAL" is a special handling code meaning "valuable" while "EAW" means that no document pouch would be

delivered by the freight forwarder. Air Canada sent an e-mail confirming that the Gold Shipment was booked for transport. This e-mail comprises primarily of a table with the booking details including, among other information: Actual Weight - 250.0 KG; Description - GOLD; Commodity Code - VAL; Declared Value - NVD; Prepaid - YES; Product - AC Secure; and, Special Handling Codes - PRI VAL EAW. The Grimmett Affidavit indicates that PRI means "priority".

[17] On April 14, 2023, Brink's transmitted three FWB messages to Air Canada via CCS-UK (the CCS provider used by Brink's) regarding the Gold Shipment. The Gold FWBs, among other information, included the lines "SSR/BRINK S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO" and "/NG/GOLD GOLDBARSSEALS 0". Brink's submits that the code "SSR" means "Special Service Request".

[18] Brink's also submitted three FHL messages to Air Canada via CCS-UK. These included the lines: "TXT/GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD- GOLD-GOLD-GOLD-GOLD-G" and "CVD/CHF/PP/NVD/13612696.75/XX". It is Brink's' position that the value of the Gold Shipment was identified on the FHLs as $13,612,696.75 CHF. However, Air Canada's position is that monetary value on the FHL is the declared value for customs [Customs] purposes.

[19] Shortly thereafter, Brink's responded to Air Canada's confirmation email for the Gold Shipment by sending an email enclosing the final gold MAWB, which document is titled "Air Waybill" [Gold Air Waybill].

[20] The Gold Air Waybill identifies the shipper and the consignor, provides the flight details and other information. It also contains the following wording:

> It is agreed that the goods described hereon are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplement charge if required.

[21] The Gold Air Waybill, in the "Declared Value for Carriage" box, contains the entry "NVD" (no value declared). In the "Declared Value for Customs" box is the entry "NCV" (no Customs value). The "Amount of Insurance" box entry is "XXX"; the "Nature and Quantity of the Goods" column entry is "GOLDBARS"; the "Gross Weight" column entry is 400.19 kg; and the "Chargeable Weight" column entry is 400.5 kg. In the freight "Rate Class" column the letter "S" is entered (which Brink's submits means "Surcharge"). The freight "Rate/Charge" column entry is $23.60/kg, with the "Total" column entry being 9451.80. The words "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO" appear on the face of the Gold Air Waybill.

iii. Banknotes Shipment

[22] A similar booking process was followed with respect to the banknotes.

[23] On April 14, 2023, Raiffeisen Schweiz [Raiffeisen], a Swiss retail bank, placed an order for Brink's to transport a shipment of banknotes with a gross weight of 53.18 kilograms and a value of $1,945,843 USD [Banknotes Shipment] from Zurich to Toronto. Upon receipt of the

order, Brink's created a MAWB, the next Air Canada MAWB number automatically generated being No. 014 ZRH 6290 1193.

[24] That same day, Brink's sent a booking e-mail to Air Canada with the subject line "VAL BOOKING BRINKS / 014-6290 1193". Air Canada sent a booking confirmation email indicating that the Banknotes Shipment was booked for transport. This again is comprised primarily of a table with the booking details including, among other information: Actual Weight - 80.0 KG; Description - BANKNOTES; Commodity Code - VAL; Declared Value - NVD; Prepaid - YES; Product - AC SECURE; and, Special Handling Codes - PRI VAL EAW.

[25] Brink's also transmitted a FWB message to Air Canada with respect to the Banknotes Shipment, which, among other information, included the lines "SSR/BRINK S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO" and "/NG/BANKNOTES BANKNOTES".

[26] Additionally, Brink's transmitted a FHL message to Air Canada regarding the Banknotes Shipment, which included the lines "TXT/BANKNOTES – BANKNOTES-BANKNOTES" and "CVD/CHF/PP/NVD/1945843/XXX". Again, Brink's' evidence is that the FHL identifies the value of the Banknotes while Air Canada's evidence is that the value identified on the FHL message is the declared value for Customs.

[27] Shortly thereafter, Brink's responded to Air Canada's confirmation email for the Banknotes Shipment by sending an e-mail enclosing the final banknotes MAWB [Banknotes Air

Waybill]. Like the Gold Air Waybill, it identifies the shipper and the consignor, provides the flight details and other information as well as the limitation of liability notification wording.

[28] The Banknotes Air Waybill, in the "Declared Value for Carriage" box, indicates "NVD" and, in the "Declared Value for Customs" box, indicates "NCV". The "Amount of Insurance" box entry is "XXX". The "Nature and Quantity of the Goods" column entry is "BANKNOTES", the "Gross Weight" column entry is 53.18 kilograms and the "Chargeable Weight" column entry is 53.5 kilograms. In the freight "Rate Class" column, the letter "S" is entered. The freight "Rate/Charge" column entry is 11.00 with the "Total" column entry being 588.50. The words "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO" also appear on the face of the Banknotes Air Waybill.

iv. AC Secure and Freight Rates

[29] Brink's elected to transport the Shipments by way of Air Canada's secure services product, known as AC Secure. AC Secure provides for special handling for high-value cargo. Air Canada indicates that this includes extra security, higher load priority and shorter time for tender and retrieval of cargo.

[30] Air Canada's website states that AC Secure ensures the safe and secure transportation of specific commodities including goods with a declared value of $1,000 CAD/USD per kilogram or more, or when a shipper purchases insurance in the same amount per kilogram, regardless of commodity. The Air Canada Cargo website, with respect to the AC Secure service, states that the listed commodities, regardless of declared value or amount of insurance purchased, are "high-

value shipments". The listed commodities include gold and money or currency notes. The AC Secure webpage also states that "[a]ll valuable shipments are assessed a flat valuable handling fee and a valuation charge that is calculated as a percentage of the declared value for air transport" and that Air Canada Cargo's liability is limited by tariffs and international agreements. Further, that variable levels of special handling are offered depending on the declared value of the shipment or the level of service requested at the time of booking and that "shipping rates can vary significantly depending on the class, handling requirements, and options [the shipper] selects".

[31] The IATA publishes Air Cargo Tariffs and Rules [TACT]. The TACT rate for the carriage of valuable cargo is 200% of the general cargo rate. The Gold and Banknotes Air Waybills reflect the TACT rate for the carriage of valuable cargo (i.e., $11.00 per kilogram for the banknotes and $26.00 per kilogram for the gold).

[32] However, the parties agree that the freight rates on the face of the Gold and Banknotes Air Waybills are not the freight rates that Air Canada actually charged Brink's. The freight rates stated on the Gold and Banknotes Air Waybills are "face" or "book" rates, inputted to avoid disclosing the rate negotiated by the parties on those air waybills.

[33] AC Secure publishes its own rates [AC Secure Rates]. I note in passing here that the AC Secure Rates sheet is subject to a Confidentiality Order as it contains sensitive commercial information. Accordingly, these reasons will not make reference to actual rates charged or other confidential information.

[34] The Cosgrove Affidavit states that the freight rates set out in the AC Secure Rates sheet apply only to those entities or persons that ship cargo under the AC Secure service and that those rates are not otherwise available to the public at large. On cross-examination on his affidavit, Mr. Cosgrove added that to access the AC Secure Rates, customers would also be required to have an account with Air Canada. For carriage between stations in Switzerland and Canada, the AC Secure Rates sheet provides a minimum rate for any cargo falling below a certain weight threshold and one standard (flat) rate for all other valuable cargo. Those rates are less than Air Canada's published and public rates, which are based on the TACT rate.

[35] The Grimmett Affidavit states that on September 11, 2023, Air Canada invoiced Brink's for the Gold Shipment based on the standard flat rate set out in the AC Secure Rates sheet, plus 4.00 CHF for the electronic transfer of documents to Air Canada. The invoice was paid on October 2, 2023. The Grimmett Affidavit also states that on December 10, 2023, Air Canada invoiced Brink's for the Banknotes Shipment, applying the same rate and electronic transfer fee, and that this invoice was paid on January 3, 2024. Although the Cosgrove Affidavit states that the Banknotes Shipment was not invoiced because of the commencement of the subject litigation, when referred to an exhibit to the Grimmett Affidavit on cross-examination, indicating that the Banknotes Shipment had been invoiced and paid, Mr. Cosgrove agreed that this appeared to be the case.

v. The Shipments are Stolen

[36] On April 17, 2023, the Shipments were transported on Air Canada Flight AC881 departing from Zurich Airport, in Zurich, Switzerland and arriving at Toronto Pearson International Airport in Toronto, Canada.

[37] Shortly after arrival, the Shipments were stolen from Air Canada Cargo facilities at Toronto Pearson International Airport. The suspect(s) allegedly came into possession of the Shipments after presenting Air Canada personnel with a fraudulent air waybill.

[38] On April 19, 2023, Raiffeisen and Valcambi sought compensation from Brink's for the theft of the Shipments. On May 4, 2023, Brink's made payment to Raiffeisen in the amount of 1,734,835 CHF and to Valcambi in the amount of $14,988,920.58 USD.

[39] Brink's wrote to Air Canada on April 27, 2023, demanding full reimbursement for its losses and damages arising from the theft of the Shipments. In response, Air Canada admitted that it is strictly liable for Brink's' damages in the amount of the CAD equivalent of the maximum limits of liability set out in Article 22(3) of the *Montreal Convention,* amounting to 8,811 SDR (approximately $11,591.75 USD) for the Gold Shipment and 1,177 SDR (approximately $1,540.39 USD) for the Banknotes Shipment.

[40] Brink's then initiated the subject action.

**The *Montreal Convention***

*Exclusivity*

[41] The parties agree that their respective rights and obligations concerning the Shipments are governed exclusively by the *Montreal Convention*. While in its written submissions, Air Canada raised this as an issue, when appearing before me counsel for Brink's confirmed that Brink's accepts that the *Montreal Convention* governs all of the parties' rights and obligations with respect to its claim. Accordingly, I will not further address this point.

*The Convention*

[42] The *Montreal Convention* is an international treaty that governs the liability of air carriers and the extent of compensation for damages for which they will be liable. It applies to all international carriage of persons, baggage or cargo performed by aircraft for reward (Article 1(1)). It was ratified by Canada in 2002 and was incorporated into Canadian law in 2003 by way of the *Carriage by Air Act*. Specifically, pursuant to s 2(2.1) and Schedule VI of that Act.

[43] The preamble to the *Montreal Convention* recognizes the significant contribution of its predecessor, the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* signed in Warsaw on 12 October 1929 [*Warsaw Convention*], and other related instruments to the harmonization of private international air law; the need to modernize and consolidate the *Warsaw Convention* and related instruments; and, the importance of ensuring

protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.

[44] As will be discussed further below, prior to the enactment of the *Montreal Convention*, the *Warsaw Convention* underwent several amending protocols. These include the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, which occurred at the Hague in 1955 [*Hague Protocol*], and the *Montreal Protocol No. 4 To Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, as Amended by the Protocol Done at the Hague on 28 September 1955* [*Montreal No. 4 Protocol*]. Pursuant to the *Carriage by Air Act*, the *Warsaw Convention* (ss 2,3,4,5 and 6; Schedule I), the *Hague Protocol* (ss 2 and 6; Schedule III) and the *Montreal No. 4 Protocol* (ss 2 and 5; Schedule IV) also have force of law in Canada. However, Article 55 of the *Montreal Convention* stipulates that it shall prevail over any rules which apply to international carriage by air between State Parties to the *Montreal Convention* by virtue of those States commonly being Party to the *Warsaw Convention*, the *Hague Protocol*, the *Montreal No. 4 Protocol* and other stipulated conventions and protocols.

[45] For the purposes of this motion and cross-motion, the most relevant provisions of the *Montreal Convention* are as follows:

> ***Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo***
>
> …
>
> **3** In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special

Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

…

***Article 11 — Evidentiary Value of Documentation***

**1** The air waybill or the cargo receipt is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

…

***Article 23 — Conversion of Monetary Units***

**1** The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

…

***Article 25 — Stipulation on Limits***

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

***Article 26 — Invalidity of Contractual Provisions***

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not

> involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.
>
> ***Article 27 — Freedom to Contract***
>
> Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.
>
> …
>
> ***Article 29 — Basis of Claims***
>
> 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.

[46] I note here in passing that, although Article 22(3) as described above sets the carrier liability limit at 17 SDR per kilogram, that limit was revised and increased to 22 SDR per kilogram, in accordance with the review process set out in Article 24, with effect on December 28, 2019. The parties agree that the increased 22 SDR per kilogram limit is in effect.

**Issues**

[47] In my view, the issues raised by this motion and cross-motion can be framed as follows:

1. Can this matter be resolved by way of summary judgement?

2. Is Air Canada, as the carrier, entitled to rely on the Article 22(3) limit of liability with respect to the loss and damages arising from the theft of the Shipments, or,

does this matter fall within the Article 22(3) exception to the limit of liability, thereby permitting Brink's to rely on an increased liability limit? That is, with respect to the increased limitation amount:

a. Did Brink's make, at the time when the Shipments were handed over to Air Canada, a special declaration of interest in delivery at destination; and

b. Did Brink's pay a supplementary sum, if required?

**Summary Judgment**

[48] Brink's submits that the *Federal Courts Rules*, SOR/98-106 [*Rules*] governing summary judgment must be interpreted broadly, favoring proportionality and fair access to the affordable, timely and just adjudication of claims (citing *Hryniak v Mauldin*, 2014 SCC 7 at paras 4–5 [*Hryniak*]). Further, that summary judgment is available if the process allows the presiding judge to make the necessary findings of fact and to apply the law to those facts (citing *Graymar Equipment (2008) Inc v Cosco Pacific Shipping Ltd*, 2018 FC 974 at para 16; *Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 at paras 33–40).

[49] Brink's further submits that in this matter there is no dispute as to the appropriateness of a motion for summary judgment. A determination as to whether the monetary limits of liability set out in Article 22(3) of the *Montreal Convention* are applicable to Brink's' claim can be made based on the evidentiary record before the Court. More specifically, the Court is able to ascertain whether Brink's made a special declaration of interest in delivery and paid a supplementary sum in respect of the Shipments, which are the only questions to be answered on these motions.

[50] Air Canada submits that under Rule 215(1), there is no genuine issue for trial if there is no basis for the claim based on the law and the evidence brought forward, or if the judge has the evidence required to fairly and justly decide the dispute (citing *Canada v Bezan Cattle Corporation*, 2023 FCA 95 at para 138). Air Canada submits that there is no basis for Brink's' claims for any damages in excess of the *Montreal Convention*'s Article 22(3) limit of liability (22 SDR per kilogram) and that there is no evidence that Brink's declared a value for carriage/special declaration of interest or paid a supplementary sum for the carriage of the Shipments. Given that Air Canada has admitted strict liability for damages in the amount of the Article 22(3) limit of liability, there is no other issue for trial.

[51] In my view, this matter can be appropriately resolved by way of summary judgement, which is governed by Rules 213(1) and 215(1). As held by the Federal Court of Appeal in *Manitoba v Canada*, 2015 FCA 57:

> [15] Under Rule 215(1) of the *Federal Courts Rules*, where there is "no genuine issue for trial" the Court "shall" grant summary judgment. The cases concerning "no genuine issue for trial" in the Federal Courts system, informed as they are by the objectives of fairness, expeditiousness and cost-effectiveness in Rule 3, are consistent with the values and principles expressed in *Hryniak*. In the words of *Burns Bog Conservation Society v. Canada*, 2014 FCA 170, there is "no genuine issue" if there is "no legal basis" to the claim based on the law or the evidence brought forward (at paragraphs 35-36). In the words of *Hryniak*, there is "no genuine issue" if there is no legal basis to the claim or if the judge has "the evidence required to fairly and justly adjudicate the dispute" (at paragraph 66). *Hryniak* also speaks of using "new powers" to assist in that determination (at paragraph 44). But under the text of the *Federal Courts Rules* those powers come to bear only later in the analysis, in Rule 216.

[52] Put otherwise, there is no genuine issue for trial if the motions judge can make necessary findings of fact, apply the law to those facts, and if the summary judgment process is a proportionate, more expeditious and less expensive means to achieve a just result (*Patterned Concrete Mississauga Inc v Bomanite Toronto Ltd*, 2021 FC 314 at para 4, citing *Hryniak*, at para 49).

[53] In this matter, the questions raised by both parties reflect the opposite sides of the same coin. They turn on whether Brink's made a special declaration of interest in delivery at destination and paid a supplementary sum, if required, within the meaning of Article 22(3) of the *Montreal Convention*. This determination can be made based on the principles of statutory interpretation and on the evidentiary record before this Court, namely through the affidavits submitted by the parties, accompanying exhibits, and cross-examination transcripts. A determination of this question will be wholly dispositive of the action. This is because: the exclusivity of the *Montreal Convention* is admitted by Brink's; Air Canada has admitted strict liability for damages in accordance with the Article 22(3) limits of liability; and a determination of whether Brink's made a special declaration of interest and paid a supplementary sum will dictate the amount of Air Canada's liability.

[54] Thus, what must be determined is whether Brink's can establish that it meets the conditions of the exception to the Article 22(3) limit of liability. Once resolved, there is no other genuine issue for trial.

**Article 22(3) Limits of Liability**

### A. Special Declaration of Interest

*Brink's' Position*

[55] Brink's submits that applying the evidence in this matter to a properly interpreted Article 22(3) establishes that it made a special declaration of interest.

[56] Brink's submits that, because the *Montreal Convention* is an international treaty that has been incorporated into Canadian law, the meaning of the words contained in Article 22(3) must be determined in accordance with the *Vienna Convention on the Law of Treaties*, TS 1980 No 37 [*Vienna Convention*] (citing *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at para 11), and specifically Article 31(1) of that *Convention*. The approach to international treaty interpretation is similar to the domestic approach to statutory interpretation except, unlike domestic statutes, "treaties must be interpreted with a view to implementing the true intentions of the parties" (citing *Canada v Alta Energy Luxembourg SARL*, 2021 SCC 49 at para 37). And, citing *Thibodeau v Air Canada*, 2014 SCC 67 [*Thibodeau*], Brink's submits that, in light of the *Montreal Convention*'s objective of achieving international uniformity, domestic courts should pay close attention to international jurisprudence, and be "especially reluctant to depart from any strong international consensus that has developed in relation to its interpretation" (*Thibodeau*, at para 50).

[57] Given the above, and in the absence of a definition or form of "special declaration of interest in delivery" prescribed by the *Montreal Convention*, the starting point in interpreting Article 22(3) is to examine the plain meaning of its text, as this reflects what the parties to the *Convention* agreed (citing *Brink's Limited v South African Airways*, 93 F 3d 1022 (2d Cir 1996) at 1027 [*South African Airways*]).

[58] In that regard, Brink's submits that Air Canada's position that a shipper must declare the specific monetary "value" of the cargo in order to escape the Article 22(3) liability limits is incompatible with the ordinary meaning of the text, which refers to the shipper's "interest" and not the cargo's value. The word "interest" was not used in the *Warsaw Convention*, which required a shipper to provide a "special declaration of value at delivery." It is new to the *Montreal Convention*, evidencing the drafters' intention to broaden the scope of Article 22(3). Brink's refers to dictionary definitions to support its view that "value" and "interest" have different meanings.

[59] Brink's also submits that Article 22(3) precedes Article 23(4), a provision that addresses the conversion of SDR, and in which the term "value" is used throughout. Brink's submits that this indicates the drafters' intention not to use the word "value" in Article 22(3) and not to restrict the meaning of "special declaration of interest" when they opted to replace the word "value" with the word "interest".

[60] Brink's acknowledges that the *Montreal Convention* is "an entirely new treaty that unifies and replaces the system of liability that derives from the *Warsaw Convention*" (citing *Ehrlich v*

*American Airlines, Inc*, 360 F 3d 366, (2d Cir 2004) at 371). However, it argues that many of its provisions are taken directly from the *Warsaw Convention* and the many amendments thereto (citing *Lavergne v ATIS Corp*, 767 F Supp 2d 301 (DPR 2011) at 307). Thus, where language has not been retained and has been changed, courts must resist ignoring the revisions the drafters of the *Montreal Convention* felt it necessary to make (citing *Underwriters at Lloyds Subscribing to Cover Note B0753PC1308275000 v Expeditors Korea Ltd*, 882 F 3d 1033 (11th Cir 2018) at 1045). According to Brink's, the drafters of the *Montreal Convention* understood that "interest" meant something different than "value" as otherwise they would not have changed the language of Article 22(3). In support of this interpretive view, Brink's refers to a US Court of Appeals Second Circuit case, *Badar v Swissport USA, Inc*, 53 F 4th 739 (2d Cir 2022) at 747 [*Badar*], as analogous.

[61] Brink's also argues that Air Canada relies exclusively on old jurisprudence that interprets the words "special declaration of value" and not the words "special declaration of interest" as currently found in Article 22(3) of the *Montreal Convention*. Brink's submits that those cases do not assist the Court in its interpretive exercise.

[62] Additionally, Brink's submits that interpreting the special declaration of interest in the narrow manner proposed by Air Canada would undermine the entire purpose of the *Montreal Convention*. The *Montreal Convention* preamble reflects an additional consideration not found in the *Warsaw Convention*, that being, "the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution" (citing *International Air Transport Association v Canadian*

*Transportation Agency*, 2022 FCA 211 at para 96). Brink's refers to articles, US case law and discussions from the US Senate as well as *Thibodeau* (at paras 150 and 160) to support its position that the *Montreal Convention* represents a shift towards increased protections for consumers and passengers, and that Article 22(3) must be interpreted within that context. Brink's submits that, viewed in this context, it would be incongruous if a statement on the face of the Gold and Banknotes Air Waybills, such as "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO", was not considered a "special declaration of interest at destination".

[63] Brink's also argues that Article 22(3) does not restrict the form of a "special declaration of interest" to the face of an air waybill. In that regard, Brink's claims that, not only does the *Montreal Convention* not define "special declaration of interest in delivery", but that nothing in the text of Article 22(3) indicates how this declaration is to be documented, nor does it require that it take any particular form (citing *Delta Air Lines, Inc v Chimet, SpA*, 619 F 3d 288 at 297 [*Chimet*]; *Durunna v Air Canada*, 2013 ABPC 31 at para 69 [*Durunna*]; *Koliada v Lufthansa German Airlines*, [2001] OJ No 2960 at para 8 [*Koliada*]; *Foord v United Air Lines Inc*, 2006 ABPC 103 at para 38 [*Foord*]). Therefore, Air Canada's position that, to make a "special declaration of interest in delivery", a shipper must expressly declare the monetary value of the cargo on the face of Air Canada's air waybill under the "Declared Value for Carriage" box is not mandated by the text of Article 22(3) nor does it have any support in law. Brink's submits that none of the cases referenced by Air Canada support their position that a declared value for carriage is synonymous with or one and the same as a special declaration of interest in delivery at destination. Rather, while those cases say that the entry of a monetary figure under the

declared value for carriage section of an air waybill constitutes a “special declaration of value”, none of them state that this is the only way that a special declaration can be made.

[64] For example, in *Chimet*, the US Court of Appeals for the Third Circuit noted that the *Montreal Convention* “includes language suggesting that other evidence beyond the air waybill may be considered” when determining whether a special declaration of interest has been made (at 299).

[65] Brink’s submits that even before the *Montreal Convention*, courts recognized that the “obvious purpose” of a special declaration was “to inform the carrier of the risk it assumes in providing carriage for a valuable shipment and to allow it to take the necessary steps to minimize that risk” (citing *Orlove v Philippine Air Lines*, 257 F 2d 384 (2d Cir 1958) at 388 [*Orlove*]). Further, that when one considers this objective in harmony with the phrase “special declaration of interest in delivery”, it is inconceivable how the words “BRINK’S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO” could not have the effect of exceeding the monetary limits imposed by Article 22(3).

[66] Brink’s submits that the *Montreal Convention* is paramount. Articles 26 and 49 expressly prohibit carriers from setting a limitation of liability lower than that provided for in the *Convention*. However, despite this, Air Canada argues that the terms on the reverse side of its Gold and Banknotes Air Waybills [AC Conditions of Carriage], the terms of the Air Canada International Cargo Tariff [AC Cargo Tariff] and the language of the IATA Resolution 600b Air

Waybill – Conditions of Contract [IATA Resolution 600b] supplant the language of the *Montreal Convention*.

[67] Article 2.2 of the AC Conditions of Carriage states that, to the extent not in conflict with rules relating to liability established by the *Warsaw Convention* or the *Montreal Convention*, carriage and other related services performed by the carrier are subject to applicable laws and government regulations, the provisions contained in the air waybill, the carrier's conditions of carriage, and the carrier's applicable tariffs.

[68] Article 6.1 of the AC Conditions of Carriage states that "for cargo accepted for carriage, the *Warsaw Convention* and the *Montreal Convention* permit shippers to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required". Brink's submits that Air Canada interprets this language to mean that a shipper must declare the value of the cargo on the face of the air waybill in order to exceed the liability limits imposed under Article 22(3) of the *Montreal Convention*. However, that this ignores that the language used (i.e., "permit") is permissive and not mandatory. As such, and contrary to Air Canada's submissions, nothing in the AC Conditions of Carriage states that the value must appear on the face of the air waybill in order to satisfy Article 6.1. And, if the AC Conditions of Carriage did stipulate this, they would be in conflict with the *Montreal Convention*, which requires a special declaration of interest in delivery – not value. In any event, Brink's did declare the monetary value of the Shipments when it transmitted the FHL messages to Air Canada. Brink's also made a special declaration of interest by: disclosing the value of the Shipments to Air Canada at the time of booking; indicating the need for special supervision on the face of the

Gold and Banknotes Air Waybills; designating the cargo as “valuable”; and, utilizing the AC Secure service.

[69] Similar to the AC Conditions of Carriage, Brink’s argues that Article 37(E) of the AC Cargo Tariff expressly incorporates the *Montreal Convention* and confirms that it should prevail in the event of conflict. Article 38(G)(A) of the AC Cargo Tariff states that “unless the shipper has made a special declaration of value for carriage and has paid the supplementary sum applicable, liability of Carrier shall not exceed the applicable Convention limit…” However, nothing in the AC Cargo Tariff mandates that such “value” must appear on the face of the air waybill. In fact, subparagraph (G)(A) goes on to state that “[i]f the shipper has made a special declaration of value for carriage, it is agreed that any liability shall in no event exceed such declared value for carriage stated on the face of the air waybill or included in the shipment record”. The AC Cargo Tariff defines “Shipment Record” as “any record of the contract of carriage preserved by [the] Carrier, evidenced by means other than an air waybill.” Brink’s submits that the FHLs contained the value of the Shipments, but this was more than was required, as all that Brink’s had to do to trigger the exception under Article 22(3) was to declare a special interest in delivery at destination. To the extent that the AC Cargo Tariff tracks the “archaic language” found in the *Warsaw Convention* with respect to the special declaration, the *Montreal Convention*’s terms govern by virtue of its supremacy.

[70] Brink’s also claims that Air Canada’s reliance on Article 13 of the AC Cargo Tariff is misplaced. It dissects those provisions, and submits that the Tariff requirement that the shipper make a declaration of value for all “valuable cargo shipments” is “belied by the reality of the

situation, which is that AC knowingly (and regularly) accepts ‘valuable cargo shipments’ for transportation under AC Secure without any actual value being declared on the face of the air waybill”. Brink’s refers to Air Canada’s acceptance for carriage of “valuable cargo shipments” in the 24 occasions documented in this case, where no “value” was declared on the face of the air waybill. On cross-examination, Mr. Cosgrove confirmed that the practice of providing “NVD” in the “Declared Value” section of the air waybill was Brink’s’ standard practice whenever it used AC Secure. According to Brink’s, Air Canada cannot now attempt to retroactively enforce a provision of its Tariff, which it has previously repeatedly ignored (referencing *Williams Dental Co, Inc v Air Exp Intern*, 824 F Supp 435 (SDNY 1993) at 442).

[71] Additionally, Brink’s submits that IATA Resolution 600b tracks the same language as the AC Conditions of Carriage, including Article 2.2. Thus, to the extent that IATA Resolution 600b conflicts with the *Montreal Convention* insofar as it permits the shipper to increase the limitation of liability by declaring a higher value (instead of an interest) for carriage, the *Montreal Convention*’s language must prevail. Regardless, Air Canada’s reliance on the standards set out in IATA Resolution 600b is not based in any binding contractual obligation or legal precedent.

[72] Given the foregoing, Brink’s submits that there can be no doubt that it made a special declaration with respect to its interest in the Shipments. Booking a shipment under AC Secure is sufficient on its own to constitute a “special declaration”. By selecting a process which purportedly recognizes that some high-value items require unique handling, Brink’s conveyed its special interest in the Shipments. Air Canada’s suggestion otherwise strains credulity and

conflicts with both the ordinary meaning of Article 22(3) and the overall aims of the *Montreal Convention*.

[73] Brink's further argues that the manner in which Air Canada responds to a shipper's selection of the AC Secure process confirms that it is considered a special declaration of interest in delivery. Brink's refers to Air Canada's evidence that whenever a shipper selects the AC Secure service, the special handling codes "PRI" (for "priority") and "VAL" (for "valuable") are automatically added to the air waybill. These actions evidence a clear mutual understanding that, in opting to transport cargo via AC Secure, a shipper is making a special declaration within the meaning of Article 22(3).

[74] In any event, abundant evidence exists to support Brink's' claim that it declared its special interest in the delivery of the Shipments. This evidence includes:

a. The special handling code "VAL" contained in the subject line and body of the booking confirmation e-mails for both Shipments;

b. The FWBs for both Shipments containing the following special service request: "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO";

c. The FWB and FHL messages for the Gold Shipment described the nature and quantity of the cargo as more than 400 kilograms of gold, the value of which is as easily discernable as the value of any currency; and

d. The FHLs for both Shipments described the monetary value of the goods as: (i) $13,612,696.75 CHF worth of “GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-GOLD-G”; and (ii) $1,945,843.00 USD worth of “Banknotes”.

*Air Canada’s Position*

[75] Like Brink’s, Air Canada submits that in seeking the meaning to be given to the wording of the relevant *Montreal Convention* provisions, recourse must be made to the rules of international treaty interpretation as set out in the *Vienna Convention* and developed in the case law of State members.

[76] As to the text of the *Montreal Convention* and the context of the words used therein, Air Canada submits that, contrary to Brink’s’ submissions, the relevant language in Article 22(3) of the *Montreal Convention* is identical to that of the French text of Article 22(2) of the *Warsaw Convention*, and the authentic English, French and Spanish text of Article 22(2)(a) of the *Hague Protocol* and Article 22(2)(b) of the *Montreal No. 4 Protocol*. Thus, the word “interest” as it appears in Article 22(3) of the *Montreal Convention* did not change, is not new, and does not signal the drafters’ intention to “adopt an expansive interpretation of the Convention’s scope with respect to liability for loss of cargo” as Brink’s submits. Air Canada traces the history of the original language of the *Warsaw Convention*, and subsequent amendments thereto, in support of its position.

[77] As to the purpose of the *Montreal* and the *Warsaw Conventions*, Air Canada submits that their fundamental purpose is certainty and uniformity (citing *Thibodeau*, at para 41; *Morris v KLM Royal Dutch Airlines*, [2002] UKHL 7, [2002] 2 AC 628 at para 150 [*KLM*]). And, contrary to Brink's' assertions, the purpose of the *Montreal Convention* with respect to cargo is different than with respect to passengers and consumers generally. Air Canada submits that the preparatory deliberations undertaken in the drafting of the *Montreal Convention* (travaux préparatoires) address its purpose with respect to cargo, and confirm that a declaration of value is synonymous with a declaration of interest. Further, that secondary sources establish that Brink's failed to make a special declaration of interest.

[78] Air Canada also submits that declaring a value for carriage is a special declaration of interest within the meaning of Article 22(3) of the *Montreal Convention*.

[79] Article 11(1) of the *Montreal Convention* states that the air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage. The face of both the Gold Air Waybill and the Banknotes Air Waybill state, among other things, that the "[s]hipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required". The AC Conditions of Carriage and IATA Resolution 600b, incorporated into IATA Resolution 672 – Form of Multilateral E-Airwaybill Agreement [IATA Resolution 672], contain the same provision. The Grimmett Affidavit deposes that the IATA e-AWB is the default contract. On cross-examination, Mr. Grimmett admitted that the "default" contract includes the AC Conditions of Carriage. Air Canada submits that no evidence exists to support that the Shipments were not carried under the

AC Conditions of Carriage or, in any event, under the standard IATA conditions of carriage, which are one and the same.

[80] Air Canada asserts that the AC Cargo Tariff, incorporated into the AC Conditions of Carriage, requires that the shipper must make a declaration of value for carriage on the air waybills of all shipments, which distinguishes it from a declared value for Customs. This declaration of value can include "no value declared" (or "NVD").

[81] In Air Canada's view, the AC Contract of Carriage, the AC Cargo Tariff, the plain meaning of the text of the *Montreal Convention* and the case law of the courts of the States party to the *Montreal Convention* and amended *Warsaw Convention* all confirm that a declared value for carriage is synonymous with/one and the same as a special declaration of interest in delivery at destination. In that regard, Air Canada quotes from *United International Stables Ltd v Pacific Western Airlines Ltd*, 1969 CanLII 827 (BCSC) at 73–75 [*Pacific Western*], citing *Corocraft, Ltd v Pan American Airways Inc*, [1969] 1 All ER 82, (UK Court of Appeal, Civil Division) at 84, para C [*Corocraft*] and *Westminster Bank, Ltd v Imperial Airways, Ltd*, [1936] 2 All ER 890 (UK King's Bench Division) at 897–898 [*Westminster Bank*]. (Air Canada also references *Piano Remittance Corp v Varig Brazilian Airlines, Inc*, 18 Avi 18,381 (SD NY, 1984) at 18, 383, affm'd 755 F 2d 914 (2d Cir, 1985); *Perera Co, Inc v Varig Brazilian Airlines, Inc*, 19 Avi 17,810 (US 2nd Cir, 1985) at 17,811–17,812; *Plaza Recycling Company, Inc v British Airways, Inc*, 19 Avi 17,385 (NY SC, 1985) at 17,385, affm'd 19 Avi 18,422 (NY SC, 1986) at 18,422 and 18,424; *Shawcross and Beaumont* "*Air Law*" LexisNexis, issue 189, September 2024 at 980–990 [*Shawcross and Beaumont*]).

[82] Air Canada submits that Brink's' reliance on *Durunna* and *Koliada,* among other cases, is misplaced because: they have no precedential value; they are distinguishable as they do not consider the circumstances involving a sophisticated party and, regarding *Koliada*, deals with checked baggage, not cargo; and, are wrongly decided. Similarly, *Chimet* makes no distinction between special declaration of value and special declaration of interest and is otherwise unhelpful to Brink's because that Court did not find that references to valuable cargo on the face of the air waybill amounted to a special declaration of interest. And, in this case, Brink's provides no evidence extrinsic to the Gold and Banknotes Air Waybills suggesting that they made a special declaration of interest.

[83] Further, stating the nature of the cargo does not alone amount to a special declaration and Brink's' submission in that regard is not supported by the plain meaning of the *Montreal Convention* text. Nothing in that *Convention,* the *Warsaw Convention,* the AC Conditions of Carriage, the AC Cargo Tariff or the jurisprudence of the courts of the States party to the *Conventions* supports Brink's' argument. However, the secondary sources that Air Canada cites supports its position.

[84] Air Canada submits that under the *Montreal Convention*, Brink's was responsible for the correctness of the particulars and statements relating to the subject cargo inserted by it or on its behalf in the air waybills or furnished by it or on its behalf to the carrier. As air waybills are *prima facie* evidence of the contracts for the Shipments, and they do not disclose Brink's' declared value for carriage, it was open to Brink's to provide evidence that it did. However, Brink's has admitted that it has no documents or information of having made a declaration of

value for carriage to Air Canada. The providing of a declaration of value for carriage is a requirement of the AC Conditions of Carriage and of the AC Cargo Tariff and is necessary to rely on the Article 22(3) limitation of liability exception.

[85] Further, the declared value for Customs is not a declared value for carriage or otherwise a special declaration of interest. This view is in line with the AC Cargo Tariff, Brink's' obligations under Article 16(1) of the *Montreal Convention*, and international case law regarding the *Montreal Convention* (and the *Warsaw Convention*, as amended). Because Brink's did not declare a value for carriage, the analysis should end there. However, and in any event, the plain meaning of the text of the *Montreal Convention* and the avoidance of an anomalous or illogical result support this interpretation. This is because payment of a supplementary sum without having declared a value for carriage is illogical as it amounts to a payment for nothing additional. Further, the requirement for and extent of a supplementary sum depends on and is triggered by the declaration of value.

*Analysis*

i. Interpretive Principles

[86] As the parties submit, the Vienna Convention sets out how international treaties are to be interpreted (International Air Transport Association v Canada (Transportation Agency), 2024 SCC 30 at para 39 [IAT Association]; Thibodeau, at para 35; Pushpanathan v Canada (Minister of Employment and Immigration), [1998] 1 SCR 982 at paras 51–52).

[87] As stated by the Supreme Court of Canada in *IAT Association*

> [39] The *Vienna Convention* is the starting point for determining the scope of the *Montreal Convention* (see *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at paras. 51-52; *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-78). Article 31 of the *Vienna Convention* directs that the *Montreal Convention*, like all treaties, should be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Or, as this Court has put it, "[t]he point of departure for interpreting a provision of a treaty is the plain meaning of the text" (*Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 S.C.R. 431, at para. 16). The English text of Article 31 of the *Vienna Convention* refers to "ordinary meaning" and this Court in *Febles* referred to "plain meaning", in the English version of its reasons. In French, both the text of the *Vienna Convention* and the Court's reasons in *Febles* use the expression "*sens ordinaire*". I take these expressions to mean the same thing, that being that the analysis begins with the words chosen by the state parties to the *Montreal Convention*.

[88] Article 32 of the *Vienna Convention* addresses supplementary means of interpretation, stating that, "[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

[89] In *Deep Vein Thrombosis* [2005] UKHL 72 at paragraph 11, the House of Lords addressed the principles of interpretation with respect to Article 17 of the *Montreal Convention*, holding that:

> (1) the starting point is to consider the natural meaning of the language of article 17, with the French text prevailing in case of any inconsistency with the English text….;

> (2) the Convention should be considered as a whole and given a purposive interpretation;
>
> (3) the language of the Convention should not be interpreted by reference to domestic law principles or domestic rules of interpretation; and
>
> (4) assistance can and should be sought from relevant decisions of the courts of other Convention countries, but the weight to be given to them will depend upon the standing of the court concerned and the quality of the analysis.

[90] The House of Lords added that the balance struck by the *Montreal Convention* between the interests of passengers and airlines ought not to be distorted by a judicial approach to interpretation in a particular case designed to reflect the merits of that case and that "[a] legal construction is not fallacious merely because it has harsh results" (citing *Husain v Olympic Airways* (2004) 124 S Ct 1221, 1234. See also *King v Bristow Helicopters Ltd*, [2002] UKHL 7; *KLM*, at paras 25–82; *Plourde c Service aérien FBO inc (Skyservice)*, 2007 QCCA 739 at para 51 [*Plourde*], citing Paul S Dempsey and Michael Milde, *International Air Carrier Liability: The Montreal Convention of 1999* (Montreal, McGill University, 2005) at 47, which contain similar principles regarding the interpretation of international treaties).

[91] The *Vienna Convention* is, accordingly, the starting point for the interpretation of Article 22(3) of the *Montreal Convention*.

(a) Plain or Ordinary Meaning

[92] The word "interest" is found twice in Article 22(3). The first time it appears is in the sentence "unless the consignor has made, at the time when the package was handed over to the

carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires". A plain reading of the term "interest" in this sentence suggests that it is capable of applying to a number of meanings. Indeed, as Brink's points out, the word "interest" can mean a legal concern or share, title, property right, pecuniary stake, privilege, immunity or benefit (citing *Oxford Concise Dictionary, Black's Law Dictionary, Merriam-Webster Dictionary* and *Cambridge Dictionary*). However, this sentence on its own is not particularly helpful in determining the meaning of the word.

[93] In my view, a plain reading of the word "interest" in the second sentence of Article 22(3) narrows its meaning. That portion of Article 22(3) states that, if the consignor makes a special declaration of interest and pays a supplementary sum if required, "the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination". A plain reading of this sentence indicates that a consignor's "interest" must be, or at least include, the declared monetary value of the cargo. That is because this portion of Article 22(3) contemplates a comparative exercise between "the declared sum" and the consignor's "actual interest", to determine which is "greater" for the purposes of discerning the carrier's liability. This exercise would be impossible if there were no declared sum and if a monetary value was not also attached to the consignor's "actual interest".

[94] It is true that the words "value" and "interest" have different definitions. However, the *Merriam-Webster* dictionary defines "interest" as a "right, title, or legal share in something." The *Cambridge Dictionary* defines "interest" as "an involvement or a legal right, usually relating to a business or possessions". *Black's Law Dictionary* defines interest as "a legal share in

something: all or part of a legal or equitable claim or right to property." In this case, Brink's was not the owner of the Shipments. Its involvement in their transport was as a freight forwarder who presumably contracted with the owners of the Shipments to have them delivered to the consignee. However, Brink's' interest is necessarily connected to the value of the Shipments, as demonstrated by the fact that it has reimbursed the owners of the Shipments for the value of same.

[95] Brink's also submits that the word "value" as used in other Articles of the *Montreal Convention* means something different from "interest" as found in Article 22(3). For example, Brink's points to Article 22(4), which is concerned with the determination of the liability of the carrier, if only part of the cargo is damaged:

> **4** In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
>
> (emphasis added)

[96] Article 22(4) applies the limitation of liability set out in Article 22(3) in the event of partial damage to cargo. The reference to the value of other packages is relevant only to the extent that, if the value of those packages is affected as a result of the damage, then the carrier's liability will also extend to them as determined by the SDR per kilogram liability limitation found in Article 22(3). In my view, this does not assist Brink's as the use of words – here, the

word “value” – must be viewed in context. Moreover, in such a circumstance, the limitation on liability is ultimately connected to the declared weight of the packages/cargo and not its value.

[97] Brink’s also argues that restricting the “special declaration of interest” to a monetary figure is incompatible with the plain meaning of the text. However, and very significantly in my view, even if a plain reading of the text of Article 22(3) could suggest that “interest” encompasses something broader than declared value, to have any practical effect, and therefore support the purpose of the *Montreal Convention*, a special declaration of “interest” must mean, or must include, the monetary value of the cargo if it is to engage the exception to the Article 22(3) limit of the carrier’s liability.

[98] This is because under Article 22(3), a carrier’s liability – without a party making a special declaration – is limited to 17 SDR per kilogram (or any revised and implemented SDR per kilogram figure). A specified worth or declared value of the cargo is not needed to make that assessment. All that is needed is the weight of the cargo, which must be included in the air waybill (Article 5(c), *Montreal Convention*). With a special declaration (and payment of a supplementary sum if required), carrier liability moves from a limited sum based on cargo weight to liability based on the “special declaration of interest” in delivery at destination. That liability is “a sum not exceeding the declared sum”. This increased liability can only be assessed if the monetary value of the cargo has been declared. Put otherwise, Article 22(3) gives the consignor the ability to access a higher limitation of liability. The consignor may, or may not, chose to make that election. But if it does so elect, then the consignor must declare the monetary value of the cargo and pay an additional sum, if required, in order to rely on the higher limit. As

will be discussed below, that declaration of value need not necessarily be on the face of the air waybill. But, the monetary value of the cargo must be provided to the carrier in order to trigger the higher limits found in Article 22(3). Further, this interpretation accords with the purpose of the *Montreal Convention*.

[99] In my view, this is determinative. To find otherwise would lead to a result which is manifestly absurd or unreasonable (Article 32, *Vienna Convention*) or an "abnormal result" as warned against in *Plourde* (para 51). And, as will also be discussed below, the goal of uniform rules governing claims arising from international air transportation would be defeated (see *Shawcross and Beaumont*, at 980–990).

[100] As Brink's submits, if the *Montreal Convention*'s language is reasonably susceptible of only one interpretation, the court's task of interpretation ends there (citing *South African Airways*, at 1027). In my view, this is such a case.

[101] However, for completeness, I will continue the statutory interpretation analysis.

(b) Object or Purpose of the *Montreal Convention*

[102] In *Thibodeau*, the Supreme Court noted that there had been a number of attempts to revise the *Warsaw Convention*, ultimately leading to the *Montreal Convention,* including the *Montreal No. 4 Protocol* and the *Hague Protocols* (*Thibodeau*, at para 32). And, while the purpose of the *Montreal Convention* was "to modernize and consolidate the Warsaw Convention and related instruments" (preamble, *Montreal Convention*), because the purposes of the *Warsaw*

*Convention* and of the *Montreal Convention* were the same, decisions and commentary respecting the *Warsaw Convention* were therefore helpful in understanding those purposes (*Thibodeau*, at para 31).

[103] In interpreting the *Montreal Convention*, the Supreme Court in *Thibodeau* discussed its history and purpose, stating:

> [41] The *Warsaw Convention* (and therefore its successor the *Montreal Convention*) had three main purposes: to create uniform rules governing claims arising from international air transportation; to protect the international air carriage industry by limiting carrier liability; and to balance that protective goal with the interests of passengers and others seeking recovery. These purposes responded to concerns that many legal regimes might apply to international carriage by air with the result that there could be no uniformity or predictability with respect to either carrier liability or the rights of passengers and others using the service. Both passengers and carriers were potentially harmed by this lack of uniformity. There were also concerns that the fledging international airline business needed protection against potentially ruinous multi-state litigation and virtually unlimited liability.
>
> [42] As succinctly summed up by one text, the *Warsaw Convention* aimed "to eliminate many of the conflicts problems which might arise in international air travel, to create a system of internationally recognized documentation, to prescribe a limitation period for claims, to resolve questions of jurisdiction and, perhaps most importantly, to impose very strict limits on carriers' liability": Fountain Court Chambers, *Carriage by Air* (2001), at p. 3. From the point of view of passengers and shippers, this limitation was balanced against a reversal of the burden of proof in their favour such that, on proof of damage, fault on the part of the carrier would be presumed: *ibid*. See also Dempsey, at pp. 309-10; *Shawcross and Beaumont*, at pp. VII-105 to VII-105A; A. Field, "International Air Carriage, The Montreal Convention and the Injuries for Which There is No Compensation" (2006), 12 *Canta. L.R.* 237, at p. 239; L. Chassot, *Les sources de la responsabilité du transporteur aérien international: entre conflit et complémentarité* (2012), at pp. 45-46.

[104] The Supreme Court of Canada subsequently referred to these paragraphs of *Thibodeau* in *IAT Association* (*IAT Association*, at para 46) and went on to state:

> [48] In *Thibodeau*, Justice Abella, dissenting on another point, expanded in her reasons on the history and purpose of the *Montreal Convention*, as received from its predecessor:
>
> > The predecessor *Warsaw Convention* came into being in 1929 to assist the fledgling airline industry take flight. At that time, aviation technology was in its initial stages. Accidents were common, and many pilots and passengers were injured or died as a result.
> >
> > Airlines responded by requiring passengers to sign waivers relieving carriers of any and all liability in the event of an injury. When accidents happened, those passengers were left with no remedy for their injuries or losses.
> >
> > The *Warsaw Convention* attempted a protective reconciliation for both airlines and passengers. Airlines would benefit from the introduction of a uniform scheme of limited liability to protect against the financial risks and uncertainty posed by accidents, passengers would benefit from access to predetermined amounts of limited compensation for death or injury — about US$8,300 per passenger — and a prohibition on airlines requiring passengers to waive all liability .... [paras. 151-53]
>
> As Justice Abella explained, growing recognition that liability limitations set by the *Warsaw Convention* were too low and a broader shift in the attention of governments towards a more passenger-friendly legal regime resulted in patchwork efforts to expand carrier liability. This led to efforts to update the *Warsaw Convention*, culminating in the *Montreal Convention* of 1999. In comparison to the earlier agreement,
>
> > the state parties to the *Montreal Convention* were more focused on the importance of "ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution" (*Montreal Convention*,

> preamble; *Ehrlich v. American Airlines, Inc.*, 360 F.3d 366 (2d Cir. 2004), at p. 371 (fn. 4)).
>
> (*Thibodeau*, at para. 159)

[105] As safety in the industry improved, governments turned their attention from protecting the financial viability of airlines to introducing a more passenger-friendly legal regime. The focus tilted towards increasing the exceptionally low limits on carrier liability established in the *Warsaw Convention.* The various protocols followed as well as industry action by way of the Montreal Agreement in 1966. Ultimately, the *Montreal Convention* was reached:

> [159] The Montreal Convention thereby sought to replace the patchwork system that had attempted to expand the limits on liability set by the *Warsaw Convention* in 1929. The drafters of the *Montreal Convention* continued to maintain a uniform liability scheme, as had the *Warsaw Convention*, but while the primary goal of the *Warsaw Convention* had been to limit the liability of carriers in order to foster the growth of the nascent commercial aviation industry, the state parties to the *Montreal Convention* were more focused on the importance of "ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution" (*Montreal Convention*, preamble; *Ehrlich v. American Airlines, Inc.*, 360 F.3d 366 (2d Cir. 2004), at p. 371 (fn. 4)).
>
> (*Thibodeau*, at para 159)

[106] While *Thibodeau* and *IAT Association* both concern passenger claims and while the focus of the State parties to the *Montreal Convention* was less on the protection of a fledgling airline industry and more on increased protections for passengers (see *Weiss v El Isreal Airlines Ltd*, 433 F Supp 2d 361, 365 (SDNY 2006) at para 6), the *Convention* remains animated by the overall objectives of balancing the competing interests of air carriers and those who engage with them and, ensuring uniformity in the way in which claims for international air transport are

addressed (see *Thibodeau* at para 41). This is true not only for passenger claims but also for cargo claims.

[107] Accordingly, an interpretation that a "special declaration of interest" by the consignor must be, or must include, the monetary value of the cargo, supports the purpose of the *Montreal Convention* by balancing the interests of air carriers and consumers. More specifically, it permits consignors to know that carriers are strictly liable for cargo loss or damage and provides them with a right of recovery. This is balanced against the right of carriers to limit their liability in accordance with the limits set out in Article 22(3) as agreed by the State parties. The above interpretation also provides uniformity in application and outcome of such claims. And, it provides air carriers with the information needed to alert them to the possibility of a consignor engaging the higher limit so that, if necessary, the carrier can take measures to protect against the increased liability limits, such as imposing higher freight rates, requiring a supplemental sum or requiring the consignor to insure the cargo. It also assists carriers in proving, if need be, whether a "sum is greater than the consignor's actual interest in delivery at destination" (Article 22(3), *Montreal Convention*).

[108] If the special declaration of interest by the consignor did not mean the monetary value of the cargo, then the carrier would not be able to determine whether a higher limitation amount was engaged under Article 22(3) and the goal of uniform rules governing claims arising from international air transportation would be defeated.

(c) *Travaux Préparatoires* and Intention of the Drafters

[109] Brink's submits that the word "interest" is new to the *Montreal Convention* as it was not found in the *Warsaw Convention*, which required a shipper to provide a "special declaration of value at delivery". Brink's submits that this wording change is very significant because it demonstrates the drafters' intention to broaden the scope of Article 22(3). However, Air Canada submits that the *Warsaw Convention*, and the subsequent amending protocols, contain the word "interest", meaning that the use of the word "interest" in the *Montreal Convention* was not new and does not reflect an intention to expand the scope of Article 22(3).

[110] I agree with Air Canada on this point.

[111] The *Warsaw Convention* was originally drafted in the French language (Article 36, *Warsaw Convention*). The relevant provision of the *Warsaw Convention*, in the original French, is incorporated alongside the English version in Schedule I of the *Carriage by Air Act*. It reads as follows:

> 22(2) Dans le transport de bagages enregistrés et de marchandises, la responsabilité du transporteur est limitée à la somme de deux cent cinquante francs par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.
>
> (emphasis added)

[112] The text "[d]éclaration spéciale d'intérêt à la livraison" translates to "special declaration of interest upon delivery". This suggests that the original language of the *Warsaw Convention* contemplated the word "interest", not "value" (or "valeur").

[113] Air Canada also submits that Article 8(m) of the *Warsaw Convention* demonstrates that there is no difference between the meaning of "special declaration of value" and "déclaration spéciale d'intérêt à la livraison…" In English, Article 8(m) reads as follows:

> Article 8
>
> The air waybill shall contain the following particulars:
>
> > (m) the amount of the value declared in accordance with Article 22(2);

[114] In French, the phrase "the amount of the value declared in accordance with Article 22(2)" is "le montant de la valeur déclarée conformément à l'article 22, alinéa (2)". Thus, Air Canada submits that "interest" and "value" are synonymous.

[115] Air Canada also refers to two amending protocols to the *Warsaw Convention*: the *Hague Protocol* and the *Montreal No. 4 Protocol*, added as Schedules to the *Carriage by Air Act*.

[116] The *Hague Protocol* was drafted in 1955 and came into force in Canada in 1963 (*Ludecke v Canadian Pacific Airlines Ltd*, [1979] 2 SCR 63 at 71). Article 22(a) of the *Hague Protocol* states:

> In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a <u>special</u>

> declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.
>
> (emphasis added)

[117] Similarly, Article VII of the *Montreal No. 4 Protocol*, which was drafted in 1975 and came into force in Canada in 1998, amended Article 22 of the *Warsaw Convention* by removing cargo from Article 22(2) and adding the following new paragraph (b) after paragraph 22(a):

> **(b)** In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination.
>
> (emphasis added)

[118] Notably, both the *Hague Protocol* and the *Montreal No. 4 Protocol* state that they were drawn up in several "authentic texts", including English, and that "[i]n the case of any inconsistency, the text in the French language, in which language the [*Warsaw Convention*] was drawn up, shall prevail" (Article XXV, *Montreal No. 4 Protocol*; Article XXVII, *Hague Protocol*).

[119] So, while the English version of the original *Warsaw Convention* does say "special declaration of value", that wording was revised by the two amending protocols, which both use the language "special declaration of interest." The amending protocols align with the

"prevailing" French language of the original *Warsaw Convention* text, which also used the language of "interest" instead of "value". In my view, this history regarding the change of wording does not support Brink's' position that the drafters of the *Montreal Convention* intended to broaden the scope of Article 22(3).

[120] With respect to the travaux préparatoires, Air Canada refers the Court to the International Conference on Air Law, "Friends of the Chairman" Group, minutes of the Fifth Meeting, held in Montreal on May 20, 1999, Agenda Item 9: Consideration of the draft Convention (ultimately the *Montreal Convention*). When discussing the content of what would later become Article 22(3) of the *Montreal Convention*, the meeting minutes state:

> In relation to paragraph 3, dealing with the carriage of cargo, and in the light of the discussion which had taken place, there had been no change in light of the arguments which had been advanced to the effect that carriage of cargo would involve parties who were quite sophisticated, who were able to protect their own interests and in any event, had the ability to make the special declaration of interest referred to in that paragraph, and were therefore able to cover themselves to the value that they believed the cargo may genuinely contain. For that reason, in the light of the arguments which had been advanced in earlier discussions of the group, no change had been made to the figure.
>
> (emphasis added)

[121] This excerpt does not speak directly to the question of what the drafters meant by a "special declaration of interest" and appears instead to address why the limitation amount for cargo (SDR per kilogram) was not increased. However, this evidence is assistive as it confirms that the word "interest" pre-dated the *Montreal Convention* and, significantly, that the drafters contemplated that shippers could protect themselves to "the value that they believe the cargo may genuinely contain" by making a special declaration of interest.

[122] Similarly, Air Canada points to the International Civil Aviation Organization, International Conference on Air Law (Convention for the Unification of Certain Rules for International Carriage by Air), Montreal, 10-28 May 1999, Minutes of the Thirteenth Meeting concerning limitation of liability, to highlight that passengers and cargo are treated differently:

> 11. **Article 21 A** *(Limits of Liability)* dealing with the quantification of liability for damage caused by delay and for damage caused in relation to the carriage of baggage and of cargo was the result of a great deal of examination […] Similarly, in relation to cargo, the limit of 17 SDRs had been retained, for two reasons: firstly, in recognition of the fact that the consignor could also make a special declaration and pay a supplementary sum so that the liability might be beyond that amount and be covered by insurance; and secondly, in recognition of the concerns expressed in the Conference that in dealing with cargo one had to recognize that one was dealing with sophisticated consignors and persons who obviously would address those issues and that they stood on a better footing of equality with air carriers than the person who checked his baggage. It was in that context that the current text had been developed.
>
> (emphasis added)

[123] In my view, this excerpt simply supports that that drafters of the *Montreal Convention* were alive to the fact that consignors could make a special declaration to access an increased liability limit and that the then 17 SDR per kilogram limit need not be raised, given that cargo consignors would be aware of this option.

[124] The travaux préparatoires referenced by Air Canada are not particularly helpful in interpreting Article 22(3) as they do not explicitly address what was intended by a special declaration of interest, as opposed to a special declaration of value. However, as discussed above, they do indicate that the drafters contemplated that shippers could protect themselves –

that is, their interest in the cargo – to the value they ascribed to it by making a special declaration of interest, which, in my view, necessarily includes a monetary amount.

[125] That said, I would also note that neither party refers the Court to any text, jurisprudence or other source, which explains why the change in wording from "value" to "interest" was made in the *Hague Protocol*, and why it was then continued in the *Montreal No. 4 Protocol* and, ultimately, the *Montreal Convention*. Nor did the parties produce any authority explicitly addressing whether or how "special declaration of value" differs from "special declaration of interest". However, given that the terminology change aligns the English version with the authoritative French version of the *Warsaw Convention*, and the fact that there appears to have been no case law or commentary about the change over the nearly 60 years since it was initially effected in 1955, this tends to support Air Canada's view that the terms are synonymous or, as I see it, that a special declaration of interest must necessarily be, or include, a declared monetary value of the cargo at issue.

(d) Jurisprudence

[126] The jurisprudence also supports the view that a special declaration of interest means, or must include, the monetary value of the cargo.

[127] In this regard, I note that Brink's relies on *Badar* to support its view that, by the use of language "special declaration of interest" in Article 22(2), the drafters of the *Montreal Convention* intended to broaden the terms "special declaration of value."

[128] *Badar* involved an airline's loss of the remains of a deceased person. The plaintiffs argued that "cargo" was not defined in the *Montreal Convention* and should be narrowly construed to encompass only "commercial products" or other items to which society attaches no special significance and, therefore, excluded human remains. The Court did not agree and found that the plaintiffs' claims were governed by the *Convention*. In reaching that conclusion, it discussed the principles of treaty interpretation as well as the history and application of the *Montreal Convention*. It found, among other things, that an inclusive reading of "cargo" was especially appropriate because, while Article 1 of the *Warsaw Convention* stated that it was applicable to "passengers, baggage, and goods", the *Montreal Convention* "uses the term 'cargo' (which, if anything, is more expansive), implying that the *Montreal Convention* applies to more than commercial goods". Further, that interpreting "cargo" to include human remains was consistent with the purpose of the *Montreal Convention* – uniformity – and that excluding items not readily viewed as cargo would impair this purpose.

[129] Brink's claims that *Badar* permits this Court to draw an inference about the change in language between Article 22(2) of the *Warsaw Convention* and Article 22(3) of the *Montreal Convention* – specifically, that the drafters intended that the term "special declaration of interest" is broader than a "special declaration of the value" and therefore that a declaration of the monetary value of the cargo is not required. First, I am not persuaded that *Badar* supports the drawing of an inference in interpreting a different Article and word. Second, in my view, the fact that the use of the word "interest" pre-dates the *Montreal Convention* undermines this argument. Third, I would think that if this was the drafters' intent, that this would be apparent from the travaux préparatoires, or other sources, which it is not. And, finally, if the word "interest" were

in fact used with the intent of being broader than the word "value", it does not logically follow that a "special declaration of interest" excludes or does not include a "special declaration of value." As discussed above, when viewed in context, I am not persuaded that it does. And, if relying on *Badar*, then it would seem that a more inclusive reading would be appropriate. That is, if "interest" is a broader term, then it would be inclusive of "declared value". As I have found above, on a plain reading of Article 22(3), and to permit its practical application, a declaration of the monetary value of the cargo must be, or include, the consignor's special declaration of interest.

[130] Similarly, Brink's relies on the following paragraph in the dissenting opinion in *Thibodeau*:

> [160] As this history shows, interpreting the change in language from Article 24 of the *Warsaw Convention* to Article 29 of the *Montreal Convention* in a way that narrows protection for consumers and expands it for carriers, is both counter-intuitive and historically anomalous. At no time was there ever any suggestion that the new *Convention* was designed to *reduce* the ability of passengers to sue carriers.

[131] In *Thibodeau*, the Supreme Court of Canada found that there was no evidence to suggest that State parties intended to replace the subject-specific scope of exclusivity established in Article 24 of the *Warsaw Convention* with a universal rule of exclusivity in Article 29 of the *Montreal Convention*. Here, there is no evidence indicating that there was any intention, by adoption of a special declaration of "interest" in the *Hague Protocol* and thereafter by the use of that same wording in Article 22(3) of the *Montreal Convention*, to expand what was encompassed by a special declaration of "value". Further, it bears repeating that while Brink's asserts that the use of the word "interest" expands the special declaration, it also seeks to have it

applied as excluding the need to declare the monetary value of the cargo in order to permit a consignor to establish that it was entitled to rely on the higher liability limit. I have difficulty with this expanding but contracting interpretation.

[132] Brink's also relies on *Koliada*, an Ontario Superior Court of Justice Small Claims Court decision. There, the plaintiff passenger had advised an airline representative that his baggage contained a laptop worth $3,000, a camera worth $600 and a suite worth $600. He was concerned about the safety of these items, asked if he needed to pay an additional fee, and was told that he did not. On arrival, the plaintiff discovered that his luggage was missing. The airline claimed that its liability was limited by Article 22(2)(a) the *Warsaw Convention*. The court found that, because the *Warsaw Convention* does not mandate a particular form for the declaration of value, the plaintiff's oral declaration, which addressed the value of the goods, was sufficient. Further, that the payment of a supplementary sum is optional and depends on the demand of the carrier. In that case, the airline did not ask for a supplementary payment even though the plaintiff made its representative aware of the value of each item. The court held that the plaintiff had met the exclusionary requirements of Article 22(2)(a) so as to entitle him to benefit from the higher limitation of liability.

[133] I first note that *Koliada* is a 2001 decision. The Small Claims Court asked whether the plaintiff complied with Article 22(2)(a) of Schedule III of the *Carriage by Air Act*. Schedule III is the *Hague Protocol*, which uses the wording "unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest at delivery at destination and has paid a supplementary sum if the case so requires" (emphasis

added). However, the court in *Koliada* stated that Article 22(2) places a limit on the carrier's liability and that the carrier can "be liable for only a specific number of francs per kilogramme, unless the passenger declares a value for the property that he entrusts to the carrier and pays a fee if requested" (emphasis added). Thus, the court in *Koliada* appears to treat the requirement for a "special declaration of interest" as a declaration of the monetary value of the property.

[134] Brink's also relies on *Durunna*, which discusses *Koliada*. In that discussion, the Provincial Court of Alberta stated that "[i]n applying Article 22(2)(a) of the *Warsaw Convention*, and determining whether a 'special declaration' had been made, the Deputy Judge in *Koliada* stated that a '...verbal declaration of value is sufficient'" and that it was clear from the Deputy Judge's comments that "the determinative statement was the declaration of value" (*Durunna*, at para 71, emphasis added).

[135] Neither *Koliada* nor *Durunna* are binding on this Court. Further, *Shawcross and Beaumont* states, and I agree, that *Durunna* was wrongly decided for other reasons (at 994, fn 3). However, it is of note that these two cases both treat the requirement of a "special declaration of interest" as if it is a declaration of the monetary value of the property.

[136] I would also note that what was at issue in *Koliada* was a baggage claim by an individual passenger. While the Small Claims Court held that the plaintiff's oral declaration, which addressed the value of the goods, was sufficient, this finding is highly unlikely to have application in the context of a cargo claim involving sophisticated parties.

[137] *Chimet* is factually much more similar to this matter. It addresses the fact that the subject waybill in that case did not include any explicit reference to a declared value and the question of how cargo value may otherwise be declared.

[138] In *Chimet*, the shipper sought to transport approximately 100 kilograms of pure platinum, which was stolen before it reached its final destination. Delta Air Lines, the carrier, sought to limit its liability for the loss under Article 22(3) of the *Montreal Convention*. In dispute was whether Chimet had declared a higher value when it consigned the goods. Two documents were at issue: the air waybill printed on a standard IATA form and a delivery receipt. The air waybill included fields that the court stated, “appear[ed] to be designed to allow the consignor to designate values for the cargo” (*Chimet*, at 292). In the field labeled as "Declared Value for Carriage," the waybill listed the letters "NVD”. The waybill also included several entries that appeared to detail the contents of the shipment. In a field labeled "Nature and Quantity of Goods (incl. Dimensions or Volume)", the waybill entry was "PURE PLATINUM" (*Chimet*, at 292). And, in an area under this was printed:

> VAL VAL VAL VAL
>
> THE FINAL TRANSPORTATION FROM THE AIRPORT TO THE CONSIGNEE'S ADDRESS MUST BE PERFORMED BY CUSTOMS BROKERS OR SPECIALISED COURIERS TO FORWARD VALUABLE CARGO

[139] The reverse side of the air waybill included a notice stating that under the *Warsaw Convention*, “the carrier's liability is limited in the case of loss unless a higher value is declared

in advance and a supplementary charge paid if required" (*Chimet*, at 293). The conditions of contract included:

> 5. If the sum entered on the face of the air waybill as "Declared Value for Carriage" represents an amount in excess of the applicable limits of liability referred to in the above Notice and in these Conditions and if the shipper has paid any supplementary charge that may be required by the carrier's tariffs, conditions of carriage or regulations, this shall constitute a special declaration of value and in this case carrier's limitation of liability shall be the sum so declared.

[140] The delivery receipt listed the number of the air waybill, the weight of the cargo, the destination, and the carrier. It also included an entry containing the figure: "EU 3.050.000,00" (*Chimet*, at 293).

[141] The US Court of Appeals, Third Circuit, noted that Article 22(3) does not specify how the "special declaration of interest" is to be documented, but it does require the delivery of a document (typically an air waybill) to preserve the record of carriage (referencing Articles 4(1), 4(2), 7(4), 10(1), 10(2) and Article 11(1)) (*Chimet*, at 297). That Court noted that the *Montreal Convention* designates the air waybill or cargo receipt as the primary mechanisms for recording the conditions of carriage. The *Convention* also provides that the consignor is responsible for creating the air waybill (Article 7(1)), for the accuracy of the air waybill, and for any damages caused by inaccuracies in the air waybill (Article 10) (*Chimet*, at 298). With respect to Delta Air Lines's argument that Chimet failed to fulfill its responsibility to declare "a special declaration of interest" under Article 22(3), and at page 298 held:

> We agree that Chimet failed to document in the waybill that it made a special declaration of interest or paid a supplemental sum. The waybill does not include any explicit reference to a declared value, and Chimet was responsible for completing the waybill and verifying its accuracy. We also agree with Delta's general contention that an air waybill typically functions as the primary

> mechanism for documenting the terms of carriage. We disagree, however, that this dispute can be conclusively resolved solely by examining the air way-bill.
>
> (emphasis added)

[142] And while it disagreed with Chimet's suggestion that the delivery receipt functions as a "cargo receipt" providing "prima facie evidence" of the declared value under Article 11 of the *Montreal Convention*, the US Court of Appeals concluded that the documentary evidence in the record before it did not conclusively resolve the dispute:

> Nothing in the Montreal Convention precludes the consideration of extrinsic evidence to determine the terms of the contract of carriage. On the contrary, the Convention includes language suggesting that other evidence beyond the air waybill may be considered. While the Convention designates the air waybill as the default method for preserving a "record of the carriage," it also contemplates the possibility that "[a]ny other means" may be used to preserve such a record. Art. 4(2); see also Art. 10(1) (referring to the "record preserved by the other means referred to in paragraph 2 of Article 4"); Art. 10(3) (same). In addition, Article 11 provides merely that the "the air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the *cargo*, and of the conditions of carriage mentioned therein." Art. 11(1). This word choice — as contrasted with more explicit option such as "conclusive" or "complete" — clearly contemplates the possibility that the air waybill or cargo receipt may be rebutted by other evidence. See Black's Law Dictionary (8th ed. 2004) (defining "*prima facie* evidence as "[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced" (emphasis added)). The delivery receipt provides at least some evidence to rebut Delta's position that no supplemental value was declared. Given the apparent tension between the waybill and the delivery receipt, as well as potential inconsistencies within the waybill itself, the District Court did not err by considering the parties' ability to gather additional evidence on this disputed issue.
>
> (*Chimet*, at 299)

[143] Ultimately, that court concluded that the necessary evidence Chimet needed to establish whether a value was declared could only be obtained in Italy and therefore confirmed the dismissal of the action on *forum non conveniens* grounds.

[144] In my view, *Chimet* is significant to this case because, with respect to Article 22(3) of the *Montreal Convention,* the US Court of Appeals explicitly found that Chimet had failed to document in the waybill that it made a special declaration of interest or paid a supplemental sum. This was because the waybill did not include any explicit reference to a declared value. In my view, this confirms that a declaration of interest must be, or must include, a special declaration of the monetary value of the cargo for the purposes of Article 22(3) – although this potentially may be made somewhere other than on the face of an air waybill.

[145] Brink's also relies on *Pacific Western*. In that case, the British Columbia Supreme Court [BCSC] noted that Article 22(2) of the *Warsaw Convention* provided "unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires." And, that this was "somewhat changed" in the *Hague Protocol* to "unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires." In *Pacific Western*, the defendant carrier argued that the plaintiff did not intend to make a special declaration and was not understood to make one. However, on the face of the air waybill, the shippers' declared value for carriage was shown at $68,000. Further, in that case the air waybill

specifically provided that the entry of $68,000 constituted a special declaration of value. The conditions of contract, at paragraph 2(d) stated:

> 2 (d) In the case of carriage subject to the Convention, the shipper acknowledges that he has been given an opportunity to make a special declaration of the value of the goods at delivery and that the sum entered on the face of the air waybill as "Shipper's/Consignor's Declared Value — For Carriage", if in excess of 250 French gold francs (consisting of 65 1 /2 milligrams of gold with a fineness of 900 thousandths) or their equivalent per kilogram, constitutes such special declaration of value.

[146] The BCSC stated that:

> The importance of this entry in the air waybill was commented upon by Lord Denning, M.R. in *Corocraft Ltd. et al. v. Pan Amer. Airways, Inc.* at p. 84:
>
> > The important thing to notice is that the senders did not declare any value for carriage purposes. They wrote on the waybill (or consignment note) "NVD", no value declared. If they had declared its value for carriage purposes and paid a supplementary sum, they would have been entitled (in case it was lost by the defendants' fault) to recover its full value of £1,194 13s. 8d. Their omission (to declare its value for carriage purposes, or to pay a supplementary sum) meant that the defendants were under a very limited liability.
>
> *Westminster Bank, Ltd. v. Imperial Airways, Ltd*., [1936] 2 All E.R. 890, attaches similar importance to entry on the air waybill.
>
> The special declaration on the face of the air waybill is not ambiguous and should not be disregarded or treated as something other than a special declaration.

[147] While the cases referred to by the BCSC (*Corocroft* and *Westminster Bank*) are concerned with the *Warsaw Convention* and not the *Montreal Convention*, *Pacific Western* demonstrates that the wording found in the *Hague Protocol* – which is the same wording as

Article 22(3) of the *Montreal Convention* – does not mean that a special declaration of interest permits a shipper to rely on the higher limits without making a declaration of monetary value. Rather, that declaring value for carriage may be considered a "special declaration of interest" under the *Montreal Convention*.

[148] Whether or not, as Air Canada submits, *Pacific Western* stands for the proposition that "a declared value for carriage is synonymous with/one and the same as a special declaration of interest at destination", in my view, the case demonstrates that a special declaration of interest is, or must include, a declaration of the monetary value of the cargo if a shipper seeks to rely on the higher limits of liability.

[149] In that regard, Brink's argues that it would be wrong to "read in" the word "value" to Article 22(3). However, this is not supported by the jurisprudence, including *Chimet* and *Pacific Western*. Further, in my view and as discussed above, the special declaration of interest in Article 22(3), by practical application, must be or must include, a declaration of the monetary value of the cargo if the shipper seeks to rely on the higher limits of liability. If there is no declaration of value on the air waybill, or as established by other evidence, then the carrier is exposed to an unknown liability. This defeats the purpose of the *Montreal Convention*.

ii. How Must Value Be Declared?

[150] Brink's also argues that, in any event, the *Montreal Convention* does not require that the shipper or consignor state the value of the cargo on the air waybill and, in this case, Brink's provided other evidence of the value of the cargo, entitling it to rely on the higher limits.

[151] As Brink's submits, Article 8 of the original *Warsaw Convention* lists the information that air waybills must contain. Article 8(m) is "the amount of the value declared in accordance with Article 22(2)".

[152] Article 8 was deleted in the *Hague Protocol* and was replaced with a lesser list of requirements that did not include cargo weight or its declared value. In the *Montreal No. 4 Protocol*, the Article 8 contained in the *Hague Protocol* was deleted and replaced with different wording, which included "an indication of the weight of the consignment". The value of the cargo is not required. Article 5(c) of the *Montreal Convention*, regarding contents of air waybills or cargo receipts, also requires an indication of the weight of the consignment but does not require that the shipper or consignor state the value of the cargo on the air waybill. Article 11(1) of the *Montreal Convention* states that the air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein. Article 11(2) states that any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated.

[153] Brink's submits, and Air Canada accepts, that the value of the cargo need not necessarily be stated on the face of the air waybill, as Article 22(3) does not stipulate this (see also *Durunna*, at para 69; *Shawcross and Beaumont*, at 980–990; *Chimet*, at 299; *Koliada*, at para 8). However, where they part company is whether in this case Brink's provided evidence of the value of the Shipments, which would entitle it to rely on the higher liability limits.

[154] Brink's submits that the evidence establishing that it made "special declaration of interest" is that: it elected to transport the Shipments through AC Secure, "a process which purportedly recognizes that 'some high-value items require unique handling'"; Air Canada added the special handling codes "PRI" (meaning "priority") and VAL (meaning "valuable") to the subject Air Waybills; the special handling code "VAL" was found in the subject line and body of the booking confirmation e-mails for both Shipments; the FWBs for both Shipments contained the special service request, "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO"; and, the FWB and FHL messages for the Gold Shipment described the nature and quantity of the cargo as more than 400 kilograms of Gold, "the value of which is as easily discernable as the value of any currency".

[155] I would agree that the use of words (or abbreviations) such as "Valuable", "SECURED" and "SPECIAL SUPERVISION" communicated that Brink's considered the Shipments to be valuable. This is further evidenced by the fact that Brink's booked the transport of the Shipments through AC Secure, which transports high-value cargo (although I would note in passing here that the evidence is that the airway bill is automatically populated by Air Canada with the terms PRI and VAL when a shipper selects the AC Secure service). However, and in any event, in my view this evidence on its own does not amount to a "special declaration of interest" for the purposes of Article 22(3) because it does not incorporate a monetary value of the cargo.

[156] In that regard, *Shawcross and Beaumont* addresses declarations of interests under the *Warsaw Convention* and *Hague Protocol* as follows (footnotes omitted):

> The declaration of interest is of importance, fixing in effect a higher limit of liability. As a United States court has observed:

> One who ships goods at a declared value substantially below their actual worth in order to receive a reduced freight rate is gambling that the goods will not be lost through someone's negligence.
>
> There are no provisions as to the form which the declaration should take; an oral declaration would appear to satisfy the requirements of the article. This would be unacceptable in actual commercial practice and carriers commonly provide in their conditions of contract for an acknowledgment by the consignor that he has had an opportunity to make a special declaration of the value of the goods at delivery and identifying as the special declaration the entry on the air waybill of a 'declared value for carriage'.
>
> The precise language of the relevant contractual conditions must be examined in each case, but in general the courts will not treat a declaration of value made for some other purpose, even if it is included in the air waybill, as constituting a declaration of interest for the purposes of art 22. This has been held in the case of declarations of value for customs and for insurance purposes. It has been emphasised that the convention speaks of a 'special' declaration, and this means that the declaration must be directed towards invoking the provisions of art 22. As the form of the declaration is prescribed solely by contractual terms, the carrier may be prevented by the application of general principles of contract law from relying on the relevant terms.
>
> (at 980–990, emphasis added)

[157] Thus, the question is whether the evidence establishes that Brink's communicated the monetary value of the Shipments to Air Canada so as to engage the higher limits under Article 22(3).

[158] Brink's submits that the FHLs described the monetary value of the goods as $13,612,696.75 CHF for the Gold Shipment and $1,945,843 USD for the Banknotes Shipment.

In that regard, it also points to the HAWB information, which it says was generated by Air Canada based on information provided by or on behalf of Brink's.

[159] In response, Air Canada refers to the cross-examination of Mr. Grimmett. Mr. Grimmett was referred to Exhibit I of his affidavit, which is the FWB for the Banknotes Shipment transmitted by Brink's to CCS-UK, which includes a line that reads "CVD/CHF/PP/PP/NVD/NCV/XX". He was then referred to Exhibit K, which is the electronic FHL message that CCS-UK sent to Air Canada containing the line "CVD/CHF/PP/NVD/1945843/XXX". Mr. Grimmett confirmed that the numbers in the latter replaced the "NCV" (No Customs Value) in Exhibit I and that the value contained in the FHL is the value for Customs. Air Canada's point being that, although Mr. Grimmett, in paragraphs 48 and 49 of his affidavit, states that the FHL data transmitted to Air Canada on April 14, 2023 "reflected the value of carriage" as $1,945,843 USD, the subject exhibits demonstrate that it was in fact the Customs value that was communicated.

[160] Air Canada also refers to Mr. Grimmett's cross-examination evidence regarding the physical copy of the Brink's HAWB for the Banknotes Shipment, attached as Exhibit EE of his affidavit. The HAWB indicates a "value of customs" and a "value for carriage", both in the amount $1,945,843 USD. However, Mr. Grimmett confirmed on cross-examination that Brink's' HAWBs are internal to Brink's and were not provided to Air Canada. Mr. Grimmett confirmed that this was also true of the FWB, FHL and Brink's' HAWB for the Gold Shipment. He was unable to identify any document or communication in which Brink's informed Air Canada of the declared value for carriage of the Shipments.

[161] The Cosgrove Responding Affidavit deposes that the Brink's HAWBs referenced by Mr. Grimmett were never provided to Air Canada, as confirmed by the cross-examination evidence of Mr. Grimmett. Further, that in any and all of Brink's' information provided to Air Canada in respect the Shipments, only a value for Customs or a Customs Value was declared by Brink's. Brink's did not declare a value for carriage to Air Canada.

[162] Additionally, Mr. Cosgrove deposes in his responding affidavit that the value identified in the FHLs is the declared value for Customs. His evidence is that the information in Brink's FHL message and the information Air Canada received from CCS-UK, by CCS-UK entering the information into Air Canada's cargo software program, is the HAWB information found at Exhibit T of the Cosgrove Affidavit. This does not declare a value for carriage. Rather, "NVD" (or No Value Declared) is entered, and only a Customs value is entered in the amount of 1,945,843.00 CHF, confirming that the Brink's FHL message declared a value for Customs only.

[163] On review of the evidence, I agree that it establishes that the value of the Shipments communicated by Brink's via FHL messages declared only the value of the Shipments for Customs purposes. Further, that this was the only instance in which Brink's communicated a monetary value to Air Canada with respect to the Shipments.

[164] Thus, the question becomes whether a declared value for Customs is a "special declaration of interest".

[165] Brink's submits that a declaration of value for Customs constitutes a "special declaration of interest" under Article 22(3). I do not agree.

[166] The Gold and Banknotes Air Waybills contemplate distinct declared values for Customs and for carriage. Namely, they include a "Declared Value for Carriage" box and a separate "Declared Value for Customs" box. For both Shipments, the entries in these boxes are "NVD" for "Declared Value for Carriage" and "NCV" for the "Declared Value for Customs". This distinction suggests that these two values address different purposes.

[167] Article 16 of the *Montreal Convention* states that "[t]he consignor must furnish such information and such documents as are necessary to meet the formalities of customs […] before the cargo can be delivered to the consignee". I note that while a declared value for Customs may be a necessity for shipping cargo internationally, a "special declaration of interest" is not. Rather, it is an option available to consignors which, if utilized, permits them to engage the higher limit of carrier liability under Article 22(3), so long as they pay a supplemental sum, if required.

[168] In that regard, the Cosgrove Affidavit states that it is the deponent's understanding and experience that the purpose of a declared value for Customs is, in respect of the subject Shipments, as between the Government of Canada and the shipper, Brink's with respect to applicable Customs Duties, tariffs or tax imposed on the shipments as they are crossing international borders. A declaration of value for carriage is as between the airline and the shipper in respect of the applicable freight rate and charges for the carriage of the shipment. In contrast, a special declaration of interest in delivery at destination directly implicates the carrier-shipper

relationship as it notifies carriers of the nature of the cargo and the worth imported onto it by the consignor, which in turn informs how the carrier handles the cargo in the air carriage process.

[169] As Air Canada puts it, the declaration of value triggers how Air Canada will respond to the request for carriage, while declaring a value for Customs has little bearing on the carrier-shipper relationship.

[170] It is also of note that, in the context of the *Warsaw Convention*, *Corocraft* found that a declared value for Customs, without more, did not give rise to a "special declaration of value" (*Corocraft,* at 84 para C). And, although again concerning the *Warsaw Convention*, in Dr. René H Mankiewicz's *The Liability Regime of the International Air Carrier: A Commentary on the Present Warsaw System* (1981), the author states that "[t]he indication of the value of the cargo for customs purposes is not a declaration of value under 22(2)" of the *Warsaw Convention*. Similarly, I find that a declaration of Customs value is not a special declaration of interest under Article 22(3) of the *Montreal Convention*.

[171] Thus, while the evidence confirms that Brink's did convey to Air Canada the nature of the Shipments and that they were valuable, it did not provide Air Canada with the monetary value of the cargo, which is necessary to constitute a "special declaration of interest in delivery at destination" under Article 22(3) of the *Montreal Convention* and to engage the higher limitation of carrier liability. As Brink's has not satisfied that condition, Air Canada's liability is limited to 22 SDR per kilogram based on the weight of the subject Shipments.

iii. Conditions of Carriage

[172] Finally, and before leaving this condition necessary to engage the exception to Article 22(3), I will address the parties' arguments about the conditions of carriage and whether they conflict with Article 22(3) of the *Montreal Convention*. For the reasons that follow, I find that they do not.

[173] Article 11(1) of the *Montreal Convention* states that the air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein. Article 27, concerning freedom to contract, does not preclude carriers from implementing conditions of carriage, so long as they do not conflict with the *Montreal Convention*. However, pursuant to Article 47, regarding invalidity of contractual provisions, any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under Chapter III (liability of the carrier and extent of compensation for damage) or to fix a lower limit than that which is applicable according to Chapter III will be null and void.

[174] As noted above, the face of the Gold and Banknotes Air Waybills indicates that the carriage is subject to the AC Conditions of Carriage found on the reverse of that document and that the shipper's attention is drawn to the notice concerning the carrier's limitation of liability. The reverse includes:

> NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY
>
> If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or

> the Warsaw Convention may be applicable to the liability of the Carrier in respect of loss of, damage or delay to cargo. Carrier's limitation of liability in accordance with those Conventions shall be as set forth in subparagraph 4 unless a higher value is declared. For transportation wholly within Canada, …
>
> CONDITIONS OF CONTRACT
>
> 2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.
>
> 2.2 To the extent not in conflict with the forgoing, carriage and other related services performed by each carrier are subject to
>
> 2.2.1 …
>
> 2.2.2 provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables, (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof…
>
> 5.1 Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with Carrier's tariff, conditions of carriage and related regulations, applicable laws including national laws implementing the Warsaw Convention and the Montreal Convention...
>
> 6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge, if required.
>
> (emphasis added)

[175] The parties also refer the Court to various IATA documents. Mr. Grimmett deposed that the IATA e-AWB is the default contract of carriage for all air cargo shipments on enabled trade routes. Further, that the terms and conditions for exchanging EDI messages are set out in IATA

Resolution 672, the Multilateral e-AWB Agreement. On cross-examination, having been referred to the terms of IATA Resolution 672 (including IATA Resolution 600i, discussed below) and IATA Resolution 600b, Mr. Grimmett ultimately agreed that the parties' default contract of carriage includes the conditions of the carrier, in this case Air Canada.

[176] The Grimmett Affidavit includes as an exhibit an IATA announcement explaining that the IATA e-AWB would become the default contract of carriage for all air cargo shipments on enabled trade lanes and included a link to the IATA e-AWB Implementation Playbook [Playbook]. The Playbook states, among other things, that the air waybill constitutes the contract of carriage between the shipper and the carrier and is governed by IATA Resolution 600a "The Air Waybill" and IATA Resolution 600b "Air Waybill Conditions of Contract". The Playbook also explains that IATA Resolution 672 provides a single standard agreement that airlines and freight forwarders can sign once with IATA and then start using IATA e-AWBs with all other parties to the agreement.

[177] It is sufficient to say here that IATA Resolution 672 contains a "Notice Concerning Carrier's Limitation of Liability" and also states that the conditions of contract detailed in IATA Resolution 600i shall apply to all cargo contracts, except in two instances not at issue here. (IATA Resolution 600i is Annex A to IATA Resolution 672. The latter states in a notice that the provisions of IATA Resolution 600i are incorporated by reference into IATA Resolution 672, including the conditions of contract set out therein). IATA Resolution 600i includes that:

> 2/2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicant Conventions.

> 2.2 To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to
>
> 2.2.1…
>
> 2.2.2 provisions contained in the Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier which are made part hereof…
>
> 6./6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
>
> (emphasis added)

[178] IATA Resolution 600b, resolves that the conditions of contract and notices set out therein shall be included on an air waybill, these include:

> **I. NOTICE APPEARING ON THE FACE OF THE AIR WAYBILL**
>
> It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
>
> **II. CONDITIONS OF CONTRACT ON REVERSE SIDE OF THE AIR WAYBILL**

**NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY**

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention may be applicable to the liability of the Carrier in respect of loss of, damage or delay to cargo. Carrier's limitation of liability in accordance with those Conventions shall be as set forth in subparagraph 4 unless a higher value is declared.

**CONDITIONS OF CONTRACT**

…

2./2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.

1.2 To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:

2.2.1 applicable laws and government regulations;

2.2.2 provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. When carriage is to/from the USA, the shipper and the consignee are entitled, upon request, to receive a free copy of the Carrier's conditions of carriage. The Carrier's conditions of carriage include, but are not limited to:..

2.2.2.1 limits on the Carrier's liability for loss, damage or delay of goods, including fragile or perishable goods;

…..

6./6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

> ….
>
> 7.2.1 in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and
>
> 7.2.2 in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.
>
> (emphasis added)

[179] The point being made by Air Canada in its submissions is that the conditions of contract, specifically the liability provisions of the IATA "default contract" (i.e. IATA Resolution 600i as incorporated into IATA Resolution 672 and the AC Conditions of Carriage), are essentially the same as those required to be included in an air waybill by IATA Resolution 600b. Put differently, IATA Resolution 600i, IATA Resolution 600b and the subject Air Canada Air Waybills all state that the *Warsaw Convention* and the *Montreal Convention* permit a shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge, if required. Also significant, in my view, is that IATA Resolution 600i and IATA Resolution 600b both treat the *Montreal Convention* in the same manner as the *Warsaw Convention* – requiring that shippers declare a higher value for carriage in order to avail themselves of the higher limitation of liability.

[180] Air Canada submits that if Brink's' interpretation of Article 22(3) were accepted, it would lead to an absurd result as all international contracts for carriage would be in contravention of the *Montreal Convention*.

[181] In my view, IATA Resolutions 600i and 600b demonstrate that if a consignor wishes to rely on a higher limitation than the default SDR per kilogram limit otherwise applicable under Article 22(3), then this option is open to it. I do not agree with Brink's that Air Canada relies on the AC Conditions of Carriage or the AC Cargo Tariff to "supplant" the language of the *Montreal Convention*. Rather, the *Montreal Convention* explicitly contemplates the use of conditions of carriage, so long as they do not conflict with its provisions (Article 27). In this case, the conditions of carriage explain how a shipper or consignor can engage the higher limit permitted by Article 22(3). That is, by declaring a higher value for carriage and paying a supplementary sum, if required. Put otherwise, the conditions of carriage tell a shipper or consignor how a special declaration of interest is to be made. In my view, this does not conflict with Article 22(3).

[182] The IATA documents also suggest an interpretation, by the international air carrier industry, that an Article 22(3) special declaration of interest is a declaration of the monetary value of the cargo, for purposes of carriage.

[183] Air Canada also points to the AC Cargo Tariff, which Air Canada submits is incorporated into the AC Conditions of Carriage. The AC Cargo Tariff defines "valuable cargo" as meaning a consignment that contains one or more of the listed items, which include "gold bullion", gold in several other forms, and legal banknotes. "Convention" is defined as meaning the *Warsaw Convention*, the *Warsaw Convention* as amended by the *Hague Protocol* or the *Montreal No.4 Protocol* or the *Montreal Convention*, whichever may be applicable to carriage under the Tariff. Other relevant sections in the AC Cargo Tariff are the following:

## 13. DECLARATION OF VALUE

(A) The shipper must make a declaration of value for carriage on the air waybills of all shipments regardless of whether or not charges based on value are applicable.

(B) Such declaration of value may be in any amount, provided that "NVD" (No Value Declared) may constitute such declaration.

(C) Notwithstanding paragraphs (A) and (B) above, in the case of valuable shipments (as defined in Rule No. 1 of this tariff), the shipper must either:

(1) Declare a value for carriage which cannot be less than:

(a) Any declared value for customs, or

(b) Any insured amount, or

(c) Any amount on the shipper's commercial invoice, or

(d) Any amount entered on the customs export documents; whichever is higher; or

(e) Purchase insurance through Carrier for the actual value of the goods.

## 21. VALUATION LIMITS

### (A) VALUATION LIMIT OF CONSIGNMENT

No consignment having a declared value in excess of USD 500,000.00/CAD 500,000.00 will be accepted for carriage unless a special arrangement therefore has been made in advance between the shipper and Carrier.

**(B)** ….

## 29. CARRIER'S RIGHT OF INSPECTION

Carrier reserves the right to examine the packaging and contents of all shipments and to inquire into the correctness or sufficiency of information or documents tendered in respect of any shipment but Carrier shall be under no obligation to do so.

**37. LAWS AND PROVISIONS APPLICABLE**

(A) Carriage hereunder is subject to the rules and limitations relating to liability established by the Convention unless such carriage is not "international carriage" as defined by the Convention.

....

(D) In the case of carriage subject to the Convention, the shipper acknowledges that he has been given a opportunity to make a special declaration of the value of the cargo at delivery and that the sum entered on the face of the air waybill as "shipper's declared value – for carriage", if in excess of 250 French gold francs (USD 20.00/CAD 20.00) per kilogram constitutes such special declaration of value.

(E) For the purposes of international carriage governed by the Montreal Convention 1999, the liability rules set out in the Montreal Convention 1999 are fully incorporated herein and shall superseded and prevail over any provisions of this tariff which may be inconsistent with those rules.

**38. LIMITATION OF LIABILITY**

…

(G)(A) Unless the shipper has made a special declaration of value for carriage and has paid the supplementary sum applicable, liability of Carrier shall not exceed the applicable Convention limit or, if no Convention applies, SDR 22, per kilogram of cargo destroyed lost, damaged or delayed. If the shipper has made a special declaration of value for carriage, it is agreed that any liability shall in no event exceed such declared value for carriage stated on the face of the air waybill or included in the shipment record. All claims shall be subject to proof of value.

(emphasis added)

[184] Further, s. 48, regarding AC Priority 1 Service for general cargo, states that the listed shipments shall not be accepted for transportation under the provisions of the AC Cargo Tariff, which includes valuable cargo. Section 49, concerning standard service for general cargo shipments, includes the same provision.

[185] Air Canada submits that these AC Cargo Tariff provisions demonstrate that a shipper can chose not to make a declaration of value, but does so at its own peril. I agree that the decision of whether or not to make a declaration of monetary value lies with the shipper. If, despite the provisions of the AC Cargo Tariff, IATA Resolution 600i, IATA Resolution 600b and the AC Conditions of Carriage in the subject air waybills, a declaration of monetary value is not made by the shipper, then the consequence is that the increased carrier liability is not engaged and the liability of the carrier is limited to 17 SDR per kilogram (as may be revised pursuant to an Article 24 review).

[186] Thus, although Brink's points to the fact that Air Canada previously accepted 24 shipments of valuable cargo without requiring a declaration of the monetary value of the cargo on the face of the air waybills for those shipments, this does not assist it. While Brink's' standard practice may be to not make a declaration of monetary value, the risk of not doing so, or of not otherwise communicating the cargo's monetary value for carriage, lies with Brink's.

[187] In conclusion, for all of the above reasons, I find that Brink's failed to make a special declaration of interest in delivery at destination, the first condition necessary to permit it to rely on an increased liability limit under Article 22(3).

### B. Did Brink's Pay a Supplementary Sum?

[188] In order for a shipper to avoid the liability limit specified in Article 22(3), it must not only establish that it made a special declaration of interest but also that it has paid a supplementary sum if the case so requires. These requirements are conjunctive. Therefore,

because I have found that Brink's did not make a special declaration of interest, its claim that it is entitled to rely on the exception to the limit of liability and claim a higher amount cannot succeed.

[189] However, for the sake of completeness, I will also address the second requirement of Article 22(3).

*Brink's' Position*

[190] Brink's submits that the payment of a supplementary sum is optional as it "depends upon the demand of the carrier for payment" (citing *Koliada*, at para 9). In this matter there is no dispute that, by selecting AC Secure, Brink's paid a higher freight rate than it would have paid had it elected to send the Shipments via general cargo. Brink's argues that it elected to take advantage of Air Canada's offer to ensure the safe and secure transportation of specific commodities by agreeing to pay the additional AC Secure rate.

[191] Further, the AC Secure section of the Air Canada website states that "shipping rates can vary significantly depending on the class, handling requirements, and options [selected]". Brink's asserts that this is precisely what happened in this matter as it paid over 250% more for the specialized AC Secure service than it would have paid had it sent the Shipments via general cargo. Further, the record is clear that the freight rate listed on the air waybill is a "face" or "book" rate, inputted for the mere purpose of not disclosing the actual rate negotiated by the parties. Accordingly, Air Canada's claim that it charged Brink's the AC Secure program standard freight rate for carriage of valuable cargo for each of the Shipments, which was lower

than the air waybills' face/book rate, is a red herring. Brink's also disagrees with Air Canada's view that *Westminster Bank* is dispositive of the issue.

*Air Canada's Position*

[192] Air Canada argues that Brink's did not pay it a supplementary sum for the carriage of the Shipments. Rather, the evidence establishes that Air Canada charged Brink's the standard AC Secure freight rate applicable to all AC Secure customers for shipments of valuable cargo to and from Switzerland. This was also the standard freight rate Air Canada charged for all of the 24 shipments of Brink's valuable cargo that Air Canada carried in 2023. The only additional charge was a handling charge of 4.0 CHF, which Air Canada charged Brink's for both its valuable and general cargo. Air Canada relies on *Westminster Bank* to support this position.

*Analysis*

[193] In my view, the evidence does not establish that Brink's paid a supplementary sum in these circumstances.

[194] It is true that Brink's did transport the Shipments by way of AC Secure, a service that Air Canada states is designed "specifically for the safe and secure transportation of valuable cargo" and which ensures, among other things, that goods are moved and loaded with "higher Priority of Load", are handled and secured in holding areas; coordination of third-party security guards (if required); chain of custody for traceability; and, "[e]fficient transport and handling processes to ensure shipments are kept secure".

[195] It is also true that the freight fees for shipping cargo under AC Secure are higher than freight fees for shipping ordinary or regular cargo as established by the AC Secure Rates sheet and the AC General Rates sheet for general cargo.

[196] However, Air Canada's evidence is that valuable cargo, which includes gold and banknotes, cannot be shipped as general cargo. It must be shipped by way of AC Secure. It notes that all 24 of the documented shipments by Brink's were shipped via AC Secure. Brink's puts forward no evidence to contradict this – that is, Brink's has not established that Air Canada accepts valuable cargo for shipment as general cargo.

[197] Thus, in the context of the shipment of valuable goods, the AC Secure rates are Air Canada's standard rates for customers having a contract with Air Canada, like Brink's, and are thereby eligible to take advantage of those rates. In my view, this is not a "supplementary sum", the plain meaning of which is "additional" (*Merriam-Webster Dictionary*) or further or more, fees.

[198] The Cosgrove Affidavit states that, had Brink's declared a value for carriage, this would have triggered a renegotiation of the freight rate, a discussion with respect to adequate insurance and/or payment of an additional fee for carriage. In my view, had any additional fees been charged and paid for services beyond those standard to the AC Secure service, then these would likely have fallen within the term "supplemental sum". Contextually, this fits with the purpose of the declaration of interest – that being to alert the carrier to the risk of an increased limitation

amount so that the risk can be managed as the carrier deems appropriate (see *Orlove*, at 388 in the context of the *Warsaw Convention*).

[199] Air Canada's argument largely hinges on *Westminster Bank*, which it claims is dispositive of whether Brink's paid a supplementary sum. In that decision, the King's Bench Division said the following at p 898:

> Suffice it to say that no special declaration was in fact made. Nor do I think that even if a special declaration was made that any supplementary payment was made by the consignor. Imperial Airways carry at certain rates. There is what I may term the ordinary rate for general merchandise; there is also a rate applicable at the company's option to furs, skins, other valuable goods, works of art, etc. These rates are *ad valorem* rates. Similarly there are *ad valorem* rates for the carriage of gold bullion and specie, and Imperial Airways announce that special rates can be had on application for the carriage of bullion for destinations in Europe. The goods in question in this case were bars of gold, and in order to assess the amount to be paid, it was necessary, as the rate was an *ad valorem* rate, to insert the value of the gold, which accounts, in my opinion, for the insertion of the words " Value £9,000 " in the column headed: "Quality and nature of goods." Undoubtedly as the goods in question were bullion a higher rate was paid than the rate for ordinary merchandise, but I do not think that a supplementary payment was made. In my opinion the word" supplementary" implies some payment in addition to the ordinary rate at which the goods in question are carried. Here the only rate at which bullion is carried is the *ad valorem* rate which in fact was paid. What was in fact paid was a rate which was the usual rate for the carriage of bullion, but which was a higher rate than that for ordinary merchandise, and I am unable to accede to the argument that because this rate was a rate higher than the rate for ordinary merchandise that the payment of that rate was a supplementary payment.

[200] Brink's submits that the passages from *Westminster Bank* on which Air Canada relies are *obiter* from a 1936 judgment. According to Brink's, more recent jurisprudence and the language of the *Montreal Convention* make clear that a supplementary sum has to be requested and, for the

exception not to apply, refused. Article 22(3) requires that a supplementary sum be paid "if so required". As noted in *Durunna*: "these words can be interpreted to place the onus on the [carrier] to request an additional payment if a special declaration has been made" (at para 77). And, citing *Koliada* at paragraph 9, Brink's submits that the court in *Durunna* noted that the "payment of a supplementary sum is optional" as it "depends upon the demand of the carrier for payment".

[201] Brink's also submits that, more importantly, the underlying facts in *Westminster Bank* are distinguishable. In that case, the carrier's practice was to charge on an *ad valorem* basis. As such, gold was necessarily more expensive to ship than an "ordinary", less valuable shipment. Thus, the court found in *obiter* that although it cost more to ship gold than it would to ship less valuable cargo, the shipper had not paid a "supplementary sum" over and above what it would cost to ship the goods regularly. Brink's submits that in this matter Air Canada does not charge on an *ad valorem* basis and that it has a rate for the general transport of cargo and a higher AC Secure rate for the transportation of valuable cargo. *Westminster Bank* is distinguishable on that basis.

[202] I would first note that I do not agree with Brink's that *Durunna* stands for the proposition that a demand for supplemental payment must be made and refused. It seems obvious that if a carrier made a demand for a supplemental payment and the shipper refused to pay it, then the carrier would be very unlikely to accept cargo for shipment. To do so (if a special interest had been declared) would be to assume the risk of a higher limit of liability without compensation for same. Article 22(3) requires only that a supplemental sum has been paid if the case so requires.

[203] It is also significant to note that, although *Durunna* held that the words, "if so required" can be interpreted to place the onus on the carrier to request an additional payment, even if that interpretation were accepted, it would only have application if a special declaration was made. This is not the case here.

[204] As to *Westminster Bank*, in that case the carrier's practice was to charge shippers an *ad valorem* rate for the carriage of gold. For that reason, it was necessary to provide the value of gold to be shipped so that the freight, proportional to the value of the gold, could be calculated. The *ad valorem* rate was the only rate at which gold was carried and that was the rate paid. The court found that the rate, while higher than the rate applicable to other cargo, was not a supplementary payment.

[205] In this case, the evidence establishes that Air Canada charges a rate for the general transport of cargo, and a higher rate (through AC Secure) for the transportation of high-value cargo. The AC Secure webpage indicates that gold and money or currency notes – regardless of declared value or the amount of insurance purchased – are considered to be high-value shipments. It also states that variable levels of special handling are offered depending on the declared value of the shipment or the level of service requested at the time of booking. This could include unarmed escort services or the option to coordinate a third party guard accompaniment. As to shipping costs, the website states that shipping rates can vary significantly depending on the class, handling requirements and options selected.

[206] In my view, this is a similar circumstance to *Westminster Bank* because, while Air Canada charges a higher freight rate for the shipment of valuable cargo, that is its standard rate for that service. Its evidence is that it is also the only rate available for shipment of valuable cargo, which cannot be shipped as general cargo (and therefore at general cargo rates). The AC Secure rate could change depending on the declared value (which declaration was not made in this case) or the level of services provided. There is no evidence that services beyond those standard to AC Secure were charged and paid in this case.

[207] Brink's points to the fact that the Gold and Banknotes Air Waybills include the words "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO". When cross-examined on his affidavit, Mr. Cosgrove testified that if cargo is booked through AC Secure, it gets a higher loading priority and, upon arrival, is placed in a secure lock-up. Beyond that, depending on the declared value of the shipment, additional special handling requirements may be triggered (for example, if armed guards are required). He also testified that the words "BRINK'S SECURED AIRFREIGHT SPECIAL SUPERVISION IS REQUESTED VALUABLE CARGO" on the face of the Shipments' Air Waybills do not cause Air Canada to treat the shipment differently than other cargo. Rather, Air Canada proceeds based on the product that is actually booked – AC Secure or AC General. A request in the handling remarks box of the air waybill permits shippers to provide additional instructions as they see fit, but this does not necessarily mean that the request will be actioned by Air Canada.

[208] In my view, it seems apparent from the evidence that if Brink's wanted special supervision beyond that provided by the AC Secure service, it would need to specify what it

required and to negotiate the terms of same with Air Canada. However, there is no evidence before me that this occurred, nor that Brink's was charged a supplementary sum with respect to special supervision or otherwise. The Cosgrove Affidavit states that Air Canada did not charge Brink's any fee for carriage of the Shipments in addition to applying and charging the standard freight rate set out in the AC Secure Rates sheet. Brink's does not dispute this. I also accept Air Canada's submission that if Brink's wanted services above those standard to the AC Secure service, then this would have been triggered by a declaration of value, which was not made in this case.

[209] For these reasons, I find that Brink's did not pay a supplemental sum and that one would have been required had it engaged services beyond those standard to the AC Secure service. Accordingly, this condition of Article 22(3) was also not met and the higher limitation amount was not triggered.

**Conclusion**

[210] In conclusion, based on the evidence before this Court, I find that Brink's did not satisfy either of the two requirements necessary to engage the higher limit of liability permitted by Article 22(3) of the *Montreal Convention*. Brink's did not establish that it made a special declaration of interest in delivery at destination for the Shipments. This alone was determinative. However, and in any event, Brink's also did not establish that it paid a supplementary sum when it booked the transportation of the Shipments with Air Canada.

[211] As a result, Air Canada's liability for the loss of the stolen Shipments is limited to 22 SDR per kilogram, the amount prescribed by Article 22(3) of the *Montreal Convention* (as revised pursuant to Article 24) being 8,811 SDR for the Gold Shipment, and 1,177 SDR for the Banknotes Shipment.

**Costs**

[212] Brink's and Air Canada both sought their respective costs for their motions and cross-motions on a substantial indemnity basis. However, no submissions as to the actual quantum of costs sought were made by either party.

[213] Rule 400 affords the Court full discretion in the awarding of costs. Rule 407 states that, unless the Court otherwise orders, costs shall be assessed in accordance with Column III of the table to Tariff B. Given that I have not been directed to any circumstances that would warrant an exceptional costs award, nor am I of the view that any exist based on the materials before me, Air Canada shall have its costs for responding to Brink's' motion for summary judgment and for its cross-motion seeking summary judgment, all based on Column III of Tariff B.

**JUDGMENT IN T-2124-23**

**THIS COURT'S JUDGMENT is that**

1. Brink's' motion for summary judgement is dismissed;

2. Air Canada's cross-motion for summary judgement is granted;

3. Air Canada's liability to Brink's for the loss of each of the Shipments is limited to the amount set out in Article 22(3) of the *Montreal Convention*, being the sum of 22 Special Drawing Rights per kilogram of the freight weight for each Shipment;

4. Air Canada shall pay those sums to Brink's;

5. Air Canada shall have its costs for responding to Brink's motion and for Air Canada's cross-motion, all based on Tariff B, Column III.

"Cecily Y. Strickland"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-2124-23 |
| **STYLE OF CAUSE:** | BRINK'S, INCORPORATED, BRINK'S GLOBAL SERVICES INTERNATIONAL INC., AND BRINK'S SHWEIZ AG v AIR CANADA |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | NOVEMBER 18, 2024 |
| **JUDGMENT AND REASONS:** | STRICKLAND J. |
| **DATED:** | JANUARY 20, 2025 |

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| Clay S. Hunter | FOR THE DEFENDANT |

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