Federal Court of Appeal | Cour d'appel fédérale

Date: 20250825

Docket: A-267-22

Citation: 2025 FCA 149

CORAM: **GLEASON J.A.**
MONAGHAN J.A.
HECKMAN J.A.

BETWEEN:

WESTJET

Appellant

and

OWEN LAREAU

Respondent

and

AIR CANADA

Intervener

Heard at Toronto, Ontario, on June 20, 2024.

Judgment delivered at Ottawa, Ontario, on August 25, 2025.

REASONS FOR JUDGMENT BY: HECKMAN J.A.

CONCURRED IN BY: GLEASON J.A.
MONAGHAN J.A.

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REASONS FOR JUDGMENT

HECKMAN J.A.

I. OVERVIEW

[1] A decade ago, a review of Canada's transportation system and of the legal and regulatory frameworks which govern it reported that while Canada's airlines were frequently ranked among

the best in the world, Canadians were very concerned with the unsatisfactory treatment of airline passengers affected by delays, cancellations, and denials of boarding (each a disruption or flight disruption). The review concluded that legislative and regulatory reform was needed to ensure the fair and reasonable treatment of air travellers.

[2] In 2019, legislative amendments led to the promulgation of the *Air Passenger Protection Regulations*, S.O.R./2019-150 [the Regulations]. The amendments directed the Canadian Transportation Agency, after consulting with the Minister of Transport (the Minister), to make regulations in relation to flights to, from, and within Canada, that prescribed air carriers' obligations towards passengers in the event of a flight disruption. Depending on which of three categories of flight disruptions applies in a particular case, carriers are required to (i) ensure that passengers complete their itinerary, (ii) meet minimum standards of treatment, and/or (iii) in some circumstances, pay passengers minimum compensation for inconvenience. Under the Regulations, a carrier owes its passengers compensation only for inconvenience caused by a disruption within its control (the "within control" category). It owes them no compensation in the case of a disruption within its control but required for safety purposes (the safety category) or where a disruption is due to situations outside its control (the "outside control" category).

[3] In the decision on appeal to this Court (the Decision), the Agency, also charged with investigating and adjudicating passenger complaints under the Regulations, stated that disruptions within the safety category should be limited to events that "cannot be foreseen nor prevented or, in other words, that cannot be prevented by a prudent and diligent carrier." It held that a disruption resulting from a crew shortage should not be considered to fall within the safety

category unless the carrier demonstrates that the disruption could not have been reasonably prevented, or was unavoidable, despite proper planning and did not result from the carrier's own actions or inactions.

[4] The appellant, WestJet, submits that the Agency's interpretation ignores the plain and ordinary meaning of the Regulations, which essentially define a flight disruption required for safety purposes as one that is "required by law in order to reduce risk to passenger safety." It argues that passengers should receive no compensation for any flight disruption that arises in response to a safety issue, regardless of the circumstances that have led to the safety issue, including a carrier's failure to take reasonable measures to develop and implement a reasonable contingency plan to mitigate the disruption. Moreover, in the appellant's view, the Agency's interpretation of the safety category cannot stand because it puts pressure on carriers and their personnel to choose to operate flights unsafely in order to avoid paying their passengers compensation.

[5] I disagree. The Agency did not err in interpreting and applying the Regulations. The appellant's proposed interpretation of the safety category would effectively defeat the consumer protection scheme established by the Regulations to redress the acute imbalance in market power to which passengers have historically been subjected in relation to air carriers. It must be rejected.

[6] Applying the modern principle of statutory interpretation, a disruption is "within a carrier's control but required for safety purposes" when the carrier incurs that disruption to

reduce a risk to passenger safety despite having taken reasonable measures 1) to plan and conduct its day-to-day operations in such a manner as to avoid the occurrence of situations causing that risk and 2) to follow a reasonable contingency plan developed to effectively and expeditiously reduce the risk.

[7] Accordingly, for the reasons that follow, I would dismiss the appeal.

II. BACKGROUND

[8] I begin by reviewing the history of the amendments to the *Canada Transportation Act*, S.C. 1996, c. 10 [*CTA*] that led to the promulgation of the Regulations, the relevant statutory and regulatory provisions and their interpretation by the Agency, and the factual context in which the issue has arisen before this Court. Against this background, I then set out the submissions of the parties, the Agency, and the intervener Air Canada. Finally, I turn to how the safety category should be interpreted.

A. *The modernization of the CTA*

[9] In 2014, the Minister launched a review of the *CTA*. The review recognized that airline travellers were "subject to an acute imbalance in market power compared to air carriers" and that many governments around the world, including in the United States and European Union (EU), had intervened to ensure the fair and reasonable treatment of air travellers through prescriptive, statutory consumer protections: Canada, Department of Transport, Canada Transportation Act

Review, vol. 1, *Pathways: Connecting Canada's Transportation System to the World* (Ottawa: Department of Transport, 2015) at 203 [*CTA* Review]. It recommended that the Government of Canada enhance consumer protection for airline passengers by "enacting legislation or regulations that define rights and remedies that are as harmonized as possible with those of the [United States] and European Union, and that apply to all carriers serving Canada": *CTA* Review at 204.

[10] In 2017, the Government introduced Bill C-49, later enacted as the *Transportation Modernization Act*, S.C. 2018, c. 10 [*TMA*], to amend the *CTA*. Among other changes, the *TMA* added section 86.11, which directed the Agency, after consulting the Minister, to make regulations in relation to flights to, from and within Canada, including connecting flights, in a number of areas. Notably, the Agency was mandated to promulgate regulations that established clear carrier obligations towards passengers in the case of flight disruptions, and that made terms and conditions of carriage and information regarding any recourse available against carriers readily available to passengers in simple, clear, and concise language.

[11] In his speech introducing Bill C-49 for second reading, the Minister described the tenor of the proposed legislation in terms of passenger rights as follows:

> Bill C-49 proposes to mandate the Canadian Transportation Agency to develop, in partnership with Transport Canada, new regulations to enhance Canada's air passenger rights. These new rules would ensure air passenger rights are clear, consistent, and fair for both travellers and air carriers.
>
> I believe that when passengers purchase an airline ticket, they expect and deserve the airline to fulfill its part of the transaction. When that agreement is not fulfilled, passengers deserve clear, transparent, and enforceable standards of treatment and compensation. Under this proposed legislation, Canadians would benefit from a

> uniform, predictable, and reasonable approach. The details of the new approach would be elaborated through the regulatory process, which would include consultation with Canadians and air stakeholders.
>
> My objective is to ensure that Canadians have a clear understanding of their rights as air travellers without negatively impacting on access to air services and costs of air travel for Canadians.
>
> (*House of Commons Debates*, 42nd Parl, 1st Sess, No 187 (5 June 2017) at 12060.)

[12] Bill C-49 was studied by the House of Commons Standing Committee on Transport, Infrastructure and Communities and the Senate of Canada Standing Senate Committee on Transport and Communications. Notably, as highlighted by the appellant in its submissions, witnesses debated the wisdom of adopting an air passenger bill of rights modelled on the EU regime governing passenger compensation (Regulation (EC) No. 261/2004, art. 5(3)). This regime requires carriers to pay compensation to passengers in the event of a flight cancellation unless a carrier can establish that the cancellation "is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken."

[13] Some witnesses representing the airline industry expressed concern that the EU regime "penalized" airlines for safety-related delays and that pressure on airlines and their staff to avoid such penalties could compromise passenger safety. Similar concerns had been aired at an earlier House of Commons Committee examination of a private member's bill that had sought to establish an air passenger bill of rights: Bill C-310, *An Act to Provide Certain Rights to Air Passengers*, 2nd Sess, 40th Parl, 2009. The House of Commons Committee studying Bill C-49 refused to adopt a proposed amendment to the effect that compensation would not be required only where a flight cancellation resulted from extraordinary circumstances that could not be

avoided despite the taking of reasonable measures: House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Minutes*, 42nd Parl, 1st Sess, No 74 (3 October 2017).

[14] Section 86.11 of the amended *CTA* directed the Agency, after consulting with the Minister, to make regulations governing different aspects of carriers' obligations towards passengers. Paragraph 86.11(1)(*b*) of the *CTA* is central to this appeal. It mandated the Agency to make regulations respecting the carriers' obligations in the case of flight delays, flight cancellations, or denials of boarding. Notably, it established three categories of flight disruptions in subparagraphs 86.11(1)(*b*)(i)-(iii) for which regulations were to be developed by the Agency. These regulations were to provide that passengers who experienced a disruption within the carrier's control would be entitled to minimum standards of treatment and minimum compensation for inconvenience. Passengers who experienced a disruption within the carrier's control but required for safety purposes would be entitled to minimum standards of treatment but not to compensation. Passengers who experienced a disruption due to situations outside the carrier's control were entitled to complete their itinerary but not to minimum standards of treatment or compensation. Section 86.11 is set out here:

Regulations	**Règlements**
…	[…]
Regulations — carrier's obligations towards passengers	**Règlements — obligations des transporteurs aériens envers les passagers**
86.11 (1) The Agency shall, after consulting with the Minister, make regulations in relation to flights to,	**86.11 (1)** L'Office prend, après consultation du ministre, des règlements relatifs aux vols à destination, en provenance et à

from and within Canada, including connecting flights,

l'intérieur du Canada, y compris les vols de correspondance, pour :

…

[…]

(*b*) respecting the carrier's obligations in the case of flight delay, flight cancellation or denial of boarding, including

***b*)** régir les obligations du transporteur dans les cas de retard et d'annulation de vols et de refus d'embarquement, notamment :

(i) the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier's control,

(i) les normes minimales à respecter quant au traitement des passagers et les indemnités minimales qu'il doit verser aux passagers pour les inconvénients qu'ils ont subis, lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable,

(ii) the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions,

(ii) les normes minimales relatives au traitement des passagers que doit respecter le transporteur lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable, mais est nécessaire par souci de sécurité, notamment en cas de défaillance mécanique,

(iii) the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events, and

(iii) l'obligation, pour le transporteur, de faire en sorte que les passagers puissent effectuer l'itinéraire prévu lorsque le retard, l'annulation ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment un phénomène naturel ou un événement lié à la sécurité,

(iv) the carrier's obligation to provide timely information and assistance to passengers;

(iv) l'obligation, pour le transporteur, de fournir des renseignements et de l'assistance en temps opportun aux passagers;

… […]

B. *The development of the Air Passenger Protection Regulations*

[15] The Agency launched a consultation process to inform its development of the Regulations. Throughout that process, members of the travelling public, consumer advocacy groups, and air carriers recognized that the definition of the three categories of flight disruption in subparagraphs 86.11(1)(*b*)(i)-(iii) was important, because it would determine "what standards of treatments and compensation, if any, must be provided by the airline": Canada, Canadian Transportation Agency, *Air Passenger Protection Regulations Consultations: What We Heard* (Ottawa: Canadian Transportation Agency, 2018) at 9 [APPR Consultations].

[16] Travellers called for definitions clear enough to ensure that the categories not requiring compensation from airlines "not inadvertently capture items for which airlines are, in fact, fully responsible": APPR Consultations at 10. Consumer advocates worried that overly broad definitions could allow airlines to categorize too many situations as wholly beyond their control or due to safety considerations and argued that situations "within an airline's control but required for safety" should be defined narrowly: APPR Consultations at 10.

[17] For their part, airlines wanted to ensure that the definitions "accurately reflect factors for which they are directly responsible" and "reflect the level of control an airline has over each event": APPR Consultations at 10. They submitted that they should not be held responsible for "issues that could not have been mitigated" and that mechanical malfunctions that could not be foreseen or prevented through regular maintenance "should not be viewed as being within the

airline's control": APPR Consultations at 10-11. Airlines reiterated their concern that the definitions should "in no way create pressure on crew to make decisions to avoid delays at the expense of safety": APPR Consultations at 11.

[18] Following the consultations, the Agency published draft regulations in the Canada Gazette: Proposed Regulatory Text, Air Passenger Protection Regulations, s 1(1), C. Gaz. 2018.I.4915 [Proposed Regulations]. In response to the comments it received on the Proposed Regulations, it made changes: Regulatory Impact Analysis Statement, Air Passenger Protection Regulations, C. Gaz. 2019.II.2226 [RIAS].

[19] Although the Agency acknowledged the desire among some stakeholders for "greater specificity and clarity in the regulations" as to the situations that would be considered required for safety purposes and outside the carrier's control, it concluded that it was not possible or desirable to be completely prescriptive in regulation and that it would address these comments through a combination of regulatory adjustments and guidance materials for air carriers: RIAS at 2241-2242.

[20] However, the Agency did expand the definition of "required for safety purposes." The Proposed Regulations had defined the term as "legally required in order to reduce risk to passengers but does not include scheduled maintenance in compliance with legal requirements": Proposed Regulations at 4916. The Agency explained its changes as follows:

> Many stakeholders believe that the definition of "required for safety purposes" does not provide sufficient certainty as to the type of disruptions that it would cover. The wording of this definition is meant to be broad enough to include any

> flight disruption that a carrier must incur in order to ensure the safe operation of the aircraft. The [Agency] will provide further guidance through guidance material.
>
> Air industry stakeholders expressed concern that the definition's focus on legal requirements would exclude safety decisions made by the pilot based on Safety Management Systems (SMS). This was not the intent, and to address this concern, the [Agency] has clarified the definition for "required for safety purposes" to include SMS and pilot discretion.
>
> (RIAS at 2242.)

[21] The Agency also added "manufacturing defects" to the list of situations outside carriers' control:

> Stakeholders have questions why, unlike the EU regime, the [Proposed Regulations] did not recognize that safety issues identified by the manufacturer or government authority that ground the aircraft are outside of the carrier's control, as they are not inherent in the normal exercise of the carrier's activity (e.g. manufacturer recall).
>
> In considering the stakeholder comments, the [Agency] has included "manufacturing defects" and instructions from state officials to the list of situations outside of the carrier's control.
>
> (RIAS at 2242.)

[22] During the consultations, many stakeholders had asked the Agency to explicitly state which category of flight disruption would be engaged when a crew member reaches their duty time limit (a "crew time out"). On this issue, the Agency opted to offer guidance for carriers in an interpretation note rather than by amending the Proposed Regulations. In its view, the applicable category would depend on the "root situation" that brought about the crew "hitting

their duty time limit," which could vary greatly and include "crew illness, adverse weather events, poor scheduling by the carrier": RIAS at 2243.

[23] The Proposed Regulations were also changed to address "knock-on effects." These occur, for example, when a weather delay has an impact on the next flight scheduled to use the delayed aircraft, or when disruptions occurring early in a multi-leg journey have an impact on the rest of that journey: RIAS at 2243. While some air carriers and industry associations complained that knock-on effects were not reflected in the Proposed Regulations, consumer advocates were concerned that such effects could be ascribed to categories in which no compensation was owed and viewed this as a potential loophole. The Agency added specific provisions to address these comments:

> In considering the significant concern regarding knock-on effects, the [Agency] has added greater clarity in the regulations — recognizing knock-on effects but creating reasonable limits. The APPR indicate that when a flight is disrupted for safety reasons or situations outside the carrier's control, these designations could also be applied to a disruption experienced on a subsequent flight. However, this could only be done if that subsequent disruption is directly attributable to the first one and if the carrier took all reasonable measures to recover its schedule after the original flight disruption.
>
> (RIAS at 2243.)

C. *The promulgation of the Air Passenger Protection Regulations*

[24] Promulgated on May 21, 2019, the Regulations were implemented in two stages to give carriers the time to make the necessary systems and operational changes. Accordingly, while

some of the provisions came into force on July 15, 2019, those relating to seating, delays, and cancellations only came into effect on December 15, 2019.

[25] The provisions of the Regulations relevant to this appeal are reproduced in an appendix to these reasons.

[26] Under the Regulations, minimum compensation for inconvenience is owed only in the case of disruptions that are within a carrier's control (Regulations, s 12(1)) and, in the case of a delay or cancellation, where a passenger is informed of the disruption 14 days or less before the departure time indicated on the original ticket (Regulations, ss 12(2)(*d*) and 12(3)(*d*)). It is not owed for:

- a disruption due to situations outside a carrier's control described by subsection 10(1);
- a disruption that is within a carrier's control but that is required for safety purposes under subsection 11(1);
- a disruption that, under subsection 10(2), is a knock-on effect of a delay or cancellation due to situations that are outside the carrier's control; or
- a disruption that, under subsection 11(2), is a knock-on effect of a delay or cancellation within a carrier's control but required for safety purposes.

[27] Subsection 19(1) of the Regulations sets out the minimum compensation amounts payable to passengers to whom compensation is owed under paragraphs 12(2)(*d*) (for delay) and 12(3)(*d*) (for cancellation). These amounts increase the more the arrival of the passenger's flight at the destination is delayed, and are larger for "large carriers," defined as carriers that have transported a worldwide total of two million passengers or more during each of the two preceding calendar years (Regulations, s 1(2)). To receive compensation for a flight delay or cancellation, passengers must file a request with the carrier within a year of the day the flight disruption occurred (Regulations, s 19(3)). Subsequently, upon receipt of the request, the carrier has 30 days to provide the compensation or an explanation as to why it is not payable (Regulations, s 19(4)). Similarly, subsection 20(1) of the Regulations sets out the minimum compensation amounts for a denial of boarding (Regulations, s 12(4)(*d*)).

[28] The compensation owed by carriers to passengers under subsections 19(1) and 20(1) of the Regulations is summarized in the following tables:

Compensation for delay or cancellation		
Delay of arrival at destination	Minimum compensation	
	Large carriers	Small carriers
3 hours ≤ delay < 6 hours	$400	$125
6 hours ≤ delay < 9 hours	$700	$250
delay ≥ 9 hours	$1,000	$500

Compensation for denial of boarding	
Delay of arrival at destination	Minimum compensation
delay < 6 hours	$900
6 hours ≤ delay < 9 hours	$1,800
delay ≥ 9 hours	$2,400

[29] Under subsection 86.11(4) of the *CTA*, the carriers' obligations established under the Regulations are deemed to form part of the terms and conditions set out in the carriers' tariffs, insofar as these do not provide more advantageous terms and conditions of carriage than those obligations.

[30] At the time of the events underlying this appeal, section 67.1 of the *CTA* provided that when a carrier failed to comply with these obligations, passengers could file a complaint with the Agency. If the Agency determined that the carrier had failed to apply its tariffs, contrary to subsection 67(3) of the *CTA*, it could order the carrier to take corrective measures, including payment of the required compensation. Detailed provisions governing the filing, mediation, and adjudication of complaints under the Regulations are now set out in sections 85.01 to 85.16 of the *CTA*.

D. *Agency guidance on the interpretation of the Regulations*

[31] Following the promulgation of the Regulations, the Agency provided guidance to the airline industry and the public with respect to carriers' obligations through the issuance of non-binding guidance documents and an interpretive decision. Each is described in turn.

(1) Supplementary guidance relating to crew shortages

[32] In 2020, the Agency published a non-binding guidance document with regards to passenger complaints relating to crew shortages: Canada, Canadian Transportation Agency,

Supplementary Guidance: Evidentiary Requirement for Airlines for Complaints Relating to Crew Shortages, No. TT4-76/2022E-PDF (Ottawa: Canadian Transportation Agency, 2020) [Supplementary Guidance]. The Supplementary Guidance provides that, in the context of a passenger's complaint relating to their entitlement to compensation, a carrier claiming that a flight disruption is either within its control but required for safety purposes or outside its control is expected to provide evidence to support its claim. It warns that, absent such evidence, the Agency may decide that the disruption was within the carrier's control. Where a carrier justifies a flight disruption based on a crew shortage, the Supplementary Guidance states, at pages 2-3, that such evidence includes, but is not limited to:

1. Documentation confirming the reason why the crew originally assigned to the flight could not fly – for example:

    - crew absentee records such as attendance or sick logs;

    - crew duty time logs which show an expiration of the prescribed number of hours that crew members were allowed to work for safety purposes;

    - incident logs or other records regarding crew-related inability to report for duty or unavailability for specific assigned flights. These records should provide details about the incident or a description of the circumstances and reasons why crew were unable or unavailable to work, including for what length of time. For example, in the event that crew were stranded at another location due to a weather event or a mechanical malfunction, the records provided should document the cause of any resulting flight disruption, whether any crew members exceeded the length of time that they were allowed to work, and the length of time that they were subsequently off duty and/or remained stranded.

2. Contingency plans prepared by the airline to address crew shortages which outline the measures that the airline would take to address the following:

    - situations that may cause crew absences or shortages that are part of day-to-day operations (for example, labour disruptions, meteorological

and environmental conditions, computer issues and network outages, epidemics or medical emergencies, domestic versus international operating conditions);

- size of the crew workforce the airline has available at its disposal in relation to the scope of its operations at the affected location;
- availability and number of reserve crews and procedures for dispatching crews;
- recovery plans in respect of potential crew shortages.

3. Reports confirming the efforts taken by the airline to find replacement crew and the reasons why they were not successful, despite implementing contingency planning measures – for example:

    - evidence that reserve crews were depleted;
    - any information about unexpected or unplanned changes to the airline's workforce which may have impacted the availability of replacement crew.

(2) Guidance document on types and categories of flight disruption

[33] The Agency also published a non-binding guidance document, revised in September 2022, describing the different categories of flight disruptions: Canada, Canadian Transportation Agency, *Types and categories of flight disruption: A guide*, No. TT4-50/17-2022E-PDF (Ottawa: Canadian Transportation Agency, 2020) [Agency Guide].

[34] The Agency described disruptions in the “within control” category as concerning flights disrupted for reasons within the airline’s control, other than safety, often stemming from airlines’ commercial decisions (overbooking flights, consolidating or cancelling undersold flights or other

actions to maximize revenue) or decisions to manage their day-to-day operations (staff and flight crew scheduling and availability, flight preparation activities such as baggage handling and aircraft cleaning and fueling, and scheduled maintenance). The Agency noted that disruptions linked to a carrier's day-to-day operations could, in specific cases, be considered to fall within the safety or "outside control" categories.

[35] The Agency Guide describes the safety category as generally applying when an airline has to disrupt a flight to ensure the safety of the flight and people on board, for example, in accordance with the *Canadian Aviation Regulations*, S.O.R./96-433 [*CAR*] and standards. Flight disruptions within a carrier's control but required for safety would include disruptions caused by unexpected mechanical malfunctions that impact safety, decisions of a carrier based on its Safety Management System (SMS) and safety-related decisions made by pilots at their discretion.

[36] Finally, disruptions in the "outside control" category are described in the Agency Guide as disruptions caused by events over which an airline does not have control, including safety and security concerns, medical emergencies, and natural phenomena.

(3) The Interpretive Decision

[37] In the two months after the Regulations came fully into force, the Agency received over 3,000 complaints from passengers with respect to carriers' obligations to communicate the reasons for delays and cancellations under the Regulations. It pursued an inquiry into 567 applications against carriers. Observing that there were several issues giving rise to common

areas of contention among passengers and carriers, the Agency opened pleadings on eight general questions of interpretation in order to issue an interpretive decision that would help ensure a clear, consistent understanding of carriers' obligations: Canadian Transportation Agency, Letter Decision No. LET-C-A-72-2020 at para. 18. In addition, submissions were received from several carriers who were parties to the applications, including the appellant WestJet, Swoop, the intervener Air Canada, and Sunwing. The Agency received position statements from airline associations and passenger advocacy organizations. It also received responses from 20 passenger applicants.

[38] The Agency then provided guidance in the form of an interpretive decision: Canadian Transportation Agency, Decision No. 122-C-A-2021 (Interpretive Decision). The questions of interpretation examined by the Agency in the Interpretive Decision most relevant to this appeal and the Agency's summary of its conclusions on these questions are set out in the following table:

Question of interpretation	**Agency conclusion (Interpretive Decision at para. 4)**
Issue 1: How much detail regarding the reason for a flight disruption should be provided by carriers to passengers pursuant to paragraph 13(1)(a) of the [Regulations]?	Paragraph 13(1)(a) requires carriers to take reasonable efforts to provide the reason for a flight disruption in sufficient detail for passengers to understand the reason given and how this reason caused the flight disruption.
Issue 2: If a carrier refuses to pay compensation on the basis that a flight disruption was within its control but required for safety purposes or was due to situations	Subsection 19(4) requires carriers to provide passengers with sufficient information in the explanation provided when rejecting a request for compensation for the passenger to

outside its control, how much detail regarding the reason for the flight disruption should be included in the explanation given to the passenger pursuant to subsection 19(4) of the [Regulations]?	decide whether they wish to challenge the carrier's rejection of their request.
Issue 3: When a flight is disrupted for multiple reasons, how should the flight disruption be categorized?	The primary reason, or most significant contributing factor, is the appropriate test to determine the categorization of a flight disruption with multiple contributing reasons.
Issue 4: How should a flight disruption caused by a crew shortage be categorized?	In categorizing a flight disruption caused by a crew shortage, the circumstances surrounding the crew shortage must be considered, including, but not limited to, factors such as the categorization of the events that caused the crew shortage, and whether the carrier has prepared and implemented reasonable contingency plans.

[39] The Agency noted that the carriers who were party to the applications took different positions on the question of how to categorize a flight disruption caused by a crew shortage. For example, Air Canada submitted that each crew shortage should be assessed on a case-by-case basis. In its view, while proper crew planning and a crew's failure to arrive on time for reasons within the carrier's control remained situations within its control, a crew shortage triggered by reasons outside its control, including weather, labour strikes, pandemics, or crew member illness, should be categorized as outside its control. However, according to Air Canada, a flight disruption caused by a crew going over duty time is safety-related, and where a flight crew has some discretion to operate a flight notwithstanding the expiry of crew duty time limits, "carriers should not be penalized for a safety call made within this discretion, because crews could feel

pressured to operate a flight to avoid additional cost for the carrier": Interpretive Decision at para. 79. For their part, the appellant and Swoop submitted "that crew shortages are often caused by reasons outside the carrier's control and are always related to safety": Interpretive Decision at para. 81.

[40] The Agency reported that the applicant passengers submitted that carriers were responsible for staffing issues and that they should be aware of when crew duty time limits expired and able to resolve crew shortages in a reasonable period of time: Interpretive Decision at para. 83. Air Passenger Rights, a passenger advocacy group, argued that carriers had "full control over their staffing, and are therefore responsible for ensuring adequate reserve crew" and that crew shortages could not trigger flight disruptions that were "for safety purposes": Interpretive Decision at paras. 86-87. Airhelp, another passenger advocacy group, submitted that disruptions caused by crew shortages should be considered within a carrier's control but required for safety purposes only "where, due to very extraordinary circumstances, the carrier cannot locate alternate crew and ensure that crew members remain sufficiently free from fatigue to safely operate the aircraft": Interpretive Decision at para. 88.

[41] The Agency offered the following analysis and determinations on the issue of the proper categorization of crew shortages:

> [89] A crew shortage can be caused by a variety of situations and circumstances, including delays leading to the expiration of crew duty time limits. The Agency agrees with the [air carriers party to the complaints] that a carrier should not be penalized for it, or its crew, making a safety call within their discretion regarding the safe operation of an aircraft. Nonetheless, crew absences or shortages are part of day-to-day operations, and therefore should be anticipated and planned for, including in relation to the expiration of crew duty time limits.

[90] The Agency notes that carriers are responsible for proper crew scheduling, including reasonable contingency planning. A crew shortage caused by a scheduling error of the carrier would therefore be due to a situation within the carrier's control.

[91] In categorizing a flight disruption caused by a crew shortage, the circumstances surrounding the crew shortage must be considered, including, but not limited to, the following factors:

1. Whether there were events affecting the flight that caused the crew shortage and whether those events were outside the carrier's control, within the carrier's control, or within the carrier's control but required for safety purposes; and

2. Whether the carrier has prepared and implemented reasonable contingency plans, considering elements which may impact scheduling of new crew, such as whether the issue occurred in a remote or foreign location.

[92] With respect to the first factor, there are a variety of events that may contribute to a crew shortage, both within and outside the carrier's control, and controllability of these contributing events may impact the controllability of the resulting crew shortage. A non-exhaustive list of situations outside the carrier's control is provided in subsection 10(1) of the APPR, and some of these situations may contribute to a crew shortage, such as labour disruptions (paragraph 10(1)(j)), meteorological conditions (paragraph 10(1)(c)), or medical emergencies (paragraph 10(1)(h)). The unexpected illness of a crew member could result in a crew shortage, or a weather delay could result in the crew exceeding their duty time limits and the crew determining that it would be unsafe for them to fly. Similarly, a delay caused by a reason within the carrier's control but required for safety purposes could also cause crew to exceed their duty time limits. For example, a mechanical issue may lead to a flight delay that results in the crew exceeding their duty time limits.

[93] However, even if situations outside the carrier's control, or within the carrier's control but required for safety purposes, contribute to the crew shortage, the crew shortage may still be found to be within the carrier's control depending on the second factor set out above: whether the carrier has prepared and implemented reasonable contingency plans for replacing crew.

[94] The carrier's contingency planning, and elements that impact the scheduling of new crew, will be assessed on a case-by-case basis. The requirement to have reserve crew should be based on the particular circumstances of the flight disruption. The Agency recognizes that extraordinary situations can

> impact a carrier's reserve crew, such as an illness affecting a significant number of crew. The carrier may also be unable to locate alternate crew in the case of a labour disruption. The Agency also notes that there may be delays in flying in alternate crew for reasons outside the carrier's control, such as weather delays.
>
> [95] Reasonable contingency planning does not necessarily require carriers to have reserve crew available at all airports at which they operate. At busier airports, such as major hubs, there will be a higher expectation that the carrier has reserve crew available in case of day-to-day crew shortages, such as occasional crew illness. The Agency understands that locating alternate crew will likely be more difficult in more remote regions, or foreign locations, particularly where the carrier's operations are limited. For example, if a Canadian carrier operates multiple routes to Europe, it may be reasonable for it to only have reserve crew in one city in Europe where a major airport is located, such as London, United Kingdom.
>
> (Interpretive Decision.)

[42] Against the background of the legislative and regulatory history behind the flight disruption categories and their interpretation by the Agency in the non-binding guidance documents and the Interpretive Decision, I turn now to the specific facts before the Court on this appeal, and set out how the Agency, informed by its guidance, applied the regulatory framework to the respondent's complaint in the Decision.

E. *Facts of this case*

[43] On July 18, 2021, Owen Lareau, the respondent, was supposed to be a passenger on a WestJet flight from Regina to Toronto (the Flight), from where he would then fly to his final destination in Ottawa. Though the Flight was supposed to depart Regina at 11:30 a.m., it was cancelled less than an hour before its departure because of a crew shortage.

[44] WestJet rebooked Mr. Lareau on a flight to Calgary later that day. He stayed overnight in Calgary using vouchers provided by WestJet for his meals and accommodation and flew to Ottawa the next day. He arrived at his final destination approximately 21 hours later than originally scheduled.

[45] Mr. Lareau submitted a request to WestJet for compensation for the flight disruption. WestJet refused this request, answering that it was "unable to approve [his] claim for compensation as [his] flight was impacted due to crew member availability and [the cancellation] was required for safety purposes."

[46] Three days after this refusal, on August 17, 2021, Mr. Lareau submitted a complaint to the Agency, requesting "more information regarding this safety situation," since it seemed to him that WestJet was understaffed. He stated that he had had to miss a day of paid work, and that he could have made alternative arrangements had he been informed of the cancellation in the days or weeks preceding it. He sought monetary compensation to make up for his lost income.

[47] In response to the complaint, WestJet provided evidence of the Operational Control Centre's shift notes and communications. Three entries on July 18, 2021 relate to the Flight:

> 10:24 a.m.: FO book off. CS looking at options
>
> 10:24 a.m.: fo booked off - they ar working on a solution! GO CREW SKED!
>
> 10:49 a.m.: no fo avail - possible crew covid concerns - flight cancelled - yqr/yyz advised

[48] In addition, WestJet provided screenshots of two emails: one email sent at 10:44 a.m. on July 18, 2021 advising "teams" of the flight's cancellation, and one email sent in the early hours of July 19, 2021, outlining the daily report of the Centre's duty manager for July 18, 2021, stating that the first officer had booked off.

[49] WestJet explained to the Agency, in an email dated November 12, 2021, that:

> [the Flight] experienced an outside carrier control – crew – safety cancellation. Specifically, a Frist [*sic*] Officer booked off due to illness. YQR is not a WestJet crew base; as such, crew resources are limited and we were unable to fulfill the crew compliment [*sic*] for the safe operation of this flight.

F. *The Decision*

[50] On July 8, 2022, the Agency decided the cancellation of Mr. Lareau's flight was within WestJet's control and not required for safety purposes. Accordingly, it held that he was entitled to compensation for inconvenience in the amount of $1,000.

[51] The Agency stated that when a carrier claims that a flight disruption was within its control but required for safety purposes, or outside its control, it must establish the claim and provide evidence to support its categorization of the disruption: Decision at para. 7.

[52] The Agency summarized the relevant portion of the Interpretive Decision, outlined above. It stated that "[i]n general, carriers have control over staffing issues": Decision at para. 10. It then explained what a carrier must show to establish that a flight disruption is within the

carrier's control but "required for safety purposes". Its interpretation is well summarized in the following passages:

> … disruptions within the carrier's control but required for safety purposes should be limited to events that cannot be foreseen nor prevented or, in other words, that cannot be prevented by a prudent and diligent carrier.
>
> …
>
> … the threshold for establishing that a crew shortage was not within the carrier's control within the meaning of section 12 of the APPR is high. The carrier must demonstrate that it could not have reasonably prevented the disruption despite proper planning.
>
> …
>
> Nonetheless, if a crew shortage is due to the actions or inactions of the carrier, the disruption will be considered within the carrier's control for the purposes of the APPR. Indeed, a disruption caused by a crew shortage should not be considered "required for safety purposes" when it is the carrier who caused the safety issue as a result of its own actions.
>
> (Decision at paras. 9, 11-12 [emphasis added].)

[53] Turning to the facts of the case, the Agency noted that the only relevant evidence WestJet provided were the Operational Control Centre notes, outlined above, indicating its failure to secure an alternate first officer. In the Agency's view, that evidence did not explain why the efforts were not successful. Further, the Agency held that WestJet had not indicated whether it had explored the possibility of bringing in a replacement first officer to Regina to operate the flight, even if that meant the flight would have to be delayed. Moreover, it noted that WestJet had not provided evidence regarding what contingency plans may have been in place to ensure that replacement first officers were available in the event of a crew shortage. As such, the

Agency was not satisfied on the evidence before it that the cancellation was "unavoidable despite proper planning," or that it was "not the result of [WestJet's] own actions or inactions": Decision at para. 13.

G. *Appeal of the Decision to this Court*

[54] The appellant sought and obtained leave to appeal the Decision pursuant to section 41 of the *CTA*, which allows appeals to this Court, with leave, on questions of law or jurisdiction. The legal question before this Court is the scope of the safety category: when is a flight disruption "within the carrier's control but… required for safety purposes" under section 11 of the Regulations?

[55] The appellant, WestJet, and the respondent, Mr. Lareau, are parties to the appeal. This Court granted intervener status to Air Canada. Moreover, the Agency provided submissions to the Court pursuant to subsection 41(4) of the *CTA*: see *WestJet v. Lareau*, 2024 FCA 77, 2024 CarswellNat 1224. I summarize their submissions in the following section.

III. THE ARGUMENTS OF THE PARTIES, INTERVENER, AND AGENCY

A. *The appellant's position*

[56] The appellant claims that "required for safety purposes" should be interpreted according to the language of the definition of that term in the Regulations. In its view, in a case where the

airline advances a safety purpose that does not involve a mechanical malfunction, the question is simply whether the flight disruption was "required by law in order to reduce risk to passenger safety."

[57] On the facts of this case, the appellant observes that, as acknowledged by the Agency in the Decision, the *CAR* prohibit the appellant from operating the aircraft with a single pilot: *CAR*, section 703.86. Moreover, they prohibit a first officer who is sick and unfit for duty from acting as a flight crew member: *CAR*, section 602.02. Accordingly, the appellant submits that cancelling the Flight when it was unable to obtain another first officer was required by law in order to reduce risk to passenger safety and thus required for safety purposes.

[58] The appellant submits that its interpretation is supported not only by the plain and ordinary meaning of the words of the Regulations (in particular, the definition of "required for safety purposes"), but by the Regulations as a whole and the purpose of subparagraph 86.11(1)(*b*)(ii) of the *CTA* and section 11 of the Regulations in the context of the object of the legislative scheme.

[59] In the appellant's view, on the plain and ordinary meaning of the definition of "required for safety purposes," the cause of the situation that leads to a safety issue, including whether it is due to the actions or inactions of a carrier, does not matter, except with respect to the carve-out for disruptions resulting from issues identified on scheduled maintenance. The only question is whether, in the circumstances that presented, whatever the cause, delaying or cancelling the flight was required by law in order to reduce risk to passenger safety.

[60] The appellant argues that the Agency has limited the safety category to events that cannot be prevented by a prudent and diligent carrier, and that it has excluded from the safety category any disruptions resulting from a crew shortage where the carrier caused the safety issue by its own actions. As a result, the Agency's interpretation focuses only on the cause of the safety issue and whether it was foreseeable and within the carrier's control, rather than on safety itself.

[61] This, in the appellant's view, makes the safety category meaningless and effectively eliminates it, leaving only two categories of disruption:

> [W]here the reason for the disruption is unforeseeable and cannot be prevented, it is outside the carrier's control and compensation will not be payable, and where the reason is foreseeable and could have been prevented, it will be within the carrier's control and compensation will be payable.
>
> (Appellant's Memorandum of Fact and Law at para. 75.)

[62] The appellant finds support for its textual interpretation in the context of the Regulations as a whole, specifically the "knock-on" provisions in subsections 10(2) and 11(2). It notes that where a carrier wishes to categorize as "required for safety purposes" a flight disruption directly attributable to an earlier flight disruption that was "required for safety purposes," express language in the knock-on provisions requires the carrier to establish that it took all reasonable measures to mitigate the impact of the earlier disruption. In other words, when the Regulations oblige carriers to demonstrate that a disruption could not be avoided by the adoption of reasonable measures, they use express language. Relying on the implied exclusion rule of statutory interpretation, the appellant submits that the absence of similar language in subsection 11(1) of the Regulations or in the definition of "required for safety purposes" indicates that, to

categorize a disruption as “required for safety purposes,” a carrier need not demonstrate that the event triggering the disruption was unforeseeable or could not have been prevented by reasonable measures.

[63] Finally, the appellant submits that its proposed interpretation of the safety category is consistent with what it claims to be the purpose behind creating a category of flight disruptions for which no compensation is payable: “to discourage carriers and flight crew from making decisions based on their desire to avoid paying compensation rather than on safety, which should be paramount”: Appellant’s Memorandum of Fact and Law at para. 85. It argues that this purpose is consistent with the concerns expressed by carriers in parliamentary committee hearings studying proposed changes to the *CTA* and in consultations preceding the promulgation of the Regulations that a regime that penalized carriers for safety-related decisions would compromise passenger safety. It notes that the Agency, in its Interpretive Decision, agreed that a carrier should not be penalized for it, or its crew, making a safety call within their discretion regarding the safe operation of an aircraft.

[64] The appellant submits that Parliament’s inclusion of the safety category shows that Parliament rejected a model that would require compensation unless the carrier could show it had taken all reasonable measures to avoid the disruption. Rather, flight disruptions for safety reasons were to be treated differently in respect of the obligations placed on carriers than other types of disruptions within the carrier’s control. Compensation is not payable to ensure that carriers’ decisions to operate are based only on safety and not on financial concerns. While the appellant recognizes that the Regulations were intended to create an airline passengers’ bill of

rights, it notes that it is in the interests of passengers to interpret the *CTA* and Regulations in a manner that best ensures their safety.

B. *The respondent's position*

[65] The respondent submits that the appellant's proposed interpretation of "required for safety purposes" gives no meaning to the "required" element of that provision. It argues that "required" must be interpreted as providing the Agency with the power to scrutinize a carrier's explanation for the disruption, consistent with the obligation imposed on carriers under section 13 of the Regulations to provide to passengers the reason for the delay. The respondent argues that, if the appellant had cancelled the Flight in circumstances where it could have, but failed, to call on pilots employed within a reasonable distance of Regina to replace the ill first officer, the cancellation would be attributable to profit or human resources issues, not safety.

[66] The respondent submits that the appellant's position amounts to a claim that, to categorize a disruption as required for safety purposes, it is sufficient for a carrier to assert, without supporting evidence, that that is the case. In its view, that position is inconsistent with a carrier's obligations under the Regulations to provide information in support of its decision not to compensate a passenger.

C. *The Agency's position*

[67] The Agency also submits that the appellant's claim that it is enough for a carrier to point to the existence of a safety issue to establish that a disruption is required for safety purposes ignores the word "required". In the Agency's view, the language chosen calls for the Agency to inquire into the circumstances that give rise to the safety issue, including the carrier's conduct, to determine how the disruption should be categorized under the Regulations.

[68] The Agency submits that several factors may cause a disruption, including weather, staff error, economic considerations, or safety purposes, and that the Agency must determine the primary cause of the disruption. While there could be a safety issue, the Agency could conclude that the disruption was caused by a factor entirely within the control of the carrier:

> The question remains why the flight disruption was required. If it was required for a safety reason then no compensation is payable. If [it] was required because of some matter within the control of the carrier which led to a safety issue, it is open to the Agency to conclude that it was this issue, not the safety issue, which caused the flight disruption.
>
> (Memorandum of Fact and Law of the Canadian Transportation Agency at para. 49 [emphasis in the original].)

D. *The intervener's position*

[69] While it does not focus its submissions on the question of statutory interpretation, the intervener Air Canada agrees with the appellant that the Agency's test for the safety category

ignores whether a disruption is required for safety purposes and asks instead whether it was foreseeable and could have been prevented by a prudent and diligent carrier.

[70] The intervener submits that, in the context of a crew shortage, the Agency's "prudent and diligent carrier" standard requires the carrier to demonstrate that the crew shortage was unavoidable despite proper planning, and that it was not due to the carrier's actions or inactions. In the intervener's view, this standard is legally flawed and impractical; the Agency is holding carriers to an unattainable standard of perfection by requiring them to "show in hindsight that [they] could not have done anything differently to prevent the flight disruption":

> … [R]ather than asking itself whether the carrier put in place reasonable measures to prevent flight disruptions, the Agency asks itself whether, in hindsight, the carrier could have implemented measures that would have prevented the flight disruption. And in the absence of evidence showing that nothing else could have been done to avoid the flight disruption, the Agency presumes that the crew constraint was within the airline's control.
>
> (Intervener's Memorandum of Fact and Law at para. 14.)

[71] The intervener argues that, to establish that a flight disruption was "unavoidable despite proper planning," the Agency expects carriers to secure evidence of how they deployed their contingency plans in specific cases, by capturing and storing all relevant information in real time to reconstruct complex chains of events. In its view, this expectation is unrealistic and imposes an impractical and legally flawed burden on carriers incompatible with their operational realities, contrary to the Regulations' intent.

IV. ANALYSIS

A. *Issue and standard of review*

[72] The central question before this Court is one of statutory interpretation: what does it mean for a flight disruption to be "within a carrier's control but… required for safety purposes" under section 11 of the Regulations?

[73] The Supreme Court of Canada has confirmed that the appellate standards of review apply on a statutory appeal, with leave, to this Court under section 41 of the *CTA*: *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30, 496 D.L.R. (4th) 385 at para. 25 [*IATA*]. Since the interpretation of the safety category is a question of law, this Court will review the Agency's decision on this question on a correctness standard.

[74] In his oral submissions, the respondent argued that while the correctness standard of review applies, it should be applied "with nuance" given the unique situation in this case. He emphasized that the Agency authored the Regulations, issued the Interpretive Decision to explain how they should be interpreted and, following that decision, rendered the decision in the case at bar. He submitted that a correct interpretation of subsection 11(1) of the Regulations should be consistent with the Interpretive Decision, since this was the Agency's explanation of its intent.

[75] The appellant submitted in reply that the Interpretive Decision is not conclusive of the "legislator's intent" with regards to the meaning of the Regulations since the Agency made the

Regulations after consulting with the Minister, and there was no way to know if the Agency and the Minister were in complete agreement on the meaning of the Regulations. The intervener observed in reply that the Agency is in the unique position of occupying the multiple roles of regulator, administrator, and quasi-judicial body, and submitted that the Court should not conflate these roles, each of which comes with its own powers and processes.

[76] In my view, the Court's task in reviewing for correctness an administrative decision maker's determination is clearly set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 54:

> When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view… While it should take the administrative decision maker's reasoning into account — and indeed, it may find that reasoning persuasive and adopt it — the reviewing court is ultimately empowered to come to its own conclusions on the question.

The Agency has considerable regulatory expertise and experience in the transportation sector: *Canadian National Railway Company v. Richardson International Limited*, 2020 FCA 20, 445 D.L.R. (4th) 720 at para. 53. This Court will pay close attention to the Agency's interpretation of the *CTA* and the Regulations. Ultimately, however, the Court's role in this appeal is to apply the principles of statutory interpretation to the provisions at issue and come to its own view of their meaning.

B. *Principles of statutory interpretation*

[77] The Supreme Court of Canada has recently provided very helpful overviews of the principles of statutory interpretation: *Piekut v. Canada (National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1 at paras. 42-50 [*Piekut*]; *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, 502 D.L.R. (4th) 59 at paras. 30-36 [*Telus*]. Under the modern principle of statutory interpretation, courts consider the words used in legislation in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament: *Piekut* at para. 42, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193 at para. 21. This approach requires courts to interpret statutory language according to a textual, contextual, and purposive analysis to find a meaning that is harmonious with the Act as a whole: *Piekut* at para. 43.

[78] As a result of this approach to statutory interpretation,

> …"plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms" (…). At the same time, "just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretative exercise"…
>
> (…)
>
> In sum, as Professor Sullivan explains, the prime directive in statutory interpretation is that
>
> > after taking into account all relevant and admissible considerations . . . the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b)

> its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just. (…) [Citations omitted].

(*Piekut* at paras. 45, 49.)

C. *The text of section 86.11 of the CTA and of the Regulations*

[79] I begin my analysis of the text of the relevant statutory and regulatory provisions by focusing on the wording used to describe the categories of flight disruptions. First set out in subsection 86.11(1) of the *CTA*, which defines the Agency's authority to make regulations regarding carriers' obligations towards passengers, this wording is reflected in subsections 10(1), 11(1) and 12(1) of the Regulations. I first consider what it means for a disruption to be "within a carrier's control". I then turn to the meaning of "required for safety purposes".

(1) The meaning of "within a carrier's control"

[80] As noted previously, the *CTA* and Regulations set out three categories of flight disruptions: the "within control," "safety," and "outside control" categories. Carriers' obligations towards passengers in the event of a flight disruption differ depending on the category within which the flight disruption is determined to fall. The "within control" category is defined in section 12 of the Regulations. It applies to a flight disruption that is "within the carrier's control" but that does not belong to the safety category, defined in section 11 as a disruption that is "within the carrier's control, but is required for safety purposes." Section 10 of the Regulations

defines the “outside control” category, which applies to a flight disruption that “is due to situations outside the carrier’s control, such as natural phenomena and security events”.

[81] The “within control” and safety categories relate to disruptions that are within the carrier’s “control.” The noun “control” means “the power to influence or direct … the course of events” (*The New Oxford Dictionary of English* (1998) *sub verbo* “control”) or “the condition of being directed or restrained” (*Webster’s New World College Dictionary* (2018) *sub verbo* “control”). A disruption that is within a carrier’s control is therefore one which the carrier has the power to influence or direct, or over which it can exercise restraining or directing influence. Accordingly, a flight disruption is within a carrier’s control where a carrier can take actions to exercise restraining or directing influence over the occurrence or severity of the disruption. These include actions to avoid, where possible, the occurrence of a situation that would trigger a disruption or, where such a situation nevertheless arises, to mitigate the disruption.

[82] There are many ways carriers could choose to exercise restraining or directing influence on the occurrence or severity of disruptions. For example, a carrier could take reasonable measures 1) to plan and conduct its day-to-day operations in such a manner as to avoid the occurrence of a situation that could reasonably be expected to lead to a flight disruption and 2) where such a situation nevertheless occurs, to follow the reasonable contingency plan it has developed to effectively and expeditiously recover from the situation, thus mitigating the disruption. For the sake of brevity and to clarify these reasons, I will use the term “prudent and diligent carrier” to refer to a carrier that exercises restraining or directing influence over the occurrence or severity of a disruption through such measures. A carrier’s ability to exercise such

influence over a disruption, regardless of the measures used to do so, means that the disruption is "within its control."

[83] As observed by the Agency in the Decision, carriers generally exercise control over staffing:

> [T]hey control how many employees they hire, how far in advance their employees are hired and trained, where employees are dispatched, the frequency of their employees' work assignments and at which hubs employees are located.
>
> (Decision at para. 10.)

Indeed, in submissions to the Agency in the context of the Interpretive Decision, Air Canada properly acknowledged that "proper crew planning" remained within its control.

[84] Some foreseeable situations, the timing of which may be difficult to predict, will occur in a carrier's day-to-day operations and could lead to flight disruptions. These include crew shortages resulting from the occasional absence of a crew member due to illness. As noted by the Agency in its Interpretive Decision, for such situations, a carrier can take measures to carry out its operations, including staffing decisions, in such a manner as to avoid a flight disruption or, when that isn't possible, to mitigate the disruption. The disruption is thus "within the carrier's control."

[85] The "outside control" category of flight disruptions includes disruptions that are "due to situations outside the carrier's control," such as natural phenomena and security events. Its scope is elucidated by subsection 10(1) of the Regulations, which sets out a non-exhaustive list of

situations outside the carrier's control. These situations include the presence of conditions that seriously interfere with or render impossible the safe operation of aircraft, such as meteorological conditions or natural disasters, war or political instability, or a security threat. They also include actions involving, or decisions taken by, third parties, such as instructions from air traffic control, the identification of a safety-related manufacturing defect by an aircraft manufacturer or competent authority, orders and instructions from law enforcement officials or airport security, or labour disruptions within the carrier or within an aviation-related essential service provider.

[86] In these situations, a carrier cannot exercise restraining or directing influence over the occurrence or severity of the disruption. It cannot, by its actions alone, avoid the development of the situation that triggers the disruption, nor can it mitigate the disruption. Unsafe meteorological conditions (Regulations, s 10(1)(*c*)) prevent the operation of an aircraft until they subside. No amount of planning undertaken by a carrier can avoid their occurrence or change their duration. Safety-related manufacturing defects can prevent the operation of an aircraft until the manufacturer devises a way to remedy the defect (Regulations, s 10(1)(*k*)). A labour disruption that deprives an aircraft of its flight crew or an airport of its air-traffic controllers disrupts the operation of the carrier until it is resolved by the agreement of all parties to the dispute, the order of a labour board, or legislative means (Regulations, s 10(1)(*j*)).

[87] Based on the foregoing analysis of the statutory and regulatory text, disruptions "within a carrier's control" would include disruptions that result from a situation caused by the carrier. If a carrier, through its actions or inaction, causes a situation that a carrier could and should have avoided, for example, by properly planning and conducting its day-to-day operations, and that

situation triggers a disruption, the disruption is "within the carrier's control." This is so because the carrier could have acted in such a manner as to avoid the disruptive situation, thus exercising restraining or directing influence over the occurrence or severity of the disruption, but failed to do so.

[88] This conclusion is supported by the use of the word "attribuable" in the French version of subparagraphs 86.11(1)(*b*)(i) and (ii) and subsections 11(1) and 12(2) of the Regulations, which describe a flight disruption as "qui lui est attribuable." In this context, the French verb "attribuer" means to link an outcome (the disruption) to a cause or to the person who caused it (the carrier): "rapporter (qqch.) à un auteur, une cause" (*Dictionnaire (Le Robert) Dixel* (2010) *sub verbo* "attribuer"). Its English equivalent, the verb "attribute," means "to regard something as being caused by" (*The New Oxford Dictionary of English* (1998) *sub verbo* "attribute").

(2) The meaning of "required for safety purposes"

[89] Subparagraph 86.11(1)(*b*)(ii) of the *CTA* describes the safety category as flight disruptions that are within a carrier's control, but are "required for safety purposes, including in situations of mechanical malfunctions." A mechanical malfunction is a "mechanical problem that reduces the safety of passengers but does not include a problem that is identified further to scheduled maintenance undertaken in compliance with legal requirements": Regulations, s 1(1).

[90] The Regulations define "required for safety purposes" as follows:

required for safety purposes means required by law in order to reduce risk to passenger safety and includes required by safety decisions made within the authority of the pilot of the aircraft or any decision made in accordance with a safety management system as defined in subsection 101.01(1) of the *Canadian Aviation Regulations* but does not include scheduled maintenance in compliance with legal requirements. (*nécessaire par souci de sécurité*)	**nécessaire par souci de sécurité** Se dit de toute exigence légale à respecter afin de réduire les risques pour la sécurité des passagers, y compris les décisions en matière de sécurité qui relèvent du pilote de l'aéronef ou qui sont prises conformément au système de gestion de la sécurité au sens du paragraphe 101.01(1) du *Règlement de l'aviation canadien*, à l'exception de la maintenance planifiée effectuée conformément aux exigences légales. (*required for safety purposes*)

[91] As noted above, the RIAS states that the language of the definition of "required for safety purposes" was broadened beyond "required by law in order to reduce risk to passenger safety," the formulation in the Proposed Regulations, to ensure that safety decisions based on pilot discretion or on an SMS were not excluded: RIAS at 2292.

[92] In the context of a situation that results in a risk to passenger safety, a disruption within a carrier's control is therefore "required for safety purposes" when it is required by law in order to reduce risk to passenger safety, including safety decisions based on pilot discretion or an SMS but excluding scheduled maintenance in compliance with legal requirements.

[93] The safety standards set out in the *CAR* or safety decisions based on pilot discretion or an SMS require, before an aircraft is allowed to operate, that certain conditions be met to ensure passenger safety or that certain measures be taken to reduce risk to passenger safety. For example, in certain circumstances, the *CAR* require a minimum of two pilots to operate an

aircraft. Consequently, in the case of a crew shortage due to the illness of one of the pilots, to comply with the *CAR*, steps must be taken to find a replacement pilot to ensure that all members of the flight crew required by the *CAR* to safely operate the aircraft are on board. However, neither the *CAR* nor safety decisions made within a pilot's authority or in accordance with an SMS expressly prescribe the disruption "required" to achieve these measures. How to determine what disruption is "required" for safety purposes in a given situation is the key question on this appeal.

[94] The word "required" means "that is required, requisite, necessary" (*Shorter Oxford English Dictionary* (2007) *sub verbo* "required"). The French adjective "nécessaire", whose English equivalent is "necessary", is used in the French-language version of "required for safety purposes": "nécessaire par souci de sécurité." "Required" in this context therefore connotes a disruption that is necessary to reduce risk to passenger safety. This interpretation is consistent with the intention behind the definition of "required for safety purposes" set out in the RIAS:

> The wording of this definition is meant to be broad enough to include any flight disruption that a carrier must incur in order to ensure the safe operation of the aircraft.
>
> (RIAS at 2242 [emphasis added].)

[95] When can a specific disruption be said to be necessary to reduce a risk to passenger safety? The appellant argues that in a situation that results in a risk to passenger safety, any disruption incurred by a carrier to reduce that risk is "required for safety purposes." In the Decision, the Agency held that, to establish that a disruption within the carrier's control is "required" for safety purposes, a carrier must show that it could not have reasonably prevented

the disruption despite proper planning or, in other words, that the disruption could not have been prevented by a prudent and diligent carrier. In theory, another possibility could be to hold carriers to a standard of perfection; in order to establish that a disruption is required for safety purposes, a carrier would have to show that it exhausted *all possible* measures to avoid the occurrence of the situation that caused the risk to safety or to effectively and expeditiously reduce that risk.

[96] The text of the Regulations suggests that, contrary to the appellant's submission, whether a flight disruption is within a carrier's control but required for safety purposes is not the carrier's call. The Agency must determine whether the disruption was "required": whether it was necessary for the carrier to incur *a specific disruption* in order to reduce the risk to passenger safety. For the reasons set out in the next section, this view of the meaning of the text is confirmed by the purpose behind section 86.11 of the *CTA* and section 11 of the Regulations.

D. *The purpose of subparagraph 86.11(1)(b)(ii) of the CTA and section 11 of the Regulations*

[97] Before addressing the purpose behind recognizing the safety category in subparagraph 86.11(1)(*b*)(ii) of the *CTA* and section 11 of the Regulations, I review the purposes of the *CTA* and of the Regulations as a whole.

(1) The purposes of the *CTA*

[98] The overall objectives of Canada's national transportation policy are laid out in section 5 of the *CTA*, which highlights Parliament's focus on ensuring a safe and cost-effective transportation system that serves the needs of its users and advances Canadians' well-being:

> … a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada.

[99] The *CTA* recognizes that competition and market forces are the prime agents in providing viable and effective transportation services: *CTA*, s 5(*a*). However, it also acknowledges that regulation and strategic public intervention are used to achieve economic, safety, security, environmental, or social outcomes that cannot be achieved satisfactorily by competition and market forces: *CTA*, s 5(*b*).

(2) The purpose of section 86.11 and of the Regulations

[100] As previously noted, the Minister described section 86.11 of the *CTA* as mandating the Agency to develop new regulations to enhance air passenger rights by ensuring that they are clear, consistent and fair for both travellers and air carriers, provide for clear, transparent, and enforceable standards of treatment and compensation and result in a uniform, predictable, and

reasonable approach: *House of Commons Debates*, 42nd Parl, 1st Sess, No 187 (5 June 2017) at 12060.

[101] According to the Agency, the objective of the regulatory process that led to the promulgation of the Regulations was to create new regulations that:

> 1. are world-leading and feature robust, simple, clear, and consistent passenger rights;
>
> 2. reflect operational realities of carriers and allow for carrier innovation, where appropriate; and
>
> 3. align with international agreements, and apply best practices from lessons learned from other jurisdictions, where appropriate.
>
> (RIAS at 2229.)

[102] In its recent decision in *IATA*, the Supreme Court of Canada described the rationale behind the Regulations as follows:

> [89] The Attorney General and the Agency submit that the Regulations mark an evolution in the government's approach away from a "piecemeal" system that relied on carrier-led tariff development towards one that ensures predictable payments to passengers who are inconvenienced during carriage by air to, from or within Canada. The Regulations were put in place, following a review of the *CTA*, with a view to correcting an "'acute imbalance in market power' between air passengers and air carriers, and the 'unusual situation' where Canadian air passengers had to rely on foreign customer protection measures when traveling abroad"… Parliament responded to this situation by directing the Agency to put in place a system of standardized compensation.
>
> [90] The Regulations are, thus, best understood as providing for statutory entitlements under a consumer protection scheme. Passengers claiming under the Regulations need not show what harm, if any, they have suffered in order to claim compensation. The Regulations do not tie compensation to harm and

> inconvenience; rather they mandate compensation for delay, cancellation or denial of boarding based on the time by which a passenger's arrival at their ultimate destination is delayed.

[103] In my view, it is clear from this description that section 86.11 of the *CTA* and the Regulations promulgated under that provision are an example of a regulatory initiative designed to achieve an outcome that could not be achieved satisfactorily by competition and market forces: the resolution of the acute imbalance in market power to which airline travellers were subject relative to air carriers.

[104] This Court, in the decision upheld by the Supreme Court of Canada in *IATA*, also elaborated on the motivations behind the adoption of the Regulations:

> It is obvious from a reading of the RIAS that the Regulations were adopted with a view to emulating and aligning with the European Union regime. While they are not identical, they build upon the same framework and share the same rationale of better protecting passengers and compensating them for inconvenience resulting from the disruption of their flight schedules.
>
> (*International Air Transport Association v. Canadian Transportation Agency*, 2022 FCA 211, 2022 CarswellNat 5116 at para. 142 [*IATA FCA*].)

[105] As noted by this Court in *IATA FCA*, the RIAS sets out the mischief that the Regulations were designed to address. The approach under the previous regime, which allowed air carriers to establish their own policies in their tariffs, had not always resulted in transparent, clear, fair, and consistent policies regarding the treatment of passengers. A central aspect of the new regime relates to achieving greater transparency in the treatment of passengers. The Regulations ensured "clearer, more consistent passenger rights by establishing minimum requirements, standards of

treatment, and in some situations minimum levels of compensation that all air carriers must provide to passengers": RIAS at 2226.

(3) The purpose behind subparagraph 86.11(1)(*b*)(ii) of the *CTA* and section 11 of the Regulations

[106] The appellant submits that in describing the purpose behind subparagraph 86.11(1)(*b*)(ii) of the *CTA* and section 11 of the Regulations, this Court should consider the submissions of witnesses appearing before House of Commons and Senate of Canada Committees studying Bill C-49 and previous private members' bills on passenger rights. In particular, the appellant points to the decision of the House of Commons Committee studying Bill C-49 to reject an amendment that would have mandated compensation in the event of a cancellation unless it was the result of extraordinary circumstances that could not be avoided despite the taking of reasonable measures. The appellant invites this Court to infer from this legislative history that Parliament intended that flight disruptions for safety reasons be treated differently than other types of disruptions within a carrier's control and, specifically that compensation not be payable, to ensure that a carrier's decision to operate is based only on safety and not on a desire to avoid the financial consequences resulting from the payment of compensation for inconvenience caused by the disruption.

[107] It is open to a court seeking to identify a legislative purpose to look to extrinsic evidence, but that evidence should be used with caution: *R. v. Sharma*, 2022 SCC 39, 486 D.L.R. (4th) 579 at para. 89 [*Sharma*]. Unlike the second reading speech by Ministers who introduce legislation or explanations that they (or their Parliamentary Secretary or departmental officials) provide to the

House or Senate Committees, the statements of witnesses (other than departmental officials) and committee votes on amendments do not provide authoritative statements of Parliament's intent: *Sharma* at para. 90.

[108] I agree with the appellant that, correctly interpreted, the Regulations intend to treat disruptions within a carrier's control but required for safety purposes as a distinct category in the regulatory scheme governing compensation.

[109] Disruptions in the safety category differ from those in the "within control" category. By mandating compensation for disruptions that fall within the carrier's control, Parliament intended that carriers, not passengers, bear the cost of the inconvenience associated with a disruption over which a carrier could exercise a restraining or directing influence. However, Parliament carved out an exception to this rule for disruptions within a carrier's control but required for safety purposes. In a situation that results in a risk to passenger safety, a disruption is required for safety purposes where it is *required* by law to reduce the risk to passenger safety.

[110] I return to the question of the correct interpretation of "required for safety purposes." As noted in the previous section, the appellant argues that in a situation that results in a risk to passenger safety, any disruption incurred by a carrier to reduce that risk is required for safety purposes. Under this standard, passengers could bear the cost of disruptions that flow from a carrier's choice to conduct its operations without preparing or reasonably implementing reasonable operations and contingency plans designed to avoid the occurrence of disruptions or mitigate them. This would hardly further the Regulations' objective of redressing the acute

imbalance in market power to which passengers have historically been subjected in relation to air carriers by better protecting them and compensating them for inconvenience resulting from the disruption of their flight schedules. Moreover, it would not result in a "uniform, predictable and reasonable" approach to compensation in situations of risk to passenger safety, since what disruption is required for safety purposes would hinge on how a particular carrier chooses to address the risk to passenger safety.

[111] A "standard of perfection," under which disruptions could not be required for safety purposes unless a carrier established that it had exhausted all possible measures to avoid the occurrence of the situation that caused the risk to safety or to reduce that risk, would also be problematic. Such a standard could, for example, require a carrier to station a full complement of replacement crew at every airport at which it operates, no matter how remote the location. It would be in significant tension with the objective of Canada's national transportation policy to ensure a competitive, economic and efficient national transportation system and viable and effective transportation services (*CTA*, s 5) and would likely be inconsistent with the Regulations' objective of reflecting the operational realities of carriers (RIAS at 2229).

[112] Unlike the two preceding approaches, the Agency's proposal that whether a disruption is required for safety purposes be assessed by comparing it to the disruption that would be incurred by a prudent and diligent carrier is consistent with the purposes of the *CTA* and Regulations. Under this interpretation, a carrier does not owe compensation to its passengers for the disruption it must incur to reduce a risk to passenger safety despite having taken reasonable measures 1) to plan and conduct its day-to-day operations in such a manner as to avoid the occurrence of

situations causing that risk and 2) to follow a reasonable contingency plan developed to effectively and expeditiously reduce the risk. In other words, in a situation that results in a risk to passenger safety, the disruption required for safety purposes is the disruption that a prudent and diligent carrier would have incurred in that situation. Unlike the appellant's proposed interpretation, holding all carriers to an objective standard would achieve a "uniform, predictable and reasonable" approach to passenger compensation in situations raising a risk to passenger safety. It would also better protect passengers and compensate them for inconvenience resulting from the disruption of their flight schedules.

[113] This interpretation recognizes that there may be situations resulting in a risk to passenger safety where even a prudent and diligent carrier would have to delay or cancel a flight to reduce this risk as required by law; in those circumstances, and for such disruptions, a carrier does not owe compensation to its passengers. This differs from the EU model that the appellant submits was rejected by Parliament when it adopted the *TMA*. As previously noted, that model requires carriers to pay compensation to passengers in the event of a flight cancellation unless a carrier can establish that the cancellation is caused by "extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken": Regulation (EC) No. 261/2004, art. 5(3). Under the "prudent and diligent carrier" standard, compensation could be denied in situations other than "extraordinary circumstances" that give rise to a risk to passenger safety, such as crew shortages.

[114] So interpreted, the safety category also differs from the "outside control" category of disruptions for which no compensation is owed. No carrier can avoid the occurrence of the

situations enumerated in subsection 10(1) of the Regulations (or analogous situations) that trigger a disruption, nor can they mitigate that disruption. By contrast, disruptions that fall within the safety category are defined as "within the carrier's control"; carriers can exercise restraining or directing influence over them.

[115] Let us assume that a crew shortage resulting from the absence of a crew member due to illness raises a risk to passenger safety. Let us also assume that, in the circumstances, a prudent and diligent carrier would incur a three-hour delay to reduce this risk. That this delay is required for safety purposes does not mean that it is outside the carrier's control. The disruption remains "within the carrier's control" because the carrier could exercise restraining or directing influence beyond that exercised by a prudent and diligent carrier, further mitigating the severity of the delay or possibly even avoiding it. However, that is not required of carriers under the "prudent and diligent carrier" standard. So long as a carrier, to reduce a risk to passenger safety, incurs a disruption no more severe than that which a prudent and diligent carrier would have incurred in those circumstances, its passengers bear the cost of the inconvenience caused by the disruption.

[116] Accordingly, this interpretation also achieves the purpose of subparagraph 86.11(1)(*b*)(ii) of the *CTA* and of section 11 of the Regulations to treat flight disruptions within a carrier's control but required for safety purposes as a distinct category in the regulatory scheme governing compensation. It does not, as the appellant claims, eliminate the safety category or render it meaningless.

[117] The appellant submits that the purpose of the safety category is to ensure that carriers and members of the flight crew do not choose to operate unsafely by failing to report illnesses or mechanical issues, thereby sacrificing passenger safety for the carriers' bottom line. I am not convinced by this argument. Beyond pointing to the expressions of concern by industry representatives and witnesses before Parliamentary committees and during Agency consultations, the appellant has not demonstrated that these concerns were accepted by Parliament as well founded, or that they are supported by evidence.

[118] As holders of air operator certificates that authorize them to operate a commercial air service, carriers are responsible to ensure compliance with all applicable regulations, including those that aim to ensure the safety of passengers. For example, they are required to establish and maintain an SMS through which personnel are led to recognize the potential impact of their choices on the safety of operations and are made accountable for safety in the areas for which they have responsibility: *CAR*, ss 107.02 and 107.03. Such requirements aim to foster stronger safety cultures within the civil aviation industry and to improve safety practices: Regulatory Impact Analysis Statement, Regulations Amending the Canadian Aviation Regulations (Parts I, IV, V and VII), C. Gaz. 2005.II.1431.

[119] Within this context, it should go without saying that under no circumstances should the prospect of a carrier paying compensation for a flight disruption factor into safety decisions made by carriers or their crew members in the exercise of the discretion afforded to them under the governing regulatory framework.

[120] In any event, an interpretation of the safety category based on a prudent and diligent carrier standard does not lead to the concerns raised by the appellant. A disruption within a carrier's control but required for safety purposes is the disruption that a carrier would incur to reduce a risk to passenger safety despite having taken reasonable measures 1) to plan and conduct its day-to-day operations in such a manner as to avoid the occurrence of situations causing that risk and 2) to follow a reasonable contingency plan developed to effectively and expeditiously reduce the risk. This interpretation does not hold carriers to a standard of perfection. It requires them to be prudent and diligent.

[121] In sum, this interpretation does not force carriers to choose between operating safely and jeopardizing their bottom line. It encourages them to act reasonably in conducting their operations. Under this interpretation, a carrier would avoid the payment of compensation if it establishes that it had reasonable operations and contingency plans and that its personnel took reasonable measures to follow them. Carriers cannot complain if they are required to pay compensation for disruptions that are not "within a carrier's control and required for safety purposes" because these exceed the disruption that would have been incurred by a prudent and diligent carrier in the same circumstances.

E. *The context and scheme of the Regulations*

[122] In interpreting section 11 of the Regulations, attention must be paid to the entire context and the scheme of the Regulations.

[123] One key feature of the Regulations is that they recognize that passengers cannot enforce their rights to minimum standards of treatment or to minimum compensation under the new regime if carriers do not provide them with the information they need to do so.

[124] Where passengers experience a disruption falling within any of the three categories set out in paragraph 86.11(1)(*b*), the Regulations expressly subject the carrier to an onerous and ongoing obligation to provide passengers with information that ensures they are aware of their rights: ss 10(3)(*a*), 11(3)(*a*), (4)(*a*) and (5)(*a*), 12(2)(*a*), (3)(*a*) and (4)(*a*). In each case, a carrier must provide passengers affected by a disruption the reason for the flight disruption, the compensation to which they may be entitled for inconvenience, the applicable standard of treatment, and the recourse available against the carrier, including their recourse to the Agency: Regulations, ss 13(1)(*a*) – 13(1)(*d*). Where a carrier denies a passenger's request for compensation, it must provide "an explanation as to why compensation is not payable": Regulations, s 19(4). Taken together, these provisions establish a passenger rights regime that is based on justification: carriers must justify to passengers why compensation is not payable based on the application of the standards prescribed in the Regulations to the circumstances surrounding the particular disruption.

[125] It follows that any plausible interpretation of the Regulations cannot shield from passenger or Agency scrutiny the actions taken or not taken by carriers to avoid the occurrence of a situation that creates a risk to the safety of passengers or to mitigate the disruption required to reduce this risk once the situation occurs.

[126] That is precisely what the appellant's proposed interpretation entails. During the hearing, counsel for the appellant submitted that, in deciding whether disruptions fell within the safety category, the Agency's role was reduced to the "usually clear and straightforward" task of confirming whether, on the facts, the carrier was required by law to do something to reduce a risk to passenger safety, like replace an absent and/or ill crew member. In the appellant's view, inquiries into whether a carrier took reasonable measures to mitigate the impact of a flight disruption are authorized by the Regulations only to categorize the knock-on effects of earlier disruptions under subsections 10(2) and 11(2). Apart from knock-on effects, the appellant's interpretation of the Regulations leaves no room for passengers or the Agency to scrutinize the actions or inaction of the carrier that may have led to or aggravated the severity of a disruption resulting from a situation of risk to passenger safety, compared to the disruption that a prudent and diligent carrier would have incurred in the same circumstances.

[127] The provisions relating to knock-on effects are a second element of context. Subsection 11(2) of the Regulations provides that a flight disruption directly attributable to an earlier delay or cancellation that was within the carrier's control but required for safety purposes will be considered to also be within the carrier's control but required for safety purposes only if the carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation. Subsection 10(2), a provision analogous to subsection 11(2), applies to flight disruptions directly attributable to an earlier delay or cancellation that was due to situations outside the carrier's control.

[128] The appellant invites this Court to apply the implied exclusion rule of statutory interpretation. It argues that because subsections 10(2) and 11(2) expressly impose on carriers a duty to take all reasonable measures to mitigate the impact of a disruption, the drafter of the Regulations did not intend a similar duty in any other situation. Therefore, it submits that the Regulations cannot be read as requiring a carrier that seeks to categorize a disruption within its control as required for safety purposes to show that it took reasonable measures to mitigate the impact of the disruption.

[129] Courts do consider rules of statutory interpretation, including the implied exclusion rule, when they apply the modern principle of statutory interpretation: *Piekut* at para. 47. However, an argument based on implied exclusion is purely textual in nature and cannot be the sole basis for interpreting a statute; the words of the statute must be considered in conjunction with its purpose and its scheme: *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360 at para. 37. In my view, another interpretation better fits with the purpose of section 11 of the Regulations than that proposed by the appellant.

[130] In the RIAS, the Agency stated that subsections 10(2) and 11(2) were included to add "greater clarity": while knock-on effects would be recognized, the Regulations would subject them to reasonable limits that would respond to consumer advocates' concerns that knock-on effects could be attributed, in a potential loophole, to categories of disruptions for which no compensation was owed: RIAS at 2243. Such concerns were consistently expressed by travellers and consumer advocates during the consultation phase that preceded the Agency's publication of the Proposed Regulations. These stakeholders very clearly told the Agency that categories of

disruptions that do not require compensation should not capture disruptions that are within carriers' control: APPR Consultations at 10. Indeed, the Agency reported that airlines had submitted that the categories should be defined in a way that reflects the level of control an airline has over each event: "[A]irlines should not be held responsible for delays attributable to other parties, issues that could not have been mitigated, or downstream impacts of extraordinary circumstances": APPR Consultations at 10 [emphasis added].

[131] In my view, by specifying that disruptions directly attributable to an earlier delay or cancellation falling within the safety category can only be considered to fall within that category to the extent the carrier took all reasonable measures to mitigate the impact of the earlier delay or cancellation, subsection 11(2) makes explicit a requirement that is implied in the language that defines the safety category. The provisions in the Regulations governing knock-on effects are consistent with an interpretation of subsection 11(1) that equates "disruption within a carrier's control and required for safety purposes" with the disruption that would be experienced by a prudent and diligent carrier in the same circumstances.

F. *The consequences of the proposed interpretation of subsection 11(1) of the Regulations*

[132] A frequently used tool in the interpretive process is to assess the likely effects or results of rival interpretations to see which accords most harmoniously with text, context, and purpose:

> This is appropriate. The judge is assessing effects or results not to identify an outcome that accords with personal policies or political preferences. Rather the judge is assessing them against the standard, accepted markers of text, context and purpose in order to discern the authentic meaning of the legislation. For example,

> if the effect of one interpretation offends the legislative purpose but the effect of another interpretation does not, the latter may be preferable to the former.
>
> (*Williams v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252, [2018] 4 F.C.R. 174 at para. 52.)

[133] The Agency submits that the appellant's interpretation of the safety category as including flight disruptions that result from a situation that gives rise to a risk to passenger safety regardless of the circumstances leading to the situation, including a carrier's failure to take actions that a prudent and diligent carrier would have taken, would defeat the clear intent of the *CTA* and the Regulations. It illustrates its argument with the following hypotheticals:

1. A carrier might cancel a flight where it inadvertently assigns a crew member who does not yet hold a pilot's license to operate the flight. This situation would give rise to a risk to passenger safety because it would be unsafe to operate a flight without a licensed pilot.

2. A carrier might, due to oversight, neglect to pay its account for the provision of fuel at a particular airport and be unable to fuel its aircraft. Operating a flight with insufficient fuel would give rise to a risk to passenger safety.

3. Where a flight is undersold, a carrier might decide to replace, for economic reasons, a larger aircraft with a smaller aircraft. Where the smaller aircraft cannot accommodate the number of passengers who were issued tickets for the flight, operating the flight without cancelling some tickets and thus with a number of passengers that exceeds the aircraft's capacity would give rise to a risk to passenger safety.

[134] I agree with the Agency that in the first two cases, under the appellant's interpretation, cancellation of the flight would be "required for safety purposes" notwithstanding that a prudent and diligent carrier would have taken reasonable measures to plan and conduct its day-to-day operations so as to avoid the occurrence of the situation causing the risk to passenger safety. In the third case, under the appellant's interpretation, cancellation of the tickets of the group of passengers whose number exceeds the newer aircraft's capacity would be "required for safety purposes" despite the commercial motivation underlying the carrier's substitution of the aircraft.

[135] I agree with the Agency that the appellant's proposed interpretation could deny compensation for disruptions that result either from the carrier's lack of diligence in carrying out its day-to-day operations (taking reasonable measures to plan and conduct its operations in such a manner as to avoid the occurrence of a situation causing a risk to passenger safety, here by ensuring the scheduling of a qualified pilot and the provision of fuel for its aircraft) or from a deliberate decision to privilege its economic interests. These outcomes are irreconcilable with the purpose of the Regulations to institute a consumer protection scheme that corrects the acute imbalance in market power between air passengers and air carriers that predated the Regulations.

[136] Indeed, such an interpretation could strip the "within control" category of disruptions of most of its content. Since, as illustrated by the Agency's hypotheticals, many, if not most, aspects of a carrier's operations are safety sensitive and can ultimately be characterized as having repercussions on the safety of passengers, most disruptions could, under the appellant's interpretation, be argued to be within the carrier's control but required for safety purposes. Such

an interpretation would not achieve the Regulations' purpose of better protecting passengers and compensating them for inconvenience resulting from the disruption of their flight schedules.

[137] During the hearing, counsel for the appellant called the Agency's scenarios fantastical and submitted, in effect, that market forces incentivized carriers not to act in such a manner as to incur a disruption, stating that, in the case at bar and other cases, there was "a goal, …a pressure, …an incentive to have the flight go, to have a pilot there if possible."

[138] The Regulations establish a passenger rights regime aimed in part at resolving the imbalance in market power to which airline travellers were historically subject relative to air carriers. Such a purpose cannot be squared with the appellant's claim that, when it comes to disruptions asserted by a carrier to be required for safety purposes, passengers and the Agency must essentially put their faith in market forces and carriers' good intentions.

[139] Finally, the interpretation of the safety category based on a prudent and diligent carrier standard proposed in these reasons addresses the concerns advanced by the intervener about the manner in which it claims the Agency is currently investigating and adjudicating passenger complaints under the Regulations.

[140] The intervener reproaches the Agency on two counts. First, it submits that the Agency requires a carrier to replay the circumstances leading to a disruption and demonstrate that it could not have done anything to avoid it, failing which the Agency finds the disruption to be within the carrier's control, requiring compensation. Second, the intervener argues that, in an

exercise akin to Monday morning quarterbacking, the Agency attributes control to the carrier and orders compensation where it is able to identify an alternative course of action, real or hypothetical, that the carrier could, in the Agency's view and with the benefit of hindsight, have taken to avoid the disruption. Moreover, the Agency does so without providing the carrier any opportunity to address its proposed alternative course of action.

[141] The intervener calls for an interpretation of the Regulations that is compatible with carriers' operational realities, consistent with the objectives set out in the RIAS. It submits that:

> …[T]he standard of the "prudent and diligent carrier" should focus on whether the carrier had a reasonable contingency plan at the time of the disruption and whether that contingency plan has been followed - not on the measures a carrier could or should have taken to avoid the crew shortage with the benefit of hindsight.
>
> (Intervener's Memorandum of Fact and Law at para. 31.)

[142] The interpretation of the safety category set out in these reasons is consistent with that adopted by the Agency and urged by the intervener. Under that interpretation, the Agency focuses its analysis on whether a carrier has established reasonable operations plans and contingency plans and whether its personnel have taken reasonable measures to follow them. In my view, properly followed, this analytical framework should address the intervener's concerns.

V. APPLICATION OF THE PROPOSED INTERPRETATION TO THE CASE AT BAR

[143] The interpretation of the safety category based on a prudent and diligent carrier standard given in these reasons is entirely consistent with the Agency's treatment of flight disruptions

caused by crew shortages outlined in its Interpretive Decision. In my view, the Decision is also consistent with the interpretation proposed in these reasons and with the Interpretive Decision.

[144] The Agency states at paragraph 9 of the Decision that "disruptions within the carrier's control but required for safety purposes should be limited to events that cannot be foreseen nor prevented or, in other words, that cannot be prevented by a prudent and diligent carrier." The appellant reads the requirement that the safety category be limited to disruptions due to events that cannot be foreseen nor prevented as essentially requiring that these events be "outside the carrier's control." Such an outcome would effectively eliminate the safety category. It would also be inconsistent with the statutory and regulatory definition of the safety category as comprising disruptions "within the carrier's control."

[145] The phrase "events that cannot be foreseen or prevented" must be read together with the phrase that follows it, which frames the analysis within the context of the actions of a prudent and diligent carrier. In circumstances where the situation that results in a risk to passenger safety is foreseeable, in the sense that it occurs as part of a carrier's day-to-day operations (e.g., a crew shortage resulting from the occasional absence of a crew member due to illness), a prudent and diligent carrier is expected to take reasonable measures to plan and conduct its operations in such a manner as to avoid the situation and, where it nevertheless occurs, take reasonable measures to follow its reasonable contingency plan to effectively and expeditiously reduce the risk.

[146] Carriers can only be held to the standard of the prudent and diligent carrier, a standard based on reasonableness, not perfection. As noted by the Agency in its Interpretive Decision,

reasonable contingency planning to deal with crew shortages will not necessarily require carriers to have reserve crews available at all airports at which they operate, no matter how remote. In implementing a contingency plan to bring in replacement crew, a prudent and diligent carrier exercises restraining or directing influence over the disruption resulting from the crew shortage, which thus remains within the carrier's control. However, depending on the circumstances, and even in the most favourable of conditions, a prudent and diligent carrier may incur a disruption in implementing its reasonable contingency plan. In that context, the delay required by a prudent and diligent carrier to bring in replacement crew to reduce the risk to passenger safety caused by the crew shortage is a disruption "required for safety purposes" that is, in the Agency's words, "unavoidable despite proper planning." Conversely, disruptions that exceed that which must be incurred by a prudent and diligent carrier to reduce the risk to passenger safety could be avoided; they are not required for safety purposes.

[147] In the case at bar, beyond the appellant's assertion that it unsuccessfully attempted to secure an alternate first officer in order to avoid cancelling the Flight and that crew resources were limited because Regina was not a WestJet crew base, there was no evidence before the Agency regarding any contingency plan the appellant had in place to mitigate the effects of a crew shortage in Regina and avoid cancellation of the Flight, or of the reasonable measures that it took to implement any such plan. Accordingly, I see no error in the Agency's decision that there was insufficient evidence establishing that the disruption in this case – the appellant's cancellation of the Flight – was "unavoidable despite proper planning" or that "it was not the result of [the appellant's] own actions or inactions": Decision at para. 13.

[148] The Agency concluded that the cancellation of the Flight "was within [the appellant's] control": Decision at para. 14. This finding does not imply that the Agency held that in order to fall within the safety category, disruptions must fall *outside* a carrier's control. It simply confirms that in the absence of evidence establishing that it was required for safety purposes, the appellant's cancellation of the Flight was a disruption "within the carrier's control but… not referred to in subsection 11(1) or (2)" and so was a disruption within the carrier's control as described in subsection 12(1) of the Regulations.

[149] In sum, to categorize the appellant's cancellation of the Flight as a disruption within the appellant's control but required for safety purposes, the Agency had to be satisfied, on a balance of probabilities and based on the evidence before it, that the appellant had taken reasonable measures to implement a reasonable contingency plan to mitigate the flight disruption that resulted from the crew shortage caused by the first officer's absence. The appellant led insufficient evidence to satisfy the Agency of this. I am of the view that the Agency made no reviewable error when it found that the appellant's cancellation of the Flight was not a disruption within its control but required for safety purposes.

VI. DISPOSITION

[150] For the aforementioned reasons, I would dismiss this appeal. As no costs are sought, I would award none.

"Gerald Heckman"
J.A.

"I agree.
Mary J.L. Gleason J.A."

"I agree.
K. A. Siobhan Monaghan J.A."

APPENDIX

Definitions and Interpretation

Definitions — Part II of Act

1 (1) The following definitions apply in Part II of the Act.

mechanical malfunction means a mechanical problem that reduces the safety of passengers but does not include a problem that is identified further to scheduled maintenance undertaken in compliance with legal requirements. (*défaillance mécanique*);

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

Delay, Cancellation and Denial of Boarding

…

Obligations — situations outside carrier's control

10 (1) This section applies to a carrier when there is delay, cancellation or denial of boarding due to situations

Définitions et interprétation

Définitions — partie II de la Loi

1 (1) Les définitions qui suivent s'appliquent à la partie II de la Loi.

défaillance mécanique Problème mécanique qui réduit la sécurité des passagers, à l'exclusion du problème découvert lors de la maintenance planifiée effectuée conformément aux exigences légales. (*mechanical malfunction*)

nécessaire par souci de sécurité Se dit de toute exigence légale à respecter afin de réduire les risques pour la sécurité des passagers, y compris les décisions en matière de sécurité qui relèvent du pilote de l'aéronef ou qui sont prises conformément au système de gestion de la sécurité au sens du paragraphe 101.01(1) du *Règlement de l'aviation canadien*, à l'exception de la maintenance planifiée effectuée conformément aux exigences légales. (*required for safety purposes*)

Retard, annulation et refus d'embarquement

[…]

Obligations — situations indépendantes de la volonté du transporteur

10 (1) Le présent article s'applique au transporteur lorsque le retard ou l'annulation de vol ou le refus

outside the carrier's control, including but not limited to the following:

d'embarquement est attribuable à une situation indépendante de sa volonté, notamment :

(*a*) war or political instability;

***a*)** une guerre ou une situation d'instabilité politique;

(*b*) illegal acts or sabotage;

***b*)** un acte illégal ou un acte de sabotage;

(*c*) meteorological conditions or natural disasters that make the safe operation of the aircraft impossible;

***c*)** des conditions météorologiques ou une catastrophe naturelle qui rendent impossible l'exploitation sécuritaire de l'aéronef;

(*d*) instructions from air traffic control;

***d*)** des instructions du contrôle de la circulation aérienne;

(*e*) a *NOTAM*, as defined in subsection 101.01(1) of the *Canadian Aviation Regulations*;

***e*)** un *NOTAM* au sens du paragraphe 101.01(1) du Règlement de l'aviation canadien;

(*f*) a security threat;

***f*)** une menace à la sûreté;

(*g*) airport operation issues;

***g*)** des problèmes liés à l'exploitation de l'aéroport;

(*h*) a medical emergency;

***h*)** une urgence médicale;

(*i*) a collision with wildlife;

***i*)** une collision avec un animal sauvage;

(*j*) a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider;

***j*)** un conflit de travail chez le transporteur, un fournisseur de services essentiels comme un aéroport ou un fournisseur de services de navigation aérienne;

(*k*) a manufacturing defect in an aircraft that reduces the safety of passengers and that was identified by the manufacturer of the aircraft concerned, or by a competent authority; and

***k*)** un défaut de fabrication de l'aéronef, qui réduit la sécurité des passagers, découvert par le fabricant de l'aéronef ou par une autorité compétente;

(*l*) an order or instruction from an official of a state or a law enforcement agency or from a

***l*)** une instruction ou un ordre de tout représentant d'un État ou d'un organisme chargé de l'application

person responsible for airport security.

de la loi ou d'un responsable de la sûreté d'un aéroport.

Earlier flight disruption

(2) A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

Perturbation de vols précédents

(2) Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable à une situation indépendante de la volonté du transporteur est également considéré comme attribuable à une situation indépendante de la volonté du transporteur si ce dernier a pris toutes les mesures raisonnables pour atténuer les conséquences du retard ou de l'annulation précédent.

Obligations

(3) When there is delay, cancellation or denial of boarding due to situations outside the carrier's control, it must

Obligations

(3) Lorsque le retard ou l'annulation de vol ou le refus d'embarquement est attribuable à une situation indépendante de la volonté du transporteur, ce dernier :

(*a*) provide passengers with the information set out in section 13;

***a*)** fournit aux passagers les renseignements prévus à l'article 13;

(*b*) in the case of a delay of three hours or more, provide alternate travel arrangements, in the manner set out in section 18, to a passenger who desires such arrangements; and

***b*)** dans le cas d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs aux termes de l'article 18;

(*c*) in the case of a cancellation or a denial of boarding, provide alternate travel arrangements in the manner set out in section 18.

***c*)** dans le cas d'une annulation ou d'un refus d'embarquement, fournit des arrangements de voyage alternatifs aux termes de l'article 18.

Obligations when required for safety purposes

11 (1) Subject to subsection 10(2), this section applies to a carrier when

Obligations — nécessaires par souci de sécurité

11 (1) Sous réserve du paragraphe 10(2), cet article s'applique au

there is delay, cancellation or denial of boarding that is within the carrier's control but is required for safety purposes.

transporteur dans le cas du retard ou de l'annulation de vol ou du refus d'embarquement qui lui est attribuable, mais qui est nécessaire par souci de sécurité.

Earlier flight disruption

Retard, annulation et refus d'embarquement subséquents

(2) A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is within that carrier's control but is required for safety purposes, is considered to also be within that carrier's control but required for safety purposes if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.

(2) Le retard ou l'annulation de vol ou le refus d'embarquement qui est directement imputable à un retard ou à une annulation précédent attribuable au transporteur, mais nécessaire par souci de sécurité, est également considéré comme attribuable au transporteur mais nécessaire par souci de sécurité si le transporteur a pris toutes les mesures raisonnables pour atténuer les conséquences du retard ou annulation précédent.

Delay

Retard

(3) In the case of a delay, the carrier must

(3) Dans le cas du retard, le transporteur :

(*a*) provide passengers with the information set out in section 13;

***a*)** fournit aux passagers les renseignements prévus à l'article 13;

(*b*) if a passenger is informed of the delay less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14; and

***b*)** si le retard a été communiqué aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

(*c*) if the delay is a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 17, to a passenger who desires such arrangements.

***c*)** s'il s'agit d'un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.

Cancellation

Annulation

(4) In the case of a cancellation, the carrier must

(*a*) provide passengers with the information set out in section 13;

(*b*) if a passenger is informed of the cancellation less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14; and

(*c*) provide alternate travel arrangements or a refund, in the manner set out in section 17.

(4) Dans le cas de l'annulation de vol, le transporteur :

***a*)** fournit aux passagers les renseignements prévus à l'article 13;

***b*)** si l'annulation a été communiquée aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

***c*)** fournit aux passagers des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.

Denial of boarding

(5) In the case of a denial of boarding, the carrier must

(*a*) provide passengers affected by the denial of boarding with the information set out in section 13;

(*b*) deny boarding in accordance with section 15 and provide the standard of treatment set out in section 16 to passengers affected by the denial of boarding; and

(*c*) provide alternate travel arrangements or a refund, in the manner set out in section 17.

Refus d'embarquement

(5) Dans le cas du refus d'embarquement, le transporteur :

***a*)** fournit aux passagers concernés les renseignements prévus à l'article 13;

***b*)** refuse l'embarquement conformément à l'article 15 et applique à l'égard des passagers concernés les normes de traitement prévues à l'article 16;

***c*)** fournit aux passagers des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17.

Obligations when within carrier's control

12 (1) Subject to subsection 10(2), this section applies to a carrier when there is delay, cancellation or denial of boarding that is within the carrier's

Obligations — attribuable au transporteur

12 (1) Sous réserve du paragraphe 10(2), le présent article s'applique au transporteur dans le cas du retard ou de l'annulation de vol ou d'un refus d'embarquement qui lui est

control but is not referred to in subsections 11(1) or (2).

attribuable mais qui n’est pas visé aux paragraphes 11(1) ou (2).

Delay

(2) In the case of a delay, the carrier must

(*a*) provide passengers with the information set out in section 13;

(*b*) if a passenger is informed of the delay less than 12 hours before the departure time that is indicated on their original ticket, provide them with the standard of treatment set out in section 14;

(*c*) if the delay is a delay of three hours or more, provide alternate travel arrangements or a refund, in the manner set out in section 17, to a passenger who desires such arrangements; and

(*d*) if a passenger is informed 14 days or less before the departure time on their original ticket that the arrival of their flight at the destination that is indicated on that original ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

Retard

(2) Dans le cas du retard, le transporteur :

***a*)** fournit aux passagers les renseignements prévus à l’article 13 ;

***b*)** si le retard a été communiqué aux passagers moins de douze heures avant l’heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l’article 14;

***c*)** s’il s’agit d’un retard de trois heures ou plus, fournit aux passagers qui le désirent des arrangements de voyage alternatifs ou un remboursement aux termes de l’article 17;

***d*)** s’ils ont été informés quatorze jours ou moins avant l’heure de départ indiquée sur leur titre de transport initial que leur arrivée à la destination indiquée sur ce titre de transport sera retardée, verse aux passagers l’indemnité minimale prévue à l’article 19 pour les inconvénients subis.

Cancellation

(3) In the case of a cancellation, the carrier must

(*a*) provide passengers with the information set out in section 13;

(*b*) if a passenger is informed of the cancellation less than 12 hours before the departure time that is

Annulation de vol

(3) Dans le cas de l’annulation, le transporteur :

***a*)** fournit aux passagers les renseignements prévus à l’article 13;

***b*)** si l’annulation de vol a été communiquée aux passagers moins de douze heures avant l’heure de

indicated on their original ticket, provide the standard of treatment set out in section 14;

(*c*) provide alternate travel arrangements or a refund, in the manner set out in section 17; and

(*d*) if a passenger is informed 14 days or less before the original departure time that the arrival of their flight at the destination that is indicated on their ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

***c*)** fournit des arrangements de voyage alternatifs ou un remboursement aux termes de à l'article 17;

***d*)** s'ils ont été informés quatorze jours ou moins avant l'heure de départ indiquée sur leur titre de transport initial que leur arrivée à la destination indiquée sur ce titre de transport sera retardée, verse aux passagers l'indemnité minimale prévue à l'article 19 pour les inconvénients subis.

Denial of boarding

(4) In the case of a denial of boarding, the carrier must

(*a*) provide passengers affected by the denial of boarding with the information set out in section 13;

(*b*) deny boarding in accordance with section 15 and provide the standard of treatment set out in section 16 to passengers affected by the denial of boarding;

(*c*) provide alternate travel arrangements or a refund, in the manner set out in section 17; and

(*d*) provide the minimum compensation for inconvenience for denial of boarding in the manner set out in section 20.

Refus d'embarquement

(4) Dans le cas du refus d'embarquement, le transporteur :

***a*)** fournit aux passagers concernés les renseignements prévus à l'article 13;

***b*)** refuse l'embarquement conformément à l'article 15 et applique à l'égard des passagers concernés les normes de traitement prévues à l'article 16;

***c*)** fournit aux passagers des arrangements de voyage alternatifs ou un remboursement aux termes de l'article 17;

***d*)** verse l'indemnité minimale prévue à l'article 20 pour les inconvénients subis.

Information — cancellation, delay, denial of boarding

13 (1) A carrier must provide the following information to the passengers who are affected by a cancellation, delay or a denial of boarding:

(*a*) the reason for the delay, cancellation or denial of boarding;

(*b*) the compensation to which the passenger may be entitled for the inconvenience;

(*c*) the standard of treatment for passengers, if any; and

(*d*) the recourse available against the carrier, including their recourse to the Agency.

Renseignements fournis à la suite d’un retard, d’une annulation ou d’un refus d’embarquement

13 (1) Le transporteur fournit aux passagers visés par le retard ou l’annulation de vol ou le refus d’embarquement les renseignements suivants :

***a*)** la raison du retard, de l’annulation de vol ou du refus d’embarquement;

***b*)** les indemnités qui peuvent être versées pour les inconvénients subis;

***c*)** les normes de traitement des passagers applicables, le cas échéant;

***d*)** les recours possibles contre lui, notamment ceux auprès de l’Office.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Michael Dery Kathryn McGoldrick	FOR THE APPELLANT
Jean-Marc Leclerc Adil Abdulla	FOR THE RESPONDENT
Patrick Girard Amara Khy	FOR THE INTERVENER
Allan Matte	FOR THE CANADIAN TRANSPORTATION AGENCY

SOLICITORS OF RECORD:

Alexander Holburn Beaudin + Lang LLP Vancouver, British Columbia	FOR THE APPELLANT
Sotos LLP Toronto, Ontario	FOR THE RESPONDENT
Stikeman Elliott LLP Montréal, Quebec	FOR THE INTERVENER
Legal Services Directorate Canadian Transportation Agency Gatineau, Quebec	FOR THE CANADIAN TRANSPORTATION AGENCY