

JUL 05 2019



No. **S-197 552**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TIANA SHARIFI

PLAINTIFF

AND:

WESTJET AIRLINES LTD.

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

(Travel Bank)

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The representative Plaintiff, Tiana Sharifi, resides in the City of Vancouver in the Province of British Columbia.

2. The Defendant, Westjet Airlines Ltd. (hereinafter "**Westjet**"), is a company incorporated pursuant to the laws of Alberta and extra-provincially registered pursuant to the laws of British Columbia with a head office at 22 Aerial Place NE, Calgary, Alberta T2E 3J1 and an address for delivery at c/o AHBL CORPORATE SERVICES LTD., 2700-700 West Georgia St, Vancouver, BC, V7Y 1B8.

3. Westjet is a commercial airline that operates domestic passenger flights within Canada and international passenger flights to/from Canada.

The Plaintiff's Circumstances

4. On or about January 29, 2018, the Plaintiff booked an itinerary with Westjet for roundtrip travel for herself and her then-husband, from Vancouver, BC to Paris, France (the "Trip") for the price of \$646.63CAD per person.
5. The Trip was booked for departure on June 19, 2018 and returning on July 3, 2018.
6. The Plaintiff and her then-husband intended to travel on the Trip for leisure purposes.
7. The Plaintiff paid the full price for the Trip to Westjet.
8. On or about May 23, 2018, the Plaintiff cancelled the Trip and received a refund from Westjet in the amount of \$993.23 (which was the price of the Trip minus cancellation fees), an amount that was issued in the form of a WTB Credit (defined below) and deposited into the Plaintiff's Westjet Travel Bank account.
9. Westjet imposed an expiry date of May 23, 2019 on the Plaintiff's WTB Credit of \$993.23.
10. On or about May 20, 2019, the Plaintiff used approximately \$500 of her WTB Credits for booking a return trip to Calgary, with approximately \$400 remaining in her Westjet Travel Bank account thereafter.
11. On May 23, 2019, the Plaintiff's remaining WTB Credit of approximately \$400 expired and was seized by Westjet.

The Westjet Travel Bank

12. The Westjet Travel Bank is an online voucher or device that stores prepaid credits issued by Westjet to a particular customer (hereafter the "**WTB Credit**").
13. The WTB Credits:

- a. have a dollar value, whereby each dollar of a WTB Credit is the equivalent of one Canadian Dollar and can be exchanged by the customer for the future purchase of future travel on any Westjet flight;
 - b. expires in twelve months;
 - c. can be extended upon payment of a fee ranging from \$20-23CAD;
 - d. can be transferred to a third-party; and
 - e. any unused credits after the expiry is forfeited to Westjet.
14. WTB Credits are issued to a customer for reasons including:
- a. A refund of moneys from the cancellation of a customer's itinerary;
 - b. A refund of the price difference from the change of a customer's itinerary;
 - c. Compensation to customers for flight delays and missing baggage; and/or
 - d. Compensation for any general inconveniences caused to a customer;
15. The precise reasons for issuance of a WTB Credit to each customer's prepaid account is well-documented within Westjet's own records.
16. In some circumstances, customers transfer their WTB Credits to third parties in exchange for payment of cash at a loss, which is usually at a price of twenty percent below the face value of the WTB Credits (hereinafter the "**Discount**").

The Class

17. The representative Plaintiff brings this action on her own behalf and on behalf of all individuals residing in Canada (except residents of Alberta, Quebec, Yukon, Nunavut, and the Northwest Territories), who had a Westjet Travel Bank credit since June 28, 2015,

that was issued in relation to an itinerary that was booked primarily for a leisure purpose (the "**Class**" or "**Class Members**").

18. The representative Plaintiff is a member of the Class.

19. The Class Members, and each of them, have suffered damages as a result of Westjet imposing an expiry date and/or fees in respect of the WTB Credits.

Prepaid Purchase Card Laws in Canada

20. Consumer protection legislation prohibiting expiry dates and/or fees associated with "prepaid purchase cards" or "gift cards" have existed in Canada for many years, and in some jurisdictions, such as Ontario, Manitoba, British Columbia, New Brunswick, Nova Scotia and Saskatchewan for more than a decade. This legislation applies to Westjet.

21. Despite the existence of the prepaid card laws across Canada, Westjet has not taken steps to comply with those obligations, which demonstrates lax, passive, or ignorant of consumer rights and to Westjet's own legal obligations.

Part 2: RELIEF SOUGHT

1. The representative Plaintiff claims on her own behalf and on behalf of the Class Members against Westjet for:

- a. a certification order pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 (the "*CPA*"), including an order that damages be assessed on an aggregate basis;
- b. a declaration that the "Westjet Travel Bank" is a "prepaid purchase card" or "gift card" under the applicable Provincial Prepaid Card Laws (as defined further below);

- c. a declaration that the expiry of the prepaid WTB Credits within the Westjet Travel Bank is in contravention of the prohibition on expiry dates for “prepaid purchase cards” or “gift cards” under the applicable Provincial Prepaid Card Laws;
- d. a declaration that all expiry dates for all WTB Credits (which are subject to the Provincial Prepaid Card Laws) are of no legal force and effect and can be redeemed at any time;
- e. a declaration that imposing an expiry date on the WTB Credits is a “deceptive act or practice” and/or “unconscionable act or practice” under sections 4-5 and/or 8-9 of the *BPCPA* or its equivalent legislative provisions in Saskatchewan, Manitoba, Ontario, Newfoundland and Labrador, and Prince Edward Island, and/or a false or misleading representation under s. 52 of the *Competition Act*;
- f. a declaration that the fees for extending the expiry dates of the prepaid WTB Credits within the Westjet Travel Bank is in contravention of the prohibition on fees in relation to “prepaid purchase cards” or “gift cards” under the applicable Provincial Prepaid Card Laws:
- g. damages, including damages pursuant to s. 171 of the British Columbia *Business Practices and Consumer Protection Act* and other applicable Provincial Prepaid Card Laws for:
 - i. the monetary equivalent of the WTB Credits that have been forfeited to Westjet;
 - ii. any fees paid to Westjet for extension of the WTB Credits; and
 - iii. the monetary equivalent of any Discount from the transfer of WTB Credits to a third-party;
- h. punitive damages;

- i. in addition, or in the alternative, an accounting and restitution to all Class Members, including a restoration order under s. 172(3)(a) of the *BPCPA* for:
 - i. the monetary equivalent of the WTB Credits that have been forfeited to Westjet; and
 - ii. any fees paid to Westjet for extension of the WTB Credits;
- j. in addition, an order pursuant to s. 172(3)(c) of the *BCPCA*, that the Defendant advertise to the public in a manner that will assure prompt and reasonable communication to consumers, and on terms or conditions that this Honourable Court considers reasonable, the particulars of any judgment, declaration, order, or injunction granted against the Defendant;
- k. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- l. the costs of administering the plan of distribution of the recovery in this proceeding;
- m. damages, loss, investigation costs, and costs of this proceeding pursuant to s. 36 of the *Competition Act* and
- n. such further and other relief that, as to this Honourable Court, seems meet and just.

Part 3: LEGAL BASIS

The Provincial Prepaid Card Laws

1. Westjet is subject to and must comply with the provincial prepaid card legislation of a Class Member's province of residence, including the following (collectively the "Provincial Prepaid Card Laws"):

- a. **British Columbia** - *Business Practices and Consumer Protection Act, SBC 2004, c 2 (the **BC BPCPA**)*
- i. The Westjet Travel Bank and/or WTB Credits is a “prepaid purchase card” within the meaning of s. 56.1 of the *BC BPCPA*, in relation to Class Members residing in British Columbia.
 - ii. Section 56.2 of the *BC BPCPA* prohibits issuance of a “prepaid purchase card” with an expiry date.
 - iii. Section 56.3 of the *BC BPCPA* prohibits charging of fees in relation to a “prepaid purchase card”.
- b. **Saskatchewan** - *The Consumer Protection and Business Practices Act, SS 2014, c C-30.2 (the **SK CPBPA**)*
- i. The Westjet Travel Bank and/or WTB Credits is a “prepaid purchase card” within the meaning of s. 47 of the *SK CPBPA*, in relation to Class Members residing in Saskatchewan.
 - ii. Section 49 of the *SK CPBPA* prohibits issuance of a “prepaid purchase card” with an expiry date.
 - iii. Section 51 of the *SK CPBPA* prohibits charging of fees in relation to a “prepaid purchase card”.
- c. **Manitoba** - *Consumer Protection Act, CCSM c C200 (the **MB CPA**)*
- i. The Westjet Travel Bank and/or WTB Credits is a “prepaid purchase card” within the meaning of s. 170 of the *MB CPA*, in relation to Class Members residing in Manitoba.
 - ii. Section 171 of the *MB CPA* prohibits issuance of a “prepaid purchase card” with an expiry date.

- iii. Section 2 of the Manitoba *Prepaid Purchase Cards Regulation*, Man Reg 98/2007 prohibits charging of fees in relation to a “prepaid purchase card”.
- d. **Ontario** - *General*, O Reg 17/05 enacted under the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A (the **Ontario CPA Reg**)
- i. The Westjet Travel Bank and/or WTB Credits is a “gift card” within the meaning of s. 23 of the *Ontario CPA Reg*, in relation to Class Members residing in Ontario.
 - ii. Section 25.3 of the *Ontario CPA Reg* prohibits issuance of a “gift card” with an expiry date.
 - iii. Section 25.4 of the *Ontario CPA Reg* prohibits charging of fees in relation to a “gift card”.
- e. **Newfoundland and Labrador** - *Gift Card Regulations*, NLR 14/11 (the **NFLD GCR**)
- i. The Westjet Travel Bank and/or WTB Credits is a “gift card” within the meaning of s. 2 of the *NFLD GCR*, in relation to Class Members residing in Newfoundland and Labrador.
 - ii. Section 3 of the *NFLD GCR* prohibits issuance of a “gift card” with an expiry date.
 - iii. Section 5 of the *NFLD GCR* prohibits charging of fees in relation to a “gift card”.
- f. **Nova Scotia** - *Gift Card Regulations*, NS Reg 325/2009 (the **NS GCR**)
- i. The Westjet Travel Bank and/or WTB Credits is a “gift card” within the meaning of s. 2 of the *NS GCR*, in relation to Class Members residing in Nova Scotia.

- ii. Section 3 of the *NS GCR* prohibits issuance of a “gift card” with an expiry date.
- iii. Section 5 of the *NS GCR* prohibits charging of fees in relation to a “gift card”.

g. **New Brunswick** - *Gift Cards Act*, RSNB 2011, c 165 (the **NB GCA**)

- i. The Westjet Travel Bank and/or WTB Credits is a “gift card” within the meaning of s. 1 of the *NB GCA*, in relation to Class Members residing in New Brunswick.
- ii. Section 3 of the *NB GCA* prohibits issuance of a “gift card” with an expiry date.
- iii. Section 4 of the *NB GCA* prohibits charging of fees in relation to a “gift card”.

h. **Prince Edward Island** - *Gift Cards Act*, RSPEI 1988, c G-4.1 (the **PEI GCA**)

- i. The Westjet Travel Bank and/or WTB Credits is a “gift card” within the meaning of s. 1 of the *PEI GCA*, in relation to Class Members residing in Prince Edward Island.
- ii. Section 3 of the *PEI GCA* prohibits issuance of a “gift card” with an expiry date.
- iii. Section 4 of the *PEI GCA* prohibits charging of fees in relation to a “gift card”.

2. The Provincial Prepaid Card Laws are substantially similar or identical from one another and can be applied collectively in a single proceeding, namely that:

- a. The Class Members are all “consumers” within the meaning of the respective Provincial Prepaid Card Laws or otherwise entitled to the protection under the Provincial Prepaid Card Laws;
 - b. Westjet is a supplier or merchant that is subject to each of the respective Provincial Prepaid Card Laws; and
 - c. The WTB Credits and/or the Westjet Travel Bank are “gift cards” and/or “prepaid purchase cards” under the respective Provincial Prepaid Card Laws as the WTB Credits all share the characteristics that it is a prepaid credit that can be used to later acquire goods and/or services from Westjet and was “issued” to all of the Class Members with an expiry date, during the course of a transaction with a consumer.
3. Westjet’s forfeiture of expiry dates on the WTB Credits and charging of extension fees in relation to the WTB Credits is contrary to the Provincial Prepaid Card Laws and the Class Members have suffered a damage.
4. Westjet’s stipulation of an expiry date on the WTB Credits, when no expiry was legally permitted, constitutes a “deceptive act or practice” and/or “unconscionable act or practice” under the *BPCPA* (or the equivalent Provincial Consumer Protection Laws, defined below), and section 52 of the *Competition Act*, RSC 1985, c C-34, which depreciated the value of the WTB Credits, thereby causing damage or loss to those Class Members.
5. In addition to the Provincial Prepaid Card Laws, Westjet is also subject to and must comply with the general provincial consumer protection legislation of a Class Member’s province of residence, including the following (collectively the “**Provincial Consumer Protection Laws**”):

a. **Saskatchewan**

- i. “unfair practice” under sections 4-9 of the *SK CPBPA*

b. Manitoba

- i. “unfair business practice” under ss. 2-3 of *The Business Practices Act*, CCSM c B120

c. Ontario

- i. “unfair practice” under ss. 14-17 of the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A

d. Newfoundland and Labrador

- i. “unfair business practices” and/or “unconscionable act or practice” under ss. 7-9 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1

e. Prince Edward Island

- i. “unfair practice” under ss. 2-3 of the *Business Practices Act*, RSPEI 1988, c B-7

Punitive Damages

6. Westjet’s conduct in failing to comply with the Provincial Prepaid Card Laws (some of which have been enacted for over a decade) demonstrates wilful and blatant disregard of the rights of the Class and constitutes egregious and high-handed conduct that warrants an award of punitive damages.

7. Westjet’s conduct also demonstrates behaviour that was lax, passive, or ignorant of the Class and to Westjet’s own legal obligations under the consumer protection laws.

Plaintiff’s address for service:

c/o Hammerberg Lawyers LLP
1220 – 1200 West 73rd avenue
Vancouver, British Columbia V6P 6G5

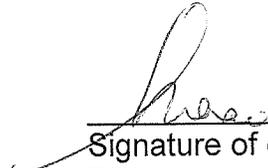
Fax number for service: 604-269-8511

Place of trial: Vancouver, British Columbia

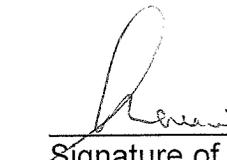
The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia on July 5, 2019



Signature of co-counsel for the
Plaintiff
JOEL D. ZANATTA / KEVIN
MCLAREN



Signature of co-counsel for the
Plaintiff
MATHEW P. GOOD



Signature of co-counsel for the
Plaintiff
SIMON LIN

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

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

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The representative Plaintiff, on behalf of all class members, seeks damages as well as restitution and restoration of losses suffered due to the Defendant's unlawful collection of fees for the first checked baggage, contrary to the terms of their own contract.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident;
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate);
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

- Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2
- Competition Act*, RSC, 1985, c. C-34
- Class Proceedings Act*, R.S.B.C. 1996, c. 50