

Transportation Notes: Passenger's Fall Due to Unsteadiness Not an Accident Under the Convention

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By Carlos Martins, Andrew MacDonald, Emma Romano

The British Columbia Civil Resolution Tribunal (the “**BCCRT**”) – the equivalent of the Province’s Small Claims Court – recently ruled in favour of an air carrier, dismissing a passenger’s claim for compensation arising from an alleged fall sustained while exiting the aircraft.

In its decision, the BCCRT considers and opines on what constitutes an “accident” under Article 17 of the *Montreal Convention*. This decision also provides helpful guidance on the evidentiary requirements in personal injury cases.

The Claim

The applicant in this case was a passenger on a flight operated by the respondent air carrier, WestJet Airlines Ltd. on December 23, 2018, from Palm Springs, USA to Vancouver, Canada.

The applicant stated that, upon arrival at the terminal in Vancouver, she fell on the bridge when exiting the aircraft and sustained injuries. She sought compensation of \$5,000 for pain and suffering.

The respondent, WestJet, denied liability on various grounds, and particularly that no “accident” occurred as that term is defined in Article 17 of the *Montreal Convention*.

Conflicting Evidence

The undisputed facts were that the passenger required a wheelchair for travelling long distances, but was able to walk short distances. A wheelchair was in fact provided for the passenger at the bridge connecting the aircraft to the terminal in Vancouver. The passenger walked from her seat to the bridge in order to access the wheelchair and sustained a fall while exiting the aircraft.

However, the BCCRT received conflicting evidence on whether the bridge floor was wet and uneven, the injuries she sustained, and whether WestJet’s staff refused to help the passenger disembark.

The passenger’s evidence was that the crew refused to help her disembark.

She stated that there was some congestion at the exit of the bridge when she was disembarking and, as she attempted to negotiate her way to the wheelchair, she did not notice the that floor between the aircraft and bridge was uneven and wet. Her evidence was that it had been raining in Vancouver that day (but no objective evidence or explanation of how rain entered the bridge or aircraft was provided in support of this allegation).

The passenger stated that she stepped on the uneven and wet floor and lost her balance and her fall caused painful bruising around

her ribs.

The air carrier relied on two incident reports prepared by its staff: one prepared by the lead flight attendant on the day of the incident and one prepared by a customer service agent. Neither of these reports stated that the floor of the bridge was uneven or wet.

The lead flight attendant's report stated that the passenger was the last to deplane. The lead flight attendant asked the passenger if she needed assistance getting to the aircraft door and to the wheelchair, but the applicant said declined. The lead flight attendant stated reportedly followed in case she needed assistance and as the passenger stepped onto the bridge, she was observed temporarily losing her footing.

The lead flight attendant's report went on to state that after the passenger lost her footing, she informed the lead flight attendant that she was out of breath and may have broken a rib. The agent waiting with the wheelchair asked the passenger if she would like a paramedic and the passenger said she did.

The customer service agent's report stated that the passenger tripped upon leaving the aircraft and hit her ribs on the bridge door. The customer service agent stated that the applicant possibly bruised or cracked her ribs, and requested paramedics, who suggested she go to the hospital.

Finally, the passenger also submitted a report from the hospital she attended the day following the incident. The two-page medical report did not mention bruising and stated that x-rays confirmed that the passenger did not have rib fractures. It concluded that the applicant "had an unsteady episode".

The Statutory Framework

The key issue was whether WestJet was liable for the applicant's injury suffered while exiting the aircraft.

As the passenger was travelling on an international flight, the *Montreal Convention* governed the air carrier's liability. The *Montreal Convention* is an international treaty to which Canada is a state party, which has the force of law under the federal *Carriage by Air Act*. The *Montreal Convention* governs the type and scope of claims that can be advanced for disputes regarding international air travel.

Article 17 of the *Montreal Convention* states:

"The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking."

Article 17 is the exclusive basis for a passenger's injury claim against an air carrier and if an "accident" occurs, the air carrier is liable without the passenger being required to prove the air carrier was at fault, subject to a cap on damages.

Therefore, in order to be found liable, the incident would have to constitute an "accident" under Article 17.

The BCCRT's Decision

The BCCRT found that the passenger, a 93 year-old woman who fell exiting the aircraft, had not experienced an "accident" as that term is defined in Article 17 of the *Montreal Convention*.

The BCCRT reconciled the conflicting evidence, noting that there was no mention of a wet or uneven floor in the two incident reports or the medical report. Had the floor been wet or uneven, the BCCRT found that this would likely have been mentioned as the reason for the fall in the medical report.

The medical report stated that the passenger fell against the cockpit door, but gave no indication of any possible causes external to the passenger. The report concludes that the applicant had an “unsteady episode”, meaning she suddenly felt unsteady on her feet.

The BCCRT went on to say that even if the passenger lost her balance because of uneven floor levels, it would not be an accident under Article 17 of the *Montreal Convention*.

The BCCRT found that because the lip between the bridge and the aircraft was inert, there was no incident external to the passenger which caused her to fall.

The BCCRT then noted that in some cases, the intentional acts of an air carrier can constitute an “accident” in a chain of causation leading to an injury. For instance, in *Gontcharov v. Canjet*, 2012 ONSC 2279, a flight attendant’s refusal to give a passenger a blanket, leading to bronchitis, was held to be an accident under Article 17 of the *Montreal Convention*.

However, in this case, the BCCRT preferred the evidence of the air carrier with respect to whether the passenger was offered appropriate assistance exiting the aircraft. The air carrier’s position was supported by the lead flight attendant’s incident report and the passenger’s booking information, which noted that she required a wheelchair only for long distances, and did not require one to travel the aisle and exit the plane.

As a result, the evidence presented did not satisfy the BCCRT that the incident constituted an accident for which the air carrier could be liable.

Comment

This case provides helpful insight into what constitutes an “accident” under Article 17 of the *Montreal Convention*.

Air carriers should also note the importance of preparing a thorough incident report whenever a passenger may be injured, as the incident report was relied on to a great extent in this case.

Quinn v. WestJet Airlines Ltd., 2019 BCCRT 1446

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Carlos Martins

Toronto
416.619.6284

Email:
cmartins@weirfoulds.com

Carlos Martins is a skilled litigator with over 25 years' experience providing legal advice in diverse sectors. He is a member of the firm's Commercial Litigation Practice Group and specializes in aviation and defamation law.



Andrew MacDonald

Toronto
416.619.6291

Email:
amacdonald@weirfoulds.com

Andrew has a varied practice that includes particular experience in media and defamation law, aviation law and administrative law.



Emma Romano

Toronto
416.619.6298

Email:
eromano@weirfoulds.com

Emma Romano is a partner in the Commercial Litigation and Technology & Intellectual Property groups at WeirFoulds LLP.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035