



Fresh as Amended pursuant to Supreme Court Civil Rule 6-1(a)
Original filed on April 4, 2016
Amended Notice of Civil Claim filed on May 27, 2019
Further Amended Notice of Civil Claim filed on June 17, 2025

No. S162957
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MANDALENA LEWIS

PLAINTIFF

AND:

WESTJET AIRLINES LTD.

DEFENDANT

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

FRESH AS AMENDED NOTICE OF CIVIL CLAIM

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

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

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

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

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

- (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

Parties

1. The plaintiff, Mandalena Lewis, is a resident of Vancouver, British Columbia. The plaintiff was employed as a Flight Attendant by the defendant between March 2008 and January 2016.
2. The defendant, WestJet Airlines Ltd. (“**WestJet**”), is a company incorporated pursuant to the laws of Alberta and is extra-provincially registered in British Columbia. Its registered office in British Columbia is located at 2700-700 West Georgia St., Vancouver, BC, V7Y 1B8. WestJet is an airline operating flights nationally and internationally, including many flights through British Columbia.
3. The plaintiff brings this claim on her own behalf and as the representative plaintiff of a certified class of present and former female Flight Attendants employed by WestJet between April 4, 2014 and February 28, 2021 (the “**Class**”).

Summary of the Claim

4. This claim is about WestJet’s breach of its common law employment contracts with the Class. The Plaintiff does not advance a claim for breach of any statutory rights or

obligations. The Plaintiff does not advance a claim for non-contractual losses or harm. The plaintiff does not seek general or compensatory damages. The Plaintiff seeks disgorgement as a remedy for WestJet's breach of contract.

5. Between April 4, 2014 and February 28, 2021 (the "**Class Period**"), WestJet's employment contracts provided that WestJet would create and maintain a workplace free from "Harassment" (defined below), and that it would properly investigate and respond to complaints of Harassment (the "**Anti-Harassment Promise**"). WestJet's Anti-Harassment Promise is critically important in the context of the airline industry, in which female Flight Attendants have historically faced and continue to face unwelcome sexual advances and attention. In a workplace in which there are heightened risks, WestJet's Anti-Harassment Promise enhances the airline's ability to attract female applicants for Flight Attendant positions, and provides WestJet the reputational benefit of being able to assert that its workplace is safe for women. Female Flight Attendants in particular stand to benefit from the Anti-Harassment program WestJet promised to put in place, and are at an increased risk without the promised program.
6. This claim asserts that despite their employment contracts, WestJet routinely and systemically denied the Class the benefit of the Anti-Harassment Promise, particularly when Pilots are the harassers. Instead of, as promised, having the benefit of a workplace free from Harassment and the benefit of a robust response to Harassment, WestJet's female employees were left at risk and subject to Harassment without adequate recourse. The plaintiff says WestJet fostered a corporate culture that overlooked and effectively tolerated Harassment, encouraged silence, failed to properly investigate complaints of Harassment, and resolved complaints by protecting the harassers. WestJet's conduct breaches a fundamental term of the contractual rights of the Class.

Differential Treatment in the WestJet Workplace

7. WestJet is a very successful airline and one of the most profitable airline companies in North America. WestJet employs over 10,000 employees. A class of WestJet employees are Flight Attendants. Another class of employees are Pilots. Flight Attendants are largely young and female and Pilots are largely older and male.

8. As a result of historical, economic and operational factors (described below), female Flight Attendants are vulnerable to Harassment from male Pilots and are subject to differential treatment by WestJet when such incidents arise.

Historical Factors that Underlie Harassment and Differential Treatment

9. The airline industry has historically been fraught with discriminatory attitudes toward female Flight Attendants, linking the performance of their jobs with gendered stereotypes regulating how they dress and appear, and discriminating against them due to their age, weight, and other inappropriate and unlawful considerations.
10. Another aspect of the airline industry that has caused harm and disadvantage to female Flight Attendants is a workplace culture historically permissive of Harassment of female Flight Attendants. The airline industry has been slow to acknowledge or address these attitudes, and in many instances permitted and even facilitated them. This has included attitudes by some male Pilots that female Flight Attendants are or ought to be sexually available to them, and that Harassment against female Flight Attendants is generally acceptable or at least will not be subject to meaningful sanction. This increases the vulnerability of Flight Attendants to Harassment.

Economic Factors that Facilitate Harassment and Differential Treatment

11. Flight Attendants at WestJet have less economic value to the company than Pilots. WestJet Pilots' remuneration and benefits are much higher than that of Flight Attendants, the cost to the company for Pilots' ongoing training is substantial, and the negotiating power and social status of Pilots within WestJet is much greater than that of Flight Attendants. As a result, the dismissal or resignation of a Pilot from WestJet is a significant cost to the company as compared the dismissal or resignation of a Flight Attendant.

Operational Factors that Facilitate Harassment and Differential Treatment

12. Within the workplace, Flight Attendants are subordinate to Pilots. The flight crews at WestJet generally consisted of two Pilots (Captain and First Officer) and three to four Flight Attendants. The Pilots were ultimately responsible for the safety of the aircraft,

passengers and flight crew. The Flight Attendants must follow Pilots' commands in the context of their employment, both during operations and on "layovers", as defined below.

13. The Pilots and Flight Attendants work in close quarters on the aircraft. They are also routinely located away from their homes on overnight stays known as "layovers". During layovers, WestJet Pilots and Flight Attendants were booked into the same hotel by WestJet, often on the same floor. The hotel rooms were paid for by WestJet and a per diem amount was provided to the Pilots and Flight Attendants for food and beverages. WestJet arranged for the transportation of the Pilots and Flight Attendants between the airports and the hotels. Pilots were unsupervised during layovers and were the final authority for safety related matters respecting Flight Attendants.
14. WestJet marketed itself to the public and to prospective employees as having an infectious "team spirit", and the Flight Attendants and Pilots were encouraged to present themselves as a fun and lively group. This team spirit was encouraged by WestJet both during operations and layovers. As part of the team spirit, socializing on layovers was common and encouraged by WestJet and this often involved alcohol consumption.
15. These historic, economic and operational factors resulted in circumstances in which Flight Attendants were vulnerable to Pilots who engaged in Harassment.

The Contract of Employment between WestJet and the Proposed Class, including the Plaintiff

16. WestJet purported to regulate Harassment in its workplace by incorporating certain terms prohibiting Harassment into its contracts of employment with all employees.
17. These employment conditions are set out in a number of policy documents that were expressly incorporated into the employment contracts. The effect of these was to assure, as a term of the employment, that the workplace was free of Harassment for each employee by:
 - a. committing WestJet to a workplace free of Harassment by, among other things, proactively preventing Harassment;

- b. requiring all WestJet employees to comply with a prescriptive Code of Conduct that prohibited Harassment; and
 - c. committing WestJet to properly investigate and act on complaints of Harassment.
- 18. Harassment includes any behaviour that negates an individual's dignity and respect because the behaviour is reasonably known to be offensive, embarrassing or humiliating. It includes physical or sexual assault, and unnecessary or unwelcome physical contact, among other conduct.
- 19. WestJet made the following promises and representations under its employment contracts with respect to Harassment:
 - a. WestJet will provide a safe and respectful work environment for all employees.
 - b. WestJet will not tolerate Harassment.
 - c. WestJet is fully responsible for ensuring that its work environment is free from Harassment.
 - d. WestJet does not tolerate discrimination, and Harassment is a form of discrimination.
 - e. WestJet states that no-one has the right to Harass anyone, at work or in any situation related to employment, including when representing WestJet at non-work events.
- 20. In promising to investigate and address complaints of Harassment, WestJet made the following representations:
 - a. WestJet will treat all complaints of Harassment seriously, whether made informally or formally.
 - b. WestJet will respond promptly to all complaints of Harassment to ensure they are resolved quickly and fairly.

- c. WestJet will impose sanctions (including termination) on any employee who violates any of their policies relating to Harassment.
- d. WestJet will subject anyone who retaliates against a person who has made a Harassment complaint to sanctions.
- e. WestJet will discipline anyone who has Harassed a person.
- f. WestJet will discipline managers who do not act properly to end Harassment.

(Paragraphs 17 to 20 collectively, constitute WestJet's "**Anti-Harassment Promise**")

- 21. WestJet's Anti-Harassment Promise was an important part of WestJet's marketing that it is a company that purportedly cares about its employees. The Anti-Harassment Promise was therefore an important component of its recruitment of female employees, including the plaintiff and the Class, as it made WestJet appear to be an attractive and safe place to work. The Anti-Harassment Promise materially contributed to customer loyalty by assuring the public that WestJet had put an end to the historical harassment that female workers had faced in the airline industry and the gender inequality that persisted as between Flight Attendants and Pilots and management.

The Plaintiff was Contractually Entitled to the Benefit of the Anti-Harassment Promise

- 22. The plaintiff was hired by the defendant as a Flight Attendant in March 2008 and entered into an employment contract with WestJet whereby WestJet was bound to honour the Anti-Harassment Promise.

Systemic Breaches of the Anti-Harassment Promise

- 23. WestJet operated in breach of its Anti-Harassment Promise and allowed Harassment to exist, where Class members were vulnerable to and/or experienced conduct including:

- a. unwelcome remarks, jokes, innuendoes, bullying, and offensive and humiliating taunting of female Flight Attendants;
- b. sexist jokes and comments causing female Flight Attendants embarrassment and offence;
- c. unwelcome sexual advances, requests or demands for sexual favours to female Flight Attendants (referred to as “midnight knocking” by Pilots in the layover scenario);
- d. unwelcome invitations and requests of a sexual nature;
- e. unwelcome physical contact;
- f. unwanted contact and attention after the end of a consensual relationship;
- g. derogatory and degrading remarks directed towards female Flight Attendants;
- h. leering and obscene comments and gestures; and
- i. verbal threats of a sexual nature.

24. WestJet had knowledge that Harassment was occurring in its workplace. Many female Flight Attendants have made complaints of conduct that offends the Anti-Harassment Promise.

25. WestJet failed to appropriately investigate and impose meaningful consequences in response to Harassment. Specifically, WestJet:

- a. routed complaints through departments or employees that WestJet knew or ought to have known were mandated to protect Pilots and WestJet in priority to upholding the Anti-Harassment Promise;
- b. failed to appoint a neutral and experienced investigator for complaints of Harassment;
- c. failed to start the investigations in a timely manner;

- d. failed to keep the complainants apprised of the investigations and share appropriate information;
- e. failed to complete the investigations in a timely manner, or at all;
- f. failed to advise complainants of the outcome of the investigations;
- g. failed to appropriately discipline harassers, including by terminating their employment;
- h. failed to take any corrective or proactive action to reduce the risk of Harassment;
- i. failed to develop a safety plan for complainants; and
- j. failed to provide complainants with adequate support to deal with the emotional effects of the Harassment.

WestJet Silences Harassment Complainants

- 26. As with the plaintiff, members of the Class who reported Harassment were encouraged or mandated to remain silent about the Harassment. They were told they will be disciplined if they share any information about Harassment with other female workers or anyone.
- 27. As a result of this requirement to remain silent and WestJet's known failure to properly respond to complaints of Harassment, others simply did not report Harassment at all. This, coupled with the prevalence of under-reporting of Harassment generally, meant that WestJet contributed an additional barrier to the already often perilous task of reporting abuse.
- 28. In addition, WestJet failed to take appropriate corrective action to prevent Harassment from occurring, despite having knowledge of Harassment complaints.

WestJet Retaliates Against Harassment Complainants

- 29. Contrary to the Anti-Harassment Promise, and contrary to its duty to implement the employee contract in good faith, instead of properly investigating the complaints, and taking action

to prevent such conduct from reoccurring, WestJet engaged in various forms of retaliation against complainants, including against the plaintiff, by, for example:

- a. diminishing the significance of the Harassment, or denying that it occurred at all;
- b. requiring that complainants remain silent about the Harassment;
- c. making changes to complainants' schedules to avoid a conflict with the Harassers' schedules to their detriment, rather than making changes to the Harassers' schedules;
- d. limiting complainants' access to full time hours due to limiting access to shifts; and
- e. unwarranted discipline and termination of complainants including constructive dismissal and other bad faith conduct.

30. Despite its Anti-Harassment Promise, WestJet allowed a culture permissive of Harassment to exist. While Harassment continued to be *de facto* acceptable at WestJet because it was not met with appropriate responses or discipline and complaints are not properly investigated, WestJet left the Class without the benefit of the protection guaranteed in their employment agreement. These failures, including the requirement that complainants remain silent about Harassment, resulted in WestJet protecting the Harassers, often Pilots, whom WestJet viewed as more economically valuable employees. The result was a workplace that endangered the safety of the Class generally, whether or not they directly experienced Harassment.

WestJet Benefits from its Breach of its Anti-Harassment Promise

31. WestJet benefited from its failure to implement and comply with the Anti-Harassment Promise. In particular, WestJet derived costs savings and increased profitability from its failure to, among other things:
- a. design initiatives required by the Anti-Harassment Promise that are intended to achieve and are reasonably capable of achieving the objective of the Promise;

- b. train and retain staff and management necessary to implement the Anti-Harassment Promise;
- c. discipline, suspend or terminate employees who breach the Anti-Harassment Promise;
- d. conduct appropriate investigations of breaches of the Anti-Harassment Promise; and
- e. provide separate accommodations and other arrangements during layovers to implement the Anti-Harassment Promise.

32. In addition, WestJet benefitted by protecting and promoting its reputation as an airline that does not tolerate Harassment by restricting Flight Attendants from discussing WestJet's failure to implement the Anti-Harassment Promise to the public.

(Paragraphs 23 to 32 collectively, constitute the “**Benefits**” to WestJet from its breach of contract.)

Part 2: RELIEF SOUGHT

1. The plaintiff claims, on her own behalf, and on behalf of the Class, as follows:
 - a. a declaration that the Anti-Harassment Promise was a term of WestJet's employment contracts with all employees;
 - b. a declaration that WestJet failed to implement the Anti-Harassment Promise;
 - c. a declaration that WestJet benefitted from its failure to implement the Anti-Harassment Promise.
 - d. disgorgement of the monetary value of the benefits that WestJet accrued in failing to implement the Anti-Harassment Promise, including the benefits derived from WestJet's failure to:
 - i. ensure the workplace is free of harassment;

- ii. implement proactive measures to avoid creating opportunities for such harassment to occur;
 - iii. properly investigate complaints and discipline the harassers; and
 - iv. remedy the effects of harassment.
- e. punitive damages;
 - f. pre-judgment interest;
 - g. costs; and
 - h. such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

1. The plaintiff pleads and relies on the common law of contract and the *Class Proceedings Act*, RSBC, 1996, c.50.

Breach of Contract

2. As set out above, WestJet owed contractual duties to the plaintiff and the Class, and in breach of those duties, WestJet derived substantial financial benefit.

Disgorgement

3. The plaintiff claims on behalf of the Class disgorgement for WestJet's breaches of contract in failing to implement the Anti-Harassment Promise. Disgorgement is available where remedies such as expectation damages, specific performance, and injunctive relief are inadequate to vindicate a plaintiff's interest and where, in the circumstances, the plaintiff's interest in performance is not reflected purely in an economic measure, or the amount of expectation damages flowing from the breach are not readily quantifiable. Disgorgement is calculated by reference to the defendant's wrongful gain and is a remedy that effectively bars the party breaching the contract from doing so with impunity where expectation damages are not easily quantifiable.

4. The Class has a legitimate interest in WestJet complying with its contractual Anti-Harassment Promise. This interest extends to preventing WestJet from making money off its breach of the Anti-Harassment Promise during the Class Period through savings and other revenue resulting from inadequate implementation of the Anti-Harassment Promise. The Class's interest cannot be vindicated by other forms of contractual relief and cannot be strictly quantified.
5. In the circumstances, other remedies for breach of contract would not adequately protect or vindicate the Class's contractual rights to good faith performance of the Anti-Harassment Promise. For example, specific performance or injunctive relief would not be available in these circumstances, and would fail to deter WestJet who reaped Benefits from its failure to implement the Anti-Harassment Promise during the Class Period. Damages premised on a compensatory model is likewise inappropriate as the Class's losses are difficult to quantify.
6. There is also the element of vulnerability as between the Class and other groups of WestJet employees where WestJet as the employer had the authority through its own decision-making and actions to impact the power imbalance and vulnerabilities between employee groups, such as between the female-dominated Class as compared with male-dominated Pilots.
7. The Class had no control over how WestJet implemented the Anti-Harassment Promise, leaving the Class entirely vulnerable to WestJet's failure to meet its Anti-Harassment Promise. In such circumstances, it is unconscionable for WestJet to retain the cost savings and other revenues generated from the Benefits during the Class Period. Moreover, the Class has a legitimate interest in preventing WestJet from reaping such Benefits as they flow from WestJet's failure to implement the Anti-Harassment Promise and may incentivize on-going wrongdoing in respect of failing to appropriately resource anti-harassment initiatives and policy implementation.

Punitive Damages

8. The actions of WestJet were high-handed, malicious, arbitrary and highly reprehensible misconduct that departed to a marked degree from ordinary standards of decent behaviour and showed a callous disregard for the contractual rights of the plaintiff and the Class.
9. The plaintiff and the Proposed Class are a group of vulnerable employees, and WestJet obtained an advantage or profit by failing to protect them. WestJet has engaged in conduct that is reprehensible and deserves punishment. The plaintiff therefore seeks punitive damages to deter WestJet and others from similar misconduct in the future.

No Claim for Breach of Statutory Rights or Common Law Duty of Care

10. For further clarity, the plaintiff does not plead or rely on any alleged breaches of any statutory obligations or rights. She does not plead or rely on any alleged breaches of any common law duty of care.
11. The plaintiff waives any right to recover general or compensatory damages. Her claim for damages is limited to disgorgement and punitive damages arising from the alleged breach of contract.

Place of Trial: Vancouver, BC

Date: June 17, 2025



Karey Brooks, KC
Counsel for the plaintiff

THIS NOTICE OF CIVIL CLAIM is filed and delivered by:

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