



SUPREME COURT OF CANADA

CITATION: International Air Transport
Association v. Instrubel, N.V., 2019 SCC 61

**APPEAL HEARD AND JUDGMENT
RENDERED:** December 11, 2019
DISSENTING REASONS: May 1, 2020
DOCKET: 38562

BETWEEN:

International Air Transport Association
Appellant

and

Instrubel, N.V.
Respondent

- and -

**Republic of Iraq, Ministry of Industry of the Republic of Iraq,
Ministry of Defence of the Republic of Iraq, Salah Aldin State Establishment
and
Chartered Institute of Arbitrators (Canada) Inc.**
Intervenors

AND BETWEEN:

**Republic of Iraq, Ministry of Industry of the Republic of Iraq,
Ministry of Defence of the Republic of Iraq and Salah Aldin State Establishment**
Appellants

and

Instrubel, N.V.
Respondent

- and -

**International Air Transport Association and
Chartered Institute of Arbitrators (Canada) Inc.**

Interveners

CORAM: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Martin JJ.

JUDGMENT:
(paras. 1 to 2)

Wagner C.J. (Abella, Moldaver, Karakatsanis, Côté, Rowe and Martin JJ. concurring)

DISSENTING REASONS:
(paras. 3 to 69)

Côté J.

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

IATA v. INSTRUBEL

International Air Transport Association

Appellant

v.

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2019 SCC 61

File No.: 38562.

Hearing and judgment: December 11, 2019.
Dissenting reasons delivered: May 1, 2020.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Martin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Private international law — Jurisdiction of Quebec court — Location of property in dispute — Seizure before judgment by garnishment — Dutch company seeking enforcement in Quebec of international arbitration awards issued against foreign entity — Since recovery of debt at risk, company seeking and obtaining from Quebec Superior Court writ of seizure before judgment by garnishment of aerodrome and air navigation fees billed and collected on foreign entity’s behalf by global trade association for international air transport industry — Association’s head office located in Montréal but funds it collects deposited in association’s bank account in Switzerland — Foreign entity bringing motion to quash writ of seizure on ground that

Superior Court lacked jurisdiction to authorize it because property at issue was located outside Quebec — Superior Court finding that it did not have jurisdiction to authorize seizure as funds did not constitute debt owed by association to foreign entity collectible in Quebec but rather property located in Switzerland held by association on foreign entity's behalf — Court of Appeal setting aside Superior Court judgment — Property seized is debt due by association to foreign entity — Debt is situated where it is collectible, at domicile of association in Montréal — Debt is therefore subject to jurisdiction of Quebec courts.

*Per **Wagner** C.J. and Abella, Moldaver, Karakatsanis, Rowe and Martin JJ. (orally):* The appeals should be dismissed, substantially for the reasons of the Court of Appeal save for the matters addressed in *obiter*.

*Per **Côté** J. (dissenting):* The appeals should be allowed and the judgment of the Superior Court reinstated. Given that the property in dispute is located outside Quebec, the Superior Court did not have jurisdiction to issue the writ of seizure before judgment by garnishment.

The Dutch company filed a request for a writ of seizure before judgment by garnishment directed at the sums or movable property belonging to the foreign entity, held by the association on the foreign entity's behalf. A seizure before judgment is a provisional measure which preserves a plaintiff's right where there is reason to fear that the recovery of his or her debt is in jeopardy. The effect of seizure by garnishment is to place sums of money and movable property belonging to the

debtor under judicial control and to make the garnishee the guardian of that property. Given that a seizure by garnishment is carried out *in rem* and directly affects the property in question, the private international law rules governing Quebec authorities' jurisdiction over real actions must be considered. Under art. 3152 *C.C.Q.*, Quebec courts have jurisdiction over a real action if the property in dispute is situated in Quebec.

The nature of the legal relationship between the association and the foreign entity is central to the disposition of the appeals in the instant case. The association and the foreign entity entered into a contract under which the foreign entity mandated the association to bill and collect air navigation charges due to the foreign entity from airlines that have the right to fly in its airspace. The contract establishes a relation of mandate whereby the association acts as mandatary for the foreign entity, the mandator.

The effects of the acts concluded by the mandatary on behalf of the mandator are reflected directly in the mandator's patrimony. The juridical acts that the mandatary performs with third parties are binding on the mandator. That reality will be reflected in the mandator's patrimony, since it is the mandator's patrimony, rather than the mandatary's, which becomes bound to the third parties' patrimonies. Where the mandate is performed properly, the mandatary assumes no obligation towards third parties and his or her patrimony is not engaged. In this case, when the association deals with third parties, the effects of those dealings are reflected not in

the association's patrimony, but rather in the foreign entity's patrimony. Therefore, the seized property forms part of the foreign entity's patrimony.

Where a contract of mandate entails the transfer of goods or property between third parties and the mandatary, the mandatary's obligation towards the mandator is not a debt. A debt presupposes an owing patrimony. The mandatary acts as the holder, as opposed to the owner, of the property, which he or she must hand over or, in the case of sums, remit to the mandator. The mandatary's patrimony is affected only in the sense that it is charged with the obligation to hand over the property, or to remit the sums, to the mandator. The property, or the sums, never actually enter the mandatary's patrimony, because they continue to belong to the mandator. This means that the mandatary's obligation cannot be a debt, since the mandatary owes nothing. The wording of art. 2185 para. 1 *C.C.Q.* supports the position that the mandatary does not become the owner of the sums collected and does not owe a debt in an equivalent amount to the mandator. The use of the term "remit" is very telling. In the present case, the association has an obligation to remit the sums it collected to the foreign entity; this obligation is distinct from any debt the association might owe to the foreign entity. Although the payments are collected and held by the association on the foreign entity's behalf, the sums in the association's bank account have always belonged and continue to belong to the foreign entity.

In order to determine the geographical location of the property at the time of seizure, it is necessary to consider the impact of banking law, if any, on the

relationships between the parties and their obligations. While the intervening contract between a customer that deposits money and a bank is a loan, this fact has no bearing on the capacity in which the customer loans the money to the bank or on the characterization of the relationship that the accountholder may have with a third party. For the purposes of issuing a writ of seizure by garnishment, the patrimonial impact of the contract of mandate between the association and the foreign entity remains unscathed by the fact that the sums to be remitted to the foreign entity were deposited in a bank account. The bank account in this case, although in the association's name, is for practical purposes equivalent to a trust and the sums were held for the benefit of the association's mandator. Despite the comingling of funds in the account, the funds remained identifiable and thus continued to belong to the foreign entity. A bank account — and sums deposited in it — is located at the branch where the account is held. In this case, the bank account in which the association kept the sums it collected on the foreign entity's behalf was located in Switzerland. The geographical location of the property in dispute here is therefore Switzerland. An *in rem* action directed at sums located in Switzerland is beyond the jurisdiction of the Quebec Superior Court.

Cases Cited

By Côté J. (dissenting)

Cinar Corporation v. Xanthoudakis, 2005 CanLII 23655; *Théberge v. Galerie d'Art du Petit Champlain inc.*, 2002 SCC 34, [2002] 2 S.C.R. 336; *Tri-Tex*

Co. Inc. v. Gideon, [1999] R.J.Q. 2324; *Lavallée v. St-Germain*, [1994] R.D.J. 291; *Victuni AG v. Minister of Revenue of Quebec*, [1980] 1 S.C.R. 580; *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, 2009 SCC 49, [2009] 3 S.C.R. 286; *Laplante v. The Queen*, 2017 TCC 118, 2017 D.T.C. 1071; *9172-0904 Québec inc. v. Commission des relations du travail*, 2010 QCCS 3397, [2010] R.J.D.T. 1091; *Laporte v. Lauzon*, 2007 QCCS 6226, [2008] R.J.Q. 478; *Yachting & Sports Pigeon Inc.* (1995), 2 C.B.R. (4th) 236; *Harp Investments Inc. (Syndic de)*, [1992] R.J.Q. 1581.

Statutes and Regulations Cited

Civil Code of Québec, arts. 2130 para. 1, 2136, 2139, 2146, 2157, 2184, 2185 para. 1, 2809 para. 2, Book Ten, 3138, 3140, 3152.

Code of Civil Procedure, CQLR, c. C-25, arts. 626, 733.

Authors Cited

Belleau, Charles, et autres. *Précis de procédure civile du Québec*, vol. 2, 5^e éd., par Denis Ferland et Benoît Emery, dir. Montréal: Yvon Blais, 2015.

Castel, Jean-Gabriel. *Droit international privé québécois*. Toronto: Butterworths, 1980.

Emanuelli, Claude. *Droit international privé québécois*, 3^e éd. Montréal: Wilson & Lafleur, 2011.

Goldstein, Gérald, et Ethel Groffier. *Droit international privé*, t. II, *Règles spécifiques*. Cowansville, Que.: Yvon Blais, 2003.

Leclerc, Normand. *L'argent en monnaie, un lexique: Des biens économiques en droit privé canadien*. Québec: CorpusCivilis, 2008.

L'Heureux, Nicole, et Marc Lacoursière. *Droit bancaire*, 5^e éd. Montréal: Yvon Blais, 2017.

Ogilvie, M. H. *Bank and Customer Law in Canada*, 2nd ed. Toronto: Irwin Law, 2013.

Popovici, Adrian. *La couleur du mandat*. Montréal: Thémis, 1995.

Quebec. Ministère de la Justice. *Commentaires du ministre de la Justice*, t. II, *Le Code civil du Québec — Un mouvement de société*. Québec: Publications du Québec, 1993.

Savoie, Réginald, et Louis-Philippe Taschereau. *Procédure civile*, t. I, *Introduction, Théorie générale, Organisation judiciaire, Action en justice*. Montréal: Guérin, 1973.

APPEALS from a judgment of the Quebec Court of Appeal (Rochette, Schragar and Healy JJ.A.), 2019 QCCA 78, [2019] AZ-51563260, [2019] Q.J. No. 232 (QL), 2019 CarswellQue 275 (WL Can.), setting aside a decision of Hamilton J., 2016 QCCS 1184, [2016] AZ-51265192, [2016] Q.J. No. 2272 (QL), 2016 CarswellQue 2101 (WL Can.). Appeals dismissed, Côté J. dissenting.

Éric Vallières and *Émile Catimel-Marchand*, for the appellant/intervener the International Air Transport Association.

Patrick Ferland and *Nicolas Roche*, for the appellants/interveners the Republic of Iraq, the Ministry of Industry of the Republic of Iraq, the Ministry of Defence of the Republic of Iraq and the Salah Aldin State Establishment.

Audrey Boctor and *François Goyer*, for the respondent.

Simon V. Potter, Adam Goldenberg and Sandra Aigbinode Lange, for the
intervener Chartered Institute of Arbitrators (Canada) Inc.

The judgment of the Court was delivered orally by

THE CHIEF JUSTICE —

[1] A majority of this Court is of the opinion to dismiss the appeals with costs throughout, substantially for the reasons of the Court of Appeal save for the matters addressed in *obiter*.

[2] Justice Côté is dissenting. Her reasons will follow.

The following are the reasons delivered by

CÔTÉ J. —

[3] This case raises the question of whether the Quebec Superior Court has jurisdiction to issue a writ of seizure before judgment by garnishment of funds deposited in a bank account outside Quebec. It questions the real or personal nature of such a remedy and illustrates the clash between property law and banking law, which must ultimately be resolved on the basis of well-established principles of civil law, namely the principles relating to mandate.

[4] On December 11, 2019, a majority of this Court dismissed the appeals in a judgment rendered from the bench. My dissenting reasons were to follow.

[5] Here they are.

I. The Parties

[6] The respondent in these appeals is Instrubel, N.V. (“Instrubel”), a Dutch company having its principal place of business in the Netherlands. It is incorporated under the laws of Belgium, where it also has offices. The record does not show that Instrubel has any connection with or business in Quebec or Canada.

[7] The appellants include the Republic of Iraq (“Iraq”) and three parties that were involved in arbitration proceedings against Instrubel: the Ministry of Industry of the Republic of Iraq, the Ministry of Defence of the Republic of Iraq and the Salah Aldin State Establishment.¹ The Iraqi entity most relevant to these appeals is the Iraqi Civil Aviation Authority (“ICAA”), the agency responsible for the regulation of Iraq’s airspace.

[8] The final appellant, the International Air Transport Association (“IATA”), is the global trade association for the international air transport industry. Its membership includes over 290 airlines present in more than 120 countries representing 82% of the world’s air traffic. Its purposes, objectives and aims include

¹ In these reasons, I refer to these appellants collectively as the “Iraqi appellants”.

the promotion of safe, regular and economical air transport for the benefit of the peoples of the world. One of IATA's roles is to liaise with government bodies around the world, like ICAA, including "on matters affecting international air transport such as safety, flight operations, industry standards, economic regulation, and training": A.R., vol. II, at p. 45. While IATA's headquarters are in Montréal, its operations are worldwide. It is present in more than 61 countries, and has executive offices in Geneva, Switzerland.

II. Background

[9] In the late 1980s and in 1990, Instrubel entered into five contracts with various Iraqi entities for the supply of military equipment in the form of night vision goggles and thermal imaging technology. Following the invasion of Kuwait in 1990, the United Nations Security Council imposed an embargo on goods coming from or going to Iraq. At the time, Instrubel's five contracts were in various states of performance.

[10] Instrubel submitted a claim for non-performance of the contracts and for lost profits to the International Court of Arbitration of the International Chamber of Commerce in Paris on January 27, 1992. Two arbitration awards in favour of Instrubel were issued on February 6, 1996 and March 12, 2003. The value of the awards on the latter date was approximately CAN\$32 million, plus interest.

[11] Neither ICAA nor even the Republic of Iraq was a party to the arbitration proceedings. Most importantly, IATA had no connection whatsoever with the arbitration proceedings.

[12] A decade later, on March 11, 2013, Instrubel filed in the Quebec Superior Court a Motion for the Homologation, Recognition and Enforcement of Arbitration Awards Made Outside Quebec, alleging that it had “only recently learned that the Republic of Iraq possesses significant assets in the Province of Quebec”: A.R., vol. I, at p. 41. At the time of the Court of Appeal’s decision on the issue in these appeals, Instrubel had not received payment of the amounts due pursuant to the arbitration awards.

[13] Believing that the recovery of payment for the arbitration awards was in jeopardy, on July 30, 2013, Instrubel sought and obtained from the Quebec Superior Court a Writ of Seizure Before Judgment by Garnishment of the air navigation and aerodrome charges billed and collected by IATA on behalf of ICAA. On August 5, 2013, the Iraqi appellants brought a Motion to Quash a Writ of Seizure Before Judgment by Garnishment on a number of grounds, including Instrubel’s failure to disclose material information, insufficient and misleading allegations, and foreign state immunity.

[14] Meanwhile, on August 12, 2013, IATA filed a Solemn Declaration of the Garnishee against the garnishment, stating that it “does not currently have in its possession any sums of money, securities or movable property that is marked as

belonging to [the Iraqi appellants]”: A.R., vol. II, at p. 3. IATA acknowledged in this negative declaration that it held funds “in trust for the benefit of” ICAA, but maintained that it could not pay them out to Instrubel because they had to be remitted to ICAA and because the funds were immune from execution: p. 3.

[15] On September 16, 2013, the Superior Court heard the Iraqi appellants’ Motion to Quash a Writ of Seizure Before Judgment by Garnishment. The parties had agreed to focus their arguments on Instrubel’s alleged failure to disclose material information and on the insufficiency of its allegations, leaving questions surrounding the funds’ immunity from seizure for a later date. On November 12, 2013, the Superior Court dismissed the motion to quash and upheld the seizure before judgment by garnishment.

[16] On November 14, 2013, Instrubel contested IATA’s Solemn Declaration, arguing that it was not a true negative declaration given that it merely indicated that IATA did not hold sums “marked” as belonging to the Iraqi appellants; Instrubel reserved its rights to contest the declaration on the ground “that the amounts held by IATA do ultimately belong to [the Iraqi appellants]”: A.R., vol. I, at p. 69. That contestation, as far as the record shows, remains outstanding.

[17] On December 11, 2013, the Superior Court granted a motion by IATA to limit the amount purported to be seized under the writ of seizure to CAN\$90 million. It ordered the release of all amounts in excess of CAN\$90 million and permitted

IATA to transfer the CAN\$90 million to the trust account held by IATA's lawyers in Montréal.

[18] Two years later, on September 28, 2015, the Iraqi appellants filed an amendment to their Motion to Quash a Writ of Seizure Before Judgment by Garnishment, arguing that the Quebec Superior Court lacked jurisdiction to issue the writ because the property seized consisted of funds deposited in a bank account in Switzerland.

III. Judgments Below

A. *Quebec Superior Court, 2016 QCCS 1184 (Hamilton J.)*

[19] The Superior Court, per Hamilton J. (as he then was), granted the Iraqi appellants' Amended Motion to Quash a Writ of Seizure Before Judgment by Garnishment in part, based on the jurisdiction ground alone.

[20] Hamilton J. characterized the relationship between IATA and ICAA as one of mandate: para. 57 (CanLII). Given that relationship, the funds collected by IATA on ICAA's behalf belonged to ICAA and IATA had an obligation to remit them. Thus, this was not a situation in which the funds belonged to IATA and IATA then owed a debt to ICAA. Hamilton J. held that the ownership of the funds did not change merely because IATA deposited them in a bank account: para. 58. He also found that although the comingling of funds in a bank account can affect ownership

rights, this was not the case here because the funds belonging to ICAA were readily identifiable: para. 59.

[21] Hamilton J. went on to say that if IATA had owed a debt to ICAA, the jurisdiction issue would have been easier to resolve because IATA's status as a party domiciled in Quebec owing a debt to ICAA would have meant that the asset in question (the debt) could be seized in Quebec: para. 60. Since he did not find this to be the case, he had to determine whether the Superior Court could issue a writ of seizure before judgment by garnishment where the garnishee was domiciled in Quebec but the property held by the garnishee was outside Quebec: para. 61. Hamilton J. considered the nature of a seizure before judgment by garnishment, finding that it is not merely a personal order affecting only the garnishee, but that it also has an impact on the property seized: para. 74. Thus, given that the seized property in this case consisted of funds held in a bank account in Switzerland, the court would be placing funds held in a Swiss bank account under the judicial control of Quebec authorities. Since the primary jurisdiction with respect to assets lies with the court of the place where they are located, Hamilton J. concluded that the Superior Court did not have jurisdiction to issue a writ of seizure before judgment by garnishment that extended to assets held by the garnishee outside Quebec: paras. 76-77.

B. *Quebec Court of Appeal, 2019 QCCA 78 (Schrager J.A., Rochette and Healy J.J.A. concurring)*

[22] The Court of Appeal allowed the appeal and dismissed the Amended Motion to Quash a Writ of Seizure Before Judgment by Garnishment. While the Court of Appeal did not expressly overturn the Superior Court's characterization of the relationship between IATA and ICAA as being one of mandate, it nevertheless found that the characterization of the relationship was not relevant to ascertaining the type of obligation owed by IATA to ICAA. Accordingly, it was of the view that IATA's obligation towards ICAA was a debt and that "this is so irrespective of the characterization of the contract between IATA and ICAA as a mandate or some *sui generis* relationship": para. 43 (CanLII). The Court of Appeal found that funds in a bank account held by a mandatary for his or her mandator do not give rise to real rights: para. 34. In this sense, ICAA never owned the debts due to it from various airlines and does not now own the funds collected in satisfaction of those debts: para. 43. In the Court of Appeal's view, IATA owed money to ICAA, and that debt was located at the place where it was collectible, which is ordinarily the domicile of the account debtor, in this case Montréal: para. 42.

[23] The Court of Appeal disagreed with the Superior Court's analysis regarding the identifiability of the funds belonging to ICAA in the bank account held by IATA: para. 36. In order to be traceable, funds must be identified and not merely quantified. Given the comingling of funds in this case, the Court of Appeal concluded that they could not be traced.

[24] The Court of Appeal found that the Superior Court had effectively ascribed attributes of a trust to the money deposited in the bank account. The Court of Appeal added that, if ICAA had indeed taken such a position, it would not have succeeded: para. 44. It referred to its previous jurisprudence to the effect that a bank account does not constitute a patrimony by appropriation. It noted that, in this case, it was not disputed that IATA was the owner and titleholder of the bank account and that it had full power and control over it. This was so despite the fact that, as between it and ICAA, the funds “belonged” to ICAA. The Court of Appeal thus held that it was not a possible outcome to characterize the right of a party having no contract with a bank, nor title or authority to the bank account, as a real right in the funds in the account, absent a trust or patrimony by appropriation, which did not exist here: paras. 47-48. Thus, the *situs* of the bank account did not change the *situs* of the debt, which was Quebec. IATA was the debtor of a personal right owed to ICAA, which could be the subject of a garnishment order issued by the courts of Quebec: para. 51.

IV. Issue

[25] These appeals raise the question of whether the Quebec Superior Court has jurisdiction to issue a writ of seizure before judgment by garnishment where the garnishee is located in the province but the property is located outside the province, and where the parties and the transaction giving rise to the seizure have no connection with Quebec.

V. Analysis

A. *Jurisdiction of the Quebec Superior Court Over Seizures Before Judgment by Garnishment*

[26] Given that the proceedings arose before the coming into force of the new *Code of Civil Procedure*, CQLR, c. C-25.01, in 2016, these appeals must be decided under the former *Code of Civil Procedure*, CQLR, c. C-25 (“C.C.P.”).

[27] A seizure before judgment is a provisional measure which preserves a plaintiff’s right where there is reason to fear that the recovery of his or her debt is in jeopardy: art. 733 C.C.P. The effect of seizure by garnishment is to place sums of money and movable property belonging to the debtor “under judicial control” and to make the garnishee the guardian of that property:

626. The effect of seizure by garnishment is to place under judicial control the sums of money and movable property belonging to the debtor and to make the garnishee the guardian thereof.

Seizure before judgment by garnishment is therefore carried out *in rem* and directly affects the property in question: C. Belleau et al., *Précis de procédure civile du Québec* (5th ed. 2015), vol. 2, by D. Ferland and B. Emery, eds., at Nos. 2-1137, 2-1141 and 2-2375.

[28] In its factum and at the hearing in this Court, Instrubel identified various points of similarity between seizures before judgment by garnishment and injunctive relief, such as *Mareva* injunctions. While Instrubel acknowledged that these measures

are not identical, it pointed to the fact that both seizures before judgment by garnishment and *Mareva* injunctions have elements of real remedies and personal remedies: R.F., at para. 127.

[29] This may be so. However, the Court must give effect to the fundamental distinctions between those two remedies, regardless of any perceived similarities. Despite Instrubel's submissions, one cannot ignore the fact that the criteria for granting a *Mareva* injunction are significantly more onerous than the criteria for issuing a writ of seizure before judgment by garnishment. There is good reason for this. A *Mareva* injunction is an exceptional remedy, which is directed at the person of the defendant and limits his or her freedom to act: see Belleau et al., at No. 2-1141. Seizure before judgment by garnishment, on the other hand, affects property. While a *Mareva* injunction directly affects the defendant's actions, seizure by garnishment affects the garnishee only incidentally, and only inasmuch as the garnished property is concerned: see *Cinar Corporation v. Xanthoudakis*, 2005 CanLII 23655, at paras. 9-10 (Que. Sup. Ct.).

[30] The rules of private international law found in Book Ten of the *Civil Code of Québec* ("C.C.Q.") must be considered in order to decide this case. Given that a seizure by garnishment is carried out *in rem*, the rules governing Quebec authorities' jurisdiction over real actions must be considered: [TRANSLATION] "a real action is tied to property and may therefore be brought against any person in possession of the property: it is instituted '*in rem*' and follows the property into

whatever hands it is situated” (R. Savoie and L.-P. Taschereau, *Procédure civile*, vol. I, *Introduction, Théorie générale, Organisation judiciaire, Action en justice* (1973), at p. 73). As Hamilton J. said, “[t]he primary jurisdiction with respect to assets is the Court of the place where the assets are located”: para. 76. Under art. 3152 *C.C.Q.*, Quebec courts have jurisdiction over a real action “if the property in dispute is situated in Québec”. Thus, to determine whether the Quebec Superior Court had jurisdiction to issue the Writ of Seizure Before Judgment by Garnishment, I must look to the location of the property in question.

[31] The importance of looking to the location of the *property*, rather than to that of its owner — or of the garnishee — cannot be emphasized enough. The enactment of art. 3152 *C.C.Q.* represented a departure from the past. The legislature recognized the need to resolve the confusion arising from the possibility of grounding the jurisdiction of Quebec courts in the defendant’s domicile even where the dispute concerned property located outside Quebec: see C. Emanuelli, *Droit international privé québécois* (3rd ed. 2011), at pp. 133-34. The Minister’s commentary illustrates this new approach:

[TRANSLATION] This article, which is new law, confers jurisdiction over real actions on the Quebec authorities in the place where the property is situated, thereby aligning the applicable law (art. 3097) and adjudicative jurisdiction. Unlike article 73 *C.C.P.*, which deals with the jurisdiction of Quebec courts over real and mixed actions, article 3152 does not base jurisdiction on the defendant’s domicile. This criterion is more relevant to mixed actions than it is to real actions. [Emphasis added.]

(Ministère de la Justice, *Commentaires du ministre de la Justice*, vol. II, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 2012)

This focus on the property's location is, moreover, supported by arts. 3138 and 3140 *C.C.Q.*, which, as explained by academic commentators, give Quebec authorities jurisdiction to order provisional or conservatory measures, or emergency measures, where the property is located in Quebec: see Emanuelli, at p. 134; G. Goldstein and E. Groffier, *Droit international privé*, vol. II, *Règles spécifiques* (2003), at p. 299; see also J.-G. Castel, *Droit international privé québécois* (1980), at p. 829.

[32] In summary, a seizure before judgment by garnishment is effected *in rem* and, in this sense, a request for a writ of seizure constitutes a real action within the meaning of the rules of private international law. Quebec courts generally have jurisdiction to issue a writ of seizure only where the property in question is located in Quebec: see Goldstein and Groffier, at p. 299. I now turn to the property in dispute in these appeals.

B. *The Garnished Property*

[33] Instrubel filed a Request for a Writ of Seizure Before Judgment by Garnishment directed at “the sums or moveable property belonging to [the Iraqi appellants]”. According to Instrubel, it had a right to seize the following:

All aerodrome charges and air navigation charges of the Republic of Iraq billed and/or collected and/or otherwise already held by the International Air Transport Association, either at its head office in Montréal or at any of its worldwide branches, on behalf of the Republic of Iraq. [Emphasis added.]

(A.R., vol. I, at p. 48)

These charges are also referred to as “E&F Charges”.

[34] In support of its Application for Seizure Before Judgment by Garnishment, Instrubel filed an affidavit sworn by Markus Johannes Dekker in which the property sought to be seized is described as follows:

Instrubel has reason to believe that the Republic of Iraq owns assets that are located in the Province of Québec. More precisely, those assets are the air navigation charges imposed by the Republic of Iraq and comprised of, *inter alia*, fly-over fees, airport maintenance fees and route maintenance fees. Such air navigation charges are payable by airlines and countries to the Republic of Iraq in order to be granted the permission to fly over their airspace.

All of said aerodrome charges and air navigation charges are billed and/or collected and/or otherwise already held by the International Air Transport Association (“IATA”), either by/through its head office in Canada or by/through any of its worldwide branches, on behalf of the Republic of Iraq, as represented by the Iraqi Civil Aviation Authority for the account of the State of Iraq. The IATA has its Canadian head office at 800 Place Victoria, in the City and District of Montréal, the whole as appears from an extract of the Iraq Aeronautical Information Publication (“AIP”) communicated herewith as Exhibit R-15.

...

Instrubel seeks the authorization of a judge of the Superior Court of Quebec to seize the aerodrome charges and air navigation charges in the hands of IATA held on behalf of the Republic of Iraq in an amount sufficient to satisfy the Partial Award and the Final Award, as described

in the Request for a Writ of seizure accompanying the present affidavit.
[Emphasis added.]

(A.R., vol. II, at p. 29)

[35] The Writ of Seizure Before Judgment by Garnishment, as issued on July 30, 2013, states the following:

Seizure of amounts of money, securities or movables

We order you, Garnishee, to appear before the Court at the courthouse of Montreal located at 1, Notre-Dame Street on August 13, 2013, in room 1.110, at 9:00 a.m. to declare under oath the amounts of money, securities or movables belonging to [the Iraqi appellants] which are in your possession for whatever purpose or grounds, and to hold them until the Court has ruled upon the matter.

We order you, [Iraqi appellants], to appear on the date and at the time and place shown above to answer to the request contained in the declaration to be served in accordance with the law and to give the reasons that this seizure should not be declared proper and valid.
[Emphasis added.]

(A.R., vol. I, at p. 49)

[36] The above-quoted passages perfectly illustrate Instrubel's view — which was the right view — of the nature of the property at the time it sought to seize it. According to its affidavit and the Writ of Seizure Before Judgment by Garnishment as issued, Instrubel understood that the property was *owned* by ICAA and was only held by IATA *on behalf* of ICAA. Instrubel knew perfectly well that it was not seizing property belonging to IATA — that is, found in IATA's patrimony — as it is now suggesting in this Court.

[37] This may be thought to be an overly formalistic conclusion. However, seizures — including seizures before judgment by garnishment — constitute harsh and exceptional measures that interfere with private individuals' property and are therefore subject to stringent formal conditions: Belleau et al., at No. 2-1142. This is one of the technical areas of the law in which it is important that courts apply such conditions rigorously. A writ of seizure before judgment can be issued only where the requesting party has complied with all formal conditions prescribed by law: *Théberge v. Galerie d'Art du Petit Champlain inc.*, 2002 SCC 34, [2002] 2 S.C.R. 336, at para. 7 (“The respondent must find authority for the seizure in the *Code of Civil Procedure* read in light of the *Copyright Act*. If he cannot find authority in the legislation, then it does not exist and the seizure was wrongful.”); *Tri-Tex Co. Inc. v. Gideon*, [1999] R.J.Q. 2324 (C.A.), at pp. 2331-32 (“A writ of seizure may therefore be issued only in circumstances where the rules governing this procedure have been strictly observed.”); *Lavallée v. St-Germain*, [1994] R.D.J. 291 (C.A.), at p. 294 ([TRANSLATION] “[S]eizure before judgment is a draconian and severe procedure and therefore demands scrupulous compliance with procedural requirements and a true basis in law.”).

C. *Nature of the Legal Relationship Between IATA and ICAA*

[38] On March 3, 2004, IATA and ICAA entered into a contract for the “Establishment of a Route Facility Charges Billing and Collection System on Behalf of the State of Iraq” (“Contract”, reproduced in A.R., vol. II, at pp. 6 et seq.). Under

the Contract, ICAA mandated IATA to bill and collect the air navigation charges due to ICAA from participating airlines. Specifically, the Contract's preamble states the following:

WHEREAS [ICAA] wishes to delegate the task of the operation of a Route Facility Charges Billing and Collection System to IATA

. . .

WHEREAS [ICAA] has instructed the Operators² concerned to pay the route facility charges for the services provided on the routes prescribed in the Iraqi Aeronautical Information Publication (AIP) to IATA acting as its Agent; [Footnote added.]

The Contract also provides as follows:

7.2 Remittance of charges to [ICAA]

IATA will remit to [ICAA] the route facility charges collected on [ICAA]'s behalf, less the agreed administrative fees as detailed in Annex 2 to this Contract, only upon and to the extent of IATA's receipt of payment of the concerned charges. Such remittance will be executed in accordance with the schedule set out in Annex 3. [Emphasis added.]

[39] The Contract is governed by Swiss law. However, given that no proof was made of Swiss law, Hamilton J. properly characterized the Contract on the basis of Quebec law: para. 57; see art. 2809 para. 2 *C.C.Q.* This approach was not questioned by the Court of Appeal, and I do not propose to do so here.

² The Operators listed in Annex 4 of the Contract consist of various airlines authorized to use Iraq's airspace: p. 18. For greater clarity, I use the term "airlines" rather than "Operators" throughout these reasons.

[40] The Contract establishes a relationship of mandate whereby IATA acts as mandatory for ICAA, the mandator. The relationship was, correctly in my view, characterized as such by Hamilton J. The Court of Appeal did not seriously dispute this characterization in saying that IATA has an obligation to ICAA in the nature of a debt and that “this is so irrespective of the characterization of the contract between IATA and ICAA as a mandate or some *sui generis* relationship”. Instrubel itself did not seem to take issue with this characterization at the hearing in this Court.

[41] I see no reason to question Hamilton J.’s conclusion that the Contract establishes a relationship of mandate. The relationship between IATA and ICAA, both as appears from the Contract and from the reality on the ground, bears all the traditional hallmarks of a mandate. Mandate has two essential aspects: first, the mandator (ICAA) confers upon the mandatory (IATA) the power to represent him or her; and second, this representation must occur in the performance of a juridical act with a third person: art. 2130 para. 1 *C.C.Q.*; A. Popovici, *La couleur du mandat* (1995), at p. 18.

[42] This concept of representation is undeniably present here. IATA collects charges *on behalf* of ICAA, not on its own behalf: see preamble, arts. 1, 3 and 7.2 and Annex 1 of the Contract, and preamble and art. 1.1 of the Contract Amendment No. 1. These charges are due *to ICAA* from airlines that have the right to fly in the Iraqi airspace. IATA therefore represents ICAA in its dealings with third parties (airlines).

[43] The nature of IATA's role as regards third parties is also consistent with the existence of a mandate relationship with ICAA insofar as it involves the performance of juridical acts with third parties. IATA's role is not merely to collect payment from the airlines flying through Iraq's airspace. The Contract is clear that "IATA has the exclusive right to establish and operate the Route Facility Charges Billing and Collection System": art. 3 (emphasis added). Airlines are required to pay route facility charges to IATA "according to the provisions communicated by IATA": art. 6C. There is no doubt that, in entering into the Contract, ICAA entrusted IATA with the performance of juridical acts with the airlines flying through Iraq's airspace.

[44] IATA also has informational obligations consistent with those of a mandatary under art. 2139 *C.C.Q.*, since it must regularly render account to ICAA for the operation of the route facility charges collection system: art. 7.3 of the Contract. Thus, while IATA has full financial control of the process, it must report to ICAA each month.

[45] Finally, the Contract could not be clearer that IATA's obligation with respect to the E&F Charges is to *remit* them to ICAA. This exact language is clearly used in the Contract. Such language is consistent with a mandatary's remittance obligations under art. 2185 para. 1 *C.C.Q.* Thus, I am in entire agreement with Hamilton J. that the relationship between IATA and ICAA is one of mandate. I am moreover of the view that this conclusion is central to the disposition of these appeals.

(1) Effects of the Mandate on the Parties' Patrimonies

[46] A relationship of mandate impacts parties' patrimonial situation. The effects of the acts concluded by the mandatary on behalf of the mandator are reflected directly in the mandator's patrimony: Popovici, at pp. 18-19 and 49; see also arts. 2146 and 2157 *C.C.Q.* The notion of representation is once again fundamental. The juridical acts that the mandatary performs with third parties are binding on the mandator. That reality will be reflected in the mandator's patrimony, since it is the mandator's patrimony, rather than the mandatary's, which becomes bound to the third parties' patrimonies. Where the mandate is performed properly, the mandatary assumes no obligation towards third parties.

[47] These principles have been affirmed by this Court in the past. In *Victuni AG v. Minister of Revenue of Quebec*, [1980] 1 S.C.R. 580, the Court recognized that an asset purchased by a mandatary on a mandator's behalf is in fact owned by the mandator: p. 583. In that case, two companies had incorporated another company, Victuni, and mandated it to purchase land in its own name. The Court had to consider whether Victuni owned the land in question or whether it had an indebtedness equal to the value of the land to the two companies that had mandated it to make the purchase. The Court found that Victuni had bought the land in its own name but that it had done so in its capacity as mandatary for the two other companies, which were the real owners and for which Victuni held the land. Thus, it found that

[u]nder the general principles of the law of mandate, it is clear that the obligation of a mandatary towards the mandator is not a debt. The person who has bought property on behalf of a third party who wishes to remain unknown is no more indebted for the price paid than he is the owner of the property. The true owner is the mandator, and the obligation of the mandatary nominee is to render an account to the mandator and deliver over what he has received on his behalf. What he receives, even if it is money, does not belong to him: he is obliged to keep it separate from his own property. It is a crime for him to take control of it so as to make himself a debtor thereof instead of a mandatary. [Emphasis added; citation omitted; pp. 584-85.]

[48] In the instant case, the Court of Appeal did not apply *Victuni* on the ground that this Court had distinguished it in another case, *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, 2009 SCC 49, [2009] 3 S.C.R. 286, at para. 27. I disagree with the Court of Appeal. The context of *Montmagny* was materially distinct, having nothing to do with the situation in *Victuni*, which was more similar to the situation now before this Court. Indeed, in order to resolve the issue in *Victuni*, the Court had to analyze and apply principles of civil law. As is clear from the beginning of the paragraph quoted above, the case was decided on the basis of those principles. It cannot be disregarded simply because the outcome concerned taxation. The Court's conclusions in *Victuni* regarding the law of mandate stand and must be given effect. In my view, *Victuni* is good law. It clearly stated that there is a general principle in the law of mandate that a mandatary's obligation towards a mandator is not a debt.

[49] Applying the principles enunciated in *Victuni* to this case, I find that when IATA deals with third parties (airlines), the effects of those dealings are

reflected not in IATA's patrimony, but rather in ICAA's patrimony. For instance, the Contract is clear that IATA is not to be held liable for any loss of income or delay in payment where there is a dispute with an airline over a certain charge: art. 7.1. This is because the third party's relationship is with ICAA, not with IATA.

[50] I conclude from this that the seized property forms part of ICAA's patrimony.

(2) The Mandatary's Obligation Towards the Mandator Is Not a Debt

[51] Where, as in this case, a contract of mandate entails the transfer of goods or property between third parties and the mandatary, the mandatary's obligation towards the mandator is not a debt. A debt presupposes an owing patrimony. However, as I explained above, the mandatary's patrimony is not engaged under a contract of mandate. Rather, it is the mandator's patrimony that is affected: Popovici, at pp. 18-19. The mandatary acts as the "holder" (as opposed to the "owner") of the property, which he or she must hand over or, in the case of sums, remit to the mandator: arts. 2184 and 2185 para. 1 *C.C.Q.* As I previously mentioned, the Contract is explicit in this regard: "IATA will remit to [ICAA] the route facility charges collected on [ICAA]'s behalf".

[52] I therefore respectfully disagree with the Court of Appeal when it stated that IATA's obligation is "a debt and [that] this is so irrespective of the characterization of the contract between IATA and ICAA as a mandate or some *sui*

generis relationship”: para. 43. In my view, this disregards the consequences of the relationship of mandate. Furthermore, it is unclear what the Court of Appeal meant when it referred to the existence of “some *sui generis* relationship”.

[53] I am in further disagreement with the Court of Appeal’s assertion that ICAA never owned the debts due to it from the airlines: para. 43. The Contract is clear and limpid to the contrary. ICAA is the airlines’ creditor — it is to ICAA that the airlines *owe* charges for using Iraq’s airspace: art. 3. The right to the payments from the airlines has always belonged to ICAA. The payments therefore also belong to ICAA, although they are collected and held by IATA on its behalf.

[54] A mandatary’s obligation towards a mandator is thus different in nature than a debt. The mandatary must hand over the property, or remit the sums, that he or she has received to the mandator. This explains why the mandatary may hold property entrusted to him or her without owning it: see *Victuni; Laplante v. The Queen*, 2017 TCC 118, 2017 D.T.C. 1071, at para. 72; *9172-0904 Québec inc. v. Commission des relations du travail*, 2010 QCCS 3397, [2010] R.J.D.T. 1091, at para. 45; *Laporte v. Lauzon*, 2007 QCCS 6226, [2008] R.J.Q. 478, at para. 73. The property is not available to the mandatary for reasons other than the performance of the mandate:

[TRANSLATION] Regardless of whether there is a trust or a mandate, what is important to defeat the trustee’s seisin is that the property be held by the bankrupt for a third party, that it be identifiable as such in the bankrupt’s hands and that it not be available to the bankrupt for purposes other than the performance of the mandate. [Emphasis added.]

(Yachting & Sports Pigeon Inc. (1995), 2 C.B.R. (4th) 236 (Que. Sup. Ct.), at para. 16)

The mandatory's patrimony is affected only in the sense that it is charged with the obligation to hand over the property, or remit the sums, to the mandator. The property, or the sums, never actually enter the mandatory's patrimony because they continue to belong to the mandator. This means that the mandatory's obligation cannot be a debt, since the mandatory owes nothing.

[55] The Contract provides that IATA's administrative fees for fulfilling the mandate are to be deducted from the gross amount received from the airlines and collected by IATA on ICAA's behalf: art. 7.2 and Annex 2. This is consistent with art. 2185 para. 1 *C.C.Q.*, which reads as follows:

2185. A mandatory is entitled to deduct what the mandator owes him by reason of the mandate from the sums he is required to remit.

It is noteworthy that the wording of art. 2185 para. 1 *C.C.Q.* supports the position that the mandatory does not become the owner of the sums collected and does not owe a debt in an equivalent amount to the mandator. The use of the term "remit" is very telling. The mandatory has to remit what he or she has received. The legislature did not say that the mandatory has to "reimburse" what he or she has received, nor that the mandatory "owes" any money to the mandator. Indeed, it is only when the mandatory does not act in accordance with the mandate that he or she may owe a debt

to the mandator. In such cases, the legislature is clear: the mandatory must “indemnify the mandator by paying” a certain amount (art. 2146 para. 2 *C.C.Q.*).

[56] In the present case, IATA has an obligation to remit the sums it collected to ICAA; this obligation is distinct from any debt it might owe to ICAA. Indeed, the property at issue here — the sums in the Swiss bank account — has always belonged and continues to belong to ICAA. The Quebec Superior Court would have had jurisdiction to issue the Writ of Seizure Before Judgment by Garnishment only if the seized property was located in the province of Quebec: Emanuelli, at pp. 69 and 134. It is therefore necessary to determine the geographical location of the property.

D. *Where Was the Property Located at the Time of the Seizure Before Judgment by Garnishment?*

[57] In order to answer this question, it is necessary to consider the impact of banking law, if any, on the relationships and obligations described above. It is widely accepted that when a customer deposits money in a bank account, the customer is making a loan to the banking institution: N. L’Heureux and M. Lacoursière, *Droit bancaire* (5th ed. 2017), at pp. 120-21; M. H. Ogilvie, *Bank and Customer Law in Canada* (2nd ed. 2013), at p. 239. The bank may deal with the sums as it sees fit (within regulatory constraints), but it remains liable to repay the amount to the customer.

[58] However, the deposit of the sums does not affect characterization. Money that is deposited remains property: N. Leclerc, *L'argent en monnaie, un lexique: Des biens économiques en droit privé canadien* (2008), at p. 55. The banking contract has effect only as between the contracting parties: *Harp Investments Inc. (Syndic de)*, [1992] R.J.Q. 1581 (Sup. Ct.), at p. 1585. I am of the view that, for the purposes of issuing a writ of seizure by garnishment, the patrimonial impact of the contract of mandate between IATA and ICAA remains unscathed by the fact that the sums to be remitted to the mandator were deposited in a bank account: *Harp*, at p. 1586. The sums belong to ICAA. While IATA may have a right of a personal nature to require repayment of the sums from the bank, it has ultimately never owned them — they continue to belong to ICAA.

[59] It is important to keep in mind that three types of contracts are in play here: first, the contract of mandate between IATA and ICAA; second, the agreements between IATA and the airlines concerning the collection of the charges; and finally, the loan between IATA and the bank. As mandatary, IATA collects and holds the sums on ICAA's behalf and may deposit them in a bank account. This operation results in IATA being the bank's lender. Such a status is far from being inconsistent with the law of mandate, since the deposit of sums in a bank account simply means that the mandatary is managing the property entrusted to him or her: art. 2136 *C.C.Q.*

[60] Banking law is certainly important. The world's economy is, in many respects, built upon banking, and banking law principles help to regulate the daily

dealings of a commercial society. But banking law cannot be used to deny commercial realities whenever it is convenient to do so. The sums collected by IATA on behalf of ICAA never left ICAA's patrimony and thus continued to belong to it. The funds deposited remain identifiable and belong to ICAA. IATA acted only as an administrator of ICAA's property in depositing the funds. At best, IATA is the bank's lender.

[61] I am of the view that the bank account in this case, although in IATA's name, is for practical purposes equivalent to a trust account. IATA deposited the sums it collected on behalf of ICAA in that account. Indeed, IATA said as much in its Solemn Declaration: "IATA had in its possession an amount of USD166,652,878.55 that according to the books of IATA is held in trust for the benefit of the Iraqi Civil Aviation Authority" (A.R., vol. II, at p. 3 (emphasis added)). Until transferred to ICAA's bank account in New York pursuant to the Contract (specifically art. 7.2), the sums in the Swiss bank account were held for the benefit of IATA's mandator. IATA could not deal with the funds as it saw fit; it could only remit them in accordance with the terms of the Contract and its role as mandatary.

[62] I disagree with the Court of Appeal's view of Hamilton. J.'s analysis and its assertion that "had ICAA taken such position [that the account constituted a trust account], it would not have succeeded": para. 44. I find nothing "incongruous" about the result reached by Hamilton J.: para. 49. While I accept that the intervening contract between a customer that deposits money and a bank is a loan, this fact has no

bearing on the capacity in which the customer loans the money to the bank. Between the bank and the accountholder, the lender is the accountholder and the borrower is the bank. But this has no impact on the characterization of the relationship that the accountholder may have with a third party.

[63] Consider the following. What effect would it have had on the characterization of the relationship between IATA and ICAA — and on the ownership of the funds — if instead of depositing the money collected in a bank account, IATA had put the money — assuming that it was cash — in a safety deposit box at the same bank? In my view, it would not have made any difference at all, provided that the funds in the safety deposit box could be easily traced.

[64] On this issue of the funds' traceability, I agree with Hamilton J.'s analysis. As he concluded, despite the comingling of funds in the account, the funds belonging to ICAA were readily identifiable: paras. 58-59. The parties filed joint stipulations acknowledging that IATA maintained records of the E&F Charges collected on ICAA's behalf. IATA filed an affidavit confirming that it kept detailed records of ICAA's funds in the account. I therefore disagree with the Court of Appeal's analysis concerning the traceability of the funds: paras. 36-41. This is a question of fact, and Hamilton J.'s finding could not be interfered with absent a palpable and overriding error. In my view, the evidence was sufficient to conclude, as he did, that the funds remained identifiable and thus continued to belong to ICAA.

[65] A bank account — and sums deposited in it — is located at the branch where the account is held: Emanuelli, at p. 69. This is why a writ of seizure by garnishment must be served at that branch: L’Heureux and Lacoursière, at p. 182; see also Belleau et al., at No. 2-2344. In this case, the bank account in which IATA kept the sums it collected on ICAA’s behalf was located in Switzerland, more specifically in Geneva. This is not surprising given that IATA has executive offices in Geneva. The geographical location of the property in dispute here is Switzerland.

[66] An *in rem* action directed at sums located in Switzerland is beyond the jurisdiction of the Quebec Superior Court, since it has jurisdiction only if the property in dispute is located in Quebec: art. 3152 *C.C.Q.*

[67] I add that the subsequent transfer of some of the funds to the trust account held by IATA’s lawyers in Quebec does not change my conclusion. The sums were brought to Quebec pursuant to an agreement that was meant to have no bearing on the parties’ rights. The moment at which the jurisdiction of the Quebec Superior Court must be considered is when the Writ of Seizure Before Judgment by Garnishment was requested and issued. At that time, the sums were in Switzerland.

VI. Conclusion

[68] Given that the property in dispute is located outside Quebec, I conclude that the Quebec Superior Court did not have jurisdiction to issue the Writ of Seizure Before Judgment by Garnishment.

[69] I would accordingly allow the appeals with costs throughout, and reinstate Hamilton J.'s judgment.

Judgment accordingly.

Solicitors for the appellant/intervener the International Air Transport Association: McMillan, Montréal.

Solicitors for the appellants/interveners the Republic of Iraq, the Ministry of Industry of the Republic of Iraq, the Ministry of Defence of the Republic of Iraq and the Salah Aldin State Establishment: LCM Attorneys Inc., Montréal.

Solicitors for the respondent: IMK, Montréal.

Solicitors for the intervener Chartered Institute of Arbitrators (Canada) Inc.: McCarthy Tétrault, Montréal.