



SUPREME COURT OF CANADA

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Case in Brief: *International Air Transport Association v. Instrubel, N.V.*

Judgment of December 11, 2019 (written dissenting reasons issued on May 1, 2020) | On appeal from the Court of Appeal of Quebec
Neutral citation: 2019 SCC 61

The Supreme Court issued written dissenting reasons in a case decided orally by the majority of judges in December 2019.

Instrubel was a Dutch company. It had a dispute about contracts with the Republic of Iraq. It took the dispute to arbitration (a non-court process often used to settle international contract cases). In 2003, Iraq was ordered to pay Instrubel \$32 million plus interest. Iraq didn't pay. In 2013, Instrubel asked a Quebec court for help to get payment. It said Iraq had money in Quebec. Soon after, it asked the court to seize money from the International Air Traffic Association (IATA).

IATA collected fees from airlines on behalf of different countries, for the right to fly over and into those countries. One of the countries IATA collected fees for was Iraq. IATA wasn't involved in the fight between Iraq and Instrubel. But its headquarters were in Montreal. This meant Quebec courts had jurisdiction (power) over it.

Quebec has rules to help make sure people ordered to pay others actually do so. For example, the court can order a third party to pay a debt it owes to another person to someone else. (It can also make the third party hand over certain kinds of property belonging to the person.) The court can also order the money to be seized to make sure it's still there by the time the final decision is given. In this case, IATA could be ordered not to pay its debt until the court made a final decision. Then it would either pay it to Instrubel or Iraq, depending on who won the case.

IATA told the court it didn't have any money or property that belonged to Iraq. But less than a week before, it held \$166 million (US dollars) for the Iraqi Civil Aviation Authority. The court said IATA had to transfer \$90 million (Canadian dollars) to a bank account in Quebec. It would stay there until the final decision.

IATA asked for the seizure to be quashed (canceled). The judge who heard the issue said the money couldn't be seized. He said Quebec courts didn't have jurisdiction (power) to seize money that was outside of Quebec when the court order was issued. He also said the money IATA collected for Iraq wasn't a debt, so it couldn't be seized under Quebec law.

The Court of Appeal overturned the judge's decision. Among other things, it said the money could be seized and said it was a debt. It said the debt legally existed at IATA's headquarters in Montreal. This was true even if the money was collected in another place and was held in a bank account somewhere else.

The Supreme Court decided this case "from the bench" right after the hearing on December 11, 2019.

When a case is decided "from the bench," it means an oral decision is given right away. The parties don't have to wait for a written decision, which takes some time (an average of about five months in 2019). About a third of decisions were given from the bench in 2019.

When a case is decided from the bench, the Court will sometimes give a written explanation (reasons) later. This can be done to make things more clear. In most cases, though, there won't be written reasons. This doesn't mean there is no explanation. When giving the oral decision, the Court might give a short explanation, or say something like, "we allow (or dismiss) this appeal substantially for the reasons given by the Court of Appeal." That means it's relying on the reasons of the lower court, which basically got it right.

In this case, the majority of judges dismissed Iraq's and IATA's appeals "substantially for the reasons of the Court of Appeal." They didn't give their own written reasons. The Court of Appeal's decision stayed in effect. That meant the money could be seized from IATA.

One judge disagreed and said she would give written reasons later. It doesn't happen often that there are only written reasons for a dissent, when a judgment is from the bench. But dissent is an important part of Canada's judicial process.

This case was about enforcing an international arbitration decision. Quebec courts weren't involved in the original decision. But they heard the case because it was important to support international arbitration. This included support to make sure awards got paid.

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Breakdown of the decision: *Majority:* Chief Justice [Wagner](#) dismissed Iraq's and IATA's appeals from the bench (Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Rowe](#), and [Martin](#) agreed) | *Dissenting:* Justice Suzanne [Côté](#) said the money IATA held for Iraq wasn't a debt and that since it was held outside Quebec, Quebec courts didn't have jurisdiction, so she would have allowed the appeals

More information (case # 38562): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [decision on motion](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec)
