COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N° : 500-09-010326-007
(500-05-056783-002)

DATE : Le 15 NOVEMBRE 2004

CORAM: LES HONORABLES JOSEPH R. NUSS J.C.A.
FRANÇOIS PELLETIER J.C.A.
YVES-MARIE MORISSETTE J.C.A.

WILMINGTON TRUST COMPANY
APPELANTE – INTIMÉE INCIDENTE - défenderesse
et
WILMINGTON TRUST CORPORATION
APPELANTE – INTIMÉE INCIDENTE – défenderesse
c.

NAV CANADA
INTIMÉE – APPELANTE INCIDENTE - demanderesse

ARRÊT

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[1] **LA COUR**; - Statuant sur l'appel d'un jugement rendu le 9 novembre 2000 par la Cour supérieure, district de Montréal (l'honorable Roland Tremblay);

[2] Après avoir étudié le dossier, entendu les parties et délibéré;

[3] Pour les motifs des juges Pelletier et Morissette;

[4] **ACCUEILLE** l'appel avec dépens contre l'intimée Nav Canada;

[5] **INFIRME** le jugement de première instance à l'égard des appelantes et procédant à rendre le jugement qui aurait dû être rendu:

[6] **REJETTE** avec dépens l'action de la demanderesse à l'égard des défenderesses Wilmington Trust Company et Wilmington Trust Corporation;

[7] **REJETTE** l'appel incident avec dépens contre l'appelante incidente Nav Canada;

[8] Pour sa part, le juge Nuss, dissident, pour les motifs déposés avec cet arrêt, aurait accueilli l'appel en partie avec dépens, infirmé le jugement de la Cour supérieure à l'égard des appelantes, rejeté la réclamation monétaire dirigée contre les appelantes, déclaré que les appelantes étaient en droit d'obtenir mainlevée des saisies pratiquées en l'instance contre paiement des redevances dues à l'intimée, Nav Canada, et nées de l'utilisation par Inter-Canadien (1991) inc. des aéronefs dont les appelantes sont propriétaires et, enfin, retourné le dossier à la Cour supérieure pour que celle-ci détermine la quotité desdites redevances de même que les accessoires, tels que l'intérêt et l'indemnité additionnelle. Il aurait également rejeté l'appel incident avec dépens.

JOSEPH R. NUSS J.C.A.

FRANÇOIS PELLETIER J.C.A.

YVES-MARIE MORISSETTE J.C.A.

Me Bertrand Giroux
BROUILLETTE, CHARPENTIER, FORTIN, S.E.N.C.
Avocat des appelantes – Intimées incidentes

Me Michel G. Ménard
LAPOINTE ROSENSTEIN
Avocat de l'intimée – Appelante incidente

Dates d'audience : 26, 27 et 28 mai 2003.

REASONS OF NUSS J.A.

[115] I agree with the reasons of my colleagues Justices Pelletier and Morissette regarding the interpretation and meaning of the word "owner" found in s. 55 of the *Civil Air Navigation Services Commerzialisation Act*[1] (CANSCA). I share their view that the "owner" who is, by virtue of that section, jointly and severally liable with the operator, for charges incurred in the operation of aircraft, is not the legal titleholder of the aircraft as such, but rather the registered owner and/or others mentioned in s. 55(2) of the CANSCA[2].

[116] Turning to the other issue in appeal, I, with respect, differ with my colleagues concerning the import of the legislative provisions regarding the seizure and detention of aircraft for unpaid charges found in s. 9(1), (3) and (4) of the *Airport Transfer* (*Miscellaneous Matters*) *Act*[3] (Airports Act) and s. 56 of the CANSCA (collectively Detention Provisions).

[117] Appellants contend that the Detention Provisions are not opposable to the right of the legal titleholder[4] to obtain the release of its aircraft seized and detained pursuant to the above legislation. They submit, *inter alia*, that if the titleholder is not responsible for the debt it should not be deprived of the possession of its property and should not be required to pay the charges to obtain its release. They plead that no real right is created in favour of the seizing party and that the debt results from charges incurred in the operation of aircraft for which others are responsible. The others responsible are the operator, and in the application of the CANSCA, jointly and severally with the operator, the registered owner, the hypothecary debtor, the *bona fide* lessee and the purchaser under a conditional sale or, hire-purchase, contract.

[118] The seizure and detention recourse fashioned by Parliament, which is set out in both the Airports Act and the CANSCA, is a distinctive one. It permits each airport authority and Nav Canada respectively, upon obtaining an order from a Superior Court judge, to seize and detain aircraft for failure to pay outstanding charges.

[119] These Detention Provisions are federal law, albeit on a matter, the seizure of property, which is a recognized aspect of the civil or common law. In my view, it is not necessary for the application of the Detention Provisions in these federal statutes to require that they meet criteria found in the systems of provincial civil or common law.

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1 S.C. 1996, c. 20.

2 The hypothecary debtor, the *bona fide* lessee and the purchaser under a conditional sale or hire-purchase contract.

3 S.C. 1992, c. 5, S.C., c. A-10.4.

4 I will in this opinion refer to the "legal titleholder" as the titleholder.

The Detention Provisions have their own distinctive characteristics. They do not incorporate provincial law regarding the right to, and the consequence of, the seizure of property. Neither are they meant to be copies of provincial law. The statutory texts in issue regarding the Detention Provisions read as follows:

Loi relative aux cessions d'aéroports	***Airport Transfer Act***
(…)	(…)
9. (1) À défaut de paiement des frais fixés par elle – frais généraux d'aérogare ou d'atterrissage ou toute redevance se rapportant à l'utilisation d'un aéroport, ainsi que les intérêts y afférents-, l'administration aéroportuaire désignée peut, en sus de tout autre recours visant leur recouvrement et indépendamment d'une décision judiciaire à cet égard, demander à la juridiction supérieure de la province où se trouve l'aéronef dont le défaillant est propriétaire ou utilisateur de rendre une ordonnance l'autorisant à saisir et à retenir l'aéronef, aux conditions que la juridiction estime nécessaires.	**9. (1)** Where the amount of any landing fees, general terminal fees or other charges related to the use of an airport, and interest thereon, set by a designated airport authority in respect of an airport operated by the authority has not been paid, the authority may, in addition to any other remedy available for the collection of the amount and whether or not a judgment for the collection of the amount has been obtained, on application to the superior court of the province in which any aircraft owned or operated by the person liable to pay the amount is situated, obtain an order of the court, issued on such terms as the court considers necessary, authorizing the authority to seize and detain aircraft.
(2) Dans les mêmes circonstances, l'administration aéroportuaire désignée peut, si elle est en outre fondée de croire que le défaillant s'apprête à quitter le Canada ou à en retirer un aéronef dont il est propriétaire ou utilisateur, procéder à la demande *ex parte*.	**(2)** Where the amount of any fees, charges and interest referred to in subsection (1) has not been paid and the designated airport authority has reason to believe that the person liable to pay the amount is about to leave Canada or take from Canada any aircraft owned or operated by the person, the authority may, in addition to any other remedy available for the collection of the amount and whether or not a judgment for the collection of

	the amount has been obtained, on *ex parte* application to the superior court of the province in which any aircraft owned or operated by the court considers necessary, authorizing the authority to seize and detain aircraft.
(3) Sauf ordonnance contraire de la juridiction, l'administration aéroportuaire désignée n'est pas tenue de donner mainlevée de la saisie tant que les sommes dues n'ont pas été acquittées.	**(3)** Subject to subsection (4), except where otherwise directed by an order of a court, a designated airport authority is not required to release from detention an aircraft seized under subsection (1) or (2) unless the amount in respect of which the seizure was made is paid.
(4) L'administration aéroportuaire désignée donne cependant mainlevée contre remise d'une sûreté – cautionnement ou autre garantie qu'elle juge satisfaisante – équivalente aux sommes dues.	**(4)** A designated airport authority shall release from detention an aircraft seized upon subsection (1) or (2) if a bond, suretyship or other security in a form satisfactory to the authority for the amount in respect of which the aircraft was seized is deposited with the authority.
(5) Les termes du présent article et de l'article 10 s'entendent au sens de la *Loi sur l'aéronautique*.	**(5)** Words and expressions used in this section and section 10 have the same meaning as in the *Aeronautics Act*.
10. (1) S'appliquent aux aéronefs visés aux paragraphes 9(1) et (2) les règles d'insaisissabilité opposables aux mesures d'exécution délivrées par la juridiction supérieure de la province où ils se trouvent.	**10. (1)** Any aircraft of a person referred to in subsection 9(1) or (2) that would be exempt from seizure under a writ of execution issued by the superior court of the province in which the aircraft is situated is exempt from seizure and detention under that subsection.
(2) Le gouverneur en conseil peut, par règlement, exempter tout aéronef de la saisie ou de la rétention prévue à l'article 9.	**(2)** The Governor in Council may, by regulation, exempt any aircraft from seizure and detention under section 9.

Loi sur la Commercialisation des services de navigation aérienne	***Civil Air Navigation Services Commercialization Act***
(…)	(…)
56. (1) À défaut de paiement ou en cas de retard de paiement des redevances qu'elle impose pour les services de navigation aérienne, la société peut, en sus de tout autre recours visant leur recouvrement et indépendamment d'une décision judiciaire à cet égard, demander à la juridiction supérieure de la province où se trouve l'aéronef dont le défaillant est propriétaire ou usager de rendre, aux conditions que la juridiction estime indiquées, une ordonnance l'autorisant à saisir et à retenir l'aéronef jusqu'au paiement des redevances ou jusqu'au dépôt d'une sûreté – cautionnement ou autre garantie qu'elle juge satisfaisante – équivalente aux sommes dues.	**56. (1)** In addition to any other remedy available for the collection of an unpaid and overdue charge imposed by the Corporation for air navigation services, and whether or not a judgment for the collection of the charge has been obtained, the Corporation may apply to the superior court of the province in which any aircraft owned or operated by the person liable to pay the charge is situated for an order, issued on such terms as the court considers appropriate, authorizing the Corporation to seize and detain any such aircraft until the charge is paid or a bond or other security for the unpaid and overdue amount in a form satisfactory to the Corporation is deposited with the Corporation.

(my underlining)

[120] I agree with my colleagues that the Detention Provisions do not create a real right in favour of the seizing party[5] and that there is no authority for either ordering the sale of the aircraft or paying the seizing party by preference, out of the proceeds of a sale.

[121] I am of the opinion, however, that the absence of a real right in favour of the seizing party (Respondent), does not result in the titleholders (Appellants), being entitled to obtain the release of their aircraft without paying the charges[6] or providing the security required by s. 56(1) of the CANSCA and s. 9(3) and (4) of the Airport Act.

[122] The Supreme Court of Canada, in *Peoples Department Stores Inc. (Trustee of) v. Wise*[7], a judgment recently delivered in interpreting provisions of the *Canada Business*

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5 Nav Canada or the Airport Authorities.

6 "charges" whenever mentioned in this opinion includes fees.

7 [2004] SCC 68 (October 29, 2004).

Corporations Act[8] referred, *inter alia*, to s. 8.1 of the *Interpretation Act*[9] with respect to the possible impact of the civil law in the province on certain provisions in that federal enactment. The parties before us made no submissions with respect to s. 8.1 of the *Interpretation Act*.

[123] In the present case the recourse created by Parliament in the federal statutes is *sui generis* and its essential substantive features do not call for nourishment from provincial law in order to render the Detentions Provisions viable. Nor is it necessary in interpreting these federal enactments, for their application in the province, to refer to the provincial rules, principles or concepts from the law of property and civil rights.

[124] In my view the reasoning of the Federal Court of Appeal in *Canada (Minister of National Revenue – M.N.R.)* v. *National Bank of Canada*[10] is applicable to the case before us. The Court had to consider whether the *Quebec Civil Code* and the *Code of Civil Procedure* applied as suppletive law to the interpretation of provisions in two federal statutes, the *Income Tax Act*[11] and the *Employment Insurance Act*[12].

[125] After referring to ss. 8.1 and 8.2 of the *Interpretation Act*[13], Noël J.A. writing on behalf of the Court states:

(…)

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8 R.S.C. 1985, c. C-44.

9 R.S.C. 1985, c. I-21, S.C. 2001, c. 4, s. 8.

8.1 Le droit civil et la common law font pareillement autorité et sont tous deux sources de droit en matière de propriété et de droits civils au Canada et, s'il est nécessaire de recourir à des règles, principes ou notions appartenant au domaine de la propriété et des droits civils en vue d'assurer l'application d'un texte dans une province, il faut, sauf règle de droit s'y opposant, avoir recours aux règles, principes et notions en vigueur dans cette province au moment de l'application du texte.	**8.1** Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

(my underlining)

10 [2004] FCA 92.

11 R.S.C. 1985, c. 1 (5th Supp.).

12 S.C. 1996, c. 23.

13 See note 9.

> [33] Thus, if, in interpreting the application of a federal enactment in a province, one is to refer to the province's law of property and civil rights as suppletive law, reference to that law must be necessary and there must be no provision on the contrary in federal law.
>
> (…)
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> [36] It appears to be Mr. Justice Martineau's opinion that the obligation to pay the Receiver General is not sufficiently defined to be enforced by the Court. When Parliament decides to allocate liability for payment to a third party other than the tax debtor, he says, it does so expressly, providing that a request for payment shall be sent to the third party, as in the case of section 224 ITA. Similarly, when Parliament imposes a joint liability on persons other than the tax debtor, it proceeds by way of assessment (sections 160 and 227.1 of the ITA are cited in this regard).
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> [37] With respect, Parliament is not confined to any particular method in establishing collection measures. Where a third party is to be made liable for paying on behalf of another, such liability must be imposed in clear and unambiguous language. As it happens, the positive obligation imposed on the secured creditor to pay the Receiver General the proceeds from the property subject to the trust could not be clearer.
>
> (my underlining)

[126] If the titleholder could obtain release of the seized aircraft without the payment of the outstanding charges or providing security, the intention and purpose of the Detention Provisions enacted by Parliament would be defeated. This is so because the debt is constituted of charges incurred by the operator of the aircraft (who is often, as in this case, the registered owner) and not by the titleholder. Thus, if the contention of Appellants were to prevail, the titleholder, who is neither the operator nor the "owner" within the meaning of the statutes, could always obtain release of the aircraft and the charges would not be paid. The recourse provided by Parliament would, inevitably, be of no avail.

[127] I agree, in general, with the dissenting opinion on this point by Juriansz J. (*ad hoc*), as he then was, in the case of *Canada 3000 Inc. (Re)*[14], a judgment of the Court of Appeal for Ontario. His view, which I share, regarding the interests and involvement of titleholders and the requirement of payment by them to obtain release of the aircraft, is expressed, in part, as follows:

(…)

[14] (2004) 186 O.A.C. 116.

[229] Even if there were ambiguity in the Detention Provisions, my view is that resort to strict construction would be inappropriate in this case. The Lessors' property rights in the aircraft should not be regarded as those of uninvolved third party strangers to the outstanding charges of the Authorities. They leased their aircraft to the Canada 3000 Companies to be flown using the air navigation services provided by NAV Canada, and to use the airport facilities and services provided by the Airport Authorities. The outstanding charges are not general debts of the Canada 3000 Companies, but those debts incurred by the use of the Lessors' aircraft just as the Lessors contemplated and expressly authorized. None of the strict construction authorities cited by the Lessors, on my reading, deals with the situation where the debts sought to be charged against private property were incurred by the use of that property as authorized by the owner.

(…)

[231] This case is different because the Lessors are directly connected to the aircraft that were used to incur the charges. They are legal owners and they authorized the use of their aircraft in the manner that incurred the outstanding charges.

[232] Many of the leases also provided for payment by the Canada 3000 Companies to the Lessors of substantial security deposits to secure performance under the leases, including redelivery of the aircraft, the obligation of Canada 3000 to pay navigation charges and airport fees, and to indemnify the Lessors in the event of the seizure of aircraft for nonpayment of navigation charges or airport fees. (Affidavits of Felice Zalcberg sworn December 14, 2001). This clearly shows the Lessors appreciated that the use they authorized of their property would incur such charges, and that such charges, if left unpaid, could result in the seizure of their property.

(…)

[241] The language that addresses the release of seized aircraft from detention is particularly telling. The only circumstances in which the Detention Provisions contemplate the release of aircraft seized from detention are that the outstanding charges are paid, security is deposited or the court so directs. Section 9(3) of the *Airports Act* states that, unless otherwise directed by a court, an airport authority "is not required to release from detention an aircraft… unless the amount in respect of which the seizure was made is paid". Section 56(1) of the *CANSCA* allows NAV Canada to detain seized aircraft "until the charge is paid" or satisfactory security is deposited.

(…)

[243] I see no basis upon which the property interests of lessors or other titleholders – interests that are implicated by the words that provide for the seizure and detention of aircraft – can be excluded from the purview of the words that provide for the release of the aircraft. In the *CANSCA* the words "until the charge is paid" are part of the very same sentence that provides for initial seizure and detention. The earlier words of the sentence fit together with the later words of the sentence to form one coherent whole. The words relating to seizure, to detention, and to the release of the aircraft share the same scope of application. Likewise, ss. 9(1) and 9(3) of the *Airports Act* are part of the same framework for the regulation of the seizure, detention, and release of aircraft and share the same scope of application. The *CANSCA* and the *Airports Act*, together with the *Aeronautics Act*, comprise a complete regulatory scheme of the aeronautics industry in Canada. This detailed comprehensive statutory framework does not initially engage the property interests of titleholders, and then wordlessly leave it to the courts to disengage those interest and release aircraft to titleholders in apparent conflict with the expressly stated statutory requirement for release.

(…)

[248] The Canadian Detention Provisions do not address any right to sell detained aircraft and hence have no reason to stipulate the priorities of distribution of the proceeds upon a sale. But the prospect that titleholders' aircraft in Canada may be seized, detained and not released until outstanding charges are paid is sufficient to furnish the titleholders with a strong inducement to pay the outstanding charges even though they have not incurred them.

[249] This reading of the Detention Provisions is entirely in keeping with their statutory context. Parliament took the day-to-day operation and management of civil air navigation services and of some airports "off the government books" by transferring them to self-funded, not-for-profit entities intended to be financially viable. These entities provide essential services of a public nature that are used for profit by those with business interests in the aviation industry. Consistent with the expectation that owners are ultimately responsible for the use of their property, Parliament supported the independent financial viability of the new entities by providing an additional remedy for the collection of unpaid charges, namely a "strong inducement" to titleholders of aircraft to pay or deposit security for outstanding charges incurred by the authorized use of their property.

(…)

[255] For these reasons, I conclude that Authorities who have properly seized and detained aircraft under the Detention Provisions do not have to release the aircraft, unless otherwise directed by the court, until their outstanding charges are paid or satisfactory security is deposited notwithstanding the property interests in the aircraft. The remedy is "in addition to any other remedy available

> for the collection" of the outstanding charges. The remedy is not confined to collection of outstanding charges from persons liable for the charges. The remedy is not directed to persons at all, but rather to "aircraft", and permits the Authorities, under court supervision, to seize, to detain and to refuse to release the aircraft until somebody has satisfied the outstanding charges.
>
> (…)
>
> (my underlining)

[128] Thus, I too conclude that titleholders, Appellants, in this case, do not have the right to obtain release of their aircraft, seized and detained by virtue of orders issued by the Court pursuant to the Airports Act and the CANSCA without making the payments for charges set out in s. 9 (1), (2) and (3) and s. 56(1) respectively of these statutes.

[129] I now turn to the issue of which aircraft with respect to charges incurred (and unpaid) are covered by these provisions.

[130] Newcourt[15] correctly contends that the judgments ordering the seizures of aircraft do not constitute an obstacle to it raising the issue before the Superior Court and this Court. It was not at that time a party to those proceedings and the matter properly comes before the Court in the various actions for declaratory judgment and other proceedings.

[131] Newcourt, in separate inscriptions in appeal, appealed only that part of the judgment which concerns the seizure and detention of its aircraft by the airport authorities. It submits, as a subsidiary conclusion, that the only charges for which the aircraft can be seized and continued to be detained in the face of a request for release by the titleholder are the charges incurred (and unpaid) with respect to the operation of that particular seized aircraft, and not for all the other charges incurred (and unpaid) by the operator resulting from the latter's operation of other aircraft.

[132] The legislative provision in French is different from the English one in the Airports Act (also in the CANSCA) when referring to the aircraft which may be seized. We must therefore find a meaning common to both versions that is consistent with the context of the legislation and the intent of Parliament (*Schreiber v. Canada (Attorney General)*[16]).

[133] The French text identifies the property to be seized as the aircraft "*… la province où se trouve l'aéronef dont le défaillant est propriétaire ou utilisateur de rendre une ordonnance l'autorisant à saisir et à retenir l'aéronef…* ".

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[15] This defined term has the same meaning in these reasons as that attributed to it by my colleagues Justices Pelletier and Morissette i.e. certain titleholders grouped together, see para. [16] – [18] of their reasons.

[16] [2002] 3 S.C.R. 269 at para. [54].

[134] The English text of s. 9(1) speaks of the seizure in the "*... province in which any aircraft owned or operated by the person liable to pay the amount is situated*" for an order authorizing the "*authority to seize and detain aircraft...* ".

[135] The French text in referring to the aircraft to be seized, in the context of charges incurred in the use of an airport, supports the contention that the seized aircraft answers only for the charges incurred with respect to the operation of that particular aircraft.

[136] The English text, on the other hand, in referring to the seizure of any aircraft would appear to contemplate the seizure of any aircraft operated by the debtor (operator) for all amounts owed by the latter, even if no debt is outstanding for the use of the airport with respect to the operation of that particular seized aircraft.

[137] It is one thing to require the titleholder, in order to obtain the release of the seized aircraft, to put up the funds to cover the charges at an airport incurred in the operation of the aircraft it owns. It is quite another to require it to pay for charges incurred by an operator in the use of other aircraft which are owned by third parties.

[138] In the first case the titleholder has a contractual relationship with the operator and registered owner[17] which is for financial gain. It can, in its contract with the operator, provide for reporting and monitoring. It can also protect itself with respect to charges incurred in the use of the aircraft of which it is the titleholder[18].

[139] In the second eventuality there is no contractual or legal relationship between two, three or perhaps many different titleholders, who have each, separately, leased their aircraft to the same operator (who is also likely, as in this case, to be the registered owner).

[140] Let us consider an hypothetical example. An operator has leased ten aircraft, one from each of ten separate titleholders. It has incurred $ 100,000 charges (unpaid) for the use of the airport with respect to the operation of each of nine aircraft, so that the operator owes $ 900,000 but there are no outstanding charges with respect to the tenth aircraft. There is no legal principle on the basis of which the titleholder of the tenth aircraft could be obliged to pay $ 900,000 for the release of its own aircraft. The obligation to make such a payment would have to be imposed by clear, explicit and unequivocal language, in a legislative text, which admits of no other interpretation. Even if the tenth aircraft has incurred charges of $ 100,000 – there is no legal principle upon which its titleholder in order to obtain release of its aircraft should have to pay a further $ 900,000 with respect to the charges incurred in the operation of other aircraft

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17 See opinion of Juriansz J. (*ad hoc*) in this regard at my para. [127].

18 For example the lease between Inter-Canadien and Renaissance Leasing Corporation refers to a "Security Deposit" as meaning "a deposit of USD $ 75,000 placed or to be placed by the Lessee with the Lessor as security for the Lessee's performance of its obligations under this Agreement." M.A. p. 535.

owned by other titleholders, for the sole reason that the operator of all the aircraft is the same.

[141] It cannot be expected that the titleholder of one aircraft, would or should have, either a right or a duty, to examine or monitor the business of an operator involving the operation of a large number of aircraft owned by other titleholders. On the other hand monitoring or examining whether the operator is paying the charges incurred in the use of the titleholder's aircraft, and/or requiring the operator to post security to cover such charges is feasible, in a contractual commercial relationship.

[142] Before a legislative provision is given an interpretation which would lead to an absurd result, or which is in disharmony with recognized legal principles (by requiring the titleholder for the release of its property, to pay for charges regarding which it is a stranger), or which offends one's sense of justice, the language of the statute must be clear, explicit, unequivocal and leave no other alternative. Such is not the case in this instance.

[143] I have come to the conclusion that the French text of the Detention Provisions by the use of the word "the" in describing the aircraft subject to be seized and detained, when read together with the English text which uses the word "any" in describing the aircraft, conveys the intention and purpose of the legislation. The titleholder, if it wishes to obtain release of the seized aircraft, must pay the charges or post security to cover charges incurred, by the same operator, in the use of the airport by the operation of any aircraft of which it is also the titleholder, in addition to the seized aircraft.

[144] The titleholder of any seized aircraft and of other aircraft with respect to the operations of which, by the same operator, there are no charges outstanding, may obtain release of the seized aircraft, without having to make any payment or post any security, even if the operator has incurred (unpaid) charges in the operation of aircraft belonging to other titleholder(s).

[145] In my view, the titleholder, to obtain release of its seized aircraft must only pay all the charges, in the use of the airport, incurred (and unpaid) by the operator in the operation of any aircraft owned by the same titleholder[19]. Thus, although the titleholder, in order to obtain the release of its seized aircraft, cannot be held to pay the charges incurred in the operation of aircraft which belong to others, it will be held to pay charges incurred by the same operator in the operation of any aircraft of which it is the titleholder in order to obtain release of its seized aircraft.

[146] Although evidence was presented at the trial by Newcourt with respect to charges incurred in the use of the airport by the operation of each aircraft, the trial judge made no findings on this factual matter and Newcourt did not specifically present

[19] On this point I, with respect, differ from the opinion of Juriansz J. (*ad hoc*) expressed in para. [250] of his reasons.

evidence regarding the charges incurred by the same operator in the operation of all the aircraft of which the Appellant seeking release is the titleholder. The case should therefore be returned to the Superior Court for the purpose of establishing the amount which the titleholder is required to pay, according to these reasons, to obtain the release of its seized aircraft.

[147] Wilmington[20], did not present a subsidiary conclusion with respect to the charges to be paid by the titleholder to obtain release of its seized aircraft. However, it did conclude, that the aircraft be released without being required to make any payment or post security and asked that the Court maintain its Motion for declaratory judgment. Therefore, these reasons regarding the charges for which the seized aircraft may be detained, also apply (*mutatis mutandis*) to the Wilmington appeals against the judgments in favour of the airport authorities as well as to their appeals against the judgments in favour of Nav Canada.

CONCLUSION

[148] I would set aside the judgment of the Superior Court and maintain the appeal with respect to the interpretation of "owner" in s. 55 of the CANSCA as set out in the reasons of Justices Pelletier and Morissette, I would maintain, in part, with costs, the appeal of Appellants with respect to the release of seized and detained aircraft by declaring that Appellants have a right to obtain their release upon paying the charges due to Respondents, incurred by the operator in the operation of any aircraft owned by Appellants (the same titleholder), and I would return the case to the Superior Court to determine that amount and accessory issues such as interest and the additional indemnity.

JOSEPH R. NUSS J.A.

[20] This defined term has the same meaning in these reasons as that attributed to it by my colleagues Justices Pelletier and Morissette i.e. certain titleholders grouped together, see para. [16] and [17] of their reasons.