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UNITED NATIONS JURIDICAL YEARBOOK

2005

Part Three. Judicial decisions on questions relating the United Nations and related intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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	Page
 Judgements Decisions of the Appeals Chamber 	510 510
3. Decisions of the Trial Chambers	510
G. Extraordinary Chambers in the Courts of Cambodia	510
Chapter VIII. Decisions of national tribunals	
Canada	511
Annex. Chart of the United Nations	515
Part Four. Bibliography	
A. International organizations in general	
1. General	519
Particular questions B. United Nations	519
1. General	521
Principal organs and subsidiary bodies	321
General Assembly	524
International Court of Justice	524
Secretariat	527
Security Council	528
3. Particular questions or activities	
Aviation law	531
Collective security	531
Commercial arbitration	531
Consular relations	532
Definition of aggression	532
Diplomatic relations	533
Disarmament	533
Environmental questions	534
Financing	535
Friendly relations and cooperation among States	535
Human rights	535
International administrative law	539
International criminal law	540
International economic law	541
International terrorism	541
International trade law	543
International tribunals	545
International waterways	552

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Canada

Court of Appeal*

Province of Quebec, District of Montreal, 2 November 2005**

Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the Staff Association of the International Civil Aviation Organization and Wayne Dixon,
Respondents***

Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the International Civil Aviation Organization and Dirk Jan Goossen, Respondents****

QUESTION OF IMMUNITY OF AN INTERNATIONAL ORGANIZATION AND ITS OFFICIALS—ACT RESPECTING THE PRIVILEGES AND IMMUNITIES OF FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS—HEADQUARTERS AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)—IMMUNITY FROM JURISDICTION OF OFFICIALS OF ICAO—FUNCTIONAL IMMUNITY—IRRELEVANCE OF SENIORITY OF OFFICIAL FOR THE PURPOSE OF IMMUNITY—IMMUNITY WITH RESPECT TO AN ORGANIZATION'S INTERNAL OPERATIONS

Decision

1. The Court had before it the appeal of a judgement issued on 20 November 2003 by the Superior Court, District of Montreal (The Honourable Claude Tellier, presiding). The judgement granted the request of the Attorney-General of Canada that case No. 500–05–061028–005 be declared inadmissible and that the action brought by the Applicant against the Staff Association of the International Civil Aviation Organization and Wayne Dixon be dismissed, and also granted the Attorney-General's request that case No. 500–05–063492–019 be declared inadmissible and that the action brought by the Applicant against the International Civil Aviation Organization and Dirk Jan Goossen be dismissed.

^{*} Composition of the Court: the Honourables René Dussault, J.C.A., Pierre J. Dalphond, J.C.A., Jacques Dufresne, J.C.A.

 $[\]ddot{}$ Case No. 500–09–014074–033. Translated from French by the Secretariat of the United Nations.

[&]quot;Case No. 500-05-061028-005. (See the *United Nations Juridical Yearbook, 2003* (United Nations publication, Sales No. E.06.V.1), chapter VIII, p. 585.)

[&]quot;Case No. 500–05–063492–019. (See the *United Nations Juridical Yearbook, 2003* (United Nations publication, Sales No. E.06.V.1), chapter VIII, p. 585.)

- 2. The judge of the court of first instance reached this conclusion on the grounds that ICAO and its staff enjoyed immunity pursuant to the Act respecting the privileges and immunities of foreign missions and international organizations (the Act).* The Act incorporates the full text of a number of international treaties.**
- 3. The Court of Appeal reviewed the record, heard the parties and deliberated, as described below:

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- 4. ICAO is an international organization within the meaning of the Headquarters Agreement,*** with Headquarters in Montreal.
- 5. The Applicant was hired as a contractual employee by ICAO for the period 27 June 1990 to 12 October 1992. The contract was subsequently renewed for the period 1991–1992. The Applicant thus occupied a clerical post at ICAO from 27 June 1990 to 30 December 1992.
- 6. His employment contract stipulated that the appointment could be cancelled on one month's notice.
- 7. On 6 November 1992, the Secretary General notified the Applicant that his contract would not be renewed on 31 December 1992.
- 8. The Applicant claims in his pleading that Respondent Dirk Jan Goossen, at the time ICAO's deputy director of personnel, informed him that his contract had not been renewed because the number of General Service posts, including his clerical position, was being reduced and that therefore his post would not be filled in 1993.
- 9. On 5 January 1993, the Applicant noticed that his post had not been abolished and that, on the contrary, it had been filled.
- 10. The Applicant then attempted to appeal the decision of 6 November 1992 not to renew his contract through internal ICAO mechanisms but was rebuffed on the grounds that he had not submitted his appeal within one month of receipt of the notice of 6 November 1992 informing him that the contract would not be renewed.
- 11. The Applicant filed an unsuccessful appeal with the United Nations Administrative Tribunal (UNAT).
- 12. The Applicant faults Respondent Goossen for having deliberately thwarted his appeal to UNAT by sending an internal note to the ICAO Secretary General indicating that no exceptional circumstances justified granting permission to the Applicant to address UNAT regarding the Secretary General's refusal to waive the time limit for appealing the decision of 6 November 1992.

^{*} L.C.C. c. F-29.4.

[&]quot; The Vienna Convention on Diplomatic Relations of 18 April 1961 (Schedule I); the Vienna Convention on Consular Relations adopted on 24 April 1963 (Schedule II); and the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946 (Schedule III).

^{***} Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization, R. T. Can. 1992, No. 7.

CHAPTER VIII 513

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- 13. The nature of the pleadings the Applicant has lodged is germane here.
- 14. The Applicant deems ICAO responsible for malicious actions on the part of its employee, Dirk Jan Goossen. He blames Respondent Goossen for having failed properly to apprise him of his rights and for providing the Secretary General with erroneous information which misled the Secretary General regarding the Applicant's situation, thereby depriving him of his right of appeal.
- 15. The Applicant also lodged a separate pleading against the ICAO Staff Association for refusing to assist him even though he was a member of the Association at the time his employment ended (500–05–061028–005). In the same pleading, he requested damages from Wayne Dixon, an ICAO staff member and president of the Federation of International Civil Service Associations (FICSA), blaming him for wrongful and malicious actions which, he claimed, unduly influenced the ICAO Staff Association's decision not to support his efforts to have UNAT reconsider its decision.

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- 16. The claim against ICAO and Dirk Goossen, an ICAO official at the time, clearly conflicts with the immunity granted by Canada to ICAO and its officials. Indeed, the claim stems from the allegation that Mr. Goossen, in providing information of a particular nature to the ICAO Secretary General, prevented the Applicant from seeking redress from an international organization.
- 17. It is clear that the Applicant is requesting damages in connection with the conduct of his former employer, ICAO, and an ICAO supervisor. As the Superior Court recognized in *Miller* v. *Canada* [2001], 1 R.C.S. 407, ICAO, as an employer, has immunity conferred by the Headquarters Agreement, and this immunity naturally applies as well to the actions of ICAO's representatives.
- 18. All the actions for which Respondent Dirk Jan Goossen is blamed relate to his duties at ICAO. Whether he performed the actions in his capacity as a senior official or as an ordinary staff member, he enjoys immunity under the Act.
- 19. The second complaint was lodged against the ICAO Staff Association and Wayne Dixon, an Association supervisor at the time. In his statement to the Superior Court, the Applicant blames the Association and Mr. Dixon, one of his colleagues at the time, for failing to represent him following the decision by ICAO not to renew his contract. The complaint clearly was prompted by the termination by ICAO of the Applicant's employment contract and is a matter governed by ICAO's staff rules and Service Code. In other words, the internal operations of ICAO apply to the case. To attempt to compel compliance with such rules through recourse to the Canadian courts conflicts with the immunity ICAO enjoys with respect to its internal operations.
 - 20. For these reasons:
 - 21. The court rejects the appeal, with costs.

^{*} Supra., note 3.

ANNEX



The United Nations system

PRINCIPAL ORGANS

Secretariat	Offices OGG Office of the Secretary- General OIOS Office of Internal OHA Office of Legal Affairs Affairs Affairs Affairs Affairs ONA OFFICE OFFI	DPKO OCHA DESA DGACM	٥ ح	UNDSECOORD Office of the United Nations Security Coordinator Coordinator ONODE United Nations Office on Drugs and Crime	UNON UNON d by the UN Dep
International Court of Justice	Specialized Agencies® ILO International Labour Organization of the United Nations UNIES/CO United Nations Educational. Scientific and collural Organization of the	WORLD BANK GROUP IBRD International Bank for Reconstruction and Development Association IFC International Finance Corporation IFC International Finance Corporation MIGA Multilateral Investment Guarantee Agency ICSID International Centre for Settlement of Investment Investment Investment Settlement of Investment Investment Settlement of Investment Inve	Disputes Independent of the control	UPU Universal Postal Union WMO World Meterological Organization WIPO World Intelectual Property Organization IFAD International End	UNIDO United Nations Tridskital Development Organization WTO3 World Tourism Organization Publishe
Economic and Social Council	Functional Commissions Commissions on: Human Rights Anercite Drugs Crime Prevention and Criminal Justice Science and Technology for Science and Technology for Status of Womelopment Development	Commission for Social Development Development Development Statistical Commission Regional Commissions Economic Commission for Africa (ECA) Economic Commission for Latin for Europe (ECE) Economic Commission for Latin for Europe (ECE) Economic Commission for Latin for Europe (ECE) Economic Commission for Latin fecund Social Commission for Asia and the Pacific (ESCAP) Economic and Social Commission for Asia and the Pacific (ESCAP)	Other Bodies Permanent Forum on Indigenous Tasues (PFII) United Nations Forum on Forests Sessional and standing Committees Expert, ad hoc and related bodies	WTO's World Trade Organization HAEA* International Atomic Energy Agency CTBTO PREP.COM*	Nuclear-Test-Ban-Treaty Organization Organization Prohibition of Chemical Weapons
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General Assembly	Subsidiary Bodies Main committees Other sessional committees Standing committees and and hoc bodies and hoc bodies Other subsidiary organs	UNHCR Office of the United Nations High Commissioner for Refugees WIPP World Food Programme UNRWA2 United Nations Relief and Works Agency for Palestine Refugees in the Near East UNHABITAT United Nations Human Settlements Programme (UNHSP)	INSTRAW International Research and Training Institute for the Advancement of Women	UNAIDS Joint United Nations Programme on HIV/ALDS	hip; dashes indicate a non- lice on Drugs and Grime. JUNRW/ unism Organization use the same). Fire CTBTO Prep.Com and working with the UN and each ental level, and through the Chief
Security Council		UNDP United Nations Development Programme UNTERN United Nations Development Fund for Women Volunted Nations UNCDF United Nations Capital Development Fund UNTPA United Nations Oppulation Fund	UNRISD United Nations Wearch Institute for Social Development Development Institute for Disarmament Research to Disarmament Research	United UNU United Nations free for University UNIVES UNIVES UNIVES UNITED CONTROL CONT	Notes: Solid lines from a Principal Organ indicate a direct reporting relationship; dashes indicate a non- susdiary relationship. The UN Dury Control Programme is part of the UN Office on Drugs and Crime. ² UNRWA and UNIDIR report only to the GA, ² The World Trade Organization and World Trunism Organization use the same acronym. ⁴ TAEA reports to the Security Council and the General Assembly (GA). ² The CTBTO Prep.Com and acronym. ⁴ CAEA reports to the Security Council and the General Assembly (GA). ² The CTBTO Prep.Com and Ordan reports to the CA. ² Specialized agencies are advolvemous organizations working with the UNI and each other through the coordinating machinery of the COSOC at the integovernmental level, and through the Chief Executives Board for coordination (CEB) at the inter-secretariat level.
Trusteeship Council	Subsidiary Bodies Military Staff Committee and ad hoc bodies Triterational Criminal Tribunal for the Former Vigoslavia Triterational Criminal Tribunal for the Former Vigoslavia Triterational Criminal Tribunal for Rewarda UN Monitorina, Verification and Inspection Commission (Triad) United Nations Compensation Commission Peacekeeping Operations and Missions	Programmes and Funds UNCTAD United Alations Conference on Trade and Development ITC International Trade Centre (UNCTAD VATD) UNDEP United Nations Drug Control Programmet UNICE United Nations UNICEF United Nations UNICEF United Nations UNICEF United Nations UNICEF United Nations Children's Fund	UNICRI United Nations UNICRI United Nations UNICRI United Nations Research Institute UNITAR United Nations UNITAR United Nations Institute Research Research Institute or Training and Research	Other UN Entities OHCHR Office of the UNOPS United United Nations High Nations Office for Commissioner for Human Rights	Notes. Solid lines from a Principal Organ ir ausbidgeny relationship. Thre UN Drug Contained and UNIDIR report only to the GA, ³ The Wood acronym. ⁴ IAEA reports to the Security Cou POEW report to the GA. ³ Specialized agenc OPEW report to the GA. ³ Specialized agenc Poter through the coordinating machinery by the through the coordinating machinery by Executives Board for coordination (CEB) at