LAPOINTE ROSENSTEIN MARCHAND MELANÇON
L.L.P. Attorneys

Newsletter

Insurance Law

September 2018

M^tre Peter Moraitis

The *Highwood* decision reinforces the principle that a court's jurisdiction ends at the sideline

On May 31, 2018, the country's highest court issued a unanimous decision quashing the Court of Appeal of Alberta's decision, which allowed the originating application for judicial review of a member of a religious group challenging his excommunication[1].

In this matter, Randy Wall, a member of the Highwood Congregation of Jehovah's Witnesses, was summoned before the religious congregation's Judicial Committee to answer to charges of sinful behaviour. Following unsuccessful internal review applications, Mr. Wall turned to the civil courts to overturn the decision of the Judicial Committee, on grounds of procedural unfairness.

In this regard, both the Court of Queen's Bench and the majority of the Court of Appeal[2] concluded that courts may intervene in decisions of voluntary organizations concerning membership where property or civil rights are at issue. They also held that courts may intervene with respect to the decisions of these associations, even where no property or civil rights are engaged, where there is a breach of the rules of natural justice or where the complainant has exhausted internal dispute resolution processes.

However, the Supreme Court of Canada rejected this interpretation, stating that judicial review proceedings are limited to the decisions of public decision-makers and that there is no free-standing right to procedural fairness allowing for review of such decisions.

Although arising within a far different framework and emanating from a common law province, the *Highwood* decision reinforces the already well-established principle in Quebec law that courts, save certain exceptions, must allow voluntary associations and non-profit organizations, such as sports associations, to administer themselves.

That said, the Supreme Court, in *Highwood*, clarifies and restricts the scope of judicial review proceedings by asserting that the mere allegation of a breach of natural justice or the sole fact that the complainant has exhausted the private organization's internal processes cannot establish a common law court's jurisdiction. Furthermore, in order to establish such jurisdiction, there must exist a legal right of "sufficient importance"[3] that a party seeks to assert, for example, in the matter of contracts or torts. Only in such cases can courts review an association's compliance with its own procedures and (in certain circumstances) the fairness of those procedures[4].

The Court also mentions that, in addition to questions of jurisdiction, the concept of justiciability limits the possibility of seeking judicial review of decisions made by voluntary associations[5]. A so-called non-justiciable issue is one that should not be decided by a court of law, for lack of legitimacy. For instance, the courts would be of no help to resolve "a dispute about the greatest hockey player of all time, about a bridge player who is left out of his regular weekly game night, or about a cousin who thinks she should have been invited to a wedding"[6].

The purpose of judicial review[7] is to ensure the legality of decisions made by public decision-makers and does not apply to private decision-makers[8]. Simply because a decision impacts a broad segment of the public does not mean that it is "public" within the meaning of administrative law[9]. Therefore, not all decisions are amenable to a superior court's supervisory jurisdiction.

However, as mentioned above, the principle that courts should not interfere in the internal affairs of private bodies, such as sports associations, is not new. Although the situation surrounding the *Highwood* decision, the

constitution of the religious group in question and the ecclesiastical issues at stake may present significant differences in comparison with the case of Quebec sports federations, the case law has nevertheless long considered that it is not the role of a court of law to interfere in their internal affairs, unless the impugned decision is tinged with bad faith, unreasonable or inconsistent with the rules of natural justice[10].

Thus, through the *Highwood* case, the Supreme Court has clearly reinforced the well-established principle by not limiting its application to religious associations alone, but also to all "other voluntary associations"[11]. As such, the Court establishes that the Highwood Congregation of Jehovah's Witnesses religious group is a voluntary association[12], a private entity, autonomous from the State and whose existence has no statutory foundation. It administers itself through its members, who act voluntarily. Membership in the association is not mandatory and the organization does not pursue any lucrative purpose.

In like manner, both Canadian and Quebec jurisprudence have repeatedly defined sports organizations in a very similar way. They are generally not-for-profit organizations governed by their own rules of internal management, private entities formed and operated by members who act voluntarily[13].

Indeed, several decisions precisely set forth that sports organizations are voluntary associations[14]. The case law is therefore categorical in saying that common law courts should not intervene in the internal management of sports organizations, except in exceptional circumstances[15]. *A pari*, the rule laid down by the Supreme Court in *Highwood* supports, at least in part, the principles established by the Quebec courts regarding the "immunity" of the internal decisions of sports organizations.

Ultimately, these sports groups, like religious groups, are free to determine their own membership and rules; courts will not intervene in such matters save where it is necessary to do so to ensure respect for the rule of law.

In light of the above, there are few cases of court intervention in the decision-making process of private sports organizations. Voluntary associations of all kinds, including sports organizations, are generally free to manage their activities according to their own rules of operation without having to fear interference of the courts, all of which enshrines the principle whereby the court's jurisdiction ends at the sideline.

1. *Highwood Congregation of Jehovah's Witnesses (Judicial Committee)* v. *Wall*, 2018 SCC 26 [*Highwood*].
2. Wakeling J.A. dissenting.
3. *Supra* note 1, par. 27.
4. *Ibid.*, par. 24.
5. *Ibid.*, par. 32.
6. *Ibid.*, par. 35.
7. In Quebec, codified in article 529 of the *Code of Civil Procedure*, CQLR c. C-25.01.
8. *Canada (Attorney General)* v. *TeleZone Inc.*, 2010 SCC 62, par. 24 and 26.
9. *Supra* note 1, par. 20.
10. *Jean* v. *Association des sports de balle de l'Ancienne-Lorette*, 2014 QCCS 2618, par. 95 to 99.
11. *Supra* note 1, par. 12.
12. *Ibid.*, par. 3.
13. *Levasseur* v. *Association du hockey mineur Chaudière-Ouest*, 2007 QCCS 5510, par. 13; *Beauchamp* v. *North Central Predators AAA Hockey Association*, 2004 CanLII 48698 (ON SC), par. 76 and 86; *Miramichi Minor Hockey Club Inc.* v. *New Brunswick Amateur Hockey Association Inc.*, 1999 CanLII 2694 (NB QB), p. 19 and 20.
14. *Street* v. *B.C. School Sports*, 2005 BCSC 958, par. 45; *Miramichi Minor Hockey Club Inc.* v. *New Brunswick Amateur Hockey Association Inc.*, 1999 CanLII 2694 (NB QB), p. 2.
15. *Association olympique canadienne* v. *Deschênes*, 1988 CanLII 964 (QC CA); *Savard* v. *Fédération québécoise du sport étudiant*, C.S. Hull, 550-05-000517-531, 23 April 1993, EYB-1993-74554; *Godin* v. *Hockey Outaouais*, 2001 CanLII 25209 (QC CS).

For more information, please contact one of the team members:

Louis P. Brien
514 925-6348
louis.brien@lrmm.com

Hassan Chahrour
514 925-6316
hassan.chahrour@lrmm.com

Julia De Rose
514 925-6408
julia.derose@lrmm.com

Laurence Gauthier
514 925-6403
laurence.gauthier@lrmm.com

Julien Grenier
514 925-6302
julien.grenier@lrmm.com

François Haché
514 925-6327
francois.hache@lrmm.com

Sarah Laplante Bazzi
514 925-6416
sarah.laplantebazzi@lrmm.com

Jean-Claude Jr. Lemay
514 925-6351
jean-claude.lemay@lrmm.com

Francis C. Meagher
514 925-6320
francis.meagher@lrmm.com

Antoine Melançon
514 925-6381
antoine.melancon@lrmm.com

Paul A. Melançon
514 925-6308
paul.melancon@lrmm.com

Peter Moraitis
514 925-6312
peter.moraitis@lrmm.com

Meïssa N'Garane
514 925-6321
meissa.ngarane@lrmm.com

Bertrand Paiement
514 925-6309
bertrand.paiement@lrmm.com

Hélène B. Tessier
514 925-6359
helene.tessier@lrmm.com

Ruth Veilleux
514 925-6329
ruth.veilleux@lrmm.com