

BREAKING CASE LAW

*Mouvement laïque
québécois v.
Saguenay (City)*



This Issue

SCC clarifies that administrative law standards of review apply when there is a statutory right of appeal.

*Mouvement laïque québécois v. Saguenay (City),
2015 SCC 16*

Although this case made headlines for the Supreme Court's finding that freedom of religion under the Quebec Charter extends to protect freedom from religion it is also represents the Supreme Court's latest refinement on the standard of review.

This case involves an appeal from the decision of the Quebec Human Rights Tribunal that declared a municipal bylaw inoperative and invalid on Charter grounds. The Tribunal's authorizing statute set out a right of appeal, with leave, to the Quebec Court of Appeal. The Quebec Court of Appeal has taken conflicting approaches with the respect to the applicable standard of review. One line of case law suggests that the correct approach is to apply appellate standards as if the tribunal was a lower court (the standard of palpable and overriding error). The second line of cases suggest that the correct approach is to apply administrative law principles to determine the appropriate standard of review (reasonableness or correctness).

The Court was unanimous that the correct approach, when reviewing the decision of a specialized administrative tribunal, is that the standard of review must be determined on the basis of administrative law principles regardless of whether the review is conducted in the context of an application for judicial review or of a statutory appeal.

More specifically, the Supreme Court clarified that existence of a right of appeal with leave does not mean that the tribunal's specialized administrative nature can be disregarded. Such a factor may be important in determining which administrative law standard of review applies, but does not justify replacing it with an appellate standard.

The Court found that the correctness standard applied to the question of the scope of the state's duty of religious neutrality flowing from the freedom of conscience and religion protected by the Québec Charter. However, the factual questions as to whether the prayer was religious in nature, the extent to which the prayer interfered with freedom and the determination of whether it was discriminatory fell squarely within the Tribunal's area of expertise, and it was entitled to deference on such matters.

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