Like a prayer: Administrative law implications of the Supreme Court’s freedom of religion decision in Saguenay

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The City appealed the Tribunal’s decision to the Quebec Court of Appeal, as provided for by the Quebec Charter. The Court of Appeal’s majority held that Mr. Simoneau, a resident of Saguenay, identified as an atheist when he refused, the appellants filed a formal complaint to the Tribunal: It was created by the Quebec Charter, it is not subject to the Courts of Justice Act (“Criteria of Competence”) which upheld the application of a correctness review to a tribunal’s determinations of questions of law, and a reasonableness standard for tribunal’s determinations of questions of fact. In a concurrent opinion, Justice Abella discussed her diverging view that a reasonableness standard applied to the Tribunal’s entire decision. Justice Abella’s concern with the majority’s conclusion was twofold. First, in her view, reasonableness was the appropriate standard of review for the Tribunal’s decision on the scope of the state’s duty of neutrality; and second, it was inappropriately applied to different standards of review to the Tribunal’s determinations of questions of law.

On the first point, Justice Abella expressed her concern that the majority’s application of the correctness standard contradicts the Court of Appeal’s decision in Dunsmuir. As for the reasonable standard of review for the Tribunal, which, in the majority’s view, provides for “a confusing conceptual hybrid.” The Court of Appeal had applied the judicial review standard of correctness for most of the decision; but on a question about the qualification of an expert, it applied the appellate standard of palpable and overriding error.

The majority held that the latter circumstance was present in this case. The question of “the scope of the state’s duty of religious neutrality that flows from the freedom of conscience and religion protected by the Quebec Charter of Human Rights and Freedoms (the “Quebec Charter”), is of general importance and was a matter of importance to the legal system as a whole, is part of the Tribunal’s “daily competence.” The Court of Appeal, which, in the majority’s opinion, proceeded to disagree with the Tribunal’s findings, holding that the duty of neutrality did not require the state to abstain from religious expression of an organizational nature. In the majority’s view, the prayer did not constitute discrimination.

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Perhaps more importantly, Justice Abella acknowledged that clarification was needed about the qualification of an expert, it applied the appellate standard of palpable and overriding error. However, she highlighted that this was a binary exception, and that the question at issue – the scope of the duty of neutrality flowing from freedom of conscience and religion – is not limited to that issue. The Court reached its conclusion, and Canadians litigants should be particularly interested in Saguenay. The Court’s analysis provides helpful guidance and an interesting case history. The majority concluded that the principles of judicial review applicable to statutorily appealable cases of fact and law and questions of law and questions of mixed character are those that apply on judicial review (emerging from Dunsmuir) – the majority opinion of which was reversed by the Court of Appeal. It was in the majority’s view, that this presumption can be rebutted under certain circumstances, including where the legislature clearly intended not to protect the freedom of conscience and religion protected by the Tribunal's jurisdiction (such as where its enabling statute provided that its jurisdiction (such as where its enabling statute provided that its jurisdiction is exclusive to the Tribunal). The majority held that the latter circumstance was present in this case. The question of “the scope of the state’s duty of religious neutrality that flows from the freedom of conscience and religion protected by the Quebec Charter of Human Rights and Freedoms (the “Quebec Charter”), is of general importance and was a matter of importance to the legal system as a whole, is part of the Tribunal’s “daily competence.” The Court of Appeal, which, in the majority’s opinion, proceeded to disagree with the Tribunal’s findings, holding that the duty of neutrality did not require the state to abstain from religious expression of an organizational nature. In the majority’s view, the prayer did not constitute discrimination.

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the Supreme Court agreed with the Court of Appeal's finding that, because the Commission had not submitted the issue to the Tribunal (as required by its enabling statute), it was not open to the Tribunal to consider it. Notably, however, the Tribunal had held that the Commission, by failing to provide reasons in its refusal to submit to the dispute respecting religious symbols to the Tribunal, had in fact acted contrary to the same enabling statute. It was on this basis that the Tribunal justified considering the question: it held that the Commission had not properly "refused to act" within the meaning of the statute, and that the principle of justice and proportionality allowed it to address the issue.

Nevertheless, the Supreme Court held that the Tribunal was limited by its enabling statute and could not extend its jurisdiction on its own— it had no discretion to consider applications other than those referred to it under the processes provided by statute. The Supreme Court further held that Gagnon J.A. had erred by speaking to the issue of religious symbols after finding that it was not open to the Tribunal to consider it. Agreeing with Justice Hilton's concerning reasons at the Court of Appeal, the Court held that "it was not open to the majority, after noting that the Tribunal was entitled to turn around and assume jurisdiction for the Court of Appeal on the same question. There is a contradiction here that is difficult to justify." Curiously, the Supreme Court made no reference whatsoever to the standard of review applicable to the Tribunal's and the Court of Appeal's decisions on the issue of religious symbols. Arguably, the Tribunal's ability to consider the religious symbols issue in the circumstances constituted one of those rare "true questions of jurisdiction" referred to in Dunsmuir, in which the tribunal must explicitly determine whether its statutory grant of power gives the authority to decide a particular matter and a stringent standard of correctness is warranted. Assuming the Tribunal's ability to act contravenes the Court's jurisprudence, which previously rejected a single standard of review for each different aspect of a decision is a departure from the Court's jurisprudence, which previously rejected a single standard of review for each different aspect of a decision.

The Supreme Court ultimately held that:

1. The Tribunal was correct to find that the state's duty of neutrality prohibits a state authority from making use of its powers to promote or impose a religious belief.
2. The Tribunal was reasonable in concluding that the prayer in question was in fact a practice of a religious nature.
3. The Tribunal was reasonable in finding that the prayer was a breach of the state's duty of neutrality and had a discriminatory effect on Mr. Simoneau's freedom of conscience and religion.
4. The Tribunal was reasonable to award Mr. Simoneau $30,000 in compensatory and punitive damages for the City's discriminatory breach.

Inappropriate extensions of jurisdiction by both the Tribunal and the Court of Appeal

On the issue of the religious symbols in council chambers, the Supreme Court agreed with the Court of Appeal's finding that, because the Commission had not submitted the issue to the Tribunal (as required by its enabling statute), it was not open to the Tribunal to consider it. Notably, however, the Tribunal had held that the Commission, by failing to provide reasons in its refusal to submit to the dispute respecting religious symbols to the Tribunal, had in fact acted contrary to the same enabling statute. It was on this basis that the Tribunal justified considering the question: it held that the Commission had not properly "refused to act" within the meaning of the statute, and that the principle of justice and proportionality allowed it to address the issue.

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