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It is not enough to listen, one must also listen with an open mind!

Me Jean Beauregard represented the Association des stations de ski du Québec in this case

The Superior Court of Montreal recently rendered an interesting judgment in certain respects relating in particular to administrative law, namely the obligation of an administrative tribunal to give grounds for its decisions and to take into account its previous decisions. (*Association des stations de ski du Québec* v. *Commission de la construction du Québec* and *Jacques Émile Bourbonnais,* D.T.E. 98T-1151).

In this case, the Commission de la construction du Québec claimed that the work done by contractors on behalf of the Société du Mont-Tremblant, i.e. the laying out of ski trails, was subject to the Construction Decree.

Our client, the Association des stations de ski du Québec (the Quebec Ski Areas Association) intervened in the argument before the Construction Industry Commissioner, Mr. Jacques Émile Bourbonnais, to affirm the contrary. To support its case, our client filed before the Commissioner several relevant decisions by other Construction Industry Commissioners.

In spite of this, after nine days of hearings, the Commissioner decided that the work was subject to the Decree.

The Superior Court subsequently allowed the motion in judicial review brought by our client. According to the honourable judge Danielle Grenier, the Commissioner's decision had to be overturned because insufficient grounds were given for the decision, because it constituted a breach of the rules of natural justice and because it contained an absurd and unreasonable interpretation of the notion of "civil engineering works".

This decision acknowledges first that the obligation to give grounds for its decisions does not constrain an administrative tribunal to follow its previous decisions. In fact, the lack of consistency of a decision is not in itself a ground giving rise to judicial review, as the Supreme Court has already affirmed. However, the Court stipulated that this still does not mean that giving grounds for a decision is not important because, on the contrary, doing so encourages the consistency and quality of decisions.

Thus, the Court decided that, in the circumstances, the Commissioner was required to explain the reason why he did not intend to follow the path traced by his predecessors. In other words, he could not overlook 25 years of case law without giving grounds for his decision. The Court continued that, although the result reached by the Commissioner could be justified, the absence of analysis of the evidence constituted a breach of the rules of natural justice and contributed to making the decision patently unreasonable.

"Although it totaled 33 pages, the Commissioner's decision was not the fruit of rational reflection," the court added. "It is not enough to listen. One must also listen with an open mind," the honourable judge Grenier observed for the benefit of the administrative tribunals.

In concluding, we should note that an appeal from this judgment has been lodged.

Dominique L'Heureux
Érik Sabbatini

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