

OCRCVM V. BEAUDOIN AND AMF (C.A.) - COURTS OF JUSTICE CANNOT HOMOLOGATE A DISCIPLINARY DECISION IN THE ABSENCE OF A SPECIFIC LEGISLATIVE PROVISION TO THAT EFFECT

By [Dina Raphaël](#)

The Investment Industry Regulatory Organization of Canada (IIROC, formerly known as the Investment Dealers Association of Canada (IDA)) is a self-regulatory organization recognized by the Autorité des marchés financiers (AMF), which mainly deals with disciplinary complaints against its members. For this purpose, the IIROC has supervisory and investigative powers as well as the power to impose disciplinary sanctions. It can impose various penalties on its members, including fines.

What happens when the person on whom a fine is imposed refuses to pay it? Do self-regulatory organizations have an effective mechanism to enforce their decisions? The Court of Appeal ruled on the issue: in the absence of a specific legislative provision to that effect, the courts of justice cannot homologate the decision of an administrative body.¹

After investigating a complaint against a representative of a member corporation based on allegations of money laundering, the IIROC imposed on the representative a permanent prohibition from registration, a \$50,000 fine and the reimbursement of the investigation fees. Faced with the refusal of the representative to pay the fine and investigation fees, the IIROC asked the Court of Quebec to homologate the decision. Such a judgment would have enabled the IIROC to enforce the decision, specifically by issuing a garnishee order.

The Court of Quebec dismissed the IIROC's Motion for the following reasons:

- ▶ the IIROC could not impose sanctions on the member since the AMF did not grant it this power;
- ▶ the Court could not homologate the decision of the IIROC since no legislative provision grants it jurisdiction to do so.

The Court of Appeal, per Justice Rochon, dismissed the IIROC's appeal.

As regards to the IIROC's jurisdiction to impose fines under its disciplinary powers, the Court of Appeal held that the Court of Quebec had erred and found that, as a self-regulatory organization recognized by the AMF, the IIROC has the power to impose disciplinary sanctions, including fines.

However, there remains at stake the subject matter jurisdiction of the Court to homologate a disciplinary decision and make it enforceable. Can the court homologate a decision in the absence of a legislative provision to that effect?²

The IIROC submitted four arguments:

- ▶ its disciplinary process is similar to an arbitration agreement.

Although such an agreement may be sanctioned by the court, the Court of Appeal considered the comparison flawed and dismissed this argument;

- ▶ the powers of the courts pursuant to articles 2, 20 and 46 of the *Code of Civil Procedure* grant the court the judicial authority to homologate decision rendered by IIROC.

The Court of Appeal dismissed the argument, on the basis that the purpose of these provisions is to broaden the jurisdiction of the courts in cases where the legislator failed to grant a specific power and that they cannot serve to create a substantive right;

- ▶ since the AMF recognizes the role of the IIROC and its powers, the IIROC is entrusted with a mission of public interest similar to that of a professional body and its internal disciplinary process is one of the means enabling it to ensure the public protection.

While acknowledging the validity of the argument, the Court was not convinced that it remedied the absence of a legislative provision granting the authority to homologate a decision or sanction of the IIROC.

- ▶ the IIROC questioned the principle whereby homologation of a decision requires a legislative provision. It argued that this rule only applies to administrative organizations that have only the powers conferred to them by law.

The Court dismissed this argument in view of the fact that the issue is not with respect to the powers of administrative organizations but of the courts of justice authority to homologate and that the articles allowing for the homologation of decision are not limited to administrative organizations (transaction: section 2633 of the *Civil Code of Quebec*; arbitration agreement: section 946 of the *Code of Civil Procedure*). The Court did not agree with the argument since this would confer on courts of justice a power that the legislator did not give to administrative tribunals. Considering the limited role of the judge who homologates a decision, this argument was ill founded because it would result in granting such a right to [translation] “any voluntary association, social club, hunting and fishing club, etc. [...] while no legislative provision provides for it.”³

The legislation therefore contains a paradox: there can be homologation of a decision if the self-regulatory organization exercises a right delegated by the AMF. Moreover, a forced execution is possible if the decision of the self-regulatory organization is maintained by the Bureau de décision et de révision and filed with the Superior Court. However, if there is no request for review before the Bureau because the IIROC is satisfied with the decision and the person concerned has not requested such a review, the decision cannot be homologated because no legislative provision provides for it.

The IIROC, whose mission is to protect public interest, does not benefit from any legislative provision that would enable it to apply for the homologation of a decision rendered under its own jurisdiction (other than those delegated by the AMF), such as the imposition of a fine.

The Court of Appeal found that its hands were tied and therefore threw the ball back into the court of the legislator, who is the only one who can correct the situation!

¹ *The Investment Industry Regulatory Organization of Canada v. Beaudoin and Autorité des marchés financiers, C.A.*, n° 500-09-021201-108, December 6, 2011.

² *Fournier v. Ste-Agathe (Municipality of)*, D.T.E. 96T-162 (C.S.).

³ Paragraph 58 of the decision.

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