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CASE SUMMARY: SANCTIONS AGAINST BASKETBALL COACHES WERE SET ASIDE AFTER AN UNFAIR DISCIPLINARY HEARING

Administrative law – Decisions of administrative tribunals – Association of Basketball Officials; Coaches – Disciplinary proceedings – Professional misconduct / conduct unbecoming – Penalties and Suspensions; Hearings – Conduct of hearings – Disclosure; Judicial review – Mootness – Jurisdiction – Procedural requirements and fairness

Gymnopoulos v. Ontario Assn. of Basketball Officials

The Applicants, three volunteer basketball coaches, were sanctioned by the Respondent, the Ontario Association of Basketball Officials (“OABO”). The sanctions were imposed because of the Applicants’ treatment of officials after a high school basketball game. The Applicants succeeded in having the OABO’s decision set aside on this application for judicial review.

[2016] O.J. No. 1097

2016 ONSC 1525

Ontario Superior Court of Justice

March 2, 2016

L.A. Bird J.

The Applicants (Mr. Gymnopoulos, Mr. Glezakos, and Mr. Nembhard) were volunteer coaches of the Vaughan Voyageurs high school basketball team. The Applicants were involved in an incident after their team lost a playoff game on March 10, 2015. The Applicants were very upset with the loss and blamed the referees. The Applicants confronted the referees at a few locations after the game. Mr. Gymnopoulos also posted negative comments about the officiating on Twitter.

The Respondent, Ontario Assn. of Basketball Officials (OABO), is a private, self-governed, not-for-profit organization incorporated in 1982. OABO is the only professional association for basketball officials in Ontario and has exclusive contracts to supply officials to several leagues in Ontario. Mr. Gymnopoulos and Mr. Glezakos had a long history of officiating and coaching basketball and were members of the OABO in their capacity as officials.

The OABO decided to conduct a hearing by way of conference call on April 16, 2015 regarding the conduct of the Applicants. The discipline committee of the OABO met the next week and discussed the matter (including new information that had not been disclosed to the Applicants). The executive committee then met on May 1, 2015 and considered some factual findings already made by the discipline committee.

The executive committee issued a written decision on May 7, 2015 imposing significant sanctions on the Applicants. Mr. Gymnopoulos was prohibited from working as an official for two years and the OABO instructed its members not to work as an official at any events where Mr. Gymnopoulos was coaching. Mr. Glezakos was prohibited from working as an official for one year.

The Applicants retained counsel and initiated an appeal pursuant to the appeal process set out in the OABO's Bylaws. Only Mr. Gymnopoulos and Mr. Glezakos proceeded with their appeals. The appeal was made to the delegates at the annual general meeting on September 13, 2015. The decision was upheld except the time periods of the prohibitions were reduced by half.

The Applicants filed this petition for judicial review on December 9, 2015. The Court had to consider five issues.

First, the Court accepted this matter was urgent for the purposes of the Judicial Review Procedure Act. This decision was based, in part, on the fact that Mr. Gymnopoulos had dedicated a large portion of his life to coaching basketball and he was being prevented from coaching.

Second, the Court considered whether the issue was moot for Mr. Glezakos and Mr. Nembhard because their sanctions had been completed. The Court found the issues were not moot for those two. One significant factor was that these sanctions on their record could have significance in the future.

Third, the Court considered whether it had jurisdiction over the OABO. The OABO argued it was beyond the scope of public law. The Court considered and applied the factors in *Air Canada v. Toronto Port Authority* and decided that the OABO's decision was subject to judicial review.

Fourth, the Court considered whether there was procedural unfairness in the hearing on April 16, 2015. The Court held there were many different serious defects in the April 16, 2015 hearing. The notice of the hearing did not suggest it was a disciplinary hearing. Mr. Nembhard was not notified of the hearing by the OABO. Two of the key participants were not available for the hearing. The executive committee and discipline committee considered information not disclosed to the Applicants. The decision did not explain the rationale for the length of the prohibitions.

Fifth, the Court held that the appeal hearing did closely resemble a de novo hearing but that did not cure the serious procedural defects of the April 16, 2015 hearing.

The Court held the May 7, 2015 decision of the OABO was set aside.

This case was digested by [Scott J. Marcinkow](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at smarcinkow@harpergrey.com or review his biography at <http://www.harpergrey.com>.