

The Bellefeuille Case: A Short Lesson on Evidence

On April 13, 2007, the Court of Appeal ruled unanimously that evidence obtained by using subterfuge, a ruse or a ploy should not be rejected based on that fact alone. If the evidence is relevant and the means used to obtain it does not bring the administration of justice into disrepute, the evidence must be heard.

Certainly, the caselaw in labour law matters has always acknowledged that video evidence or a recording is admissible as evidence if it is relevant to the dispute.

However, in civil matters, the amendments brought to the Civil Code of Québec by Articles 6 and 7, as well as Article 2858, have not been the subject of many rulings.

FACTS

In the Bellefeuille case, Mrs. Bellefeuille—whose dismissal had been settled out of court, together with a letter of reference—sued her former employer and her former employer's representative, Mrs. Morisset, for damages for having deliberately prejudiced her search for a new job.

As evidence, Mrs. Bellefeuille had a recording of the telephone conversation between Mrs. Morisset and one of Mrs. Bellefeuille's friends who had pretended to be a potential employer. At trial, Mrs. Morisset objected to the admissibility of the recording as evidence and the court agreed with her. The judge ruled that the evidence had been obtained through an illegal manoeuvre and contravened the obligation of good faith. Mrs. Bellefeuille appealed to the Court of Appeal.

THE COURT OF APPEAL

The Honourable Madam Justice Bich, speaking on behalf of the Court of Appeal, ruled exactly contrary to what the trial judge had held, fleshing out her ruling with a complete review of the principles of truth and good faith that underlie the civil law.

In theory, all evidence of any relevant fact is admissible and may be presented by any means: so states Article 2857 C.C.Q. However, the following article, Article 2858, sets out

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the exception to this rule: a court must, of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are breached and that its use would tend to bring the administration of justice into disrepute.

It was the historical background to this new addition to the Civil Code of Québec which allowed Madam Justice Bich to show that the notion of good faith does not form part of the fundamental rights and freedoms that are referred to in Article 2858 and are found in the Canadian and Québec Charters, as well as in Articles 3, 10 and 35 to 37 of the Civil Code of Québec.

Indeed, the Québec Charter, which guarantees the right to privacy, among other rights, has never been raised successfully so as to have a court reject, for example, video evidence obtained without the knowledge of one of the parties. The reason is quite simple: the Québec Charter does not contain a provision declaring that evidence obtained in violation of a right guaranteed by it must be excluded or rejected. This major gap was specifically filled through the addition of Article 2858 to the Civil Code of Québec.

ARTICLE 2858 AND GOOD FAITH

Since then, in order for evidence obtained unlawfully to be excluded, it must satisfy the two conditions set forth in Article 2858 C.C.Q.: the evidence must have been obtained in breach of fundamental rights and freedoms and its use must be such that it would tend to bring the administration of justice into disrepute. Thus, recording or filming a person without his or her knowledge may be a breach of the right to

privacy, but if the evidence is relevant to the dispute, it will be excluded only if it discredits—as Madam Justice Bich stated—[TRANSLATION] “a higher order: the administration of justice.”

In the case at bar, the Court was of the opinion that there had been no unlawful manoeuvre in breach of any legislative provision whatsoever. Moreover, Mrs. Morisset had answered the telephone call in the course of performing her duties and had not had to be coaxed into discrediting Mrs. Bellefeuille. There had therefore been no interference with her right to privacy nor with any other fundamental right or freedom. However, Mrs. Morisset argued that such evidence was contrary to the obligation of good faith imposed upon all citizens by Articles 6 and 7 C.C.Q.:

- ▶ 6. *Every person is bound to exercise his civil rights in good faith.*
- ▶ 7. *No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith.*

Good faith is considered to be a fundamental value in our society, but it does not form part of our fundamental rights or freedoms and is therefore not contemplated by Article 2858 C.C.Q.

Finally, the principle of good faith had to yield to another principle, one just as important—the truth. It is the search for this truth that is the very basis of our system of evidence

and that is enshrined in Article 2857 C.C.Q. As Madam Justice Bich so well stated:

“[TRANSLATION] [...] the Legislature did not seek to exclude evidence obtained by unlawful means, unless the illegality is linked to the violation of a fundamental right; similarly, it did not seek to exclude evidence obtained in an improper, or immoral, manner, nor evidence obtained in any manner which, although not unlawful, could nevertheless tarnish the image of justice. In my opinion, this means that it did not intend to provide for the exclusion of evidence obtained by a process contrary to the terms of Articles 6 and 7 C.C.Q. and the principle of good faith expressed therein.”

The Court of Appeal was careful not to encourage citizens to use questionable, immoral or dishonest means to obtain evidence they need or believe they need. However, one must conclude, as did the Court, that [TRANSLATION] “the use of a ruse, a ploy or illegal means, [...] is not, in and of itself, grounds for excluding evidence.”



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