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Pioneer of the notion of good faith in Quebec civil law

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In 1959, a Dr. J.R. Groulx signed a letter of guarantee promising to pay Banque Nationale for all present and future loans made to his son-in-law, Maurice Robitaille. The guarantee contained a clause that it would be binding on the estate and heirs until cancelled. After Dr. Groulx died in 1963, Robitaille continued to borrow from the bank and a few years later, the bank sued Dr. Groulx's widow and two daughters for repayment of money which had been borrowed after Dr. Groulx's death.

***Donald Seal**, QC, BCL'54, later assisted by **Leonard Seidman**, BCL'72, took on the case on behalf of Dr. Groulx's widow, Florence Soucisse, and argued the case all the way to the Supreme Court of Canada, in National Bank v. Soucisse et al., [1981] 2 S.C.R. 339. Here, Me Seal offers his thoughts about this precedent-setting case.*

The case was most sympathetic. A poor widow and her two daughters were being misused by the bank: essentially, they were being sued on a guarantee that they were completely unaware of.

The guarantee had been made in only one copy, which was held by the bank. The heirs had no idea about its existence and therefore could not and did not cancel it at or after the death of Dr. Groulx.

The notion of *fin de non-recevoir* (estoppel in Common Law) was put forth that since the bank had acted in bad faith by not informing the heirs of the guarantee in question, it could not now collect on same.

Preparing to argue before the Supreme Court of Canada was much different in 1980 than it is today. We did not have computers and doing research was an arduous and time consuming task. Even though we have a fair library in our office, we also went to the bar and university libraries, but could not find any precedents in Quebec law.

We did find a relevant case in Louisiana (which is also Napoleonic based) and, on the day of the hearing, found a case in the Supreme Court library from the French *Cour de Cassation* which was on point.

In this case the Court said that the guarantee was good and the guarantor was liable, but because of the bad faith of the bank, the Court condemned the bank to pay an equivalent amount to the guarantor.

The conclusion was not completely logical, since if you are paying the debt of another, you can then sue the principal debtor and perhaps the guarantor could thus end up a winner. For this reason the judgment was subsequently reversed in a higher court in France.

Judge Jean Beetz, who was the lead judge at the Supreme Court, did extensive research on French law and precedents and found cases dating back to 1824. He concluded that the question of good faith was imperative.

The Supreme Court did not say that the bank was wrong, but because it was in bad faith, it could not collect on its guarantee, even if it said that the guarantee was good forever until cancelled.

Subsequent to this case and, we believe in part, as a result of it, the government amended the *Civil Code of Québec* to establish the notion of good faith:

« The case was most sympathetic. A poor widow and her two daughters were being sued on a guarantee that they were completely unaware of. »

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- Article 6 now provides that every person is bound to exercise his civil rights in good faith.
- Article 7 provides that no right may be exercised in a manner contrary to good faith.
- Article 1375 establishes good faith in the law of obligations.
- Additionally, Article 2361 now provides that suretyship ends at death.

The duty to act in good faith and its sanction of estoppel (*fin de non-recevoir) have* now been established as part of the laws of this province.

When you plead a case in court there is satisfaction if the court agrees with your ideas and there is double satisfaction if your ideas will help, not only the situation in your particular case, but the evolution of the law in general.

The old notion of *dura lex sed lex* (the law is hard, but it is the law) has been softened by the effect of the duty of good faith. If you are a lawyer who loves the profession, you are rewarded not only with fees, but also with the satisfaction of knowing you have helped someone.

Helping people is what the profession is all about. In this case, we had the third satisfaction of knowing that we helped society by aiding in the establishment of the notion of good faith as a bulwark against abuses.

« If you are a lawyer who loves the profession, you are rewarded not only with fees, but also with the satisfaction of knowing you have helped someone. Helping people is what our profession is all about. »

This case is still cited on a regular basis and has remained one of the pillars of jurisprudence and is often referred to as the first case of the Trilogy, since it was followed by two other similar cases.

Don Seal will be honoured at a reception at the Faculty of Law on Thursday, April 19, 2012.

Consult the complete judgement of the National Bank v. Soucisse et al., [1981] 2 S.C.R. 339 case online.

Interview conducted and edited by Victoria Leenders-Cheng; photos by Lysanne Larose

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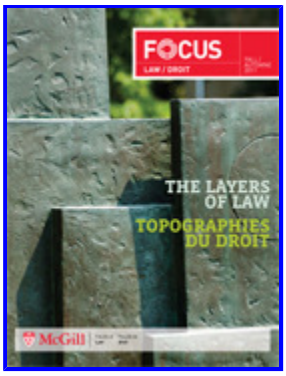
- **Focus LAW Sep 2011**



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