

Decision Provides Rare Insight on the Applicability of the "Right to be Forgotten" in Québec

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On April 14th, 2016, the Commission d'accès à l'information (the "CAI") issued a decision discussing the relevance of the "right to be forgotten" with regards to the "right to rectification" found in the Act Respecting the Protection of Personal Information in the Private Sector, CQLR, c. P-39.1.

Case Summary

In C.L. c. BCF Avocats d'affaires, 2016 QCCA 114, the plaintiff was a former employee of a law firm. She claimed that even after she left the firm, her name was still linked to her previous employer's website when typed into various search engines. She consequently made a request for rectification before the CAI and asked that any mention of her name and any information relating to her be removed from the firm's website, as she was concerned that prospective employers would call the firm and ask for references. The firm denied that there was any trace of its former employee's name or information on either its website or server, nor that there were any "tags" explaining the results found on search engines.

The CAI dismissed the plaintiff's request for rectification. It held that the firm had fulfilled its obligations by removing all information about the plaintiff from its website. While it acknowledged that certain search engines were still linking the plaintiff's name with the firm, the CAI noted that such results were due to a digital archive called Wayback Machine, which enables users to see archived versions of web pages across time, including a version of the firm's website dating from the time when the plaintiff was still employed by the firm. For the CAI, the firm did not hold "inaccurate, incomplete or equivocal" information about the plaintiff, given that the information that appeared on the **website in 2013 – and that re-appeared today through the Wayback Machine – was accurate at the moment it had appeared online.**

In this regard, the CAI interestingly noted that a person's right to rectification with respect to inaccurate, incomplete or equivocal information is distinct from the "right to be forgotten." This right, which is recognized in the European Union, allows individuals to stop search engines from providing links to information about them that is deemed

"inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue."

Impact on the "Right to be Forgotten"

As a result of this decision, it is now clear that the right to be forgotten is irrelevant to the examination of the right to rectification, as the two rights are different, both conceptually and practically. The CAI also mentioned that it is doubtful whether the "right to be forgotten" would find application in Québec. This issue is highly topical at the moment, given that the Office of the Privacy Commissioner of Canada recently chose to make reputation and privacy one of its priorities for the next five years and has launched an inquiry in which it asks whether a "right to be forgotten" would find application in Canada. The present case is one of the rare Canadian decisions on the matter and might, at least to a certain extent, provide some insight on the position of the CAI with regards to the application of the right to be forgotten in Québec.

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