

LEGAL BULLETIN

Issue No. 53

The credibility of family violence testimony in *Jacob c. R.*, 2024 QCCA 651 ([CanLII](#))

Introduction

In legal proceedings, testimony is an essential element in establishing the truth. Like an admission or a confession, it constitutes a form of evidence that enables judges to assess the facts and rule on the case before them.

However, human testimony is not infallible. It may contain inaccuracies, omissions or even gaps regarding certain events. For a long time, this kind of flaw often led courts to attach limited weight to certain testimonies, particularly when inconsistencies appeared in the witness's account.

However, a recent ruling by the Court of Appeal of Quebec has further qualified this approach. Indeed, this decision sheds interesting light on how judges may assess the credibility of testimony despite the existence of certain contradictions. This decision was handed down in a criminal case where the assessment of the evidence had to be consistent with the presumption of innocence set out in section 11(d) of the Canadian Charter. It was all the more important to consider the burden of proof in this context.

Therefore, it was necessary to analyse this decision in order to understand the lessons it offers regarding the assessment of the credibility of witness statements in court.

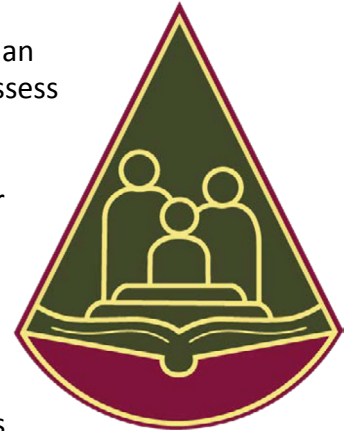
Case Background

Mr. Jacob, the appellant, and the complainant were in a couple relationship from September 2015 to March 2018. The complainant claimed to have suffered family violence at the hands of her partner during that period. She maintained that she had suffered this violence between December 2016 and February 2018, citing more than a dozen incidents.

Mr. Jacob strongly refuted these allegations and categorically denied the acts of violence of which he was accused. According to him, the relationship was fraught with conflict, but his actions were taken solely in response to the complainant's behaviour.

He simply wanted to restrain her or get her to leave her home, which she refused to do. He added that he had tried several times to end the relationship, but that the complainant kept coming back to him and sending him messages. In light of the conflicting statements made by the witnesses, the Court relied on a landmark decision regarding the evaluation of conflicting testimony, namely, *R. v. W. (D.)*,¹ to assess the evidence.

In this judgment, the judges established a three-step test for assessing the testimony of the accused. Firstly, if the judge or jury believed the accused's testimony, the accused had to be acquitted.



¹ *R. v. W.(D.)*, 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742.

Secondly, even if the testimony was not entirely believed, the accused still had to be acquitted if the testimony raised a reasonable doubt as to the guilt of the accused. Lastly, even if the accused's testimony left no reasonable doubt, the judge had to consider all the evidence to determine whether the prosecution had proved guilt beyond a reasonable doubt. In all cases, the burden of proof lay with the prosecution; the accused was not required to prove their innocence.²

Following this process, the Court dismissed the evidence given by the appellant and his witnesses. It found Mr. Jacob guilty on five counts: assault causing bodily harm, sexual assault causing bodily harm, unlawful confinement, mischief, and making threats. Mr. Jacob was thus found guilty by the trial judge on November 15, 2023.

The accused lodged an appeal against this decision. In particular, he argued that his testimony and that of the complainant were diametrically opposed and that the trial judge had rejected his testimony. However, in the view of the accused, the conviction was nevertheless based on certain elements drawn from his own testimony, which would constitute a contradiction in the Court's assessment of the evidence. It is in this context that the case was brought before the Court of Appeal.

We will focus on two key aspects in our analysis. Firstly, we will examine the court's power to pass a sentence based on certain elements of testimony that has been rejected on the grounds of a lack of credibility. Secondly, we will assess the weight given to testimony that exhibits "flaws".³

I. Absence of an unreasonable verdict by the trial judge

In *R. c. Beaudry*⁴, the judge held that a decision which clearly contradicts or is incompatible with uncontested or rejected evidence is unreasonable. Citing the foregoing, Mr. Jacob challenged the

decision of the trial judge on three charges: sexual assault causing bodily harm, assault causing bodily harm, and mischief relating to a mobile phone.

The appellant contended that the trial judge had conflated his testimony with that of the complainant by using it to establish his guilt, even though that same testimony had been rejected on grounds of lack of credibility. Therefore, the Court of Appeal was asked to consider the arguments put forward regarding the trial judge's assessment of the evidence relating to bodily harm. The Court considered that, as regards the use of elements of a testimony rejected on grounds of lack of credibility, there was no inconsistency in the judge's reasoning. In fact, in this regard, the parts of the appellant's testimony on which the judge relied refer to an incriminating passage in the testimony. However, this had no bearing on paragraph 236 of the judgment, in which the judge dismissed the exculpatory elements of the appellant's testimony. Consequently, the exclusion of part of the testimony did not result in its complete rejection. Consequently, the judge had the option of accepting certain elements of Mr. Jacob's testimony as evidence.

With regard to the allegation of conflation, the Court was of the view that the tribunal did not err in this respect, since the appellant himself acknowledged that he had not taken the necessary steps to obtain the complainant's consent prior to the sexual act. Hence the classification as sexual assault. As for the complainant, she also referred to the lack of consent. Given the similarity of these two points raised by each of the parties, there was no contradiction, as the appellant claimed. Consequently, the allegation that the testimonies had been conflated was unfounded.

The appeal judge also pointed out that it was possible, to a certain extent, to reconcile the parties' statements, particularly where common elements emerged. In this context, the statements made by both parties regarding the refusal of consent

² Id.

³ Me Marilyn Coupienne, "Droit pénal : vers une déconstruction jurisprudentielle du mythe de la victime parfait," SOQUIJ-Blogue, December 16, 2025, online : <<https://blogue.soquij.qc.ca/2025/12/16/droit-penal-vers-une-deconstruction-jurisprudentielle-du-mythe-de-la-victime-parfaite/>>, (consulted on February 18, 2026).

⁴ *R. c. Beaudry*, [2007] 1 R.C.S. 190, 2007 CSC.

represented a point of convergence. Consequently, the rejection of the appellant’s testimony did not prevent the Court from taking into account certain incriminating elements derived from that same testimony.

The same applies to the charge of mischief. The appellant alleged that the judge gave preference to her own interpretation of events when she concluded that the accused’s conduct was negligent, without first refuting the complainant’s testimony or providing any justification for her decision to disregard it. However, the testimonies did not contradict the fact that the appellant did in fact commit these acts. It is clear from the statements of both parties that the victim’s mobile phone was carelessly snatched from her hands by Mr. Jacob. The Court emphasized that the appellant cannot evade responsibility by denying the facts.

Consequently, this analysis contains no errors that could render the verdict unreasonable in relation to the charges of sexual assault and mischief.

With regard to the assault causing bodily harm, the Court of Appeal emphasized that the trial judge did not base his verdict on the appellant’s testimony, but rather on that of the complainant. Moreover, this statement is corroborated by the photographs of the victim’s injuries submitted as evidence. Consequently, the argument that the verdict was unreasonable could not stand on that count.

The question then remains as to the credibility of the complainant’s testimony.

II. The credibility of the victim’s testimony

The appellant criticized the trial judge for various errors in assessing the complainant’s credibility. However, he failed to identify any manifest and decisive errors that would justify the Court of Appeal’s intervention.

The Court drew on *R. c. Foomani*⁵ to reiterate the principle set out by Judge Cournoyer, according to

which [TRANSLATION] “great deference must be shown on appeal when assessing credibility” since the trial judge is the trier of fact and has a closer relationship with the parties. The latter judge is best placed to assess their testimony, in particular by observing their attitude and behaviour during the proceedings. Consequently, the intervention of the Court of Appeal in this regard must remain exceptional. It is justified only in very limited circumstances, in particular where the judge has attached [TRANSLATION] “disproportionate weight to certain factors,” such as the appellant’s conduct, which is not the case here.

The appellant also contended that the judge limited her analysis of the complainant’s credibility to the latter’s apparent sincerity. However, this claim was unfounded. Indeed, the judge acknowledged that the complainant had difficulty recalling certain events and the exact number of them during her testimony. However, she stressed that these factors should not undermine the overall credibility of her testimony.

The sexual, physical and psychological abuse suffered by the victim can leave deep scars that the human mind sometimes tries to bury as far away as possible. For victims, these traumas can manifest themselves in various ways. Thus, the inability to recall all the traumatic events did not necessarily call into question the consistency of the complainant’s account. Furthermore, the photographic evidence submitted to the file, showing the victim’s injuries, supported her testimony, as mentioned in the first section of our analysis.

In a post on the SOQUIJ blog, lawyer Marilyn Coupienne argued that this decision represents a significant step forward in debunking the myth of the blameless victim.⁶ Indeed, the approach adopted by the trial court judge is in line with the principle of fair justice that safeguards victims’ rights.

On several occasions, the appellant attempted to exonerate himself by shifting the blame for his violent behaviour onto the victim. He even alleged that she had acted in bad faith, claiming that she

⁵ *Foomani c. R.*, 2023 QCCA 232, para. 6-7

⁶ Me Marilyn Coupienne, “Droit pénal : vers une déconstruction jurisprudentielle du mythe de la victime parfait,” SOQUIJ-Blogue, December 16, 2025, online : <<https://blogue.soquij.qc.ca/2025/12/16/droit-penal-vers-une-deconstruction-jurisprudentielle-du-mythe-de-la-victime-parfaite/>>, (consulted on February 18, 2026).

had done so with the intention of harming him. To back up his claims, he called secondary witnesses to discredit the complainant and cast doubt on the suffering she claimed to have endured. However, in her assessment of the evidence, the judge demonstrated that the complainant had never sought to harm the appellant. She also pointed out that the hearsay evidence presented lacked credibility. This conclusion was supported by a thorough analysis of

the evidence, backed up by sound legal arguments and compelling photographic evidence.

Indeed, the complainant’s testimony appeared consistent and coherent on the whole, which led the Court of Appeal to uphold the decisive probative value that the trial judge had attributed to it. The appeal was therefore rightly dismissed.

Conclusion

In recent years, there has been a growing need to restore the confidence of victims of family violence in the justice system. This trust is crucial, as it enables victims to feel safe in the knowledge that their case will be handled impartially and that their testimony will be examined carefully and thoroughly.

The decision under review is a clear example of this approach. It serves as a reminder that human memory is not perfect and that we must show tolerance towards gaps or hesitations in accounts of traumatic events, as these are not sufficient to discredit a victim’s testimony. Indeed, where the consistency and plausibility of the account are objectively evident from the totality of the facts and evidence, the testimony may legitimately be regarded as credible.

As lawyer Marilyn Coupienne also pointed out, despite repeated warnings from the Supreme Court of Canada regarding the undue influence of myths, prejudices and stereotypes in cases of sexual and family violence, these biases sometimes continue to creep into certain judicial decisions.⁷ In this context, it remains essential to continue efforts to strengthen legal protection for victims and to ensure that evidence is assessed free from stereotypes.

This decision highlights the importance of a thorough and balanced analysis of witness statements, while helping to strengthen victims’ confidence in the justice system.

⁷ Me Marilyn Coupienne, “Droit pénal : vers une déconstruction jurisprudentielle du mythe de la victime parfait,” SOQUIJ-Blogue, December 16, 2025, online : <<https://blogue.soquij.qc.ca/2025/12/16/droit-penal-vers-une-deconstruction-jurisprudentielle-du-mythe-de-la-victime-parfaite/>>, (consulted on February 18, 2026).

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