JOURNALIST MUST PAY PUNITIVE DAMAGES FOLLOWING DEFAMATORY COMMENTS

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PRECIS: The Superior Court of Quebec has ordered a Canadian journalist to pay C$125,000 in damages to a prominent member of Senegalese society after he posted defamatory comments on the Internet and repeated them on a radio show. The court heard that the journalist knew that his source of information was unreliable before posting the comments, but had gone ahead nonetheless.

In *Abou-Khalil v Diop* (2008 QCCS 1921; 2008-05-08) the Superior Court of Quebec has awarded C$125,000 in damages to Ibrahim Abou-Khalil, a prominent member of Senegalese society, for defamatory comments posted on the Internet and repeated on a radio show by Canadian journalist Jules Diop.

As the defendant lives in Quebec the superior court had jurisdiction over the matter pursuant to Section 3134 of the Quebec Civil Code.

On October 5 2005 Diop posted a blog entitled "Karim and Bibo Bourgi are trafficking money". In the post he claimed that Abou-Khalil was a money trafficker arrested in April 2003 at Charles de Gaulle Aiport, Paris with the son of the Senegalese president, as the men were allegedly carrying €8 million. He also alleged that the Senegalese president personally intervened with the French authorities to have the men released.

The morning after posting his blog, Diop repeated his allegations on a radio show aired in Senegal and stated that he could prove them. He published a second blog on October 12 2005, again referring to Abou-Khalil and his alleged illegal commerce of foreign currency. The comments caused Abou-Khalil much harm as he is well known in Senegal, is decorated with the country's highest distinction and sits on a number of prestigious boards of directors throughout the world.

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The Quebec Civil Code provides no specific remedy for damage to a reputation. Therefore, Section 1457 on general civil responsibility outside contractual relationships is used to provide the foundation for such a remedy. In order to demonstrate the existence of a prejudice, the plaintiff must prove that the litigious comments were defamatory. 'Defamation' is defined as the communication of comments, or their publication, that causes the subject of such comments to lose the esteem or consideration of others, or incites others to have ill feelings towards him or her. The comments are analyzed according to an objective norm: would the comments influence an ordinary citizen into thinking that the subject of the comments is of ill repute?

In the present case, Diop's comments were undeniably defamatory as Abou-Khalil was never arrested in France and had never been involved in criminal activity. In addition, he had never been implicated in the illegal commerce of foreign currency or any other illegal commerce. In sum, Diop had fabricated the allegations regarding Abou-Khalil. Furthermore, before Diop posted the blog entry he found out that the source of the information was unreliable. The blog, which is available through a site linked to French publication the *Le Nouvel Observateur*, is regularly viewed by between 15,000 to 25,000 Senegalese and is referred to on other websites worldwide. In fact, Diop once boasted that he was better known in Senegal than the president.

The court found the comments were not only defamatory, but were also made intentionally, as Diop was aware of the damage that his accusations would cause to Abou-Khalil's reputation. This gave rise to both moral and punitive damages pursuant to Section 1621 of the Civil Code of Quebec. As a result, the court awarded Abou-Khalil C$100,000 in moral damages and C$25,000 in punitive damages.

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