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## **DEFAMATION ON A PAR 3: GOLF, JUVENILE PROSTITUTION AND THE RIGHT TO THE FREEDOM OF PRESS**

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**PRECIS:** The Superior Court of Québec dismissed Plaintiffs motion claiming damages for defamation with regards to several news stories prepared and broadcast by Defendants.

In the matter of *Demers v. Jobin* [2009 QCCS 1679 (CANLII)], brought forward before the Superior Court of Quebec, Plaintiffs sued Defendants for \$950,000, claiming moral and exemplary damages in relation to defamatory, malicious and hurtful statements that they allege were made by Defendants during the broadcast of certain news reports with regards to Plaintiff's involvement in (and sponsorship of) an erotic golf tournament having juvenile prostitution implications.

The facts are as follows:

Plaintiffs run and operate a radio station in Québec City, CHOI-FM, that has been in the limelight due to the "shock-rock" antics adopted by both the on air personalities, as well as by the general management. The ongoing complaints and controversy surrounding the station made it such that the Canadian Radio-Television and Telecommunications Commission (CRTC, a regulatory body that governs Canadian broadcasting and telecommunications) suspended and revoked the station's license, thereby prohibiting its content from being broadcast in Canada.

Defendants Pierre Jobin, Denis Therriault and Carl Langelier are journalists for a television company owned and operated by GROUPE TVA INC., who was also named as a Defendant in this matter which inserts itself into a long saga of litigation between the parties: Pierre Jobin had previously brought action against Plaintiffs in 2004 for comments made on air by the CHOI-FM team that were found to be defamatory and contrary to his personal dignity. Pierre Jobin won 100 000\$ in moral damages as well as 50 000 \$ in punitive damages.

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Here, it was Plaintiffs' turn to claim defamation. They alleged that Defendants, through several news stories, tried to establish a link in a biased manner between Plaintiffs and a promotional golf tournament that featured scantily clad women providing erotic services for their patrons.

Plaintiffs further claimed that Defendants were at fault by the manner in which they undertook the preparation and the broadcast of their news stories; news stories that they believe also unfairly implicated them with a juvenile prostitution controversy that befell the same golf tournament, since Plaintiffs actively promoted and participated in the sporting event.

Defamation in Québec is governed by the same rules that govern all forms of civil responsibility under the Civil Code of Québec: for there to be compensation, there must first be a fault, a prejudice and a causal link between the two; it was on this first point, the presence of fault, that Superior Court of Québec was able to deny the sums requested by Plaintiffs.

Québec law recognizes two forms of defamation, one where someone's reputation has purposefully been attacked, and the other where the attack is due to negligence or inattentiveness.

Fault in matters of journalism and defamation has been analyzed by Canadian and Québec jurisprudence to include several factors. In order to determine if there is fault, it must be shown that the journalist acted in a manner that was unreasonable compared to the norms recognized by the profession. Such an analysis is necessarily a contextual and fact base study that takes into account the public interest in the story being reported, the methods and treatments used, and the reasonability of the conclusions drawn by the report. This analysis applies equally to the person broadcasting the content as it does to the person creating it.

Consequently, the Court found that Plaintiffs could not speak of fault since an analysis of each of the news reports at issue showed that Defendants acted within the recognized norms of the profession. The stories were of public interest, as Québec City had seen its fair share of juvenile prostitution problems, and the Court was of the opinion that the reports showed proof of serious research and were delivered in a manner that was objective, impartial and professional.

The Court further determined that the reports clearly showed no explicit link between Plaintiffs and the erotic activities happening at the golf tournament. It was only after it was discovered, in a subsequent news story, that CHOI-FM stickers were found all over the booths used by the strippers for private dances, that the link between the tournament and Plaintiffs was made.

Additionally, Plaintiffs were reproached for not having addressed their complaint regarding the juvenile prostitution inferences prior to the defamation suit that had been launched by Defendants in 2004.

Since no fault was found, the Court did not position itself with regards to the damages being claimed. Instead, the Court allowed itself to state that not only did Plaintiffs fail to prove having suffered any damages, but they could also not impute their loss of a broadcasting licence onto the backs of a third party. It was clear that the defamation claimed by Plaintiffs was just a form of reprisal for the suit that they lost against Defendant Pierre Jobin, which plaintiffs even openly admitted.



