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INTERNET AS A MEDIUM FOR DEFAMATION

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Abstract

In a decision rendered last July 9, 2009 in *Rawdon (Municipalité de) v. Leblanc (Solo)*, [2009 QCSC 2151] the Quebec Superior Court, through Richer J. provided another example of some limitation to free speech in the context of defamation of public figures.

Facts

Following the publication of several “strong” messages in an online discussion forum dedicated to political issues in Rawdon (a municipality of 10,000 population in South Western Quebec), its mayor, its general manager and the municipality filed against the discussion forum administrator and its participants, proceedings to stop the publication of some aggressive messages targeting the complainants.

The decision made reference to a very long list of questionable and defamatory sentiments posted by the forum participants, including the administrator himself. All of them criticized the mayor and the general manager accusing them of bribery and favouritism. The defamatory messages also included numerous insults which would have shocked the average user, such as [translation] “*liar*”, “*schemer*” “*psychopath*”, “*total controlling bitch*”, “*the whore of Babylon*” or worse: “*little fuhrer*”, “*mayor SS*”, and “*Stalin would not have been worse*”.

The virulence of the assertions forced the complainants to ask for urgent and coercive measures. In Québec, an order for interlocutory injunction is an extraordinary remedy which allows the intervention of the court before full hearing on the merits of the case. It is an order of the court enjoining a person, not to do or to

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cease doing or, in cases which call for it, to perform a particular act or operation, or face stiff legal sanctions (including fine and imprisonment).

In order to obtain such an interlocutory injunction the complainant must meet a three-prong test: i) an appearance of right and/or a serious question to be tried ii) a serious and irreparable harm that monetary damages cannot compensate and iii) that the balance of inconveniences weighs in his favour.

Discussion

In determining whether the interlocutory injunction should issue, Justice Richer had to balance the competing interests inherent in freedom of speech and the protection of one's reputation by focusing on the injunction criteria.

The appearance of right concerns exclusively the right to one's reputation. In Quebec, reputation is not only protected by section 4 of the *Human Rights and Freedoms Charter* but also by section 3 of the *Civil Code* which states that *every person is the holder of personality rights such as the right to the respect of his name, reputation and privacy.*

Freedom of speech is protected by section 3 of the *Human Rights and Freedoms Charter* which states that *every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.*

By quoting article 9.1 of the same charter which says that by exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec, Justice Richer insisted on the fact that freedom of speech is not an absolute right.

For instance, in *Hill v. Church of Scientology of Toronto*, ([1995] 2 S.C.R. 1130) Justice Cory of the Supreme Court of Canada opined that *"the common law strikes an appropriate balance between the twin values of reputation and freedom of expression"* and in *Saniquip Inc. v. Nadon*, 2007 QCCS 2290 Justice Crépeau of the Quebec Superior Court wrote that *"reputation is a clear right which cannot be unfairly attacked"*

Therefore, Justice Richer held that the appearance of right was sufficient. Defendants overstepped their rights by losing control of their sentiments. It was a sensitive matter though since plaintiffs were both politicians and as public actors, politicians must accept some exposure to criticism.

Nevertheless, for the Tribunal, the content of the messages went beyond the reasonable criticism that a politician can expect. Some insulting messages were posted “*just for pleasure*” and were “*out of control*”.

Was the injury irreparable? On this question, the court answered yes. The Internet is a medium which facilitates the quick and irreparable spread of information. The infringement concerns not only both the mayor and the general manager but also the municipality itself and more importantly, democracy. This irreparable injury justified the interlocutory injunction

The balance of inconveniences was held to be in favour of the plaintiffs. Citing again the Supreme Court in *Hill*, the court states that defamation and reputation infringement could have pernicious and unlimited effects, especially when involving a medium as the internet. As stated by the judge, “[translation] *the Court is of the opinion that the appearance that the discussion forum on the Internet became the driving force of excess and immoderation, the amplifier and accelerator of the defamation against the plaintiffs as persons and municipality was demonstrated in this case.*”

Justice Richer also opined that the relative smallness of Rawdon must be taken into account. Indeed, the impact of an attack on the Internet is all the more important that the location is small or even in certain isolation.

Finally, the court issued the sought order for interlocutory injunction and the impugned is now closed.

In having to decide between political sensitivities and the extent of the court’s injunctive power, the Superior Court successfully walked a fine line.



