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## **FAILURE TO MEET JOURNALISTIC PROFESSIONAL STANDARDS CAN RESULT IN DEFAMATION**

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**PRECIS :** In the matter of *GIFRIC c. Corporation Sun Média (Journal de Québec)* [2009 QCCS 4148], the Quebec Superior Court ruled that the defendants were liable in libel because they failed to meet accepted professional standards when writing a column published in *Le Journal de Québec*, a daily newspaper sold in Quebec City, Province of Quebec.

Plaintiff GIFRIC is a non-profit corporation whose activities are centered on the promotion and development of innovative approaches in mental health care. The other plaintiffs are professionals involved with the corporation and particularly with one of its treatment center called “388”. GIFRIC also operates other treatment centers in the Province of Quebec, and is recognized nationally and internationally for the quality of its work.

The defendants are Corporation Sun Média, Canada's largest newspaper publisher, along with one of its experienced journalist and head of the News Department for *Le Journal de Québec*, J. Jacques Samson (thereinafter: “Samson”).

### **Facts**

In 1982, as a mean to fulfill its mission, GIFRIC opened a treatment center called “388” in Quebec City. “388” offered psychoanalytic solutions for adults with mental disorders that hospitalisation and traditional medications failed to cure. In order for “388” to operate, GIFRIC entered into a service agreement with the then Centre Hospitalier Robert Giffard (thereinafter: CHRG) now referred to as Institut Universitaire en Santé Mentale du Québec. The agreement stipulated that CHRG would be responsible for the financing of “388” and that such financing was to come from a special budget granted to CHRG by the Quebec Department of Health and Social Services. Furthermore, CHRG found a suitable location to allow “388” to operate but refused to buy it itself. CHRG requested that GIFRIC’s directors proceed with the purchase, which they did via a company solely devoted to the purchasing

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of properties used to implement GIFRIC's projects. This company subsequently leased the premises to CHRG.

In 1990, the building was sold to an individual with no connection to GIFRIC, after a report concluded that the fact that some of GIFRIC's directors were also involved with the company that leased the premises to CHRG gave rise to appearance of conflict of interest.

Over the years, occasional conflicts arose between GIFRIC and CHRG concerning the financing of "388". Ultimately, the resolution of every of these conflicts required some degree of governmental involvement. The last conflict occurred when CHRG decided to terminate its agreement with GIFRIC, and therefore close "388". This decision prompted many civil groups to request governmental action in order to ensure the continuation of the services. The public support towards "388" pressed the then Minister of Health and Social Services to appoint a conciliator in order to resolve the conflict.

It is during this conciliation process that a public relations officer of CHRG contacted the journalist Samson. A meeting later took place between Samson, the public relations officer of CHRG and a director of CHRG. Following this discussion, Samson wrote the contentious column, in which he reported the information he was provided with during the meeting. Amongst other things, Samson wrote that CHRG continuously had to deal with companies connected with GIFRIC's directors and that substantial disparities between the mortgage costs of the premises and the leasing fees could be noted. He mentioned potential risks of conflict of interest because of the possibility of GIFRIC's personnel referring patients to their own private clinics. Samson also affirmed that the resolution of past conflicts seemed to be due to the political influence of GIFRIC's members. He concluded by insinuating that "388" had been very profitable for GIFRIC's directors.

Following the publication of the column, GIFRIC sent a formal notice to the defendants stating that the column was defamatory to GIFRIC, its directors and its employees. In this notice, GIFRIC listed all the erroneous facts contained in the article and provided the defendants with the accurate informations. GIFRIC further demanded that a new article be published in order to rectify all incorrect statements.

A few days later, the defendants published an article stating that a few clarifications needed to be made in regard to the previous column, and thus providing minor precisions.

The plaintiffs then took a legal action in order to be indemnified for the harm caused to their reputation.

## Judgment

The Court stated that freedom of speech is a fundamental value that must be exercised in respect of other individual rights and as a mean to serve public interest. Journalists must comply with accepted professional standards and are liable when they fail to do so. Such standards comprise an obligation to act diligently and prudently, to verify the facts and to correct errors immediately. Even though columnists express opinions that are protected by freedom of speech, they are nevertheless bound by an obligation of diligence and prudence.

In this case, Samson did not meet such standards as he wrote his column without even speaking to the plaintiffs in order to hear their side of the story. Samson imprudently considered only the facts reported by a source neither impartial nor objective. Had he been more cautious and proceeded with minimal inquiries, his opinion in regard to “388” and its directors would have been different.

The Court noted that for 17 years GIFRIC had no ties whatsoever with the company owning the premises in which “388” was located and that even when such ties existed, nothing showed that the terms of the leasing agreement differed from ordinary market conditions. It also stated that the potential conflict of interest in regard to patients referral was non-existent as only patients that could not be treated in private clinics were admitted to “388”, and that the statement regarding GIFRIC’s political influence was unfounded. All of these facts would have come to the knowledge of Samson had he met with the plaintiffs prior to writing his column. Such careless conduct, in regard to journalistic behaviour, constitutes a tort for which the plaintiffs are entitled to claim damages.

The Court further noted that the formal notice sent by the plaintiffs provided the defendants with all the elements necessary to retract or at least set the record straight. Instead, the defendants published an article that only brought minor rectifications, therefore reinforcing the defamatory opinions conveyed in the original column.

For the foregoing reasons, the Court ordered the defendants to jointly pay damages in the amount of \$145,000 to be divided between the plaintiffs on a *pro rata* basis according to the damages sustained. However, the Court refused to grant punitive damages as it found the defendants did not act intentionally or in bad faith. The plaintiffs’ request to the effect that the judgment be published was also refused.



