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WHEN POLITICAL RIVALRY RIMES WITH LIBEL

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PRECIS : In *Lavigne v. Chenail* [2009 QCCS 2518 (CanLII)] the Superior Court of Québec granted the plaintiffs compensatory as well as punitive damages for a libellous letter published in a local paper.

The facts could be summarized as follows: plaintiff Diane Lavigne, defeated mayor of the small town of Sainte-Clothilde, and defendant André Chenail, deputy of Huntingdon county and former mayor of Sainte-Clothilde, are long time rivals belonging to opposite political parties. In August 2005, Ms. Lavigne, at that time mayor, and co-plaintiff Keith Burton, her spouse, read a letter to the editor published in «le Coup d’Oeil», the local paper. This letter, signed by André Chenail as deputy of Huntingdon, alleged that Lavigne, when conducting public duties, served her own interests and her husbands’ rather than those of the community. The missive, in an undoubtedly accusatory tone, stated that Lavigne confused personal and collective interest by granting herself an undeserved raise without consulting the citizens beforehand, and also by pushing for the installation of a water treatment system in town, in order for her and her family to benefit from it.

This open letter, published during the electoral campaign, was read by numerous citizens of Sainte-Clothilde and seriously affected the mayor's reputation. Ms. Lavigne faced a increased mistrust from her electors, which eventually lead to her defeat. She was deeply hurt by the false allegations contained in the letter as well as by the fact that the people of Sainte-Clothilde did not question its libellous content. She also had to put up with mockery coming from the local people, especially Chenail himself and his supporters. Consequently, she suffered a depression and gained a lot of weight in reaction to the stress caused by her opponent's manoeuvre. Moreover, the letter also defamed the mayor’s spouse, Mr. Burton, who, as a result, suffered three seizures and insomnia.

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This case being one of civil responsibility under the Quebec *Civil Code*, the Court first needed to determine if Chenail's published article breached both the plaintiffs' right to their reputation's respect and, hence, constituted a fault in terms of civil law. This fault, according to Justice Trahan, could be the result of two types of conduct. In the first type, the defendant would intentionally attack the plaintiffs's reputation, in order to ridicule or humiliate them, to expose them to the hatred or contempt of the public or a group. In the second type identified by the judge, the defendant would unintentionally defame the plaintiffs by being negligent.

The judge further stated that in order to be qualified as defamatory, the remarks should be analyzed objectively, that is, considered harmful to one's reputation by an ordinary citizen. The existence of a fault is also, as Justice Trahan stressed, a question of context, the facts and circumstances of the case being of great importance when determining if the letter can be considered libellous. Finally, the Court pointed out the necessity of taking into account freedom of speech which, in a democratic society, is a fundamental freedom of equal importance as the right to the respect of one's reputation. The analysis wouldn't be complete if it didn't balance out these two essential values.

In light of this analysis, Justice Trahan first found the allegations contained in the letter were based on unverified facts and, thus, were false. Firstly, the mayor's raise was due to the initiative of a municipal counsellor and was never brought to Lavigne's attention when being discussed. Secondly, the mayor's eagerness to implement the water treatment system had nothing to do with self-interest, but was rather caused by the necessity to meet certain administrative deadlines and obtain the required financing. If signing a publically released letter containing false assertions was reprehensible per se, what made Chenail's case even worse, according to the Court, was that it was clearly done in full knowledge of the facts, since Chenail admitted in court his will to 'crush' his political adversary. As for Mr. Burton, Ms. Lavigne's husband, he was included in the letter out of mere lack of concern. The judge stated the letter was nothing but a settling of scores between the defendant and Lavigne, a reaction on Chenail's part to a previous letter Ms. Lavigne sent to the Prime Minister, in which she complained about his actions against her political initiatives.

Justice Trahan therefore held that not only Chenail's letter was libellous, but it was so intentionally. This intentionality being demonstrated, the Court, under Section 49 of the Quebec *Charter of Human Rights and Freedoms*, was authorized to impose punitive damages as well as compensatory ones.

The punitive damages, said the Court, are meant to penalize a reproachable behaviour and therefore publically show reprobation with regards to this behaviour. As for the question of how much one's reputation is worth, the judge, after

highlighting the difficulty of quantifying moral damages, established the value according to the following factors : defamatory remarks and their diffusion, identity of the victims and her/his conduct and, finally, identity of the defendant and his conduct. The judge therefore settled on an amount of \$10,000.00 for punitive damages to each of the plaintiffs.

The compensatory damages were established at \$50,000.00 for Lavigne and \$20,000.00 for Burton. This judgement was also meant, as mentioned by Justice Trahan herself, to remind public officers that an irreproachable and upright behaviour is expected of them in all circumstances.

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