

T-1529-91

OTTAWA, ONTARIO, THIS 20th DAY OF AUGUST 1996

PRESENT: THE HONOURABLE MR. JUSTICE ROULEAU

BETWEEN:

JEAN-YVES HAMEL,
-and-
DOUBLE J. RANCH INC.,

Plaintiffs,

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
REPRESENTED BY THE ATTORNEY GENERAL OF CANADA,
CUSTOMS AND THE ROYAL CANADIAN MOUNTED POLICE,

-and-

ROYAL CANADIAN MOUNTED POLICE,

-and-

CANADA CUSTOMS,

-and-

CINDY VILLENEUVE,

-and-

TED SISK,

Defendants.

JUDGMENT

This action is allowed.

The defendant shall pay the sum of \$25,000 to Jean-Yves Hamel. She shall also pay the sum of \$50,000 to Ranch Double J. Inc. These sums shall bear interest at the legal rate as from the date when the action at law was instituted.

I award costs to the plaintiffs.

"P. ROULEAU"

JUDGE

Certified true translation

C. Delon, LL.L.

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-and-
DOUBLE J. RANCH INC.,**

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AND:

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-and-

CINDY VILLENEUVE,

-and-

TED SISK,

Defendants.

REASONS FOR JUDGMENT

ROULEAU J.

This is an action in tort against Her Majesty the Queen in right of Canada (hereinafter referred to as "Her Majesty") arising out of a fault allegedly committed by her servants against Jean-Yves Hamel and the firm Double J. Ranch Inc. (hereinafter referred to as "the plaintiffs").

Facts

The plaintiffs have had a business buying and selling horses in the province of Quebec, Canada, for about twenty years. In 1990, the plaintiffs were involved in buying horses in the United States, more specifically in New Jersey, and therefore frequently had to go through the customs office at the Canadian border.

Mr. Hamel arrived at the Lacolle customs office (Blackpool) in Quebec on June 18, 1990, and after completing the usual forms, the customs officer on duty

asked him to park the truck he was driving, to which a trailer containing some ten horses was hitched, in the vehicle inspection area. The customs officers did this pursuant to a look-out notice that had been issued by the Royal Canadian Mounted Police (hereinafter referred to as the "R.C.M.P.") concerning horses belonging to the Double J. Ranch Inc. because it was suspected that the horses were being used for drug trafficking. While the customs officers were doing a cursory inspection of Mr. Hamel's truck, he was informed that he was suspected of trafficking in narcotics and was subjected to a pat-down search before making a statement to the peace officers and members of the R.C.M.P.

After consenting to his horses being examined, Mr. Hamel, accompanied by Cindy Villeneuve, an R.C.M.P. constable on duty, and escorted by other R.C.M.P. vehicles, drove his truck and the contents of his trailer, some ten horses, to the St-Hyacinthe veterinary hospital. While the horses were there, they were subjected to a series of examinations to determine whether they contained cocaine. Among other things, they were fed laxatives over a period of at least three days. Certain areas of their bodies were also shaved.

The horses were returned to the plaintiffs on June 29, 1990, about ten days after they arrived at the St-Hyacinthe veterinary hospital, since no prohibited

substances had been detected or passed by natural means, and since it had been decided not to carry out any surgery on the horses.

Moreover, this case was given a certain amount of coverage in the information media, both in the print media and on television.

Issues

First, the Court must determine whether Her Majesty's servants, the members of the R.C.M.P., were entitled to detain the plaintiffs' horses at the Lacolle (Blackpool) customs office to have them examined and, if not, assess the damage caused by the interception.

Second, the Court must determine whether Her Majesty's servants are liable for leaking the information to the various media and, if so, assess the damage caused by the leak.

Position of the plaintiffs

The plaintiffs contend that Her Majesty's agents, and more specifically the members of the R.C.M.P. on duty at the Lacolle (Blackpool) customs office, committed a fault by detaining their horses and having them examined without first

conducting a serious investigation to check the soundness of the information they had received concerning the possibility that the plaintiffs were trafficking in cocaine by hiding it in the stomachs or intestines of horses.

As well, they contend that the media were informed of this case by the R.C.M.P., since the information that was published and broadcast was so clear and precise that it could only have come from the R.C.M.P.

Mr. Hamel contends that his reputation has been tarnished for all time, since the horse community is a relatively small one and people are still talking about this incident, nearly six years after it occurred. As well, he still feels humiliation when he has to appear at public auctions and has fingers pointed at him or has numerous offensive remarks made about him. He also contends that although Double J. Ranch Inc. is a separate entity, its reputation is closely associated with his own. Accordingly, the business is also still suffering the repercussions of the events of June 1990. Moreover, although he concedes that it is difficult to quantify the lost business, he claims that the number of customers has dropped as a result of that event. Lastly, he submitted a calculation explaining the amount of the claim for the loss of the horses.

In the instant case, the plaintiffs are seeking the following amounts from the defendant:

(A) Amount claimed by Jean-Yves Hamel

(a)	interference with his reputation	\$50,000.00
(b)	miscellaneous damage, humiliation and distress	<u>\$20,000.00</u>
TOTAL		\$70,000.00

(B) Amount claimed by Double J. Ranch Inc.

(a)	lost horses	\$17,118.00
(b)	lost business	in the discretion of the Court

(c)	interference with its reputation, miscellaneous damage, humiliation and distress	<u>\$50,000.00</u>
TOTAL		\$67,118.00 (not including lost business)

The claim includes interest at the legal rate from the date of service plus the additional indemnity provided in paragraph 1056(c) of the Civil Code.

Position of the defendant

The defendant submits that Her Majesty's servants, the members of the R.C.M.P., committed no fault by detaining the plaintiffs' horses at the Lacolle (Blackpool) customs office and having them examined to determine whether they contained cocaine, since they had the power to do so under paragraph 99(1)(a) of the *Customs Act*.¹

¹ R.S.C. 1985 (2nd Supp.), c. 1, as am. by S.C. 1986, c. 1.

As well, they submit that the plaintiffs have not succeeded in establishing, on a balance of probabilities, that the information leaked to the media originated with one of Her Majesty's servants. Moreover, in order for Her Majesty to be liable in respect of a fault committed by one of her servants, the servant must have committed the wrongful act in the performance of his or her authorized duties², and this was not the case here since the members of the R.C.M.P. were not at any time authorized to disclose information concerning this case.

² *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 3.

Analysis

Paragraph 3(a) and section 10 of the *Crown Liability and Proceedings Act* provides as follows:

3. The Crown is liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable

(a) in respect of a tort committed by a servant of the Crown;

10. No proceedings lie against the Crown by virtue of paragraph 3(a) in respect of any act or omission of a servant of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or the servant's personal representative.

Her Majesty will therefore not be held liable for the wrongful act of one of her servants unless he or she committed the tort in the course of his or her

employment and an action in tort for damages could be brought against him or her personally.

In the instant case, there is no doubt that the members of the R.C.M.P. are servants of Her Majesty. As well, when the members of the R.C.M.P. detained the plaintiffs' horses and had them examined, they were acting in the course of their employment. The only question that remains is therefore whether the plaintiffs could bring an action in tort against the members of the R.C.M.P. as a result of the events of June 18, 1990.

The case law has established that the applicable law in tort cases is the law of the province where the cause of action arose.³ In the instant case, this matter arose in the province of Quebec in 1990. The *Civil Code of Lower Canada*, and more specifically article 1053, therefore applies herein; that article reads as follows:

³ *Laperrière v. The King*, [1946] S.C.R. 415; *J.P.L. Canada Imports v. Canada* (1990), 43 F.T.R. 119 (T.D.); *Robitaille v. The Queen*, [1981] 1 F.C. 90 (T.D.) in which the Court held that when a cause of action arose in Quebec, the Civil Code applied to actions in tort.

Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

The plaintiffs must therefore establish the three following points, on a balance of probabilities, if this action is to succeed: that the defendant's servants committed a fault, that there is damage and that there is a causal connection between that damage and the fault of the defendant's servants.

Seizure and examination of the plaintiffs' horses

First, this Court must decide whether Her Majesty's servants committed a fault by detaining the plaintiffs' horses and having them examined when they arrived at the Lacolle (Blackpool) customs office. In order to do this, there is an initial question that must be resolved: what is the statutory authority on which the R.C.M.P. relied in doing this?

The defendant contends that the horses were detained and examined under paragraph 99(1)(a) of the *Customs Act*. On June 18, 1990, that paragraph read as follows:

99.(1) An officer may

(a) at any time up to the time of release, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts;

It is clear that in order for a customs officer to be able to act under that paragraph, the goods in question must not have been released. The definition of release is found in subsection 2(1) of the *Customs Act*, and reads as follows:

"release" means, in respect of goods, to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada.

In the instant case, the horses were released, according to Exhibit P-4 and the testimony of Angelo Deriggi, a Canada Customs information officer. Exhibit P-4 is a copy of the customs cargo control document that was given to Mr. Hamel on June 18, 1990, on which there is a stamp which reads "MAINLEVÉE-RELEASED" and [TRANSLATION] "EXAMINED AND RELEASED BY AGRICULTURE CANADA".

In addition, Mr. Deriggi admitted the following on the question of the release of the plaintiffs' horses:

[TRANSLATION]

QDo you know when Mr. Hamel's horses were released?

AThey were released on the same evening they were imported at Lacolle; the exact date and time ... I didn't have the time they were released because I was not the officer there at the time they were released.

QSo what is release?

ARelease is a procedure whereby the customs officer does his examination, examines the goods or ... the goods, in other words, in this case, and then he completes his examination. At the end of his examination, or ... he is satisfied. So he gives permission for the goods to be released, which means to enter Canada.

QAnd when was that done?

AThat whole procedure was done on the evening of the importation.

QExcept that the horses were still taken to the veterinary hospital and they were there for thirteen days.

...

THE COURT:

I am going to intervene here.

QYour own responsibility at Customs, it is not to obtain narcotics, but it is to stop people who are the subject of a look-out notice given to you by the R.C.M.P.?

AThat's right, yes.

QThat's right, okay. And if you find narcotics, you immediately take the person in question and turn him over ...

ATo the R.C.M.P.

QTo the R.C.M.P.?

AThat's right, your honour.

QAnd at that point you have finished your work?

AYes, that's right.

QSo I am showing you Exhibit **P-4**. There is a stamp on the left that says "**Released**".

A Yes, that's right.

Q And so that means that you have finished your job. You have stopped the person, you have examined the animals, everything complied with what you required, at that point, with your requirements?

A But I was not there that evening.

Q No, no, but I am showing you the exhibit, and it in fact shows the date?

A Yes. That means that it was released.

Q It was released. If there were any duties to be collected on the horses, then you would not have given the release?

A No, no, no.

Q No. But as far as you were concerned, those animals were entering duty-free?

A Duty-free, that's right.

Q Duty-free. So then they were transported to the Saint-Hyacinthe hospital?

A Yes.

QFine. The reason your customs officers remained in Saint-Hyacinthe was to assist the R.C.M.P.?

AYes, that's right.

QBecause in fact your investigation was finished at that point?

AFinished.

QFine. So who had ultimate responsibility for allowing the horses to be released from Saint-Hyacinthe to Mr. Hamel?

AIt was the R.C.M.P.

QYou no longer had any control?

ANo.

Once the horses were released, the customs officer then turned them over to the members of the R.C.M.P., so that the R.C.M.P. had control of them. Moreover, while the members of the R.C.M.P. are also customs officers under the *Customs Act*, nonetheless when the horses were driven to St-Hyacinthe, they had already been released, and accordingly, Mr. Hamel could have continued on his way with the horses were it not for the R.C.M.P.'s suspicions about him. Mr. Deriggi also

testified that the animals were under the control of the R.C.M.P. after they were released, and that the only reason why the customs officers accompanied the members of the R.C.M.P. to St-Hyacinthe was because the R.C.M.P. was short-staffed.

Paragraph 99(1)(a) of the *Customs Act* therefore cannot apply in this case. However, paragraphs 99(1)(e) and (f) might perhaps apply. Those paragraphs read as follows:

99.(1) An officer may

- (e) where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by him or any regulations thereunder have been or might be contravened in respect of any goods, examine the goods and open or cause to be opened any package or container thereof; or
- (f) where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by him or any regulations thereunder have been or might be contravened in respect of any conveyance or any goods thereon, stop, board and search the conveyance, examine any goods thereon and open or cause to be opened any package or container thereof and direct that the conveyance be moved to a customs office or other suitable place for any such search, examination or opening.

It is clear from these paragraphs that the customs officer must have reasonable grounds for suspecting that an offence has been committed before "examining" the goods. In the instant case, this was not the situation. The testimony of Daniel Paradis, a member of the R.C.M.P., is in fact very clear. This case arises out of information that Mr. Paradis received from an individual concerning Mr. Hamel. Armed with that information, Mr. Paradis initiated a semblance of an investigation. I say semblance, since there is no doubt that no real investigation was done in this case. After doing what I would characterize as cursory checking, Mr. Paradis turned the matter over to the R.C.M.P., which then issued a look-out notice concerning the plaintiffs' horses.

I am of the opinion that the members of the R.C.M.P. who detained the plaintiffs' horses and had them examined had no reasonable grounds for suspecting that the horses contained cocaine, and accordingly that the defendant cannot rely on paragraphs 99(1)(e) and (f) of the *Customs Act* in the instant case. In his testimony, Daniel Paradis admitted that the R.C.M.P. acted on information that it had received from an informer, whom he did not really know. The information he received from the informer was that Mr. Hamel was using horses to transport drugs from the United States

to Canada. The informer also told him that the drug was cocaine and that once the horses arrived at the Double J. Ranch Inc. they were then destroyed in order to remove the drugs from them. The horses were then buried on Mr. Hamel's land, or nearby. According to the informer, about nineteen horses were buried on Mr. Hamel's land. In support of that assertion, he explained that in the past, he had tried to purchase a horse that had just arrived from the United States, but that Mr. Hamel had told him to come back later because he didn't have time to sell it to him. When he went back to buy the horse, it had disappeared. Mr. Hamel allegedly then informed him that he had had to destroy it because it was sick.

The informer also told him about other people whom he suspected of engaging in the same kind of trafficking, and told him that one of them was in Texas at the time with some people from Italy. The informer also stated that he found it strange that Mr. Hamel had money and was living the good life, while in 1985 he didn't have a dime and could not even pay for the horse he had just bought.

Upon receiving this information, Mr. Paradis did the following research before passing the information on to the R.C.M.P. section that is responsible for "investigations":

[TRANSLATION]

When I received the information, the next day or the day after, the next day in my office I checked on the trip to Texas, concerning the other rancher, and I discovered that in fact the person he had identified to me was, had gone on a trip to Texas, that same day or the day before I did my checking, and was accompanied by two people from Italy, two individuals, two men from Italy.

And I contacted the Drug Enforcement Agency in Texas, which is the equivalent of the R.C.M.P. for narcotics in the United States. They told me that there was in fact a fairly big horse auction going on there, I don't recall the exact place in Texas, but that they didn't have time to do any checking, they were busy elsewhere. This was verified through an airline company, where the plane tickets had been purchased.

I contacted our R.C.M.P. liaison officer in Rome, Italy, to ask him to check the names. The only thing he could confirm was that those people had money, but the Italian authorities were involved in a huge investigation into organized crime, he had no idea who was who, and so they were in a big muddle. He couldn't tell me any more about it.

Except that a little later, they confirmed that these two people had returned to Italy and had brought nothing back, no horses, no drugs, nothing at all.

QDid you talk to your informer once, or more than once?

QThat person, do you know him well or ...

A No, I do not know him very well myself. He knew me more than I knew him. He knew what I did for a living, what kind of work I did, and so he contacted me and told me that he wanted to give me some information. So I knew who he was, but we were not on familiar terms ...

I reported the information, I checked a few facts myself, such as the trip to Texas and some other ranchers, and I checked with customs to see whether Mr. Hamel did in fact work, excuse me, travel frequently to the United States, or occasionally to the United States, to bring back horses, and everything checked out.

All my research checked out and I was able to determine that there were in fact people in Texas who corroborated the information I had received and I also determined that Mr. Hamel had in fact gone to the United States fairly often to buy horses, and even that he was in the United States at that time, that he was due to return shortly with some horses.

So all, not all but some of the information that I had on the case was corroborated in this way.

In addition, no evidence was presented to me at the hearing to show that any more thorough investigation had been done by the R.C.M.P. On the contrary, what the testimony given at the hearing showed was rather that all the events that took place on June 18, 1990 were orchestrated on the basis of the information obtained by Daniel

Paradis and of his pitiful efforts at checking it out. There is nothing in the evidence to suggest to me that, *inter alia*, any bank accounts held by the plaintiffs were checked or even that Mr. Hamel's neighbours were questioned about his activities or the activities of the Double J. Ranch Inc.

Based on the foregoing, I am of the opinion that the R.C.M.P. did not have enough information concerning Mr. Hamel and the Double J. Ranch Inc. to do what it did. A prudent and diligent person would have investigated at greater length and would have checked the truth of the allegations received through his "source" before taking any action.

In view of these facts, I am satisfied that Her Majesty's servants acted wrongfully in detaining the plaintiffs' horses and having them examined, since paragraphs 99(1)(a), (e) and (f) of the *Customs Act* cannot apply in this instance.

Leaked information

The plaintiffs also contend that the defendant's servants committed a fault by disclosing information to the media concerning this case.

In the instant case, counsel for the defendant submitted, first, that Her Majesty's servants were not responsible for leaking the information to the media. Second, he submitted that even if this Court were to find that an agent of Her Majesty was responsible for the leak, that person was acting outside the course of his or her employment in disclosing the information to the media.

I am not of this opinion, however. After considering all of the evidence in the record, I am satisfied, on a balance of probabilities, that a member of the R.C.M.P. is responsible for leaking the information to the media.

The case law has clearly established that the plaintiff need not identify the person or persons responsible for the fault committed against him or her. The plaintiff need only establish that the fault committed against him or her resulted from the action of a servant of Her Majesty who was acting in the course of his or her employment at the time he or she committed the fault.⁴

⁴ *The Queen v. Crown Diamond Paint Co.*, [1983] 1 F.C. 837 (C.A.).

While none of the journalists who testified in this Court identified any member of the R.C.M.P. as being his or her source of information concerning this case, and all of Her Majesty's servants who testified stated that the leak did not come from them, the leaked information could only have been come from the R.C.M.P. Too many details were disclosed in the various articles published in the print media. For example, in one of the articles dated June 20, 1990, we find the following passages:

[TRANSLATION]

Using a subterfuge that the police consider to be a first in the annals of Canadian law, some crafty drug traffickers allegedly used real horses as "couriers" in an attempt to import 200 kilos of cocaine into Quebec, with an estimated value of over \$130 million on the black market.

...

Although the police investigation is only at the preliminary stage, La Presse learned yesterday that the animals that were used as guinea pigs for transporting the precious white powder are currently under medical supervision at the faculty of veterinary medicine of the Université de Montréal at Sherbrooke.

If the police suspicions are borne out, then perhaps today or tomorrow, either naturally or surgically, all of these horses might pass a substantial quantity of the drug that is believed to have been hidden in their anatomies.

...

In fact, it appears that some time ago federal police officers learned that there were some individuals who planned to use large animals to facilitate the transportation of significant quantities of drugs between the United States and Canada.

In another article dated June 22, 1990, the following was written concerning this case:

[TRANSLATION]

The surveillance and "detention" of the horses was apparently ordered as a result of certain information received by the police.

On July 5, 1990, the following passage was published in a daily newspaper in the Montreal region:

[TRANSLATION]

The R.C.M.P. officers were firmly convinced that the horses were stuffed with cocaine, and they even mentioned the figure of 200 kg., with a value of \$60 million on the black market.

Only a member of the R.C.M.P. could have said exactly how many kilos of cocaine the plaintiffs' horses were suspected of transporting when they arrived at the Lacolle (Blackpool) customs office. As well, only a member of the R.C.M.P. could have known that this case arose out of information obtained from an informer. Certainly, Mr. Hamel did give a number of television interviews, and issued his comments to the print media. However, he did not do this until after the information had been leaked to the media. He was merely trying to set the facts straight and to give his opinion on the situation. He was certainly not aware of how many kilos of cocaine the R.C.M.P. suspected him of transporting, nor did he know about the existence of the informer.

Moreover, I cannot accept the submission of counsel for the defendant that the member of the R.C.M.P. who was the source of the leaked information was not

acting in the performance of his or her authorized duties since no member of the R.C.M.P. was authorized to disclose information about this case. In *Goh Choon Seng v. Lee Kim Soo*,⁵ Lord Phillimore wrote the following concerning the extent of an employer's liability for the actions of its employee:

⁵ [1925] A.C. 550, 554.

The principle is well laid down in some of the cases cited by the Chief Justice, which decide that "when a servant does an act which he is authorized by his employment to do under certain circumstances and under certain conditions, and he does them under circumstances or in a manner which are unauthorized and improper, in such cases the employer is liable for the wrongful act."

In the instant case, the information that was disclosed to the media arose directly out of the "investigation" conducted by the R.C.M.P. Only a member of the R.C.M.P. who was involved in that investigation to some degree or another could have supplied the information that was given to the media. Whether that member acted alone or with the consent of the R.C.M.P. does nothing to change the fact that when the member disclosed the information to the media, he or she did so as a member of the R.C.M.P. who was involved in the investigation.

Accordingly, the member of the R.C.M.P. who disclosed the information to the media did so wrongfully and in the course of his or her employment.

Damage and quantum of damages

There is no doubt that the plaintiffs have suffered direct and immediate harm⁶ as a result of the actions of Her Majesty's servants. The plaintiffs are therefore entitled to receive compensation from the defendant for the damage caused to them by the faults committed by her servants.

⁶ *Volkert v. Diamond Truck Co. Ltd.* (1939), 66 B.R. 385; aff'd [1940] S.C.R. 455.

The Double J. Ranch Inc. suffered harm as a result of the treatment inflicted on the horses while they were in St-Hyacinthe. According to the evidence presented to me, the horses were in good health when they were inspected in the United States. The same was true when they were examined at the Lacolle (Blackpool) customs office. It cannot be denied that the series of examinations to which the horses were subjected after they were transported to St-Hyacinthe had some effects on them. Among other things, they were fed laxatives over a period of at least three days, to determine whether they contained drugs. This purge weakened them and caused them to lose weight. As well, some horses had various areas of their bodies shaved, again in order to ensure that they did not contain any drugs. Moreover, the horses were supposed to be sold at an auction the following Friday. However, they could not be sold on that date, since they were not returned to the plaintiffs until after the Friday. When the horses were returned to Mr. Hamel, he decided, in view of their health, to sell them for a lower price.

Accordingly, I fix the amount of the claim by the Double J. Ranch Inc. for the loss associated with the horses at \$5,000, having regard to the various points in the evidence presented to me at the hearing, and more particularly since the Double J. Ranch Inc. was still able to sell the horses.

Moreover, interference with reputation may found a claim for compensation where it amounts to a fault and has caused damage.

[TRANSLATION]

In order for defamation to found an action for damages, the person who perpetrated the defamation must have committed a fault. The fault may result from two types of conduct. The first is where the defendant knowingly, in bad faith, with intent to cause harm, attacks the reputation of the victim and seeks to ridicule, humiliate and expose him or her to hatred or contempt in the eyes of the public or of a group. The second is the result of conduct where there was no intent to cause harm, but where the defendant nonetheless interfered with the victim's reputation through recklessness, negligence, impertinence or carelessness. Both forms of conduct constitute a civil fault for which compensation may be awarded, and there are no differences between them in terms of the right to a remedy. In other words, we must refer to the ordinary rules of civil liability and resolutely abandon the false idea that defamation is the result only of an act of bad faith involving the intent to cause harm. Moreover, in civil law defamation is not the result only of the disclosure or publication of false or incorrect news.⁷

⁷ J.-L. Baudoin, *La responsabilité civile*, 4th ed., Cowansville, Yvon Blais, 1994 at pp. 236-7.

Such interference generally causes two types of damage: material damage and moral damage:

Defamation, first, entitles the victim to compensation for the economic harm it causes. This includes loss of customers and reduction in sales following attacks on a product by a competitor. There must also be compensation for the physical or psychological harm suffered by the victim, particularly if there is an impact on his or her capacity to work and therefore to earn.

Most of the time, however, the essence of the claim is composed of the moral damage suffered by the victim. In that case, it is necessary to compensate for the interference with his or her reputation and to try to compensate for the humiliation, contempt, hatred or ridicule directed against him or her.⁸

⁸ *Ibid.*, at pp. 238-9.

The following factors are normally taken into consideration by the courts in assessing the damage caused by interference with a person's reputation:

First, the seriousness of the act is considered. Was it a mere discourteous or impolite comment, or was it, on the contrary, a full-fledged attack? While the intent of the person who committed the defamation is of no importance in terms of determining whether there was fault, it may be of some importance in terms of assessing the harm. Thus the courts have been more severe where the person who committed the defamation used it to try to ruin the plaintiff or to stymie his or her political aspirations. Obviously, it is important to know how widely the defamation was spread. Logically, wide publicity must be grounds for a more generous award than if it was limited to a small circle. The status of the parties, the effect that the act had on the victim and his or her family and friends, how long the interference went on, and whether the effects were permanent or transitory must also be considered.⁹

⁹ *Ibid.*, at pp. 239-40.

The reputations of both Mr. Hamel and the Double J. Ranch Inc. were tarnished by the wrongful acts of Her Majesty's servants. In the instant case, I shall deal with the loss of business suffered by the Double J. Ranch Inc. before addressing the question of moral damage.

The Double J. Ranch Inc. lost business as a result of the events of June 18, 1990. Yves Nolin and Michel Herbert, who both work in the horse trade, testified that people in the horse community are still talking about the events of June 18, 1990. Yves Nolin also stated that shortly after June 18, 1990, he cut back on his buying from the plaintiffs for a period of time. He then started doing business with the plaintiffs again, but he stated that some people refused to continue doing business with the plaintiffs.

The events of June 1990 also resulted in a number of newspaper articles and television reports. Some newspaper articles carried pretty eye-catching headlines, which could not help but harm the plaintiffs' reputation and drive away potential customers: [TRANSLATION] "Horses stuffed with drugs — Instead of "Coke" ... dung!"; "100% pure manure" and "Horses seized by RCMP believed stuffed with 200 kilos of cocaine".

Accordingly, although it may be somewhat difficult to establish with any certainty how much business the Double J. Ranch Inc. lost as a result of the events of June 18, 1990, this Court assesses the amount that the defendant must pay to it as a result of the wrongful acts of her servants to be \$20,000.

Moreover, as a result of the publication of these articles, Mr. Hamel, his wife and their daughter were ridiculed, humiliated and identified as drug traffickers by the public in general, and in particular by the people who move in the horse world's circles. Despite the fact that the newspapers and television reports all stated that the R.C.M.P. had found no drugs in the horses, it was too little, too late. While a reputation is built up little by little, not much is needed to destroy it. In the relatively closed circle of the horse world, the reputations of Mr. Hamel and the Double J. Ranch have been sullied forever. According to the evidence presented to me, the events of June 1990 are still a topic of discussion and speculation. As well, doubts still persist in horse circles

about Mr. Hamel's honesty and the respectability of the Double J. Ranch Inc. Despite the fact that Mr. Hamel himself contributed to the events of June 1990 becoming a media event by granting interviews both to the print media and to television, he did this only in reaction to the unflattering newspaper articles about him. He was only trying to restore his reputation. He cannot be reproached for doing so.

On the question of the importance of an individual's reputation, the Supreme Court has written:

Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.¹⁰

¹⁰ *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130.

I am of the opinion that the same reasoning applies to a corporate person: a business's reputation is essential if it is to prosper and grow.

Accordingly, after reviewing the evidence in the record, I am of the opinion that Mr. Hamel and Double J. Ranch Inc. are entitled to receive the sum of \$25,000 each from the defendant to compensate for interference with their reputation and for miscellaneous damage, humiliation and distress resulting from the faults committed by Her Majesty's servants.

Conclusion

For these reasons, this action is allowed.

The defendant shall pay the sum of \$25,000 to Jean-Yves Hamel. She shall also pay the sum of \$50,000 to Double J. Ranch Inc. These sums shall bear interest at the legal rate as from the date when the action at law was instituted.¹¹

¹¹ 1056c of the Civil Code.

I award costs to the plaintiffs.

"P. ROULEAU"
JUDGE

OTTAWA, Ontario
August 20, 1996

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: T-1529-91

STYLE OF CAUSE: Jean-Yves Hamel and Double J. Ranch Inc. v. Her Majesty the Queen in right of
Canada *et al.*

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 30 and May 1, 1996

REASONS FOR JUDGMENT OF ROULEAU J.

DATED August 20, 1996

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