

# Defamation in Quebec: the Responsibility of Online Platforms

Canoë Inc. v. Corriveau, 2012 QCCA 109  
Quebec Court of Appeal  
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# Outline

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# Why is this case important?

## 1. Clarifies Platform Liability for User-Generated Content

- a. Platforms have a duty to prevent foreseeable harm.
- b. Platforms can be held liable for defamatory content posted by users if they fail to take reasonable steps to moderate and remove harmful content.

## 2. Application of Article 49 to defamation

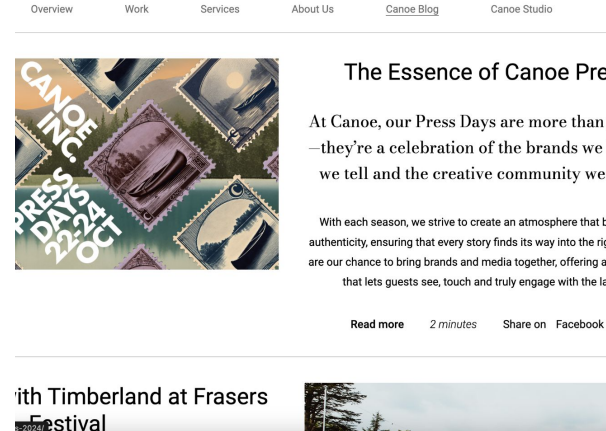
- Different from St-Ferdinand which was still a charter violation, but not a defamation case.

## 3. Strengthens Protections for Dignity and Reputation

- Creates a precedent for the protection of an individual's dignity and reputation against the freedom of expression of third-party users commenting on online platforms.

# Canoë Inc.

1. Company that hosts a range of blogs and discussion platforms covering a wide array of topics.
2. Known for encouraging public interaction and user commentary
3. **Popular forum for debate on current events in Quebec and beyond.**



# Richard Martineau

Regarding the case of lawyer Suzanne Corriveau: **Do lawyers lack a sense of morality? Are they willing to do anything to win their case?** How far should lawyers go to defend their clients? Is everything allowed in a trial? There have been instances where young children have "invented" stories of rape and molestation from scratch... What can be done to expose these "fabricators"? Should we believe ALL young people at their word? **Do we tend to treat victims of sexual assault as if they were guilty?**



# The Comments in Question

[13] A person named Brigitte Ducas called the plaintiff a **"silly tart"** and **"stupid."**

[14] Then there's the comment from Louis P., who wrote:

**"...Me Suzanne Corriveau, a well-known figure in Quebec who wins her cases without fail because she provides young prostitutes to certain judges of the Superior Court..."**

[16] An internet user identifying as Raymond Pearson responded "in addition to Louis P.," with:

**"Suzanne Corriveau is the daughter of lawyer Lawrence Corriveau, a notorious client of the network who avoided charges due to his death. Suzanne's brother, named Richard, also a lawyer, served a few years in prison for various fraud offenses."**

# Susan Corriveau

1. Prominent lawyer in Quebec with a longstanding reputation for practicing criminal and civil law.
2. Her 2007 case involving allegations of sexual abuse against a minor drew significant public and media interest.
3. Given the nature of the allegations, Corriveau faced scrutiny, especially in Quebec's media landscape, where high-profile legal cases are often the subject of intense public debate.



# Initial Case - Corriveau c. Canoë et Martineau, 2010

## Relevant Laws:

1. Article 1457 CCQ: Canoë was found to be grossly negligent.
2. Article 4 Quebec Charter of human rights and freedoms: Canoë's negligent actions were found to have violated Corriveau's "right to the safeguard of [their] dignity, honour and reputation."
3. Article 49 Quebec Charter of human rights and freedoms: Corriveau thus allowed to "obtain the **cessation** of such interference and **compensation** for the moral or material prejudice resulting therefrom.

## Awards:

1. \$50,000 in compensatory damages for the harm caused to her reputation and dignity due to the defamatory comments.
2. \$50,000 in punitive damages under Article 49 of the Quebec Charter, as Canoë Inc.'s failure to moderate the content was deemed an "illicit and intentional" violation of her rights.
3. \$7,000 in extrajudicial fees to cover some of Corriveau's legal expenses, due to Canoë's actions that prolonged the litigation.



# Canoë Inc. v. Corriveau, 2012 QCCA 109

- Canoë's appeal:

Canoe returns to court in order to dispute punitive damages under Article 49 of the Quebec Charter...**arguing that its failure to moderate defamatory comments did not meet the standard for an "illicit and intentional" violation required under Article 49 of the Quebec Charter of Human Rights and Freedoms.**

- Appeal Decision:

The Quebec Court of Appeal upheld the initial ruling, stating that Canoe Inc.'s **gross negligence in moderating the defamatory content, given the foreseeable harm, met the criteria for an intentional violation of Corriveau's rights.** The court maintained that Canoe Inc., as the platform host, could not ignore the extreme harm caused by leaving defamatory content online.

# Legal Issues & Relevant Laws

- (1) Did Canoë's failure to moderate defamatory content constitute intentional infringement under section 49(2) of the Charter justifying punitive damages?
  - Section 49 (2) of the *Charte des droits et libertés de la personne*
    - Legal Test in *St-Ferdinand*
  - Art. 1621 CCQ
- (2) Were extrajudicial fees justified?
  - Art 54 CCP

## Article 49, Charter of human rights and freedoms

- (1) Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.
- (2) In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

## Legal Test : Québec (Curateur public) c. Syndicat national des employés de l'hôpital St-Ferdinand, 1996

[121] Consequently, there will be an unlawful and intentional violation within the meaning of the second paragraph of Article 49 of the Charter when the perpetrator of the unlawful act has:

(1) a state of mind that indicates a desire or will to cause the consequences of their wrongful conduct, or **if they act with full knowledge of the immediate and natural, or at least extremely probable, consequences that this conduct will produce.**

(2) **This criterion is less strict than specific intent but goes beyond mere negligence.** Thus, the **recklessness displayed** by an individual regarding the consequences of their wrongful acts, however extreme and reckless it may be, **will not, by itself, satisfy this criterion.**

# (1) Knowledge of Consequences

[103] Canoë, like any reasonable person in the same circumstances, could not ignore that by making "the Suzanne Corriveau case" the topic of the day, it would have immediate and highly probable consequences that some individuals would make defamatory or injurious comments toward the plaintiff. Such a controversial subject could only lead to excesses. Furthermore, by violating its own rules, the defendant Canoë was aware of the consequences that the publication of such comments could have.

[104] Given that Canoë could not ignore that some individuals would make injurious or defamatory statements about the plaintiff, it could not ignore the impact that being insulted would have on the victim (an infringement on her dignity) and the effect of the defamatory comments on her reputation (an infringement on her honor and reputation).

## (2) More than reckless

[...] Furthermore, by violating its own rules, the defendant Canoë was aware of the consequences that the publication of such comments could have.

- Article 2 of Richard Martineau blog regulations sets out behaviours not tolerated in the comments.
- Paragraph 4.8, 4.9 and 5.2 of its service contract with Richard Martineau required him to moderate the comments on his blog in accordance with his blog regulations.
- Canoë relieved Richard Martineau from the obligation to moderate without taking measures to ensure that Article 2 of its regulations was respected.

# Punitive Damages - Article 1621 CCQ

1621. Where the awarding of punitive damages is provided for by law, the amount of such damages may not exceed what is sufficient to fulfil their preventive purpose.

Punitive damages are assessed in the light of all the appropriate circumstances, in particular the gravity of the debtor's fault, his patrimonial situation, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the reparatory damages is wholly or partly assumed by a third person.

# What does this mean moving forward?

- 1) Platform hosts have a duty to moderate third-party content to prevent foreseeable harm proportional to their capacity to moderate.
- 2) When they fail to do so, they may be liable for compensatory and punitive damages.
- 3) The case sets a standard for “unlawful and intentional interference”:
  - a) (1) knowledge of consequence: By publishing provocative content, the host ought to have known that there would be defamatory comments.
  - b) (2) more than reckless behaviour: When a platform has regulations to prevent defamatory comments and fails to enforce such regulations.



# What does this mean moving forward?

For platforms operating from outside of Quebec, as we have seen in *Haaretz v. Goldhar*, the courts may find that the more appropriate forum to hear the case may not be Quebec.

In such a case, Quebec laws will not apply.

# Key facts of the presentation

## Legal Basis:

1. Article 49 (Quebec Charter): Punitive damages awarded, as Canoe's gross negligence was deemed an "illicit and intentional" violation under the Charter.
  - a. 49(1), Establishes fault
  - b. 49(2), Punitive damages for unlawful intentional interference.

## Significance:

1. Reinforces that platforms have a duty to moderate user-generated content to prevent foreseeable harm.
2. Sets a standard for "unlawful and intentional interference", i.e. publishing provocative content and having an internal policy against defamation and not enforcing it.

# Bibliography

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