

R. c. Rioux

2016 QCCQ 6762

COURT OF QUEBEC

CANADA
PROVINCE OF QUEBEC
DISTRICT OF CHICOUTIMI
"Criminal and Penal Division"

No.: 150-01-044630-144

DATE: January 22, 2016

PRESIDING: THE HONOURABLE MADAM JUSTICE JOHANNE ROY, J.C.Q.

THE QUEEN

Prosecutrix

v.

JEAN-MICHEL RIOUX

Accused **Defendant if summary conviction.**

JUDGMENT

CONTEXT

[1] Mr. Jean-Michel Rioux faces two charges in connection with events that occurred on October 26, 2014.

[2] The first charge, more rarely brought, is that of having incited hatred against an identifiable group by communicating statements in a public place (subsection 319(1) of

the *Criminal Code*), and the second is that of having uttered threats to cause death or bodily harm to ethnic groups (paragraphs 264.1(1)(a) and 264.1(2)(a) *Cr. C.*).

[3] Counsel agreed to proceed solely with documentary evidence, followed by their respective submissions.

[4] The impugned statements were made on October 26, 2014, when the accused, Jean-Michel Rioux, made comments on the Facebook page of TVA News, as he took part in a discussion forum.

[5] The Crown's evidence consists of two elements:

(1) a CD comprising three files which represent and contain Rioux's Facebook profile and the discussions and comments written on the Facebook page of TVA News during the day of October 26, 2014, particularly between 1 p.m. and 6 p.m., and

(2) the accused's written statement, agreed to and signed in the presence of police officers on October 29, 2014.

[6] To understand the facts, it will be helpful to reproduce excerpts from the comments written on the Facebook page of TVA News.

[7] The first page shows a photo of two men and the following text:¹

[TRANSLATION]

Two Montreal imams unequivocally condemn the murders of the two Canadian soldiers.

"A cowardly attack, by cruel persons," they said.

They want to continue to be heard.

[8] Many signs of approval (likes) follow the title and the comments.

[9] Without relating them exhaustively, it is worth quoting some of these comments to understand the meaning of the discussions:²

[TRANSLATION]

- Muslims don't have to justify themselves to imbeciles.
- WHAT?! Not all Muslims are terrorists?! I thought the 1.6 billion Muslims, close to 30% of all the people in the world, were terrorists!!! What a shock!!

¹ Exhibit P-1, J.-M. Rioux conversations file.

² *Ibid.*

No, seriously, people who think they're all sick in the head have a small judgment/education problem... or they're just Islamophobes...

- No need for proof. You just have to be uneducated and racist to believe that everyone's in the same boat! The media doesn't help.
- I'm ashamed of the close-minded Quebecers who denounce all Muslims. They're not all radicals with the same views. Look, in 2014, we should be able to have judgment and join together to fight radicals.

[10] Several comments of this nature were expressed until 1:39 p.m., when Mr. Rioux joined the discussion:³

[TRANSLATION]

(J.-M.R.) I can't wait to get my hunting licence so that I can stick their fucking heads on my truck hood!!!!

[11] His comment gave rise to a discussion:

[TRANSLATION]

- Hmm, nice death threat, your comment.
- **(J.-M.R.) Obviously you couldn't tell the difference between a wet fart and skid marks!**
- That's right, their heads on a truck hood.
Truck hood, perfect.
- **(J.-M.R.) That's what it is to be a Quebecer, my friend! Come into my house! Go into my fridge! Etc.!! But don't start talking louder than me in my house 'cause I'll kick your ass home!! It's come to kicks for your info by the way!!**
- Calm down lol.
- You're a real ignorant and insignificant imbecile.
- **(J.-M.R.) Gutless, ignorant and insignificant! You're a wimp and a weakling! When they take over and your kids go to school with a bunch of turbans, you won't find it so funny!!**
- Go on being a victim of the law like the dependent slave that you are.
- A death threat and another murderer in the making and you talk about them.
- Makes you wonder who the extremist is.

³ *Ibid.*

- (J.-M.R.) **No, no! I'm waiting for my hunting licence. :)**

[12] Other comments were made between 4:47 p.m. and 5:33 p.m.:⁴

[TRANSLATION]

- (J.-M.R.) **We're going to exterminate your sub-race. :) Thank you. Good evening.**
- Jean Michel, sub-race, you know it's them who invented science and numbers, you idiot.
- (J.-M.R.) **Damn I can't wait to get my licence!!**
- With what you're writing you'll be in jail long before you get your licence. You need help.
- (J.-M.R.) **You're not too nervous you little chicken shit, eh!**
- I'd shut up with your idiotic mentality.
- Rayane, you stole science and numbers from other civilizations like the Persians and the Greeks among others. Not to mention that people know you're imposters, you burned the Library of Alexandria. You invented nothing apart from camel urine, which for you is an antibiotic.
- (J.-M.R.) **Hahahahaha what a fucking stupid people! That's all you can come up with!!**

[13] Mr. Rioux made a brief statement on October 29, 2014:⁵

[TRANSLATION]

Q.: What do you have to say about the comments you made on Facebook on October 26, 2014, concerning the report on TVA News?

A.: I was just fooling around. I came across this news by chance and I decided to make a comment which I copied from another person and which I found funny which I saw on the same site. When I saw the comments on my comment, I panicked. As for my other comments that followed, they come from me but I didn't believe them. I wouldn't harm a fly. I was overwhelmed by the turn of events. I never comment on Facebook, I don't follow the news. I wasn't thinking.

Q.: What sub-race were you talking about?

A.: I have no idea, I just threw those words out there.

⁴ *Ibid.*

⁵ Exhibit P-2.

ANALYSIS AND DECISION1. PUBLIC INCITEMENT TO HATRED, s. 319 *Cr. C.*

[14] The unusual nature of this provision warrants its reproduction here:

319 (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

1.1. APPLICABLE LEGAL PRINCIPLES

[15] The charge brought refers to subsection 319(1), which requires that the following essential elements be established:

- the communication of statements that incite hatred
- in a public place
- against an identifiable group
- where such incitement is likely to lead to a breach of the peace.

[16] In *Mugesera v. Canada (Minister of Citizenship and Immigration)*, the Supreme Court considered an offence under subsection (1) less serious than that of wilfully promoting hatred under subsection (2):

In a passage in *R. v. Buzzanga and Durocher* (1979), 49 C.C.C. (2d) 369 (Ont. C.A.), at pp. 384-85, cited with approval by this Court in *Keegstra*, Martin J.A. compared the two subsections of s. 319 and concluded that the guilty mind required by subs. (1) is something less than intentional promotion of hatred. On the other hand, the use of the word "wilfully" in subs. (2) suggests that the offence is made out only if the accused had as a conscious purpose the promotion of hatred against the identifiable group, or if he or she foresaw that the promotion of hatred against that group was certain to result and nevertheless communicated

the statements. Although the causal connection need not be proven, the speaker must desire that the message stir up hatred.⁶

[17] To determine whether the statements promote hatred, the Court must consider them objectively, bearing a number of factors in mind:

As is the case with the crime of incitement to genocide, the crime of incitement to hatred requires the trier of fact to consider the speech objectively but with regard for the circumstances in which the speech was given, the manner and tone used, and the persons to whom the message was addressed.⁷

[18] A determination that the statements promoted hatred does not require proof that the communication caused actual hatred.⁸

[19] The statements must target an identifiable group as defined in subsection 318(4) *Cr. C.*:

... *identifiable group* means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability.

[20] Identification of the targeted group arose in *R. v. Krymowski*, where the Supreme Court reiterated the items of evidence to be considered:

It was incumbent upon the trial judge to look at the totality of the evidence and draw appropriate inferences to determine whether the respondents intended to target "any section of the public distinguished by colour, race, religion or ethnic origin", in this case, the Roma people. Several items of evidence potentially related to this issue.⁹

[21] The concept of breach of the peace is not defined in the *Criminal Code* and remains imprecise.

[22] In *R. v. Kerr*,¹⁰ the Supreme Court cited author Pierre Lapointe's definition of public peace:

... [TRANSLATION] The concept of public peace is at the very least imprecise. Since Parliament mentions this notion as well as that of committing an offence, it covers a situation broader than a contravention of the *Criminal Code*.¹¹

⁶ *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, at para. 104.

⁷ *Ibid.* at para. 106.

⁸ *Ibid.* at para. 102.

⁹ *R. v. Krymowski*, [2005] 1 S.C.R. 101 at para. 19.

¹⁰ *R. v. Kerr*, [2004] 2 S.C.R. 371 at para. 36.

¹¹ Pierre Lapointe, "Les infractions criminelles" in Barreau du Québec, *Collection de droit 2002-2003*, vol. 11, *Droit pénal : Infractions, moyens de défense et peine* (2003), ch. II, 55 at 75.

[23] More recently, the authors of JurisClasseur Québec attempted to define what constitutes a breach of the peace:¹²

[TRANSLATION]

(d) Breach of the peace

15. Definition – Because of the many definitions found in the case law and because of the silence of the *Criminal Code* on this subject, it is not easy to define precisely what constitutes a breach of the peace. Some guidelines emerge, however, in the jurisprudence. First, the concepts of criminal offence and breach of the peace, although related, are not interchangeable: not all criminal offences constitute a breach of the peace, and a breach of the peace is not necessarily a crime.

According to the Court of Appeal for Ontario, a breach of the peace is conduct that causes or is likely to cause harm to an individual; however, it does not include conduct that is simply deemed offensive, troublesome or vaguely threatening. Relying on English case law, other courts have found it to cover a broader range of conduct. For example, a breach of the peace could include conduct that causes or is likely to cause damage to the property of an individual in its presence, or a situation where a person fears that such damage will occur during an assault, a fight, a riot, an unlawful assembly or any other disturbance. ...

[Citations omitted.]

1.2. APPLICATION TO THE CASE AT BAR

[24] The statements communicated by the accused constitute speech that incites hatred.

[25] According to the Supreme Court:

Within the meaning of s. 319, “hatred” connotes “emotion of an intense and extreme nature that is clearly associated with vilification and detestation”: *Keegstra*, at p. 777. Only the most intense forms of dislike fall within the ambit of this offence.¹³

[26] The language used, the images suggested, the repetition of the words and the violent writing style are persuasive evidence of this element.

[27] Of all the comments, Rioux’s stand out clearly for their expression of profound contempt, made without any openness to or interest in discussion but solely to convey with violent language and brutal imagery all the resentment he feels towards the group in question.

¹² Ariane Gagnon-Rocque & Jessy Héroux, “Fascicule 5 – Arrestation” in JurisClasseur Québec – Preuve et procédure pénales (current as of October 15, 2014), at para. 15.

¹³ *Mugesera v. Canada*, *supra* note 6 at para. 101; *R. v. Keegstra*, [1990] 3 S.C.R. 697 at 777.

[28] The spontaneous reactions of the other participants confirm the feelings of fear, dismay and disapproval elicited by the accused's statements.

[29] Objectively, these statements constitute incitement to hatred.

[30] The statements must be made in a "public place". This concept is defined in the same provision as including "any place to which the public have access as of right or by invitation, express or implied".¹⁴

[31] The defence did not dispute that a public discussion site with no access restrictions meets this definition.

[32] The main argument of the defence is that the evidence does not establish, beyond a reasonable doubt, the group targeted by the statements.

[33] It should be noted that the accused has no burden; rather, it is up to the Crown to prove each of the essential elements, beyond any reasonable doubt.

[34] Since the defence's argument is based on the assertions in the statement, the Court must consider these assertions not in isolation but in light of the evidence as a whole.

[35] In his brief statement, the accused said that he does not follow the news, that he was unaccustomed to using such language and copied a comment by chance, that he had no idea of the sub-race he was referring to, and that he panicked when he read the comments his assertions elicited.

[36] After considering all the evidence, the Court does not accept the accused's version.

[37] Before the accused joined the discussion, almost all of the comments made refer to persons of the Muslim faith, with multiple direct references to the noun and adjective Muslim.

[38] The texts also include references to the Muslim religion and the Muslim community, to Islam and to Islamophobia.

[39] These numerous comments leave no doubt as to their subject, at the heart of which are the Muslim religion and its followers.

[40] Furthermore, they flow logically from the title and the subject of the news.

¹⁴ Section 319(7) *Cr. C.*

[41] The accused's first assertion and all his subsequent assertions are consistent with the chronology of the discussion and, in each case, are a reply to the comments made in response to his remarks.

[42] The coherence and the variety of his remarks contradict his statement that he copied the comment from another person, without knowing the news and without knowing what he was talking about.

[43] If the accused did not know the subject he was talking about, he would have had to copy not just one comment but many, since he made more than one, in different ways.

[44] The situation would have been different if the accused had made only one comment, but between 1:39 p.m. and 5:33 p.m. he made about ten.

[45] He admits to being the author of the other comments:

[TRANSLATION]

As for my other comments that followed, they come from me but I didn't believe them.¹⁵

[46] Far from showing a sense of panic, his statements are made with hostility and persistence, as he repeatedly shares his intolerant views with his discussion partners.

[47] There is nothing to even suggest that the accused was in any way intimidated by the criticisms levied at him in very clear terms.

[48] An analysis of the different statements and the relevance, in the sense of consistency, of the accused's comments make it impossible to conclude that the accused did not know the subject of the discussion, namely, Muslims.

[49] His racist comment about people who come into his home, who help themselves from his refrigerator, and who deserve to be forcefully sent home includes a specific reference to an immigrant.

[50] The use of the expression sub-race, considering the way in which the comments and the discussion unfolded, helps identify the group targeted by the accused's statements.

[51] Even though the reference to turbans is not exclusive to Muslims, it is further evidence of the accused's target.

¹⁵ *Supra* note 5.

[52] All these elements, the direct reference made by the other participants to Muslims, the interjection of comments consistent with the different remarks made, and the statements, including the reference to turbans and to a sub-race, eliminate all doubt as to the group targeted by the accused's statements.

[53] The defence argues that there was no intention to incite hatred likely to lead to a breach of the peace.

[54] The accused does not deny having actually written the statements in question, nor does he offer a different interpretation; he simply says that the opinions expressed are not his and that he is not a violent person.

[55] The distinction that the accused is trying to establish could have served as a defence to the offence of wilful promotion of hatred, but it has no bearing on the intention required for the offence charged against him.

[56] The Court concludes that the violence of the comments made, the persistent sharing of intolerant views to the point of suggesting the use of force, and the clearly expressed insults directed at those who would instead welcome members of the Muslim community with openness and respect are likely to lead to a breach of the peace.

[57] In fact, many of the replies to the accused show feelings of violence and of threat elicited by the accused's comments.

[58] For all the reasons stated objectively above, the form of the comments, the persistent effort to persuade, and the images suggested by the accused's remarks meet all the essential criteria for this offence.

[59] The accused is convicted of the offence described in the first charge.

2. THREAT TO CAUSE DEATH OR BODILY INJURY TO ETHNIC GROUPS

2.1. APPLICABLE LEGAL PRINCIPLES

[60] In 2013, in *R. v. O'Brien*, the Supreme Court reiterated what constitutes the *actus reus* and the *mens rea* of the offence, as they had been defined in *Clemente*:¹⁶

Under the present section the *actus reus* of the offence is the uttering of threats of death or serious bodily harm. The *mens rea* is that the words be spoken or written as a threat to cause death or serious bodily harm; that is, they were meant to intimidate or to be taken seriously.¹⁷ [emphasis omitted]

¹⁶ *R. v. Clemente*, [1994] 2 S.C.R. 758 at 763.

¹⁷ *R. v. O'Brien*, [2013] 1 S.C.R. 7 at para. 7.

[61] In *R. v. McRae*, it is established that determining the nature of the comments made by the accused is a question of law that must be decided according to the reasonable person standard:

[13] Thus, the legal question of whether the accused uttered a threat of death or bodily harm turns solely on the meaning that a reasonable person would attach to the words viewed in the circumstances in which they were uttered or conveyed. ...

[14] The reasonable person standard must be applied in light of the particular circumstances of a case. ...

It follows that a reasonable person considering whether the impugned words amount to a threat at law is one who is objective, fully-informed, right-minded, dispassionate, practical and realistic.¹⁸

[Emphasis omitted.]

[62] The requisite *mens rea* is one of specific intent, as the Quebec Court of Appeal reiterated in *Dulac v. R.*:

[TRANSLATION]

The person charged with this offence must therefore have the intention to intimidate, arouse fear, or have the threat taken seriously. What we have here is a specific intent rather than a general intent.¹⁹

2.2. APPLICATION TO THE CASE AT BAR

[63] There is no evidence of either the wrongful act or the required degree of intent.

[64] There is a fundamental difference between making comments that are hateful in nature and encourage the sharing of this negative feeling, and making statements that constitute a threat.

[65] The image used by the accused of resorting to decapitation and dismembering the victim as though he were a trophy is an example of this difference.

[66] The comment reflects a feeling of hatred without, however, constituting an actual threat, given the manner in which the idea is expressed, such as, for example, the reservation about obtaining a licence.

[67] It must nevertheless be admitted that the comment about exterminating the sub-race is closer to the wrongful act in question, although it does not fundamentally change the scope of the discourse.

¹⁸ *R. v. McRae*, [2013] 3 S.C.R. 931 at paras. 13 and 14.

¹⁹ *Dulac v. R.*, 2015 QCCA 1625 at para. 4.

[68] A well-informed, reasonable person should consider all the comments which, in the Court's view, are more closely associated with hate speech than with making actual threats.

[69] As for intent, the Court cannot conclude beyond a reasonable doubt that the accused sought to intimidate or arouse fear.

[70] His comments tend to insinuate and persistently share a perception characterized by detestation, but they do not reflect a wish to sow fear and intimidate.

[71] Consequently, the accused is acquitted of this offence.

CONCLUSION

[72] The accused is therefore convicted on the first count and acquitted on the second.

Johanne Roy, J.C.Q.

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