

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE QUEBEC COURT OF APPEAL)**

B E T W E E N:

MIKE WARD

APPELLANT

-and-

COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

RESPONDENT

(Respondent)

-and-

SYLVIE GABRIEL, JÉRÉMY GABRIEL

INTERVENERS

(Mis-en-Cause)

-and-

**ASSOCIATION DES PROFESSIONNELS DE L'INDUSTRIE DE L'HUMOUR,
INTERNATIONAL COMMISSION OF JURISTS (CANADA), CANADIAN CIVIL
LIBERTIES ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, LEAGUE
FOR HUMAN RIGHTS OF B'NAI BRITH CANADA**

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A. RESPONSE TO THE FACTUM OF THE INTERVENER INTERNATIONAL COMMISSION OF JURISTS (“ICJ”)

1. What the intervention of the ICJ essentially means is that henceforth all satire should be actionable via the Human Rights Tribunals, at the cost of the taxpayer, even for a complainant who is a public person.

2. There is very little doubt that in the case of such artists such as Charlie Chaplin, and Laurel and Hardy, and the vast swath of comedians that came after, their appearance is part of the content of the performance—it’s what makes them funny.

3. The position between the total separation of content and appearance is hypocritical—we all know that in our society that roles are given to actors in accordance with their looks, politicians are often chosen for positions in accordance with their looks and physical attributes, and that some people gain fame or notoriety as a result of their physical attributes.

4. It would be impossible for a comedian to bring these simple truths out without attacking the dignity of the person in question.

5. The ICJ fails to make a distinction between artistic production, which does not purport to be saying the truth, and libelous statements which might be actionable before the Superior Court.

6. The effect of their formula is to render caricature almost impossible. Could one show Premier Bouchard with his cane, President Roosevelt in his wheelchair, a politician with a particularly long nose or a strong chin?

7. It is unworkable and stifling, and would certainly create a chill effect in which no one would be able to mock anyone else.

8. The proper calculus suggested is that if someone is not in the public domain, and they are offensively dragged through the media, they should have an action in libel.

9. Libel has always had a « dignity » component and it is not useful to turn this into an issue of discrimination.

10. If they are in the public domain, then they have opened themselves to criticism.

11. Violations of dignity before a Human Rights Commissions for people in the public eye should be limited to the unauthorized dissemination of, for example, videos of bodily functions or sexual activities.

12. Discrimination, on the other hand, requires a disadvantage, in accordance with the definition set out by Madame Justice Savard in her dissent.

13. As a result, the ICJ is proposing a new calculus which is impossible to work, which would create a chill effect where no one could say anything, and which takes absolutely no notice of the particular situation of the artist and the humorist.

14. Humor can be biting and mordant, and even cruel. That does not mean it should be punishable.

B. RESPONSE TO THE FACTUM OF THE INTERVENER LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA ("B'NAI BRITH")

15. The Factum of the B'nai Brith is based on an erroneous comparison with the case of M'bala M'bala Dieudonné;

16. It is true that Dieudonné considers himself a comedian, but that is where the similarities with Mike Ward end.

17. Dieudonné has been considered to be a purveyor of hate-speech across Europe.

18. The tribunal, in suspending Dieudonné's show, pointed out that it was not a comedy routine, because he instrumentalized comedy as a pretext for hate speech.

19. In reality, the Dieudonné case is one that is already covered under Canadian law.

20. There is no reason to use the Quebec Human Rights Commission when there is very clear hate-speech legislation in Canada, and Dieudonné would fall under that.¹

¹ *R v. Keegstra*, [1990] 3 SCR 697

21. There is hate-speech legislation which could be applied to Mike Ward if his routine were considered hate-speech, but no one has ever suggested that it was.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of January

2021 SIGNED BY:

Marie-Frèe Day
Counsel for Appellant ✓

TABLE OF AUTHORITIES

<u>Cases</u>	<u>at Para.</u>
<i>R v. Keegstra</i> , [1990] 3 SCR 697	20