



## Do my actions give rise to criminal liability?

**When a person commits an act that has the effect of damaging property, the person will not always be criminally liable as a result, even if the act, on its surface, is wilful.**

### THE FACTS

The accused was separated from her husband who had a new spouse. At nightfall, she went to the marina where her former spouse, his brother and the new spouse each had a boat. The watchman, who knew her, let her in.

She climbed aboard a 27-foot sailboat that had been re-christened “Folie d’été” and whose owner was the new spouse of her former husband. She leaned over the railing and affixed a piece of masking tape on the “i” so that it now looked like an “l”.

The new spouse noticed the change and contacted the police who, a few days later, came to see what had happened.

When the masking tape was removed, part of the “i” came off, because the glue had probably adhered to the letter when drying in the sun, which caused the damage.

### THE ISSUE

In the circumstances, the court had to answer the following question: “Was a criminal offence committed?”

### THE DECISION

The court acquitted the accused of the offence, because the prosecution did not prove the wilful element of the offence beyond a reasonable doubt.

### THE GROUNDS

Only the complainant testified in order to state that the letter “i” had been damaged. She was insulted by the label “folle d’été” [summer nutcase] by which the couple was known following the incident.

In order to be convicted of mischief under sec-

tion 430(1) (a) of the *Criminal Code*, a person must have damaged property wilfully (the material component is the damage and the intentional component is the likely knowledge that damage will occur).

The evidence showed that there had been an alteration of the lettering perpetrated against private property during the trespassing on the complainant’s boat (the material component of the offence was proved).

As for the intent to cause damage, it exists when, in carrying out an act, the person knows that he will probably cause damage and is reckless as to whether or not the incident occurs.

The tape used by the accused to conceal the “i” is a tape routinely used by painters to outline the surfaces to be painted and is not supposed to damage those surfaces.

It is undoubtedly because the tape remained in place for several days in the sun while awaiting the police that part of the lettering was damaged when the tape was removed.

The court concluded as follows: [TRANSLATION] “The court is not convinced that when the accused affixed the tape, she knew that the lettering would be damaged or that there was a probability it would be damaged when the tape was removed; in addition, the court is not convinced that she was reckless in this regard.”

### References

*R v. Robertson*, 2008 QCCQ 156, Court of Québec, Criminal and Penal Division (C.Q.) Hull 550-01-021547-064, January 10, 2008, Judge Jean-François Gosselin (J.E. 2008-376; www.jugements.qc.ca)

*Criminal Code*, s. 430(1) (a)

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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