Court File No.: C56905

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

APPELLANT'S MOTION RECORD - LEAVE TO APPEAL COSTS

(Lower court costs order of Justice Robert Smith, dated October 4, 2013)

November 22, 2013

Dr. Denis Rancourt
(Appellant)

MOTION RECORD -- TABLE OF CONTENTS

All materials used before the court from which leave to appeal is sought

Other material in the court file that is necessary for the hearing of the motion

Court File No.: C56905

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

NOTICE OF MOTION FOR LEAVE TO APPEAL COSTS

(Lower court costs order of Justice Robert Smith, dated October 4, 2013)

October 21, 2013

Dr. Denis Rancourt
(Appellant)

The Moving Party / Defendant / Appellant, DR. DENIS RANCOURT, will make a motion to the Court of Appeal for leave to appeal the lower court costs order (Costs Decision On Mr. Rancourt's Champerty Motion) of Mr. Justice Robert Smith, dated October 4, 2013, made at Ottawa, Ontario. The motion is made pursuant to s. 133(b) of the *Courts of Justice Act*, and pursuant to Rule 61.03.1 (1) to (16) of the *Rules of Civil Procedure*.

The Court will hear the motion in writing, 36 days after service of the Moving Party's motion record, factum and transcript, if any, or on the filing of the Moving Party's reply factum, if any, whichever is earlier.

The instant leave to appeal motion becomes moot if and when the appeal as of right of the defendant's champerty motion (Appeal Court File No. C56905), which is scheduled to be heard on November 8, 2013, is granted.

THE MOTION IS FOR:

1. An order that the lower court's costs order be set aside;

2. In the alternative, an order that the quantum of costs in the lower court's costs order be reduced;

3. In the alternative, an order that any costs for the lower court motion be payable only after the resolution of the main defamation action;

<u>Costs of this leave motion and other</u>

4. The costs of this motion for leave to appeal, on an appropriate scale;

5. Such further and other relief as the moving party may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The impugned costs decision is for a Defendant's motion ("champerty motion") to end the private defamation action. Costs of $105,700.00 (all inclusive) were awarded to the Plaintiff and to the Intervening Party (University of Ottawa), on a partial indemnity basis, for a motion that was heard in one day.

2. It is uncontested that the University of Ottawa is voluntarily paying all the costs of the Plaintiff in the entire private defamation action, without a spending limit, and without any conditions.

3. The test for granting leave to appeal costs is amply satisfied because:
   (a) the impugned costs decision raises matters of public importance;
   (b) the impugned costs decision contains errors of principle; and
   (c) the quantum of costs in the impugned costs decision is not just.

<u>Errors of principle of public importance</u>

4. INDEMNITY: The primary purpose of costs is to indemnify. In this case, a non-party is voluntarily paying all the costs ("full indemnity") of the Plaintiff, without a spending limit, and without any conditions. Thus, there is nothing to indemnify. Justice Smith erred by not applying the principle of indemnity.

5. DOUBLE PAYMENT: Ordering costs where no indemnity is required, and where there is no condition or agreement that the non-party will be reimbursed, constitutes double payment, and a windfall to the Plaintiff for pursuing the litigation. This is contrary to public policy and it defeats the secondary purpose of costs, which is to discourage unnecessary litigation, and encourage settlement.

6. *CHARTER*: Ordering costs against an unemployed party who is the Defendant in a defamation lawsuit, where no indemnity is required, and where the funding non-party is a large public institution, creates an imbalance of arms that precludes the required balance between the Defendant's *Charter* right to free expression and the Plaintiff's right to seek damages for harm to reputation.

Error of principle: Intervener should not get costs

7. Justice Smith erred by awarding costs to the Intervening Party, the University of Ottawa, because:
   (a) The University intervened in the proceedings at its own request and for the protection of its own interests and was not brought into the proceedings by the moving party;
   (b) The University was not a necessary party because the University is already funding the costs of the Plaintiff, without a spending limit, and the Plaintiff was free to call University witnesses in the motion;
   (c) The costs awarded to the University further create the said imbalance of arms (paragraph 4, above) that precludes the required balance between the Defendant's *Charter* right to free expression and the Plaintiff's right to seek damages for harm to reputation; and
   (d) The decision to allow the University to have party status, without a motion to intervene being heard, was made by Justice Beaudoin and, we submit, is tainted with bias (reasonable apprehension of bias).

Error of principle: Costs for case conferences

8. Justice Smith erred by allowing costs for "attending the five different case conferences" because:
   (a) Case conferences relate to the administration of justice and are not part of motions for which costs are attributed;

(b) The case conferences were mostly not about the champerty motion;

(c) There were not previously any costs requests or submissions for case conferences in the action; and

(d) Thus, the Defendant could not possibly have expected to pay costs for case conferences.

Quantum of costs is excessive, an error in principle, and counter to public policy

9. The quantum of costs ($105,700.00) is so large as to defeat the principle of partial indemnity, which is to not deplete the resources of the paying party to the point of not being able to continue litigating the action.

10. Justice Smith erred by finding that the Defendant "would reasonably have expected to pay legal costs in the range of $50,000.00 because of the extensive amount of materials he filed, and the multiple issues raised on this very important motion for the plaintiff, the University and Mr. Rancourt", yet ordering costs that are more than double what the Justice found would reasonably be expected.

11. Justice Smith erred by not considering evidence on the record in the action, which shows that the Defendant cannot pay any more large costs without materially inhibiting his defence.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The "Costs Decision On Mr. Rancourt's Champerty Motion" of Mr. Justice Robert Smith, dated October 4, 2013: *St. Lewis v. Rancourt*, 2013 ONSC 6118 (CanLII), from which leave to appeal is sought.

2. The costs Order from which leave to appeal is sought.

3. The costs submissions of the parties to the champerty motion, in the impugned costs decision.

4. Costs decisions and case conference endorsements that are the subject of the costs decision from which leave to appeal is sought.

5. The Moving Party / Defendant's motion record and factum to be filed for the instant leave to appeal costs motion, which include most of the following:

6. Relevant documents from the appeal book of the main appeal (Appeal File No. C56905).

7. Relevant submissions and transcript evidence, on the record in the action, of the financial status of the Defendant.

8. The letter of the Ontario Civil Liberties Association (OCLA) to University of Ottawa President Allan Rock, dated August 28, 2013, made public at hyperlink: http://ocla.ca/wp-content/uploads/2013/08/Letter-OCLA-to-President-Allan-Rock.pdf

9. The response of President Allan Rock to OCLA, dated September 11, 2013, made public at hyperlink:
http://ocla.ca/wp-content/uploads/2013/08/2013-09-11-Letter-from-Allan-Rock-to-OCLA.pdf

10. Relevant authorities, and case conference endorsements.

11. Such further and other evidence as the Defendant may advise and this Honourable Court may permit.

DATED: October 21, 2013

Dr. Denis Rancourt
Appellant

[redacted]

Email: denis.rancourt@gmail.com

TO: Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

AND TO: Peter Doody
Counsel for the University of Ottawa
BLG, Ottawa
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Ottawa, ON K1P 1J9

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE ROBERT SMITH	)))	Friday, the 4th day of October, 2013

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

- and –

UNIVERSITY OF OTTAWA

Affected Party

ORDER

ON READING the written submissions filed by the Plaintiff, the Defendant and the Affected Party,

1. THIS COURT ORDERS the Defendant to pay costs to the Plaintiff Joanne St. Lewis within 30 days from the date of this order in the amount of $50,000.00 (plus HST of $6,500.00) plus disbursements of $2,000.00 (inclusive of HST), for a total of $58,500.00.

2. THIS COURT ORDERS the Defendant to pay costs to the University of Ottawa within 30 days from the date of this order in the amount of $40,000.00 (plus HST of $5,200.00) plus disbursements of $2,000.00 (inclusive of HST), for a total of $47,200.00.

3. **THIS COURT ORDERS** that this Order bear interest at the rate of 3% per cent per annum, payable from the date of this order.

The Honourable Justice Robert Smith

ENTERED AT OTTAWA
INSCRIT A OTTAWA

ON/LE OCT 16 2013

DOCUMENT # 3428
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

10

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

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CITATION: St. Lewis v. Rancourt, 2013 ONSC 6118
COURT FILE NO.: 11-51657
DATE: 2013-10-04

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
Joanne St. Lewis	Plaintiff	Richard G. Dearden, for the Plaintiff
– and –		
Denis Rancourt	Defendant	Denis Rancourt, self-represented
University of Ottawa	Affected Party	Peter Doody, for the University of Ottawa
		HEARD: By written submissions

COSTS DECISION ON MR. RANCOURT'S CHAMPERTY MOTION

R. SMITH J.

Overview

[1] The defendant, Denis Rancourt ("Rancourt"), is a former physics professor at the University of Ottawa. He posted statements on his blog indicating that the plaintiff, Joanne St. Lewis ("St. Lewis") acted as "Alan Rock's house negro." St. Lewis has commenced an action for libel seeking damages for the harm caused to her reputation as a result of the defendant's publication. The University of Ottawa (the "University") has agreed to pay for St. Lewis' legal costs to sue Rancourt for libel because the statements made by Rancourt were related to her employment with the University and because the University found the comments shocking and unacceptable.

Positions of the Parties

[2] St. Lewis is seeking costs on a partial indemnity basis inclusive of disbursements and HST of $79,556.50 or alternatively on a substantial indemnity basis in the amount of $104,631.00.

[3] The University of Ottawa seeks costs on a partial indemnity scale in the amount of $58,004.55 inclusive of disbursements and HST.

[4] The defendant Rancourt makes the following submissions:

> (a) that the plaintiff has not incurred any costs that require indemnification because the plaintiff's legal costs are being entirely paid by the University;
> (b) that the University, as an affected party under rule 37.07(1), does not have a right to be indemnified for costs incurred in responding to the champerty motion;
> (c) that he acted in good faith in bringing his champerty motion;
> (d) that the proceedings were not complex and counsel for St. Lewis and the University have spent an excessive amount of time in preparation for this motion and the case conferences;
> (e) that some of the costs claimed were for time spent on other motions and appeals;
> (f) that the amount sought in costs is above what the losing party would reasonably expect to pay;
> (g) that the University and St. Lewis have duplicated their effort and the costs awarded should be reduced as a result;
> (h) he objects to the hourly rate of $540 per hour claimed by senior counsel, David Scott, on a partial indemnity rate because it exceeds the partial indemnity rate in the Notice for the Profession.

Factors

[5] The factors to be considered when fixing costs are set out in Rule 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and include in addition to success, the amount claimed and recovered, the complexity and importance of the matter, unreasonable conduct of any party which unduly lengthened the proceeding, scale of costs and any offer to settle, the principle of indemnity, hourly rate claimed, the time spent and the principle of proportionality, and the amount that a losing party would reasonably expect to pay.

Success

[6] In this case both the University and St. Lewis were completely successful on the champerty motion. I held that the University's agreement to fund St. Lewis' legal costs to commence this libel action against Rancourt was not champertous and did not constitute maintenance because the alleged libel occurred during the course of her employment for the University. Rancourt's motion for a stay of the libel action against him as an abuse of process was dismissed.

Complexity and Importance

[7] Both counsel for the University and for St. Lewis spent a substantial amount of time preparing for various aspects of this champerty and maintenance motion. They identified six separate areas that had to be researched including the law on champerty and maintenance, granting of a stay or dismissal of a libel action as an abuse of process, the admissibility of an affidavit filed subsequent to the cross-examinations on the affidavits, whether a trial of an issue should be ordered, the principle of *res judicata*, and collateral attack on an order.

[8] The matter was made factually complex due to the extensive allegations made by Rancourt against various representatives of the University including its President, Alan Rock, Dean Feldthusen, Robert Giroux, and St. Lewis herself. The affidavit and motion record filed by Rancourt contained 1,362 pages. Rancourt attempted to prove that there was evidence that Alan Rock and the University had directed St. Lewis to commence this libel action against him to harass him or for some other improper purpose related to the termination of his employment as a professor at the University.

[9] The parties also engaged in extensive cross-examination on affidavits including affidavits of Alan Rock, Dean Feldthusen, and Robert Giroux, the Chair of the Board of Governors of the University of Ottawa. In his factum Rancourt made reference to evidence contained in 530 pages of transcripts of cross-examination, 166 pages related to St. Lewis, 50 pages related to Dean Feldthusen, 140 pages related to Alan Rock, 68 pages related to Céline DeLong and 26 pages related to Robert Giroux. In addition 220 pages of affidavits and exhibits were attached. Rancourt filed an extensive record of affidavits, transcripts of cross-examinations on affidavits, and a factum. Both the University and St. Lewis were required to respond to the lengthy materials filed by Rancourt which raised many factual issues. They also had to prepare for and attend the cross-examinations on the affidavits.

[10] To summarize, I conclude that the matter was very factually complex due to the extensive materials and extensive allegations of fact made by Rancourt. In addition, as part of this champerty motion the parties attended at five case conferences, namely on January 26, February 8, April 2, May 4, and September 27, 2012.

[11] The initial date set for hearing the champerty motion was delayed when Rancourt accused Justice Beaudoin of bias, which resulted in Justice Beaudoin recusing himself as the case management judge on July 24, 2012. As a result the August 29, 2012 date for hearing the champerty motion was adjourned to December 13, 2012. Rancourt also sought a further adjournment of the champerty motion on December 13, 2012, as he sought to await a response from his motion for leave to appeal to the Supreme Court of Canada from an interlocutory decision of Justice Annis. The request for a further adjournment was denied.

[12] The matters were of high importance to St. Lewis as the publications affected her reputation as a lawyer and as a law professor. The issues were also important to the University which had agreed to pay for the legal costs of one of its law professors in their employ, to assist her to protect her reputation.

[13] The University has not requested costs on a substantial indemnity basis or alleged unreasonable conduct by Rancourt in bringing the champerty motion. St. Lewis has made allegations that the conduct of Rancourt throughout the champerty motion, including many of the motions he brought during the course of the champerty motion, amounted to unreasonable conduct. His conduct includes alleging bias against Justice Beaudoin without notice and causing him to recuse himself, and making numerous allegations of improper conduct against counsel for St. Lewis, which were held to be unfounded. However St. Lewis has not specifically sought costs on a substantial indemnity basis.

[14] I have made findings with respect to Rancourt's conduct in various other costs decisions that have been previously published. The champerty motion was argued within the one-day time period as scheduled, notwithstanding Rancourt's request for additional time. As a result, I find that Rancourt's conduct in this motion, seeking a stay of the legal action based on an allegation champerty did not rise to the level that deserves an award of substantial indemnity costs. As a result costs will be fixed on a partial indemnity basis for both the University and St. Lewis.

No Costs Incurred by Plaintiff that Require Indemnification

[15] I have previously ruled that the fact that the University is indemnifying St. Lewis for her legal costs in this libel action, including the costs incurred in this champerty motion, is not a valid reason to refuse to award costs to the successful party following an interlocutory motion, as mandated in Rule 57.03. I adopt the reasons I gave in *St. Lewis v. Rancourt*, 2012 ONSC 3320 and in *St. Lewis v. Rancourt*, 2012 ONSC 5998, where I held that the fact that the University was paying for St. Lewis' costs was not a valid reason for refusing to award costs to the successful party.

[16] In *Hill v. The Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, the plaintiff's libel action against the Church of Scientology was entirely funded by the Ministry of the Attorney General of Ontario. The Supreme Court upheld the ruling that details of the plaintiff's arrangements with his employer concerning the costs incurred by him in the legal proceeding were not relevant to the libel action. For the same reasons as set out in my previous decisions *St. Lewis v. Rancourt*, 2012 ONSC 3320 and *St. Lewis v. Rancourt*, 2012 ONSC 5998, I find that the arrangements between St. Lewis and the University as to the payment of costs and the University's right to recover costs awarded to St. Lewis in the proceeding are not relevant to the libel action and do not prevent the awarding of costs to the successful parties on a motion.

Is the University Entitled to Recover Costs for its Participation?

[17] Mr. Rancourt argues that the University is not entitled to be indemnified for the legal costs that it has incurred because he submits there was no need for the University to intervene in the champerty motion. In my decision dated June 6, 2012 (*St. Lewis v. Rancourt*, 2012 ONSC 3320), I stated as follows at para. 10:

> The University of Ottawa would be affected by any Order made in the champerty motion and therefore based on rule 37.07(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the University had a right to file material and respond to

> the Notice of Motion. The University had the same right to attend and oppose the Motion for Leave to Appeal Beaudoin J.'s order.

[18] I find that since the University was entitled to participate in the champerty motion as decided by Justice Beaudoin, and had the right to file material and respond to the champerty motion, that it also has the right to recover costs incurred on this champerty motion pursuant to the criteria set out in Rule 57 of the *Rules of Civil Procedure*.

[19] I agree with Rancourt's submissions that the costs incurred by St. Lewis or the University on other motions cannot be recovered in the champerty motion. Counsel for St. Lewis states that the costs claimed in her bill of costs are only related to the champerty motion, and only include costs for preparation, cross-examinations on affidavits, and attending the five different case conferences, as well as the motion. I accept the submissions of counsel for St. Lewis in this regard. Rancourt has not been able to identify any time claimed by either St. Lewis or the University for time spent on other motions. I will deal with Rancourt's allegation that excessive time was spent in preparation for these motions under a separate heading.

Rancourt Alleges He Acted in Good Faith?

[20] Rancourt alleges that his motion was brought in good faith to deal with legitimate emerging issues. This is disputed by St. Lewis. It is not necessary for me to make a ruling on this matter as costs are not being awarded on a substantial indemnity basis in any event.

Hourly Rates, Time Spent and Proportionality

[21] St. Lewis submits that she was justified in spending the amount of time claimed to respond to Rancourt's allegations. St. Lewis submits that if she had not been successful on this champerty motion, she would be forever branded as a "house negro" and found to have abused the court's process. These amount to very serious charges against her as a lawyer and law professor and as a result she submits she was justified in vigorously defending herself. St. Lewis further submits that Rancourt is responsible for causing the respondent parties to spend an extensive amount of time to oppose his abuse of process /champerty motion because he filed over a thousand pages of evidence in the motion records and transcripts of cross-examinations in this motion. I agree with St. Lewis' submission in this regard as Rancourt filed extensive materials which contained many allegations of fact which had to be addressed. As a result I find that it was reasonable for Rancourt to expect that both St. Lewis and the University, would have to spend many hours devoted to responding to all of the factual allegations on which he based his champerty motion.

[22] Rancourt has also previously argued on previous motions that the time spent by St. Lewis for research and preparation to oppose his motions was excessive given the experience of senior counsel. In *St. Lewis v. Rancourt*, 2012 ONSC 5998, at para. 19 I stated as follows:

> Mr. Rancourt submits that the time claimed for research and preparation was excessive given the experience of senior counsel. Both the complexity of the matter and the length of materials and number of issues raised by the moving

> party are important factors when considering the reasonableness of time spent. I have already found that the matter of refusals is not a complex legal issue as relevance is the main factor. However, Mr. Rancourt produced a very lengthy 347 page record, sought answers to 145 separate questions, and all of the refusals were found to be justified. On his motion before me he was not successful in obtaining answers to any of the 35 questions. The same result occurred before Beaudoin J. with the three witnesses produced by the University. Again, the University witnesses were asked a large number of irrelevant questions and all of their refusals were found to be justified.

[23] Mr. Rancourt again submits that the time spent by St. Lewis for research and preparation was excessive given the experience of senior counsel. The complexity of the matter, the amount of material filed, and the number of issues raised by the moving party are important factors when considering the reasonableness of time spent by a party to respond. On the champerty motion Rancourt filed extensive materials of over 1,000 pages containing many factual allegations. Rancourt submits that he would reasonably expect to pay a total of $25,000.00 in costs, as opposed to the combined amounts of $79,556.50 sought by St. Lewis and $58,004.55 sought by the University.

[24] Rancourt further submits that the amounts sought greatly exceed the costs awarded in various other motions he has brought on which he was also not successful. It is not possible to compare this champerty motion with the other motions Rancourt has brought, which mostly involved refusals and answers to questions on discovery and on cross-examinations of affidavits.

Hourly Rates

[25] I find that the hourly rate of $315 per hour claimed on a partial indemnity basis by Mr. Dearden is reasonable based on his extensive experience in the area of libel and slander and his excellent reputation as a lawyer in the city, and the rate is within the range provided for in the Notice for the Profession. I further find the rate of $120 per hour for a partial indemnity rate for Ms. Semenova, called to the bar in 2011, is also reasonable.

[26] Mr. Doody, who did most of the legal work in this matter for the University, claims an hourly rate of $300 per hour on a partial indemnity scale. I find this amount is also very reasonable given his extensive experience and excellent reputation as a lawyer in the city of Ottawa. In addition the rate claimed is within the guidelines set out in the Notice to the Profession.

[27] Mr. Rancourt objects to the rate of $540 per hour claimed for David W. Scott on a partial indemnity scale, who spent 8.9 hours working on this matter. Mr. Scott's full indemnity rate is $900 per hour and his substantial indemnity rate is $810 per hour. Mr. Scott is recognized as one of Ontario's top civil litigators and is renowned in his field as a trial lawyer.

[28] The Information for the Profession contained in the *Rules of Civil Procedure* was published by the Civil Rules Committee in 2005 to provide guidance to the profession on hourly rates. It states as follows: "It is anticipated that in considering the rates, as one of the various

relevant factors, courts will *normally* treat the rates set out below as maximum rates when fixing partial indemnity costs."

[29] The Rules Committee anticipated that the maximum rates would apply only to the most complicated matters and for the more experienced counsel within each category. The Information for the Profession states that the maximum amounts in the range are a factor to consider when determining the amount that an unsuccessful party would reasonably expect to pay and the principle of indemnity. The maximum partial indemnity rate for a lawyer of 20 years and over is $350 per hour. The Information for the Profession was effective as of July 1, 2005 and it was the intention of the Committee that it be updated periodically. The update has not occurred and it is approximately eight years later.

[30] The Information for the Profession states that the court "will *normally* treat the rates set out below as maximum rates." In this case, some eight years have gone by since the Information for the Profession was prepared. The two unique factors are that David Scott has over 50 years' experience at the bar, as well as an exceptional reputation as a trial lawyer. These two factors take the matter out of the usual situation, however I find that the issue of champerty and maintenance was not the most complex of issues. Costs on a partial indemnity basis at the rate of $450 per hour will be allowed for David Scott in the circumstances of this case and given the limited involvement of Mr. Scott.

Rancourt's Conduct and the Amount the Unsuccessful Party Would Reasonably Expect to Pay

[31] In this case Rancourt was aware of the hourly rates charged by counsel for St. Lewis and the University as he has been involved in several motions during the past two years during this legal proceeding. He was also aware that he filed extensive, lengthy materials, and that there were extensive cross-examinations on affidavits, and five case conferences over a period of approximately 11 months.

[32] Rancourt's conduct of filing very lengthy, extensive materials on many issues and contesting every aspect of this litigation has caused counsel responding to his motion to spend large amounts of legal time to research and respond to his many allegations. As a result I find that Rancourt would reasonably have expected the costs of each of St. Lewis and the University to be substantially in excess of $25,000.00 as this matter involved cross-examinations on affidavits of St. Lewis, Dean Feldthusen, President Rock, Céline DeLong, the University of Ottawa Board of Governors' Chair Robert Giroux. In these circumstances find that Rancourt would reasonably have expected to pay legal costs in the range of $50,000.00 because of the extensive amount of materials he filed, and the multiple issues raised on this very important motion for the plaintiff, the University and Mr. Rancourt.

Rancourt's Alleged Impecuniosity

[33] Mr. Rancourt submits that his inability to pay is a factor which should reduce the amount of costs awarded. I previously rejected this argument in *St. Lewis v. Rancourt*, 2012 ONSC 5998 at paras. 8 and 25. In para. 25 I stated as follows:

> Mr. Rancourt submits that he is unable to pay costs due to the loss of his employment. I do not have sufficient evidence before me to determine whether or not Mr. Rancourt is unable to pay legal costs. Whether he has made himself judgment proof as alleged by Ms. St. Lewis in her submissions by recently transferring his interest in his home to his spouse for $1.00 is not a reason for not awarding reasonable costs to the successful party. I am also unaware of how successful he has been with his online solicitation of financial support for his legal costs. Mr. Rancourt's alleged inability to pay costs is not a factor given much weight in the circumstances where his own conduct has caused the responding party to incur substantial legal costs to reasonably respond.

[34] I adopt my previous statement and the decision of the Divisional Court in *Myers v. Toronto (Metropolitan) Police Force,* [1995] O.J. No. 1321, at paras. 19 to 22 which held that it was important to avoid a situation where a person without means can cause responding parties to incur substantial legal costs without any financial consequences.

Deferral of the Awarding of Costs

[35] I made similar comments in *St. Lewis v. Rancourt*, 2012 ONSC 7066, at para. 6 and I adopt my previous reasons and will follow the regular practice that a costs award on contested motions should be fixed following the event. I do not see any valid reason or that justice requires that the fixing of costs be deferred until after the case is decided.

Costs Awarded to the University

[36] In the course of the champerty motion Rancourt brought a number of motions which the University submits required communications with its client and an evaluation to consider its position and to determine whether its interests were affected, which increased the time required to be spent on this motion. The University submits that what was a relatively straightforward application of the law of champerty and maintenance to the facts became a piece of litigation which took on a life of its own due to Rancourt's conduct of the litigation, which has added immeasurably to the cost and time. I agree with this submission.

[37] Rancourt is a self-represented individual in these proceedings. However, I do not find that this is a reason for denying costs to the successful respondents to his motion. His actions caused the University and St. Lewis to spend substantial amounts of time to respond to multiple factual allegations and numerous steps in the proceeding. As a result, considering all of the above factors, I order Rancourt to pay the University $40,000.00 plus HST plus disbursements fixed in the amount of $2,000.00 inclusive of HST.

Costs Awarded to St. Lewis

[38] Based on the above principles set out in Rule 57, including the complexity of the matter, the time spent, and the reasonable expectations of the unsuccessful party given the extensive materials filed, Rancourt is ordered to pay costs to St. Lewis fixed at the sum of $50,000.00 plus HST plus disbursements of $2,000.00 inclusive of HST.

R. Smith J.

Released: October 4, 2013

CITATION: St. Lewis v. Rancourt, 2011 ONSC 5923
COURT FILE NO.: 11-51657
MOTION HEARD: 2011/10/06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JOANNE ST. LEWIS, Plaintiff

AND:

DENIS RANCOURT, Defendant

BEFORE: Master MacLeod

COUNSEL: Richard G. Dearden, for the plaintiff

Denis Rancourt, in person

No one appearing for Claude Lamontagne

HEARD: October 6, 2011

REASONS FOR DECISION

[1] This is an action for defamation. The motion before me today is to compel answers to certain undertakings and refusals arising from cross examination of the defendant and of Claude Lamontagne who is a deponent of an affidavit.

[2] By way of context, the affidavits themselves were sworn in opposition to a motion brought by the plaintiff to compel the defendant to participate in mandatory mediation under Rule 24.1. In fact the motion as I understand it is to abridge the time for mediation and to require the parties to use an experienced private mediator rather than a mediator from the roster. That motion (the main motion) is returnable tomorrow before a judge.

[3] In response to the main motion, the defendant filed his own affidavit and an affidavit of Claude Lamontagne which is proffered as expert opinion. Mr. Dearden cross examined on those affidavits and brings this motion today to compel answers to certain refusals by Mr. Rancourt as well as two undertakings given by Mr. Lamontagne.

[4] The undertakings and the first group of the refusals are in response to questions directed to the independence of Mr. Lamontagne, to his neutrality, to the instruction or information he received from Mr. Rancourt or to his qualifications to give expert opinion evidence.

[5] A second set of refusals has to do with the means, income and assets of Mr. Rancourt. These questions were asked in response to Mr. Rancourt's own affidavit in which he attests he is of limited means and cannot afford the fees for the proposed mediator.

[6] There is a further group of refusals which relate to an application made by Mr. Rancourt to Law Help Ontario. These questions are also directed to the means and income of Mr. Rancourt. Again, this relates to the evidence given by Mr. Rancourt that he cannot afford the mediator proposed by the plaintiff. Mr. Dearden seeks access to the applications made to Law Help Ontario in order to verify whether the financial information provided to Law Help confirms or contradicts the evidence in the Rancourt affidavit.

[7] Finally there are two questions directed to the issue of insurance coverage. Rule 30.02 (3) deals with the obligation to answer such questions but these questions also also relate to the affordability of mediation. If there is coverage then the defendant has access to funding for legal counsel and of course for mediation fees.

[8] Mr. Rancourt argues that the main motion is itself improper and does not comply with the Rules of Civil Procedure. He will argue that there is no jurisdiction in the court to grant the relief sought by Mr. Dearden on the main motion. He asks me to deal with that today but I have declined to do so. This is one of the issues on the main motion which is returnable tomorrow before a judge.

[9] The issue before me is whether or not the questions must be answered in relation to the evidence the defendant himself has tendered in response to that very motion. Obviously if the judge dismisses the main motion without the need to consider the affidavit evidence or the cross examination, that decision may render any order I make today moot. In that event perhaps the judge will stay the order and relieve the defendant from providing the answers. On the other hand if the judge believes it appropriate to review the evidence before him or her and in that context must decide whether or not to admit the opinion evidence of Mr. Lamontagne my ruling today will in all probability be germane.

[10] Both parties refer to the decision of Perell, J. in *Ontario v. Rothmans Inc*. 2001 ONSC 2504 (S.C.J.); leave to appeal refused 2011 ONSC 3685 (S.C.J) as well as my own decision in *Caputo v. Imperial Tobacco Ltd*. (2002) 25 C.P.C. (5th) 78; [2002] O.J. No 3767 (Master). These cases contain the guiding principles in assessing cross examination on affidavits as opposed to discovery. *Caputo* is directly on point since it also deals with the relevance of questions directed to admissibility and weight of expert testimony proffered by way of affidavit.

[11] There can be no doubt that all of the questions asked are relevant because they are either directed to the admissibility of the expert testimony (including impartiality, bias and qualifications of the expert) or flow directly from evidence tendered by the

defendant himself. Relevance is the first consideration but just because a question is of some relevance does not mean the court will order it to be answered. Other considerations come into play.

[12] The defendant focuses on paragraphs 144-146 of the *Rothmans* decision. He interprets the comments of Perrell J. having to do with premature discoveries and not disturbing the fairness of the adversary system as somehow establishing a novel principle that would block any question which might also be asked on discovery.

[13] With respect, that is not the thrust of the Rothman decision. Perrell J. is simply exemplifying instances where the court will not order answers to apparently relevant questions. The court for example will not condone questions that are:

- Abusive or improper;
- Disproportionate in the sense of requiring efforts or expense not justified by the nature of the issues in dispute;
- Not directed to evidence which is admissible or probative; or,
- Asked for an improper purpose

[14] These categories are not exclusive. In any event, there is no blanket prohibition on asking a question on cross examination just because it might also be a question asked on discovery. The issue, once relevance has been established, is whether or not there is a basis for withholding an order because it would be unjust to make the order notwithstanding that the question may be relevant.

[15] In these matters the question of relevance is a question of law. The question of whether the court ought to order answers to be given is a matter of discretion.

[16] All of the questions are relevant as a consequence of the affidavits tendered in response to the main motion and the answers given under cross examination with the possible exception of the members of the committee discussed in the Lamontagne cross examination. Mr. Lamontagne volunteered the information however and it may be relevant to the question of bias. This is in my view was an undertaking and it should be answered.

[17] In the exercise of my discretion I am not prepared to order the Law Help Ontario applications to be produced. I regard that as overly intrusive and while the financial component of such a discussion may not itself be privileged, the extent to which lawyer client privilege attaches to discussions with a service such as Law Help has yet to be fully explored. I do not regard these answers as necessary in light of the other questions I am ordering answered. All of the other questions are to be answered.

[18] Mr. Dearden wishes to have the witnesses reattend to answer the questions under oath and to permit reasonable follow up questions. Notwithstanding that some of the questions might usefully be completely answered in written form, clearly not all of the questions are simple yes or no answers and many of them may invite proper follow up questions. In my view and notwithstanding the defendant's argument that the previous examination was conducted aggressively (a submission that I do not find to be supported by the evidence) I am ordering that the questions for production of documents be answered in writing by October 11th, 2011, that is prior to reattendance, and that the witnesses then reattend for examination. Mr. Rancourt and Mr. Dearden both confirmed their availability for October 14th, 2011. Unless otherwise agreed the witnesses are to attend on that date.

[19] Mr Dearden also asks for clear direction as to who may attend at the cross examination. The need for that is demonstrated by the exhibit at p. 154 of the motion record. Certain individuals who are not parties to the action attended at the cross examination and refused to leave notwithstanding Mr. Dearden's objections. One of these observers then posted comments on the internet describing the cross examination and attributing unethical behaviour to Mr. Dearden while also suggesting the plaintiff herself was somehow associated with evidence of wrongdoing at the university.

[20] Mr. Rancourt objects to such direction on the basis of the open court principle. In that he is misguided. Cross examination or discovery does not take place in open court (although it does take place under court supervision). It is only once a transcript or portions of a transcript are tendered in evidence that they become part of the court record. Motion records and exhibits at trial are part of the court record. Court hearings (such as this motion) are held in open court though that was not always the case. Prior to adoption of the "new rules" chambers motions were not considered to be in open court or on the record. In any event it is quite clear that there is no right for the public to attend an examination out of court at the office of the special examiner or court reporter. Even were that not the case however, the court could give direction about the conduct of such examinations.

[21] There will be a follow up cross examination if the plaintiff wishes it. No one but the parties and their lawyers and the reporter may be in attendance unless otherwise agreed.

[22] The plaintiff asks for costs. She, through her lawyer, seek costs against both Mr. Rancourt and Mr. Lamontagne. Mr. Lamontagne did not appear today although Mr. Rancourt stated that he was authorized to speak for him and advised the court that Mr. Lamontagne objected to answering the undertakings. I am advised that at one time Mr. Lamontagne had agreed to answer his undertakings but he did not do so. Mr. Lamontagne was advised that costs would be sought against him both in the notice of motion and subsequently. A minor costs award is appropriate for a non

party failing to comply with what he had agreed to do in a timely fashion. Claude Lamontagne shall pay costs fixed at $350.00 payable forthwith.

[23] The situation concerning Mr. Rancourt is more difficult. The motion was scheduled to take 1 hour and Mr. Dearden completed his submissions in half that time. The submissions of Mr. Rancourt then took until 4:30 p.m. On the other hand, of course, he will be submitting to the judge on the main motion that the entire motion – and therefore all of the costs – is improper and misguided. In the event that the judge agrees with this, it might not be reasonable for the defendant to be saddled with the costs of a motion within that motion. Of course he also argues that in the action as a whole he is the person being wronged because the action is simply an improper – and indeed unconstitutional – attempt by the University of Ottawa to muzzle free speech and criticism.

[24] The putative rule under our current costs regime is a "pay as you go" rule in which costs are presumptively to be fixed at each stage and payable forthwith. A main purpose of this is to encourage the parties not to argue unnecessary motions and to adhere to the rules. There is however the possibility that the judge hearing the main motion will dismiss it and as I have stated earlier – without in any way pre-judging that issue or suggesting it is the correct result - in that eventuality the judge might consider it appropriate to stay my order. Thus I am awarding costs of the motion before me. The defendant shall pay the plaintiff the sum of $3,000.00 on a partial indemnity scale. Subject to any contrary order of the judge hearing the main motion, those costs are to be paid within 30 days.

[25] In summary an order will go as follows:

a. The questions but for the Law Help questions are to be answered.

b. All questions that called for production of documents or copies of documents are to be answered in writing by October 11th, 2011.

c. The witnesses are to reattend at a place and time designated by counsel for the plaintiff to answer the questions under oath and to answer reasonable follow up questions on October 14th, 2011 unless otherwise agreed.

d. No one but the witness, the parties, their legal counsel and the court reporter may be present at the cross examination unless otherwise agreed.

e. Mr. Lamontagne shall pay costs of $350.00

f. The defendant shall pay costs of $3,000.00.

g. This order and the costs award is subject to variation by the judge hearing the main motion if she or he considers it appropriate.

Master MacLeod

Date: October 6, 2011

COURT FILE NO.: 11-51657
DATE: February 8, 2012

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joanne St. Lewis v. Denis Rancourt

BEFORE: Mr. Justice Robert N. Beaudoin

Appearances:

Richard Deardon (by teleconference) and Anastasia Semenova: *for the Plaintiff*

Denis Rancourt: for himself

Peter Doody: for the University of Ottawa

Joseth Hickey: Observer
Hazel Gashoka: Observer

E N D O R S E M E N T (at Case Conference)

There are a number of issues for this conference:

1. The University of Ottawa seeks leave to intervene in the Defendant's motion to have a finding that the agreement between the Plaintiff and the University violates the rule against Champerty. No leave is required. As the University would be affected by this order, service of the Notice of Motion must be made on the University pursuant to Rule 37.07(1). It is implicit in that Rule the University has the right to file material in response to the Notice of Motion. Mr. Doody has accepted service of the Notice of Motion on behalf of the University.

2. The Defendant sought to postpone discoveries in the main action pending the results of the Champerty motion. Whether or not a court will conclude that the arrangements between Ms. St. Lewis offend the rule against Champerty, that does not dispose of the merits of her claim in defamation against Mr. Rancourt and I have concluded that discoveries on the main action should not be postponed pending the hearing of the Champerty Motion. If Mr. Rancourt should succeed in his Champerty Motion, he can claim any costs incurred of having to attend discovery.

3. The Defendant also expressed an intention to bring an "Open Court" Motion that would allow any member of the public or media to attend at any examinations for discovery. For this reason, he expressed the view that this motion should be heard before any cross-examinations or discoveries are scheduled or take place. This issue has been dealt with before. I conclude that this principle does not apply to out-of-court examinations and I adopt the reasoning of Master MacLeod in his order of October 6, 2011, which order has not been

appealed. There is no right for the public to attend an examination out-of-court at the office of the special examiner or court reporter.

4. As for the Champerty Motion itself, the following schedule applies:

   a) the Plaintiff and the University will deliver their responding affidavits by February 21, 2011;

   b) the Defendant will serve his Summons to a Witness, Robert Giroux, by February 13, 2012 for an examination to take place on March 5, 2012;

   c) if the University agrees to the examination of Mr. Giroux, it will take place on March 12 or March 13, 2012, subject to Mr. Giroux' availability;

   d) if the University does not agree with the proposed examination, it will serve its Motion to Quash the Summons no later than February 27, 2012 and the Motion will be heard on March 5, 2012 at a time to be arranged;

   e) cross-examinations on affidavits will take place on March 27 and March 28, 2012. Ms. St. Lewis to be cross-examined first on March 27, 2012;

   f) service of any documents on Mr. Rancourt in these proceedings can be made by e-mail and same day delivery of hard copies by courier at Mr. Rancourt's address;

   g) a case conference will be held on April 2, 2012 at 9:00 a.m. to review compliance with this timetable, to schedule any motions arising out of the cross-examinations and the hearing of the motion.

5. As for the defamation action, the following timetable applies:

   a) Examinations for discovery will take place on April 30 and May 1, 2012 with examinations of Mr. Rancourt taking place on April 30th and those of Ms. St. Lewis taking place on May 1, 2012;

   b) if Mr. Rancourt decides to bring a motion pursuant to Rule 30.06 for a better affidavit of documents or to cross-examine on the plaintiff's affidavit of documents, this is to be scheduled by him to be heard on April 3, 2012 at 10:00 a.m. He must serve his Notice of Motion in accordance with the Rules;

   c) Mr. Rancourt is to provide copies of all documents referred to in his existing affidavit of documents by March 9, 2012. He is to provide an updated Affidavit of Documents and copies of those documents by April 16, 2012;

   d) a case conference to review the status of the discoveries and to schedule the next steps will take place on May 4, 2012 at 9:00 a.m.

6. The plaintiff seeks costs "Thrown Away" for its attendance at the case conference before Master MacLeod on January 26, 2012 as well as for its response to the Defendants' request

for the translation of all documents and has filed written submissions in support of that request. Mr. Rancourt is to provide his written submissions in response by April 23, 2012 and the plaintiff will have a further 10 days from that date to provide her reply submissions.

7. The Plaintiff sought a ruling today on the issue of whether the French language interpretation should appear in the transcripts. This matter will be dealt with at the April 2, 2012 case conference.

"original signed"
Mr. Justice Robert N. Beaudoin

Date: February 8, 2012

COURT FILE NO.: 11-51657
DATE: April 2, 2012

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joanne St. Lewis v. Denis Rancourt

BEFORE: Mr. Justice Robert N. Beaudoin

Appearances:

Richard Dearden and Anastasia Semenova: *for the Plaintiff*

Denis Rancourt: for himself

Peter Doody: for the University of Ottawa

Case Conference Endorsement

Further to my endorsement of February 8, 2012, Mr. Rancourt sought leave to appeal my decision that the "Open Court" principle did not apply to out-of-court examinations. That motion was heard by Smith J. on March 28, 2012 and was dismissed by him on March 29, 2012. In arranging to have that motion date scheduled, Justice Hackland sent a Memorandum to all parties that the case management schedule set out in the February 8, 2012 endorsement may have to be rescheduled.

That has proven to be the case. At the outset of this case conference, the parties agreed that only the examination dates set out in paragraph 4 of the February 8, 2012 Endorsement needed to be changed. Dates set for Examinations for discovery in the defamation action as set out in paragraph 5 remain unchanged.

I refused to deal with any deficiencies in Schedule B of the Plaintiff's Affidavit of Documents as alleged by Mr. Rancourt. The previous timetable specifically set aside a time for the service of such a motion under Rule 30.06 and that was not done. It is too late to bring such a motion at this time. Mr. Rancourt can raise this issue at discoveries, if necessary. I refused Mr. Deardon's request to amend the timeline set out in paragraph 5(c) and to move that date forward. Mr. Rancourt advised that he did not anticipate having more than 20 new documents to produce an updated Affidavit of Documents.

The revised timetable is a follows:

1. Mr. Rancourt will examine Mr. Giroux as a witness on a pending motion on April 18, 2012 at 10:00 a.m.
2. Mr. Rancourt will cross-examine Mr. Rock on his affidavit on April 18, 2012 at 2:00 p.m.
3. Mr. Rancourt will cross-examine Ms. St. Lewis on her Affidavit on April 23, 2012 at 10:00 a.m.
4. Mr. Rancourt will cross-examine Mr. Feldhusen on his affidavit on April 23, 1012 at 2:00 p.m.
5. Mr. Rancourt will cross-examine Ms. Delorme on her affidavit on April 24, 2012 at 10:00 a.m.
6. Mr. Doody and Mr. Deardon will cross-examine Mr. Rancourt on his affidavit on April 24, 2012 at 2:00 p.m.
7. Mr. Rancourt will deliver any supplementary Affidavit to the evidence given by Mr. Giroux at his examination by April 23, 2012 at 10:00 a.m.
8. All examinations and cross–examinations with respect to both the Champerty motion and the defamation action will take place at Gillespie's Reporting.
9. Mr. Doody will advise Mr. Rancourt if Mr. Giroux will be giving his evidence in French and if so, Mr. Doody will arrange for an interpreter to be present.
10. It was confirmed that all other affiants will be questioned by Mr. Rancourt in English and that their answers need not be translated into French. Mr. Rancourt has agreed that Mr. Doody and Mr. Deardon may question him in English but his answers will be given in French and that subject to paragraph 9 above, an interpreter will only be required for his evidence.
11. An Order was signed pursuant to section 11 of Regulation 53/01 under the *Courts of Justice Act* as set out at Tab 3 of the Plaintiff's Motion Record, permitting the filing of transcripts that include the translation or interpretation of statements made in French.
12. The time period for Mr. Rancourt's written submissions on costs as set out in paragraph 6 of the February 8, 2012 Case Conference Endorsement is hereby extended from April 23, 2012 to April 30, 2012.

13. The May 4, 2012 9:00 a.m. Case Conference will now be held to review the compliance with this revised timetable; the status of the discoveries and to schedule any motions arising out of the cross–examinations or the discoveries.
14. On May 4, 2012, the court will also schedule a date for the hearing of the Champerty motion and will deal with the Plaintiff's request to set a trial date.

"original signed"
Mr. Justice Robert N. Beaudoin

Date: April 2, 2012

COURT FILE NO.: 11-51657
DATE: May 4, 2012

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joanne St. Lewis v. Denis Rancourt

BEFORE: Mr. Justice Robert N. Beaudoin

Appearances:

Richard G. Dearden and Anastasia Semenova: for the Plaintiff

Denis Rancourt: for himself

Peter Doody: for the University of Ottawa

Case Conference Endorsement

This case conference was previously scheduled on April 2, 2012 to review compliance with the revised timetable, the status of discoveries, to schedule any motions arising out of the cross-examinations or the discoveries and to schedule the date for the hearing of the Champerty motion. The timetable for these events is as follows:

1. The Defendant's motion to deal with refusals arising out of the cross-examinations on the affidavits relating to the Champerty motion will be heard at 10:00 a.m. on June 20, 2012.

2. The Defendant will serve his Motion Record by 10:00 a.m. June 11, 2012.

3. The Champerty Motion will be heard at 10:00 a.m. August 25, 2012. The Plaintiff's request to file additional affidavit material for use on the motion will be dealt with at that time.

4. The motions by the Plaintiff and the Defendant regarding refusals rising out of the examinations for discovery will be heard at 10:00 a.m. on July 24, 2012. The Defendant's request for additional time for discoveries and for leave to examine third parties for discovery will be heard at the same time.

_____
Mr. Justice Robert N. Beaudoin

Date: May 4, 2012

CITATION: St. Lewis v. Rancourt, 2012 ONSC 3320
COURT FILE NO.: 11-51657
DATE: 2012-06-06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Joanne St. Lewis	)	Richard G. Dearden, for Joanne St. Lewis
	)	
Plaintiff	)	Peter K. Doody, for the University of Ottawa
	)	
– and –	)	
	)	
	)	
	)	
Denis Rancourt	)	Denis Rancourt, self-represented
	)	
Defendant	)	
	)	
	)	
	)	**HEARD:** (By written submissions)

DECISION REGARDING COSTS
(MOTION FOR LEAVE TO APPEAL)

R. SMITH J.

Positions of Parties

[1] The Plaintiff seeks costs of $6,999.60 on a partial indemnity basis and $9,267.10 on a substantial indemnity basis for Mr. Rancourt's unsuccessful Motion for Leave to Appeal Beaudoin J.'s Order dated February 8, 2012.

[2] The University of Ottawa also seeks costs for its involvement in the Application for Leave to Appeal Beaudoin J.'s Order. The University of Ottawa participated in the Motion for Leave to Appeal and seeks costs on a substantial indemnity basis in the amount of $9,103.62 on the basis that the Motion for Leave to Appeal constituted an abuse of process.

[3] Mr. Rancourt submits that the issue of extending the open court principle to cross-examinations on affidavits is a novel question, not previously addressed, and that he was supported by the Civil Liberties Association of the National Capital Region. Mr. Rancourt submits that he acted reasonably in bringing the Motion for Leave to Appeal and that costs

should not be awarded to the Plaintiff as the purpose for costs is indemnification, which is not applicable because St. Lewis' costs are being paid by the University of Ottawa. He further argues that awarding costs to both Professor St. Lewis and the University of Ottawa presents the possibility of double recovery. Mr. Rancourt further disputes that any costs should be awarded to the University of Ottawa as it was a non-party participant and in the alternative submits that the costs claimed by St. Lewis and the University are excessive.

Success

[4] Professor St. Lewis and the University of Ottawa were successful in opposing Mr. Rancourt's Motion for Leave to Appeal.

Complexity and Importance

[5] The issues were of average complexity and involved common law doctrines of issue estoppel, collateral attack, abuse of process, open court principle, and natural justice. The issues were important to the Plaintiff in this proceeding as the Defendant sought permission to allow supporters to attend at cross-examinations on affidavits, which would have made the process unworkable.

Unreasonable Conduct of Any Party

[6] I decided that the principles of *res judicata*, abuse of process and collateral attack all applied to prevent Mr. Rancourt from appealing the decision of Beaudoin J. because the issue had been previously decided by Master MacLeod and his decision was not appealed. However, I do not find that he acted unreasonably by seeking leave to appeal. While he was unsuccessful, the issues raised involved unusual circumstances including the authority of a case management Judge to prevent a party from bringing a motion on an issue that had previously been decided by a Master.

Scale of Costs and Offers to Settle

[7] The Applicants seek costs on a substantial indemnity basis based on my finding of abuse of process. The context of the finding of abuse of process was more related to the *res judicata* and collateral attack principles than that Mr. Rancourt's action was totally unreasonable, vexatious or without any possible merit. As a result costs will be awarded on a partial indemnity basis.

Hourly Rates, Time Spent and Proportionality

[8] Mr. Rancourt does not contest the hourly rates sought by two very experienced and competent counsel in the city of Ottawa, however he objects to paying two sets of costs and he submits that the costs sought are excessive.

[9] He further submits that the costs exceed what an unsuccessful party would reasonably expect to pay. It is difficult to assess what an unsuccessful party would reasonably expect to pay where Mr. Rancourt is a self-represented individual. However, Mr. Rancourt was aware that

Professor St. Lewis and the University were represented by two senior counsel from large firms in the city of Ottawa. Mr. Rancourt also raised a number of legal issues in his application for leave to appeal, and the motion for leave took a half-day. I find that Mr. Rancourt as the unsuccessful party would reasonably expect to pay $5,000.00 of costs.

[10] The University of Ottawa would be affected by any Order made in the champerty motion and therefore based on rule 37.07(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the University had a right to file material and respond to the Notice of Motion. The University had the same right to attend and oppose the Motion for Leave to Appeal Beaudoin J.'s order. However, I find there was some duplication of costs and as a result the University will be awarded a lesser amount of costs than those awarded to the Plaintiff.

Disposition

[11] Having considered all of the above factors, Mr. Rancourt is ordered to pay costs to the Plaintiff St. Lewis in the amount of $5,500.00 plus HST plus disbursements inclusive of HST of $197.10, and costs of $3,500.00 plus HST plus disbursements inclusive of HST of $189.84 to the University.

R. Smith J.

Released: June 6, 2012

CITATION: St. Lewis v. Rancourt, 2012 ONSC 5998
COURT FILE NO.: 11-51657
DATE: 2012/10/23

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Joanne St. Lewis	)	Richard G. Dearden, for the plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
	)	
	)	
Denis Rancourt	)	Denis Rancourt, self-represented
	)	
Defendant	)	
	)	
	)	
	)	**HEARD:** By written submissions

DECISION WITH REGARDS TO COSTS INCURRED BY ST. LEWIS IN RESPONDING TO RANCOURT'S REFUSAL MOTION

R. SMITH J.

[1] The issue raised in this decision is whether the successful responding party's (St. Lewis') costs should be reduced because Mr. Rancourt is a self-represented party who filed very lengthy materials which caused the respondent to expend substantial legal resources to respond?

[2] Ms. St. Lewis submits that she should recover costs on a substantial indemnity basis in the amount of $27,641.03, inclusive of disbursements plus HST because of Mr. Rancourt's unreasonable conduct of filing lengthy motion materials on many questions which were totally devoid of merit. Alternatively, she seeks costs on a partial indemnity basis of $21,203.53, inclusive of disbursements plus HST.

[3] The plaintiff, Ms. St. Lewis, successfully responded to Mr. Rancourt's motion for an order directing her to answer thirty-five (35) questions. In his motion, Mr. Rancourt sought to compel answers to 145 questions which he posed to four witnesses, which resulted in a refusals chart of some 86 pages.

[4] The plaintiff further submits that the defendant engaged in inacceptable conduct by stating that he was not aware of the existence of documents disclosed to Joseph Hickey and stating that he had not received legal advice for the motion on June 20, 2012, when these statements were untrue. I am unable to make a finding on whether the above allegations have been proven on a balance of probabilities on the evidence before me.

[5] Mr. Rancourt objects to Ms. St. Lewis' claim for costs for the attendance and arguments before Justice Beaudoin on June 20, 2012. Mr. Rancourt submits that since Beaudoin J. dealt with three refusals charts and I dealt with only one refusals chart, Ms. St. Lewis' preparation time should be reduced by three quarters of the amount claimed.

[6] Mr. Rancourt also objects paying costs of Ms. St. Lewis' counsel for his attendance on July 26, 2012, a date which was fixed by Regional Senior Justice Hackland. Mr. Rancourt was unable to attend because he had a medical appointment on that day. Mr. Rancourt further objects to the amount of time claimed for responding to his written submissions.

[7] Mr. Rancourt further submits that an excessive amount charged for disbursements for photocopies, and for Quicklaw and Carswell research. Mr. Rancourt objects to the 30 hours claimed for research for senior counsel. I agree with this submission and there will be a reduction on this aspect. Finally, the defendant submits that his refusals motion was reasonably brought and that he denies making any false representations.

[8] Mr. Rancourt also argues that the amount of costs awarded should be reduced because he is impecunious and unable to pay any costs as he lost his employment in 2009. He submits that the requirement to pay a costs award would exhaust his financial savings. He also submits that Ms. St. Lewis does not need to be indemnified by him because her fees are being paid by the University of Ottawa (the "University") and that there is a possibility of double recovery if the plaintiff recovers fees both from University of Ottawa and from himself.

Factors

[9] The factors to be considered when fixing costs are set out in Rule 57 of the *Rules of Civil Procedure* and include in addition to success, the amount claimed and recovered, the complexity and importance of the matter, unreasonable conduct of any party which unduly lengthened the proceeding, scale of costs and any offer to settle, the principle of indemnity, hourly rate claimed the time spent and the principle of proportionality, and the amount that a losing party would reasonably expect to pay.

Success

[10] In this case the plaintiff, Ms. St. Lewis, was completely successful as all of the 35 refusals to questions posed by Mr. Rancourt were upheld as valid refusals.

Complexity and Importance

[11] The issues on a refusals motion are of the most average complexity and were only important to the parties.

[12] While a refusals motion is not a complex matter, it did require the responding parties to spend a substantial amount of time to respond as each question had to be considered individually. One hundred and forty-five (145) refusals were raised by Mr. Rancourt, thirty-five (35) for Ms. St. Lewis and the balance related to three witnesses from the University.

[13] The issue of champerty and maintenance is an area of more complexity, especially in circumstances where the plaintiff's legal fees are being paid by her employer, the University of Ottawa. This aspect required some extra research and preparation.

Unreasonable Conduct of Any Party

[14] Mr. Rancourt filed a very lengthy 347 page motion record on his refusals motion. He may or may not have obtained some legal advice to assist him to prepare his motion materials, however, I am unable to determine whether he did or did not have access to independent legal advice. While his refusals motion was overly lengthy and devoid of merit, I find that his conduct in bringing a refusals motion was not so unreasonable as to justify imposing substantial indemnity costs.

[15] Whether Mr. Rancourt obtained objective independent legal advice or not, his actions have caused the respondents to incur substantial legal costs. The fact that Mr. Rancourt was a self-represented party is not a valid reason for reducing the substantial amount of legal costs that he caused the respondents to incur. I find that Mr. Rancourt should be held responsible to indemnify the respondents for their reasonable legal costs incurred as a result of his lengthy refusals motion where he unsuccessfully sought answers to all 145 questions.

[16] I find that if a party, represented or self-represented, files very extensive lengthy materials in support of their claim raising multiple issues, they cannot object if the opposing parties spend a substantial amount of time to review and respond to the lengthy materials.

Scale of Costs and Offers to Settle

[17] In this case, there were no offers to settle and I am not prepared to award substantial indemnity costs based on the conduct of Mr. Rancourt, even though his excessively lengthy materials caused Ms. St.-Lewis to spend a substantial amount of time to respond. This is not a matter for the higher scale of costs but rather I will increase the time that will be approved at partial indemnity rates.

Hourly Rates, Time Spent and Proportionality

[18] In this case, Mr. Rancourt does not object to the hourly rates charged by senior counsel for the plaintiff or by junior counsel who has done some of the work in this matter. Mr. Rancourt submits that the time spent is excessive and objects to the time being spent for the refusals motion related to the University which involved three witnesses and three refusals charts. He therefore seeks a reduction of three quarters of the time spent by Ms. St. Lewis' counsel. I do not agree with this submission and find it was reasonable for counsel for Ms. St. Lewis to have prepared for and attended the motion before Beaudoin J. on June 20th and on all other court attendances.

[19] Mr. Rancourt submits that the time claimed for research and preparation was excessive given the experience of senior counsel. Both the complexity of the matter and the length of materials and number of issues raised by the moving party are important factors when considering the reasonableness of time spent. I have already found that the matter of refusals is not a complex legal issue as relevance is the main factor. However, Mr. Rancourt produced a very lengthy 347 page record, sought answers to 145 separate questions, and all of the refusals were found to be justified. On his motion before me he was not successful in obtaining answers to any of the 35 questions. The same result occurred before Beaudoin J. with the three witnesses produced by the University. Again, the University witnesses were asked a large number of irrelevant questions and all of their refusals were found to be justified.

[20] The fact that Mr. Rancourt is self-represented does not excuse his conduct or reduce his responsibility for costs when he unsuccessfully brought a lengthy motion and forced the opposing party to spend large amounts of time in preparation to respond to the many issues raised in the motion. I have not found that Mr. Rancourt conducted himself so improperly to justify substantial indemnity costs however, he caused Ms. St. Lewis and the University to incur substantial legal expenses to respond to his lengthy motion. The time spent by Ms. St. Lewis was proportionate to the number of issues raised by Mr. Rancourt.

[21] I do not agree with Mr. Rancourt's submission that costs should not be awarded for preparation for the July 24, 2012 appearance before Beaudoin J., where Mr. Rancourt raised an allegation of bias against Beaudoin J. because he had established a bursary at the University of Ottawa to honour the memory of his recently deceased son. The appearance by the plaintiff on July 26, 2012 was justified as the date was fixed by the Regional Senior Justice after Beaudoin J. recused himself on July 24th. I totally reject Mr. Rancourt's submission that both counsel who attended on July 26th intended to deceive the tribunal or to attempt to inappropriately influence the course of justice.

Double Time Claimed for Responding to Written Submissions

[22] I do not find that there was any double claim for time by Ms. St. Lewis. However, I will reduce the time allowed for research by senior counsel and also for some of the time spent reviewing Mr. Rancourt's extensive submissions.

[23] Some additional time was spent by the requirement for attendances on July 26 and July 27, 2012 because of Mr. Rancourt's allegation that Beaudoin J. was biased against him. Beaudoin J. held that he was not biased against Mr. Rancourt but given the allegations and the involvement of the memory of his deceased son, he decided that he could not continue as the case management judge. Unless Beaudoin J.'s finding is overturned on appeal his decision remains valid therefore the time spent will be included as the additional attendances on July 26th and July 27th were caused by Mr. Rancourt.

[24] The fact that the University has agreed to pay for Ms. St. Lewis' costs is a matter between the University and Ms. St. Lewis. Reasonable costs will be awarded to Ms. St. Lewis as the successful party on the motion and any costs recovered from Mr. Rancourt by Ms. St. Lewis should be credited to any amount paid by the University towards Ms. St. Lewis' legal costs.

Mr. Rancourt's Inability to Pay Costs

[25] Mr. Rancourt submits that he is unable to pay costs due to the loss of his employment. I do not have sufficient evidence before me to determine whether or not Mr. Rancourt is unable to pay legal costs. Whether he has made himself judgment proof as alleged by Ms. St. Lewis in her submissions by recently transferring his interest in his home to his spouse for $1.00 is not a reason for not awarding reasonable costs to the successful party. I am also unaware of how successful he has been with his on-line solicitation of financial support for his legal costs. Mr. Rancourt's alleged inability to pay costs is not a factor given much weight in the circumstances where his own conduct has caused the responding party to incur substantial legal costs to reasonably respond.

Amount the Unsuccessful Party Would Reasonably Expect to Pay

[26] When a party brings a refusals motion on 145 questions, files a 347 page record and forces the opposing party to respond to each question, I find they would reasonably expect a substantial amount of time to be spent by the responding party. I also find it was reasonable for Ms. St. Lewis' counsel to attend the refusals motion held on June 20, 2012 and to have prepared for the said motion even though the questions related to Professor St. Lewis were not dealt with by Beaudoin J. on that date. Likewise, it was reasonable for her counsel to attend court on July 24, 2012 before Beaudoin J., and on July 26th, the date fixed by Regional Senior Justice Hackland, and again, on the attendance before me on July 27, 2012.

Disbursements

[27] I find that the disbursements claimed of $1,391.03 are reasonable given the voluminous record filed by Mr. Rancourt and that the research was reasonably required on the unusual subject matters of champerty and maintenance. I therefore find the disbursements of $1,391.03, inclusive of HST were reasonably incurred and are recoverable.

Disposition

[28] Having considered all of the above factors and the positions of the parties, I order the defendant, Denis Rancourt, to pay costs to plaintiff on a partial indemnity rate fixed in the amount of $15,000, plus HST plus disbursements of $1,391.03, inclusive of HST.

Request to Stay

[29] Mr. Rancourt requests that the costs order be stayed pending his motion for leave to appeal both my decision and Beaudoin J.'s decision. I agree with this request. The costs awarded herein are not to be enforced by the plaintiff until a decision is given on Mr. Rancourt's motion for leave to appeal, of both my decision and Beaudoin J.'s decision has been made.

R. Smith J.

Released: October 23, 2012

CITATION: St. Lewis v. Rancourt, 2012 ONSC 7066
COURT FILE NO.: 11-51657
DATE: 2012/12/11

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Joanne St. Lewis Plaintiff	Richard G. Dearden, for Joanne St. Lewis
– and –	
Denis Rancourt Defendant	Denis Rancourt, self-represented
University of Ottawa Rule 37 Affected Participant	Peter K. Doody, for the University of Ottawa
	HEARD: By written submissions

DECISION ON COSTS FOR MR. RANCOURT'S REFUSALS MOTION AGAINST THE UNIVERSITY HEARD BY BEAUDOIN J. ON JUNE 20, 2012

R. SMITH J.

Jurisdiction to Award Costs

[1] This decision deals with the jurisdiction of a case management judge to award costs for a proceeding which occurred before a different judge who recused himself following the motion before deciding the issue of costs.

[2] Justice Beaudoin recused himself as a result of Rancourt alleging that he had a conflict of interest because he had established a bursary in the name of his recently deceased son at the University of Ottawa. Justice Beaudoin found that he did not have a conflict of interest but given

the anguish caused to him by Rancourt involving the death of son, he felt that he could no longer decide any further issues involving Rancourt on an objective and impartial basis.

[3] The University submits that I have jurisdiction to award costs for the motion before Beaudoin J. on June 20, 2012 because I was appointed the case management judge to deal with all ongoing issues in this case. I agree with this submission. After Beaudoin J. recused himself as the case management judge, Regional Senior Justice Hackland assigned me to deal with all outstanding and ongoing issues in this case. I find this includes jurisdiction to hear submissions and make an award for costs on the refusals motion for the University representatives heard by Beaudoin J. The Divisional Court would not have jurisdiction to fix costs as there is no appeal and there is no order of costs from Beaudoin J. from which to appeal. As a result, I find that I have jurisdiction to decide the issue of costs for the proceedings which were heard by Beaudoin J. on June 20, 2012 and July 24, 2012.

Positions

[4] The University of Ottawa (the "University") seeks costs on a partial indemnity basis in the amount of $14,116.26, inclusive of fees, disbursements and HST for successfully responding to Mr. Rancourt's ("Rancourt") motions for refusals heard by Beaudoin J. on June 20, 2012.

[5] Rancourt also argues that the University is not able to claim costs for having its counsel attend at the refusals motion which involved representatives of the University of Ottawa. I have already decided this issue in my decision dated June 16, 2012 on the Motion for Leave to Appeal, from Beaudoin J.'s order dated February 8, 2012. The University as a person who may be affected by an order under rule 37.07(1) has the right to be served, to file responding materials and to participate in the motion. In addition, if successful, which was the case, I find that the University has the right to claim for indemnification for costs incurred pursuant to the factors set out in rule 57 of the *Rules of Civil Procedure*.

[6] Rancourt also alleges that he is impecunious and therefore submits that an award of costs should not be made against him. I previously found in awarding costs to Ms. St. Lewis ("St. Lewis") in her part of the refusals motion that I do not have sufficient evidence that Rancourt is impecunious as there is no sworn evidence to this effect before me. The same situation applies when deciding to award costs in favour of the University. I agree with the reasoning in *Myers v. Toronto (Metropolitan) Police Force*, (1995) 84 O.A.C. 232 (Div Ct.), at paras. 19-22 where the Court stated that that it is important to avoid a situation in which litigants without means can ignore the rules of the court with impunity and by alleging impecuniosity, avoid the payment of costs.

[7] Rancourt further alleges that counsel for the University has misrepresented the facts to the court and that for this reason costs should not be awarded in favour of the University. I find that counsel for the University did not misrepresent the facts to me in any way. I further find that counsel for the University's description of the exchange that occurred between Rancourt and Beaudoin J. on July 24, 2012 was not misleading in any way.

[8] Rancourt also submits that I should not make a costs order in favour of the University because he will have to prepare for the motions for leave to appeal and other motions that he may be responding to or I may be bringing. I do not find that the fact that Rancourt has brought multiple motions is a reason for not indemnifying the successful party for reasonable costs incurred in one of those motions. Costs are awarded to encourage settlement between the parties and to discourage parties from taking unmeritorious proceedings before the court.

[9] Rancourt submits that there was duplication of effort by the University and St. Lewis and that both counsel were being paid by the University. He submits that it is not equitable to make the defendant pay the costs for both lawyers. I agree with Rancourt's submission that if there was duplication in preparing for the same issue by both counsel then some reduction would be appropriate. In this case, the refusals motions dealt with by Beaudoin J. involved three representatives from the University of Ottawa who were examined by Rancourt. Mr. Dearden's involvement related to refusals to questions related to St. Lewis and not to the refusals by the University representative. As a result, I observed little duplication as both counsel dealt with refusals to different questions.

[10] Rancourt had previously submitted that Mr. Dearden should be awarded one quarter of the costs he sought because he had only one set of refusals to deal with while Mr. Doody had to represent three individual representatives of the University of Ottawa. Rancourt's submission implies that Mr. Doody, as counsel for the University, had a greater role to play in the refusals motion before Beaudoin J. than Ms. St. Lewis had in her refusals motion and therefore Rancourt would reasonably expect to pay a larger amount in costs to the University that he was ordered to pay to St. Lewis.

Factors

[11] The factors to be considered when fixing costs are set out in Rule 57 of the *Rules of Civil Procedure* and include in addition to success, the amount claimed and recovered, the complexity and importance of the matter, unreasonable conduct of any party which unduly lengthened the proceeding, scale of costs and any offer to settle, the principle of indemnity, hourly rate claimed the time spent and the principle of proportionality, and the amount that a losing party would reasonably expect to pay.

Success

[12] In this case the Universtity was completely successful in that all of the approximately 100 questions that representatives of the University refused to answer, raised by Rancourt, were upheld as being valid refusals.

Complexity and Importance and Proportionality

[13] The issues were not complex and were important to the parties. Over 100 questions were in issue and the precise basis for the refusals had to be addressed for each question or group of questions. I adopt the reasoning in my decision dated October 23, 2012 awarding costs to St. Lewis in the refusals motion involving her.

Unreasonable Conduct of Any Party

[14] As previously stated, I do not find that there is any unreasonable conduct whatsoever by counsel for the University. I also find that Rancourt's conduct of bringing this motion which was found to be without merit does not rise to the level of conduct that is so unreasonable such that would justify an award of solicitor-client costs.

Scale of Costs and Offers to Settle

[15] The University seeks costs on a partial indemnity basis. I agree that this the appropriate scale. Where a party raises many issues, in this case over 100 refusals, and forces the responding party to prepare and address each of these issues, that party would reasonably expect substantial legal expenses to be incurred and to be paid if he or she was not successful.

[16] The fact that Rancourt has chosen not to seek advice from independent experienced counsel in libel matters and has chosen to represent himself in these proceedings and has been completely unsuccessful on all of the refusals motions decided to date, is not a reason for not ordering costs. Rancourt has every right to choose to be self-represented in this complex defamation action but this choice is not a reason for not awarding costs against him when he has caused the opposing party to expend substantial amounts of money to successfully respond to his motion.

Hourly Rates, Time Spent and Proportionality

[17] I find that the hourly rates claimed and time spent by counsel for the University are very reasonable given the number of refusals by three different representatives of the University.

Amount the Unsuccessful Party Would Reasonably Expect to Pay

[18] Rancourt was aware that he had sought an order that University representatives answer many questions that had been refused. As a result, I find Rancourt was aware that if he was not successful on his motion that he would have to pay a substantial substantial amount of costs.

Disposition

[19] Having considered all of the above factors, I order Rancourt to pay costs of $12,000.00, inclusive of HST plus disbursements of $417.76 to the University.

R. Smith J.

Released: December 11, 2012

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

COSTS OUTLINE OF JOANNE ST. LEWIS
(Defendant's Motion to Dismiss The Libel Action – Champerty/Abuse of Process)

The Plaintiff, Joanne St. Lewis, provides the following Costs Outline in support of the costs the Plaintiff is seeking pursuant to the decision of Justice Smith dated March 13, 2013 that dismissed the Defendant's champerty/abuse of process motion:

	Partial Indemnity Basis	**Substantial Indemnity Basis**
Fees (as described below)	$72,861.00	$97,148.00
Lawyer's fee for all day appearance (December 13, 2013)	$2,362.50	$3,150.00
Disbursements (as detailed in the attached appendix)	$4,333.00	$4,333.00
Total	$79,556.50	$104,631.00

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- **the amount claimed and the amount recovered in the proceeding**

1. The Plaintiff is a Professor of Law at the University of Ottawa and a lawyer who seeks $1 million in damages against the Defendant Rancourt ("Rancourt") for his false, defamatory and racist publications.

2. Professor St. Lewis is a leading equality rights and anti-racism expert in Canada. The stings of libel set out in the Statement of Claim include:

(i) that Professor St. Lewis acted as the House Negro of University of Ottawa President Allan Rock;

(ii) that it was Black History month and it is the right time to out Black Americans who were and continue to be House Negros to masters;

(iii) that Professor St. Lewis acted like President Allan Rock's House Negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the University;

(iv) the newly released ATI records are disturbing beyond the non-tenured Professor St. Lewis' uncommon zeal to serve the University administration;

(v) the ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent";

(vi) Professor St. Lewis misrepresented her work as "independent" when it verifiably and factually was not independent (by any stretch!);

(vii) Professor St. Lewis acted like a House Negro while attempting to discredit a 2008 Student Union report.

The meanings that arise from these stings of libel include that Professor St. Lewis:

(i) acted as a "slave" to her white master (University of Ottawa President Allan Rock;

(ii) supports racism;

(iii) cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;

(iv) has betrayed Black people for personal gain;

(v) needs to be outed for forfeiting her cultural and racial identity to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;

(vi) is a fraud, untrustworthy, a sell out to the Black community;

(vii) was biased and acted without integrity;

(viii) participated in a high level cover up of wrongdoing.

- **the complexity of the proceeding**

1. Rancourt did everything he could do to make his champerty/abuse of process motion as complicated and drawn out as possible during the time period of January 5 – December 13, 2012. As a result, defending this champerty/abuse of process motion required an enormous amount of work.

2. This libel action is the only remedy available to Professor St. Lewis to vindicate her reputation and to compel Rancourt to take down his malicious, defamatory, racist publications. Rancourt's conduct in litigating his champerty/abuse of process motion and his false allegations that this libel action was not about Professor St. Lewis' reputation necessitated every hour of work claimed in this Costs Outline, including steps I – VIII set out below:

I. Legal Research

This motion required significant legal research on numerous issues, such as:

1. the law of champerty and maintenance;

2. the law on staying or dismissing a libel action as an abuse of process;

3. the law on the inadmissibility of the Defendant's April 23, 2012 and May 23, 2012 affidavits (eg. Rule 39.02(2); the legal principles of *res judicata*, collateral attack); and

4. the law on the trial of an issue (Rule 37.13 (2)(b)).

II. Defendant's Motion Record and Affidavit

The Defendant's Motion Record was 1,362 pages

III. Preparation of Responding Motion Record and Affidavits

1. preparation of responding motion record (180 pages) and supplementary responding motion record of Professor St. Lewis;

2. preparation of the affidavit of Professor St. Lewis;

3. preparation of the affidavit of Bruce Feldthusen, the Dean of the Common Law Section of the Faculty of Law, University of Ottawa;

IV. Cross-examinations on Affidavits

1. preparation for the Defendant's cross-examinations of Professor St. Lewis and Dean Bruce Feldthusen;

2. attendance at cross-examination of Professor St. Lewis;

3. attendance at cross-examination of Dean Bruce Feldthusen.

V. Defendant's Factum and Book of Authorities

review of the Defendant's Factum and the Defendant's Book of Authorities

VI. Professor St. Lewis' Factum and Book of Authorities

drafting of Professor St. Lewis' Factum(48 pages) that included detailed evidentiary references to the affidavits of Professor St. Lewis, Dean Bruce Feldthusen, U of O President Allan Rock and Celine Delorme and the hundreds of pages of the transcripts of the cross-examinations of Professor St. Lewis, Dean Bruce Feldthusen, President Allan Rock, Celine Delorme and the examination of U of O Board of Governors Chair Robert Giroux.

VII. Case Conferences

preparation for and attendances at five case conferences (January 26, 2012; February 8, 2012; April 2, 2012; May 4, 2012; September 27, 2012), communications with the Trial Coordinator.

VIII. Argument

1. preparation for argument on December 13, 2012 (including review of the transcripts of the Defendant's cross-examinations of Professor St. Lewis, Dean Feldthusen, President Rock, Celine Delorme and the examination of Robert Giroux; review of voluminous case law; preparation of a Compendium of Argument);

2. attendance at argument on December 13, 2012.

- **the importance of the issues**

1. Every hour that was required to defend Rancourt's champerty/abuse of process motion was justified because the stakes could not be higher for Professor St. Lewis' reputation. Rancourt was seeking to have Professor St. Lewis' libel action stayed or dismissed as an abuse of process preventing her from having her day in court to attempt to vindicate her personal and professional reputation regarding Rancourt's defamatory and racist publications described above.

2. The sole purpose of this libel action was to vindicate Professor St. Lewis' personal and professional relationship and to obtain an Order compelling Rancourt to take down his defamatory and racist publications. Rancourt repeatedly accused Professor St. Lewis of being a proxy for U of O and consistently demonstrated a reckless disregard for the harm he has caused and continues to cause to Professor St. Lewis' reputation. There can be no doubt that Rancourt had a reasonable expectation that his champerty/abuse of process motion would be vigorously defended and that Professor St. Lewis would incur substantial costs in opposing his champerty/abuse of process motion seeking to have her libel action dismissed

3. Champerty only exists if the parties to a champertous agreement agree to share in the proceeds of the action and an abuse of process "may" only be found if the maintainer is trafficking in litigation. Rancourt's basis for proving these elements of champerty and abuse of process was the fact that Professor St. Lewis' pleaded in paragraph 60 of her Statement of Claim that she would donate half of any punitive damages to the Danny Glover Scholarship she created. Rancourt had no evidence whatsoever to support these required elements yet he relentlessly maintained that Professor St. Lewis' libel action was an abuse of process.

4. It was always patently obvious that Professor St. Lewis' libel action was commenced to vindicate her reputation. Every hour in defending this champerty/abuse of process motion was necessary in light of the outrageous and insulting claims Rancourt made against Professor St. Lewis in his desperate attempt to avoid a trial requiring him to defend his defamatory and racist publications.

- **the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding**

1. On numerous occasions Rancourt intentionally attempted to delay the date his champerty/abuse of process would be argued on the merits. Rancourt's most egregious conduct that provided him a 4 month delay took place on July 24th when he falsely accused Justice Beaudoin of bias and provoked Justice Beaudoin to recuse himself as case management Judge. On May 4, 2012, Justice Beaudoin scheduled the hearing of the champerty motion for August 29, 2012. Rancourt's conduct on July 24th caused the argument of the champerty/abuse of process motion to be delayed by 4 months (December 13, 2012).

2. Another example of Rancourt's delay tactics occurred on the eve of arguing the champerty/abuse of process motion on its merits. On December 10th, Rancourt advised Counsel for the Plaintiff that he would seek to adjourn the December 13, 2012 hearing of his Champerty motion on the basis that he was seeking leave to appeal to the Supreme Court of Canada from an interlocutory decision of Justice Annis. The Defendant sought the adjournment despite being warned by Counsel for the Plaintiff in a letter dated December 11, 2012 that the Supreme Court has no jurisdiction to hear this appeal. Nonetheless, on December 13th, the Defendant proceeded to seek an adjournment. The Registrar of the Supreme Court of Canada agreed with the submissions of Counsel for the Plaintiff and refused to accept for filing Rancourt's attempted Leave To Appeal Application.

3. Rancourt filed numerous motions within his champerty/abuse of process motion. Rancourt appealed every Order. His conduct was vexatious and unnecessarily lengthened the duration of this proceeding.

- **whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution**

The libel action is solely about Professor St. Lewis obtaining remedies to vindicate her personal and professional reputation. The champerty/abuse of process motion was completely unfounded and filed to delay the trial of this libel action. There was never a champertous agreement. There was never trafficking in litigation.

- **a party's denial or refusal to admit anything that should have been admitted**

- **the experience of the party's lawyer**

Richard G. Dearden – Call to the Bar 1979
Anastasia Semenova – Call to the Bar 2011

- **the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer**

FEE ITEMS (*e.g., pleadings, affidavits, cross-examinations, preparation, hearing, etc.*)	PERSONS (*identify the lawyers, students and law clerks who provided services in connection with each item together with their year of call, if applicable*)	HOURS (*specify the hours claimed for each person identified in column 2*)	PARTIAL INDEMNITY RATE (*specify the rate being sought for each person identified in column 2*)	SUBSTANTIAL INDEMNITY RATE (*specify the rate being sought for each person identified in column 2*)	ACTUAL RATE*
I. Legal Research (champerty and maintenance; stay or dismissal of libel action as abuse of process; inadmissibility of affidavit; trial of an issue; *res judicata*; collateral attack)	Richard G. Dearden	9	$315/hr ($2,835.00)	$420/hr ($3,780.00)	$525/hr ($4,725.00)
	Anastasia Semenova	22	$120/hr ($2,640.00)	$160/hr ($3,520.00)	$200/hr ($4,400.00)
II. Review of Defendant's Motion Record and Affidavit	Richard G. Dearden	7	$315/hr ($2,205.00)	$420/hr ($2,940.00)	$525/hr ($3,675.00)
	Anastasia Semenova	3.5	$120/hr ($420.00)	$160/hr ($560.00)	$200/hr ($700.00)
III. Preparation of Responding Motion Record and Affidavits (preparation of responding motion record, supplementary motion record, affidavit of J. St. Lewis, affidavit of B. Feldthusen)	Richard G. Dearden	39	$315/hr ($12,285.00)	$420/hr ($16,380.00)	$525/hr ($20,475.00)
	Anastasia Semenova	3.2	$120/hr ($384.00)	$160/hr ($512.00)	$200/hr ($640.00)
IV. Cross-examination on Affidavits (preparation and attendance for cross-examinations of J. St. Lewis and B. Feldthusen)	Richard G. Dearden	45.5	$315/hr ($14,332.50)	$420/hr ($19,110.00)	$525/hr ($23,887.50)
	Anastasia Semenova	15.5	$120/hr ($1,860.00)	$160/hr ($2,480.00)	$200/hr ($3,100.00)

V. Review of Defendant's Factum and Book of Authorities	Richard G. Dearden	2.5	$315/hr ($787.50)	$420/hr ($1,050.00)	$525/hr ($1,312.50)
	Anastasia Semenova	2.0	$120/hr ($240.00)	$160/hr ($320.00)	$200/hr ($400.00)
VI. Professor St. Lewis' Factum and Book of Authorities	Richard G. Dearden	49	$315/hr ($15,435.00)	$420/hr ($20,580.00)	$525/hr ($25,725.00)
	Anastasia Semenova	17.2	$120/hr ($2,064.00)	$160/hr ($2,752.00)	$200/hr ($3,440.00)
VII. Case Conferences (preparation and attendance)	Richard G. Dearden	21	$315/hr ($6,615.00)	$420/hr ($8,820.00)	$525/hr ($11,025.00)
	Anastasia Semenova (Attendance February 8, 2012)	6.7	$120/hr ($804.00)	$160/hr ($1,072.00)	$200/hr ($1,340.00)
VIII. Argument (preparation for argument, preparation of compendium, attendance at argument)	Richard Dearden	23	$315/hr ($7,245.00)	$420/hr ($9,660.00)	$525/hr ($12,075.00)
	Anastasia Semenova	9.7	$120/hr ($1,164.00)	$160/hr ($1,552.00)	$200/hr ($1,940.00)
VI. Costs Outline	Anastasia Semenova	5	$120/hr ($600.00)	$160/hr ($800.00)	$200/hr ($1,000.00)
	Richard Dearden	3	$315/hr ($945.00)	$420/hr ($1,260.00)	$525/hr ($1,575.00)
TOTAL:			$72,861.00	$97,148.00	$121,435.00
+ Attendance Fee (December 13th – all day)	Richard Dearden	7.5	$315/hr ($2,362.50)	$420/hr ($3,150.00)	$525/hr ($3,937.50)

* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- **any other matter relevant to the question of costs**

N/A

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: March 28, 2013

Richard G. Dearden
Gowling Lafleur Henderson LLP

APPENDIX

Taxable Disbursements

Photocopies, Scanning, Binding and Courier charges	$3,081.05	
Quick Law, WestlaweCarswell: Research	$78.35	
Process Servers	$78.11	
Transcript Fees	$597.00	
HST	@ 13%	$498.49
Total		**$4,333.00**

Non-Taxable Disbursements

N/A

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

COSTS OUTLINE OF JOANNE ST. LEWIS
(Defendant's Champerty Motion)

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Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

COSTS OUTLINE

The **University of Ottawa** provides the following outline of the submissions to be made at the hearing in support of the costs the party will seek if successful:

	Partial (60%)	**Substantial (90%)**	**Full (100%)**
Fees with HST (as detailed below)	$52,862.30	$79,293.46	$88,103.84
Counsel fee for appearance	$2,542.50	$3,813.75	$4,237.50
Disbursements (as detailed in the attached appendix)	$2,599.75	$2,599.75	$2,599.75
Totals:	**$58,004.55**	**$85,706.96**	**$94,941.09**

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- the amount claimed and the amount recovered in the proceeding

- the complexity of the proceeding

This motion, which sought to have the action stayed or dismissed on the basis that the action was the product of champerty and maintenance on the part of the University, should not have been complex. It did, however, require a review of significant documentary evidence on the part of the University, and the production of two affidavits, from the President of the University and outside counsel retained to represent the University in the simultaneous labour arbitration between the University and Mr. Rancourt. That required an understanding of the issues in the labour arbitration and their relationship with the issues in this motion. Counsel for the university was also required to meet with Mr. Robert Giroux, the Chair of the Board of Governors of the University, to prepare him for his examination pursuant to Rule 39.03 by Mr. Rancourt. Counsel was also required to attend on two separate days for the examination of Mr. Rock, Ms. Delorme, and Mr. Giroux.

Mr. Rancourt, however, took a number of steps to make this motion as complex as possible. This action was case managed. Mr. Rancourt made extensive use of the case conferences to attempt to delay the determination of this motion. Counsel for the University was required to attend at a Case Conference on

January 26, 2012 (when parties and the Court were advised that the University would be bringing a motion to intervene), at which time the case conference was adjourned until Feb. 8, 2012 before Beaudoin J. A motion to intervene was required, opposed by Mr. Rancourt, and ruled unnecessary by Beaudoin J. A total of eleven motions were brought by Mr. Rancourt. This required extensive communication with the client, evaluation of the University's position, and constant attention to the matter by counsel, all of which increased the time required. On the hearing of the motion itself, Mr. Rancourt raised new issues in an attempt to rely on evidence filed improperly for which leave had not been obtained. What was a relatively straightforward application of the law of champerty and maintenance to pleaded facts that did not support Mr. Rancourt's position became a piece of litigation which took on a life of its own. All of this added immeasurably to the cost of the matter to the University.

- the importance of the issues

The issues were very important to the University. An allegation of champerty and maintenance is tantamount to an allegation that the University was interfering with the administration of justice. The facts were that the University decided to fund the action for the best of motives – to assist a member of faculty in restoring her reputation which had been besmirched by an outrageous racist attack arising out of activities carried on by her at the request of the University.

- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

Mr. Rancourt intentionally took every step he could to lengthen the process and add to its cost. See above.

- whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution

See above. Mr. Rancourt ought not to have asked to adjourn almost every motion or court appearance, appealed almost every order, and taken steps to delay as long as possible the resolution of these issues.

- a party's denial of or refusal to admit anything that should have been admitted

- the experience of the party's lawyer

David W. Scott was called to the Bar in 1962; Peter K. Doody was called to the Bar in 1982; Kim Dullet was called to the Bar in 2009; Jacquie El-Chammas was called to the Bar in 2010.

- the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer

FEE ITEMS	PERSONS	HOURS	Partial Indemnity	Substantial Indemnity	Actual Rate
Defendant's Champerty Motion: review Defendant's Motion Record; research; meetings with clients and affiants; draft responding Affidavits and Factum; all telephone calls and correspondence; preparation for motion hearing	David W. Scott	8.9	$540.00	$810.00	$900.00
	Peter K. Doody	44.9	$300.00	$450.00	$500.00
	J. El-Chammas	6.2	$123.00	$184.50	$205.00
	Kim Dullet	3.5	$120.00	$180.00	$200.00
	Law Clerk	9.0	$90.00	$135.00	$150.00

FEE ITEMS	PERSONS	HOURS	Partial Indemnity	Substantial Indemnity	Actual Rate
Motion for Leave to Intervene of the University of Ottawa: draft Notice of Motion, Affidavits and Factum	J. El-Chammas	13.4	$123.00	$184.50	$205.00
Cross-Examinations of Plaintiff, Robert Giroux, Allan Rock, and Celine Delorme held April 18, 23, 24, 2012: review documentation and file; meetings with clients and affiants; correspondence and telephone calls; preparation and attendance	Peter K. Doody J. El-Chammas	22.7 1.6	$300.00 $123.00	$450.00 $184.50	$500.00 $205.00
Case Conferences held January 26, February 8, April 2, May 4, and September 27, 2012: preparation and attendance	Peter K. Doody J. El-Chammas	21.0 0.2	$300.00 $123.00	$450.00 $184.50	$500.00 $205.00
Various Costs Submissions (May, October, November, 2012 and January, 2013): preparation of submissions; correspondence	Peter K. Doody	13.8	$300.00	$450.00	$500.00
All Other Work: meetings with clients; reporting to clients; review file; telephone conferences and correspondence	Peter K. Doody J. El-Chammas	22.1 6.2	$300.00 $123.00	$450.00 $184.50	$500.00 $205.00
Attendance at Defendant's Champerty Motion returnable December 13, 2012	Peter K. Doody	7.5	$300.00	$450.00	$500.00

- Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- any other matter relevant to the question of costs

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: March 25th, 2013

Signature of Lawyer

DISBURSEMENTS

Notice of Motion to Intervene	$127.00
Cross-Examinations	$88.75
Transcripts	$324.00
Court Transcripts	$223.30
Court Run charges	$200.00
Photocopy charges	$1,251.61
Courier charges	$100.61
	$2,315.27
HST (on $2,188.27)	$284.48
TOTAL	**$2,599.75**

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Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

COSTS SUBMISSIONS OF THE DEFENDANT

(Defendant's champerty motion / Costs pursuant to the March 13, 2013 Reasons of Justice R. Smith)

Date: July 15, 2013

Denis Rancourt
(Defendant)

Defendant's written submissions — Costs in defendant's "champerty motion"

Overview

1. The defendant submits that, if there ever was a motion where excessive costs submissions were made, then this is it.

2. Together, the opposing parties are claiming $137,561.05 and 472.3 hours of work, in arguing a simple motion having a previously delimited factual matrix, which was heard in 6.5 hours (excluding the lunch break).

3. The defendant submits that the patently excessive costs submissions are erroneously based on prejudicial and incorrect claims that unreasonable sub-motions and appeals were made by the defendant, while the action is in case management by consent.

Amount claimed in the proceeding

4. The plaintiff claims damages of $1,000,000.00, while not having disclosed any evidence that the plaintiff's reputation was actually impacted, and while not ever arguing that there is such evidence.

The plaintiff does not incur costs requiring indemnity

5. The plaintiff's legal costs are entirely paid by the University of Ottawa, based on an agreement with no spending limit.

6. As such, the plaintiff does not incur legal costs requiring indemnity.

The University is not entitled to indemnity

7. The University sought intervener status in the motion ("champerty motion") and was granted intervener status without a motion for leave to intervene being scheduled, heard, or opposed (see below, section "The University's motion for leave to intervene was dismissed without costs").

8. As such, the defendant had no occasion to make submissions that costs should not be awarded to the potential intervener.

9. There was no need for the University to intervene, since the plaintiff, whose costs are entirely paid by the University without conditions, could have called the University witnesses in her response to the champerty motion, without requiring any overlap or doubling of opposing counsels.

10. The defendant submits that the University intervener does not have an unqualified procedural right to indemnity in the circumstances of the instant motion, that the said circumstances are a relevant factor in awarding costs, and that the University is not entitled to indemnity.

Defendant acting in good faith

11. The defendant's arguments in the champerty motion were reasonable, and brought in good faith.

12. All of the defendant's motions are scheduled under case management by consent, and were brought in good faith.

13. The defendant has always sought that this action to be heard at trial as soon as is possible, reasonable, and fair, or be settled by mediation under fair circumstances.

14. While several emerging issues gave rise to additional motions in parallel with the instant champerty motion:
    (a) these were legitimate emerging issues brought in good faith by a self-represented litigant;
    (b) they were scheduled or re-scheduled under case management; and
    (c) they led to separate additional individual costs orders;
    (d) all on the partial indemnity scale.

Complexity of the proceeding

15. The legal issues were simple applications of the straightforward case law of maintenance and champerty.

16. The University of Ottawa ("University") acknowledges that the legal issues of maintenance and champerty in the champerty motion itself are simple: "should not have been complex" (p. 1), and "What was a relatively straightforward application of the law of champerty and maintenance to pleaded facts …" (p.2).

17. The opposing parties both argue that parallel and/or sub-motions increased the duration and costs of the champerty motion itself, which is incorrect: Additional motions did not make the simple legal questions and factual basis of maintenance and champerty complex.

18. On the contrary, the parallel motions eliminated factors and evidence from the champerty motion, thereby further simplifying the champerty motion. (See below.)

19. Costs have already been awarded on all the parallel motions. The instant costs submissions are solely for the champerty motion alone.

20. The entire champerty motion was heard in a single day of hearing, within **6.5 hours**, excluding the one-hour lunch break.

21. Five witnesses, four of which are lawyers, were efficiently cross-examined in less than, on average, 2.5 hours each (inclusive of breaks), as:

Date	**Witness**	**total duration inclusive of breaks (from transcript)**	**total number of pages in certified transcript**
April 18, 2012	Robert Giroux	160 minutes	106 pages
April 18, 2012	Allan Rock	196 minutes	140 pages
April 23, 2012	Joanne St. Lewis	200 minutes	166 pages
April 23, 2012	Bruce Feldthusen	65 minutes	50 pages
April 24, 2012	Céline Delorme	108 minutes	68 pages
		average: 2h 26m	average: 106 pages total: 530 pages

22. The total number of certified transcript pages (530 pages) in the champerty motion is hardly more than the number of certified transcript pages in the seven-hour April 30, 2012 examination for discovery of the defendant (411 pages), where the costs awarded in the refusals motion for discovery were **$14,000.00** inclusive of HST plus disbursements.

Substantial indemnity is not requested by the opposing parties

23. The University is explicitly requesting partial indemnity, as per its March 25, 2013 cover letter to the Court, in its costs submissions.

24. The plaintiff has not explicitly stated which costs scale she requests.

25. There is nothing in the record which is stated by the plaintiff to constitute egregious conduct sufficient to justifying an elevated costs scale.

The Court does not have jurisdiction to allow billing hours claimed on the basis of distinct parallel and/or sub-motions and/or appeals

26. Both parties argue that their large numbers of claimed hours are justified because sub-motions and/or appeals caused the proceedings in the champerty motion itself to be unnecessarily lengthened:

> "3. Rancourt filed numerous motions within his champerty/abuse of process motion. Rancourt appealed every Order. His conduct was vexatious and unnecessarily lengthened the duration of this proceeding." (Plaintiff, p. 5)
>
> "Mr. Rancourt intentionally took every step he could to lengthen the process and add to its cost. See above." (University, p. 2)

27. These propositions that the parallel and/or sub-motions and/or appeals lengthened the proceeding of the champerty motion itself are incorrect, as follows.

28. Scheduling "delay" necessarily arises from motions and appeals, but such "delay" is a reasonable scheduling requirement, here optimized by case management, which is distinct from the actual time and resources needed for the specific champerty motion at bar.

29. The defendant submits that the Court does not have jurisdiction to award costs, within the ambit of the proceeding of the specific champerty motion, aimed at compensating for scheduling requirements, and resources needed to address separate and distinct parallel and/or sub-motions and/or appeals, which have their own costs assigned.

30. The sub-motions and appeals caused additional scheduling requirements for the sub-motions and appeals, but did not in any way lengthen the proceedings of the champerty motion itself. On the contrary, the sub-motions *eliminated* issues and evidence in the champerty motion.

31. The separate motions and appeals deal with separate and distinct issues, such as:
    (a) the open court principle,
    (b) reasonable apprehension of bias,
    (c) leaves to appeal,
    (d) a motion for directions,
    (e) a defendant's refusals motion in the champerty motion, and
    (f) an application to the Supreme Court of Canada, which was received and has been determined by a panel of three judges.

32. The separate motions and appeals have their own separate durations and costs, and do not impact the champerty motion itself -- a motion which was heard in a single day (6.5 hours).

33. The simple legal question of admissibility of the defendant's affidavits in the champerty motion was foreseen under case management to be addressed as part of the champerty motion hearing, was an integral part of the defendant's factum, and was done within the 6.5 hours of the hearing. Similarly, the preliminary question of "issue for trial" was an integral part of the defendant's factum, and was done within the 6.5 hours of the hearing.

Excessive amounts sought

34. The main point of the instant defendant's submissions is that the costs claimed by the opposing parties are patently excessive, by a large factor of 5 or so, as argued below. A total amount that the defendant could reasonably expect to pay for the champerty motion is approximately $25,000.

35. The opposing parties, together, seek **$137,561.05** in partial indemnity costs for this simple motion:
    (a) heard in 6.5 hours (excluding the lunch break),
    (b) involving only 530 pages of examination transcripts,
    (c) in which the said examination transcripts were previously studied in detail by the parties for the defendant's extensive refusals motion in the champerty motion, and
    (d) where all (without exception) of the refused examination questions, in the defendant's refusals motion, were denied—thereby greatly simplifying the issues and proceedings in the champerty motion.

36. The total number of claimed hours for the champerty motion is a staggering **472.3 hours** by some of Canada's most experienced and renowned lawyers—incomprehensible on its face.

37. The sought amount is unreasonable and unjustified. It is far in excess of what the defendant could reasonably expect. It is far in excess of all other motions heard in the action, several of which had hearings as lengthy or lengthier, and lengthy court and/or examination transcripts.

38. Indeed, the largest costs award in this action to date in any motion, in well over a dozen motions heard in court, has been a total awarded to both opposing parties of **$27,000.00** plus disbursements, in the defendant's refusals motion in the champerty motion. The said refusals motion was complicated by several factors such as an attempt to cross-examine a University's affiant brought in the refusals motion, and a defendant's expert witness affidavit about electronic communication technology. It took *two full days of hearings*, and it dealt extensively with the *same* witness cross-examination transcripts as in the champerty motion (minus 50 pages for witness Feldthusen).

> ***St. Lewis v. Rancourt*, 2012 ONSC 5998; (costs decision, to plaintiff)**
> ***St. Lewis v. Rancourt*, 2012 ONSC 7066; (costs decision, to University)**
> **Hearing days: June 20, 2012, and July 27, 2012.**

39. The defendant submits that the large amounts sought are vastly inflated and effectively constitute more than double costs, since:
    (a) the opposing parties rely on attempting to create a prejudicial impression arising from the sub-motions and appeals, while not showing how the proceeding of the champerty motion itself was lengthened;
    (b) the separate and distinct sub-motions and appeals have their own costs awards;
    (c) the *same* examination transcripts were already studied in detail by the parties for the refusals motion in the champerty motion; and
    (d) the sub-motions *eliminated* issues and evidence in the champerty motion rather than adding issues and evidence.

Overlap in costs with the University and the plaintiff

40. The defendant submits that, in addition to the excessive claims of both opposing parties, there is also large overlap between the two opposing parties on the central issue of champerty: Both opposing parties used, as their main authority on champerty (on an employer paying the legal fees of an employee's private defamation lawsuit), the same authority —*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130— and the same underlying argument.

41. Furthermore, the five main authorities on the law of maintenance and champerty used by the University were already provided by the defendant in his factum and book of authorities: *First Capital Realty Inc.* [2009], *McIntyre Estate* [2002], *Buday* [1993], *Operation 1 Inc.* [2004], and *Adi* [2011].

INADMISSIBLE COST ITEMS

I. University of Ottawa

Excessive billed hours for champerty motion itself

42. The total claimed hours exclusively for the champerty motion itself of **104.3 hours** (8.9 + 44.9 + 6.2 + 3.5 + 9.0 + 22.7 + 1.6 + 7.5) are vastly excessive, as explained above. The defendant submits that a reasonable number of hours, for the university's part alone, would be less than 25 hours.

Costs for distinct motions are not admissible

43. The University argues:

> "A total of eleven motions were brought by Mr. Rancourt. This required extensive communications with the client, evaluation of the University's position, and constant attention to the matter by counsel, all of which increased the time required." (p. 2)

44. As explained above, such costs for separate motions, having their own costs, are not admissible. The entire claim item "All Other Work: …" (p.3) of 22.1 + 6.2 hours is not admissible as a separate item.

45. Likewise, alleged "lengthening" (unspecified in amount) due to separate motions, having separate costs, is not admissible. The only motions which could in principle impact resources for the champerty motion, actually *decreased* the resources needed in the champerty motion, such as the refusals motion in the champerty motion.

Preparation and attendance fees at case conferences are not admissible

46. The University claims a cost item "Case Conferences …" (p. 3) of 21.2 hours (21.0 + 0.2).

47. The action is in case management by consent. The case conferences were desired by both parties, and were attended in good faith, to efficiently accomplish such matters as setting the dates for the witness cross-examinations, and to schedule distinct other motions.

48. It is the practice and understanding in the action that costs are not sought for case conferences.

49. The defendant does not and did not reasonably expect that case conferences could be charged.

50. The defendant submits that the Court does not have jurisdiction to award costs within the ambit of the proceeding of the specific champerty motion for case conferences that were desired to schedule cross-examinations, and distinct other motions having their own costs, where case conferences are not charged.

51. As such, the University's claim of approximately **$6,300.00** (21.0 hours at $300.00/hour plus 0.2 hours at $123.00/hour) for preparing and attending case conferences held January 26, February 8, April 2, May 4, and September 27, 2012, is not admissible.

Costs for preparing costs submissions in prior and ruled-upon distinct matters are not admissible

52. The University seeks costs for preparing four past "Various Costs Submissions (May, October, November, 2012 and January 2013)" (p. 3), in the amount **$4,140.00** (13.8 hours at $300.00/hour).

53. The said University's claimed costs submissions are on matters clearly distinct from the champerty motion, as follows:

Date of University's costs submission	**Description of prior motion to which costs submission applies**
May 17, 2012	Defendant's motion for leave to appeal Justice Beaudoin's decision about open court principle
October 11, 2012	Defendant's refusals motion in the defendant's champerty motion
November 2, 2012 (Reply costs submission)	Defendant's refusals motion in the defendant's champerty motion
January 2013	Defendant's motion for leave to appeal reasonable apprehension of bias decisions; and defendant's leave to appeal champerty refusals decisions

54. Costs for preparing the costs outline are an integral part of costs submissions for a given motion. The defendant submits that it is not proper for the University to bootstrap costs for past and separate motions into the instant submissions for the champerty motion.

***Noori v. Grewal et al*, 2011 ONSC 6684 (CanLII), at para. 6; [Tab 1]**

55. The defendant submits that the Court does not have the jurisdiction, within the ambit of the instant costs exercise for the specific champerty motion, to grant costs for any aspect of past and distinct motions, in which costs awards have previously been made.

56. As such, the University's claim for "Various Costs Submissions" (p. 3) is not admissible.

The University's motion for leave to intervene was dismissed without costs

57. The University includes a cost item "Motion for Leave to Intervene of the University of Ottawa" (p. 3).

58. The "Motion for Leave to Intervene of the University of Ottawa" was dismissed as unnecessary, without costs, by Justice Beaudoin during the case conference of February 8, 2012.

59. The transcript of the said case conference shows that the University sought to schedule its motion for leave to intervene, whereas Justice Beaudoin granted intervener status without the motion being scheduled, heard, or opposed.

60. Justice Beaudoin's February 8, 2012 "Endorsement (at case conference)" in this action states (para. 1; **[Tab 2]**):

> The University of Ottawa seeks leave to intervene in the Defendant's motion to have a finding that the agreement between the Plaintiff and the University violates the rule against Champerty. No leave is required. As the University would be affected by this order, service of the Notice of Motion must be made on the University pursuant to Rule 37.07(1). It is implicit in that Rule the University has the right to file material in response to the Notice of Motion. Mr. Doody has accepted service of the Notice of Motion on behalf of the University. [Emphasis added.]

61. As such, the University's claim of approximately **$2000.00** for preparing its motion for leave to intervene (13.4 hours at $123.00/hour plus filing cost of $127.00 plus courier and photocopy charges) is not admissible.

62. The defendant submits that the Court does not have the jurisdiction to review Justice Beaudoin's decision in the said matter, or to include the said cost item within the ambit of the costs in the champerty motion.

Hourly rates cannot exceed Costs Subcommittee rates adjusted for inflation

63. The University uses an hourly rate of **$540.00** for a senior counsel (p. 2), in excess of the maximum partial indemnity rate set in 2005 by the Costs Subcommittee ($350.00), adjusted for inflation.

64. This is not permitted, as found by Justice R. Smith: *First Capital (Canholdings) Corporation v. North American Property Group*, 2012 ONSC 1359 (CanLII).

Billing for attending to lunch in Ottawa is not admissible

65. The University is claiming an attendance fee for the hearing of the motion based on 7.5 hours.

66. The certified transcript of the December 13, 2012 hearing is clear: The hearing started at 10:05 am, adjourned at 5:33 pm, and included a 55-minute lunch break from 1:10 pm to 2:05 pm. Therefore, the attendance time is 6.5 hours, not 7.5 hours as claimed.

67. Furthermore, the University's counsel's office at the BLG law firm is literally a 6-minute walk from the Courthouse.

68. The plaintiff submits that it is not admissible to charge an hourly attendance fee for a lunch break. Here, valued at **$300.00**.

INADMISSIBLE COST ITEMS

II. Plaintiff

Plaintiff's counsel's statements in need of clarification

69. The counsel states "The Registrar of the Supreme Court of Canada agreed with the submissions of Counsel for the Plaintiff and refused to accept for filing Rancourt's attempted Leave To Appeal Application" (p. 5). While this was true on March 28, 2013, it is incorrect. In fact, despite the counsel's repeated efforts in communicating directly with the Registrar, the defendant's leave application was accepted for filing and was determined by a panel of three judges of the Supreme Court of Canada, thanks to the intervention of the Ontario Civil Liberties Association **[see letters at Tab 3]**. Leave was denied with costs on July 4, 2013.

70. The counsel makes the statements: "Rancourt had no evidence whatsoever to support these required elements yet he relentlessly maintained that Professor St. lewis' libel action was an

abuse of process", and "The champerty/abuse of process motion was completely unfounded and filed to delay the trial of this libel action." Yet, the counsel did not file a motion to strike.

71. The counsel five times speaks to the reason for the lawsuit being to vindicate the plaintiff's reputation. This is in contrast to the fact that the plaintiff has not disclosed any evidence that the plaintiff's reputation was actually impacted, nor has the counsel ever argued that there exists such evidence.

72. The counsel gives detailed submissions about the meanings of the words complained of in the defamation action. The meanings are to be decided by the jury, with the help of three expert witnesses, and, the defendant submits, the counsel's alleged meanings have no proper place in the instant costs submissions.

Excessive billed hours for champerty motion itself

73. In addition to the submissions made above (paragraphs 15 to 41), there is a simple test which additionally shows the excessive nature of the plaintiff's costs submission amounts: The University had 3 of the 5 witnesses, and is claiming in total $58,004.55, whereas the plaintiff had 2 witnesses and is claiming in total $79,556.50, almost 40% more than the University's overly large claim —for which there is no justification whatsoever.

74. The plaintiff alone is claiming a staggering **291.3 hours** of total work on this simple motion that was argued in 6.5 hours (not counting the lunch break), and involved only 530 pages of transcripts, after all of the defendant's refusals were denied, and relevancy had been severely constrained in the refusals motion. The plaintiff's claim is in addition to the 181.0 hours of total work claimed by the University on the same simple motion.

75. The plaintiff's counsel cannot have it both ways. There cannot be "no evidence whatsoever" and the motion be "completely unfounded", yet claim to have spent **172.1 hours** (9 + 22 + 39 + 3.2 + 49 + 17.2 + 23 + 9.7) preparing motion materials and arguments.

Excessive billed hours to "prepare" for cross-examinations

76. Both of the plaintiff's witnesses are experienced lawyers, yet the claimed preparation time for the witness cross-examinations is **61 hours** (45.5 + 15.5), compared with **24.3 hours** (22.7 + 1.6) for the University's three witnesses, one of which was not a lawyer. This is almost three times more witness preparation time, for fewer witnesses who were both lawyers, including the plaintiff herself who is most familiar with the case.

77. The defendant submits that there is no reasonable justification for the claimed 61 hours to "prepare" for cross-examinations of two experienced lawyers, one (St. Lewis) who is the most familiar with the case, and the other (Feldthusen) whose examination lasted 65 minutes —

both being cross-examined by a self-represented non-lawyer litigant. The defendant submits that the claimed preparation time of 61 hours for the two cross-examinations is patently excessive.

Preparation and attendance fees at case conferences are not admissible

78. The plaintiff claims a cost item "Case Conferences (preparation and attendance)" (p. 7) of 27.7 hours (21 + 6.7).

79. The action is in case management by consent. The case conferences were desired by both parties, and were attended in good faith, to efficiently accomplish such matters as setting the dates for the witness cross-examinations, and to schedule distinct other motions.

80. It is the practice and understanding in the action that costs are not sought for case conferences.

81. The defendant does not and did not reasonably expect that case conferences could be charged.

82. The defendant submits that the Court does not have jurisdiction to award costs within the ambit of the proceeding of the specific champerty motion for case conferences that were desired to schedule cross-examinations, and distinct other motions having their own costs, where case conferences are not charged.

83. As such, the plaintiff's claim of **$7,419.00** (21.0 hours at $315.00/hour plus 6.7 hours at $120.00/hour) for preparing and attending case conferences held January 26, February 8, April 2, May 4, and September 27, 2012, is not admissible.

Double costing and excessive time to prepare Costs Outline

84. The plaintiff's table of costs (p. 7) contains double costing as:
    (a) "VIII. Argument (… attendance at argument)"; and
    (b) "+ Attendance Fee (December 13th - all dat)".

85. It would be difficult to accept this as a "typo" because the plaintiff claims that **8 hours** (5 + 3) were necessary to prepare the "Costs Outline" (item VI, p. 7).

86. The defendant submits that **8 hours** to prepare the plaintiff's Costs Outline is excessive (**$1,545.00**).

Billing for attending to lunch in Ottawa is not admissible

87. The plaintiff is claiming an attendance fee for the hearing of the motion based on 7.5 hours.

88. The certified transcript of the December 13, 2012 hearing is clear: The hearing started at 10:05 am, adjourned at 5:33 pm, and included a 55-minute lunch break from 1:10 pm to 2:05 pm. Therefore, the attendance time is 6.5 hours, not 7.5 hours as claimed.

89. Furthermore, the plaintiff's counsel's office at the Gowlings law firm is literally a 2-minute walk from the Courthouse.

90. The plaintiff submits that it is not admissible to charge an hourly attendance fee for a lunch break. Here, valued at **$315.00** plus the "double billing" for attendance described above.

Defendant's inability to pay is a relevant factor

91. The defendant has been unemployed since 2009, has given his share of the family home to his spouse, has cashed all his registered savings (except for a single non-redeemable GIC valued at $1,631.37), and has initiated a legal fund for donations to pay court fees, document production costs, and transcript costs in the action and appeals. The defendant has no money to pay any of the outstanding cost orders against him.

92. To date, the defendant has paid court-ordered costs on reasonably brought motions of $3,000.00, $2,000.00, $300.00, $6,412.10, and $4,144.84 (University).

93. Counsel for the plaintiff has stated to the court that the defendant's gift to his spouse of his share in their home was a "fraudulent conveyance" and, on December 14, 2012, wrote to the defendant: "I also attach a letter that I ask that you to please show to your spouse regarding your conveyance to her … please inform me whether I need to write your spouse directly …" **[Tab 4]**.

94. The defendant asks that his inability to pay be justly taken into account if any costs are ordered, especially in light of the fact that the University of Ottawa (which fired the defendant in a controversial 2009 decision being investigated by an Independent Committee of Inquiry of the Canadian Association of University Teachers) is voluntarily paying all the plaintiff's costs, and asks that, if needed, he be allowed to submit affidavit and documentary evidence to prove his financial inability to pay.

95. The defendant further requests that, for any costs payable, the payments be ordered differed until the defamation action is determined, in order that costs against the defendant not interfere with the defendant's right and ability to fully make his defence.

Pending appeal at the Court of Appeal for Ontario

96. An appeal of the champerty motion decision released on March 13, 2013, is scheduled to be heard by the Court of Appeal for Ontario (File No. C56905) on November 8, 2013.

Requested order

97. The defendant respectfully requests judicial determinations of the following issues about costs:

(a) Do the costs of the plaintiff require indemnity?
(b) Do the costs of the University require indemnity?
(c) Are the claimed costs excessive?
(d) Is the plaintiff's claimed 61 hours to prepare two experienced lawyers for cross-examinations excessive?
(e) Is there overlap in costs with the University and plaintiff?
(f) Are costs arising from distinct motions and/or appeals awardable within the ambit of costs for the champerty motion?
(g) Does the refusals motion in the champerty motion reduce the time required to study the witness examination transcripts for the champerty motion?
(h) Are preparation and attendance fees at all case conferences admissible?
(i) Are the University's costs for costs submissions in prior and ruled-upon distinct matters admissible?
(j) Are the University's costs its dismissed motion for leave to intervene admissible?
(k) Is the hourly rate of $540.00 for a University's counsel permitted?
(l) Is the plaintiff's claim of 61 hours to prepare two witnesses for examination, who are both experienced lawyers, excessive?
(m) Is the plaintiff's costing (in two separate cost items) for "attendance fee" / "attendance at argument" admissible?
(n) Are attendance fee costs for attending to lunch on the hearing day admissible?

98. And, additionally:

(o) Is the defendant's inability to pay a relevant factor?
(p) Should any awarded costs be differed until the determination of the defamation action?

99. The defendant respectfully submits that the claimed costs are vastly excessive. The claimed total amount of $137,561.05 is the cost of a house, and it is entirely disproportionate for the simple motion that was argued in 6.5 hours.

All of which is respectfully submitted.

July 15, 2013

Denis Rancourt
(Defendant)

INDEX OF TABS

TAB 1

CITATION: Noori v. Grewal et al, 2011 ONSC 6684
COURT FILE NO.: CV-09-5685-00
DATE: 2011-11-09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Farid Noori

- and -

Baljit Grewal, DaimlerChrysler Services Canada Inc., Giiovanni Funari, Tortstar Corporation and Roy Foss Motors Ltd.

BEFORE: Justice Thomas A. Bielby

COUNSEL: J. Mangat, Student at law, for the Plaintiff

A. Cartaginese, for the Defendants Grewal and DaimlerChrysler

C O S T S E N D O R S E M E N T

[1] On September 14, 2011, I released my endorsement with respect to the plaintiff's motion to extend the time for serving the Statement of Claim.

[2] This motion was dismissed and written submissions were invited with respect to costs.

[3] The defendants were to serve and file their submissions within 14 days and the plaintiff, seven days thereafter.

[4] On October 4, 2011, counsel for the plaintiff asked for a 10-day extension and it was granted. On November 8, 2011, my office contacted counsel and left a message as to the status of the plaintiff's cost submissions. None have been received nor have any further extensions been requested.

[5] The defendants were successful in their opposition to the relief requested and are entitled to costs of the motion. Further, the appropriate scale is that of partial indemnity.

[6] The time spent on the motion at the rates requested amount to $5,555.60, on the partial indemnity scale, and I have no issue with this amount. It includes preparing for and attending a motion and preparing the cost outline.

[7] However, also included is a further claim of $1,099.00 for the "estimated lawyer's fee for appearance (7 hours)" which I do not understand and will not allow.

[8] Accordingly, I award the defendants costs of $5,555.60 plus HST, together with disbursements of $261.93, plus HST if applicable.

Bielby J.

DATE: November 9, 2011

CITATION: Noori v. Grewal et al, 2011 ONSC 6684
COURT FILE NO.: CV-09-5685-00
DATE: 2011-11-09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Farid Noori

- and -

Baljit Grewal, DaimlerChrysler Services Canada Inc., Giiovanni Funari, Tortstar Corporation and Roy Foss Motors Ltd.

BEFORE: Justice Thomas A. Bielby

COUNSEL: J. Mangat, Student at law, for the Plaintiff

A. Cartaginese, for the Defendants Grewal and DaimlerChrysler

---

COSTS ENDORSEMENT

Bielby J.

DATE: November 9, 2011

TAB 2

COURT FILE NO.: 11-51657
DATE: February 8, 2012

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joanne St. Lewis v. Denis Rancourt

BEFORE: Mr. Justice Robert N. Beaudoin

Appearances:

Richard Deardon (by teleconference) and Anastasia Semenova: *for the Plaintiff*

Denis Rancourt: for himself

Peter Doody: for the University of Ottawa

Joseth Hickey: Observer
Hazel Gashoka: Observer

E N D O R S E M E N T (at Case Conference)

There are a number of issues for this conference:

1. The University of Ottawa seeks leave to intervene in the Defendant's motion to have a finding that the agreement between the Plaintiff and the University violates the rule against Champerty. No leave is required. As the University would be affected by this order, service of the Notice of Motion must be made on the University pursuant to Rule 37.07(1). It is implicit in that Rule the University has the right to file material in response to the Notice of Motion. Mr. Doody has accepted service of the Notice of Motion on behalf of the University.

2. The Defendant sought to postpone discoveries in the main action pending the results of the Champerty motion. Whether or not a court will conclude that the arrangements between Ms. St. Lewis offend the rule against Champerty, that does not dispose of the merits of her claim in defamation against Mr. Rancourt and I have concluded that discoveries on the main action should not be postponed pending the hearing of the Champerty Motion. If Mr. Rancourt should succeed in his Champerty Motion, he can claim any costs incurred of having to attend discovery.

3. The Defendant also expressed an intention to bring an "Open Court" Motion that would allow any member of the public or media to attend at any examinations for discovery. For this reason, he expressed the view that this motion should be heard before any cross-examinations or discoveries are scheduled or take place. This issue has been dealt with before. I conclude that this principle does not apply to out-of-court examinations and I adopt the reasoning of Master MacLeod in his order of October 6, 2011, which order has not been

appealed. There is no right for the public to attend an examination out-of-court at the office of the special examiner or court reporter.

4. As for the Champerty Motion itself, the following schedule applies:

   a) the Plaintiff and the University will deliver their responding affidavits by February 21, 2011;

   b) the Defendant will serve his Summons to a Witness, Robert Giroux, by February 13, 2012 for an examination to take place on March 5, 2012;

   c) if the University agrees to the examination of Mr. Giroux, it will take place on March 12 or March 13, 2012, subject to Mr. Giroux' availability;

   d) if the University does not agree with the proposed examination, it will serve its Motion to Quash the Summons no later than February 27, 2012 and the Motion will be heard on March 5, 2012 at a time to be arranged;

   e) cross-examinations on affidavits will take place on March 27 and March 28, 2012. Ms. St. Lewis to be cross-examined first on March 27, 2012;

   f) service of any documents on Mr. Rancourt in these proceedings can be made by e-mail and same day delivery of hard copies by courier at Mr. Rancourt's address;

   g) a case conference will be held on April 2, 2012 at 9:00 a.m. to review compliance with this timetable, to schedule any motions arising out of the cross-examinations and the hearing of the motion.

5. As for the defamation action, the following timetable applies:

   a) Examinations for discovery will take place on April 30 and May 1, 2012 with examinations of Mr. Rancourt taking place on April 30th and those of Ms. St. Lewis taking place on May 1, 2012;

   b) if Mr. Rancourt decides to bring a motion pursuant to Rule 30.06 for a better affidavit of documents or to cross-examine on the plaintiff's affidavit of documents, this is to be scheduled by him to be heard on April 3, 2012 at 10:00 a.m. He must serve his Notice of Motion in accordance with the Rules;

   c) Mr. Rancourt is to provide copies of all documents referred to in his existing affidavit of documents by March 9, 2012. He is to provide an updated Affidavit of Documents and copies of those documents by April 16, 2012;

   d) a case conference to review the status of the discoveries and to schedule the next steps will take place on May 4, 2012 at 9:00 a.m.

6. The plaintiff seeks costs "Thrown Away" for its attendance at the case conference before Master MacLeod on January 26, 2012 as well as for its response to the Defendants' request

for the translation of all documents and has filed written submissions in support of that request. Mr. Rancourt is to provide his written submissions in response by April 23, 2012 and the plaintiff will have a further 10 days from that date to provide her reply submissions.

7. The Plaintiff sought a ruling today on the issue of whether the French language interpretation should appear in the transcripts. This matter will be dealt with at the April 2, 2012 case conference.

"original signed"
Mr. Justice Robert N. Beaudoin

Date: February 8, 2012

TAB 3

Supreme Court of Canada

CANADA

Cour suprême du Canada

Ottawa, Ontario
K1A 0J1

Chambers of
The Chief Justice

Cabinet du
Juge en chef

April 19, 2013

Mr. Joseph Hickey
Executive Director
Ontario Civil Liberties Association
130 Slater Street, Suite 960
Ottawa, Ontario
K1P 6E2

Dear Mr. Hickey:

On behalf of The Right Honourable Chief Justice McLachlin, I acknowledge receipt of your letter dated March 4, 2013, Mr. Dearden's responding letter dated March 7, 2013 and your reply letter dated March 11, 2013. The Chief Justice has referred your correspondence to me for response.

In your letter of March 4, 2013, the Ontario Civil Liberties Association (the OCLA) alleges that in dealing with self-represented litigants, the Registrar has usurped the jurisdiction of the Court by dealing with matters not within his power. In particular, the OCLA alleges that the Registrar has rejected documents for filing based on the underlying substantive legal issues as opposed to a lack of compliance with any specific rule of the Court. Further, the OCLA alleges that the Registrar has improperly interpreted Rule 78 to shield his decisions from review.

The Supreme Court of Canada seeks to ensure that every member of the public has access to the Court, regardless of individual means or representation. To this end, the Court devotes significant resources to facilitating self-represented litigants' access to the Court. For example, there is a portal for self-represented litigants on the Court's website that addresses most commonly asked questions, forms that can be used, and a link to pro bono assistance. Help from Registry officers is available at the Registry counter, by telephone and by e-mail.

As the Supreme Court of Canada is a statutory court with a unique jurisdiction, one aspect of a Registry officer's functions is to inform a self-represented litigant that a proceeding at the Supreme Court of Canada may be premature if the litigant seeks to appeal something other than a final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof. The goal is to assist

self-represented litigants by directing them to the appropriate forum so that they may act promptly to preserve their appeal rights within the time prescribed for appeal before the appropriate court.

The Chief Justice has asked the Registrar to review the cases raised in the enclosures to your letter of March 4, 2013, and to address any issues directly with the individuals concerned.

On behalf of the Chief Justice, I thank you for bringing your concerns to the Court's attention.

Yours very truly,

Owen M. Rees
Executive Legal Officer

c.c.: Mr. Richard G. Dearden

Supreme Court of Canada | Cour suprême du Canada

April 8, 2013

Denis Rancourt
35 Simcoe Street
Ottawa, ON
K1S 1A3

Re: Denis Rancourt v. Joanne St. Lewis et al

Dear Mr. Rancourt:

Further to my letters of January 25 and February 22, 2013 in regard to the above matter, I am writing to correct any misunderstanding which my letters may have caused.

Accordingly, I wish to advise that if you wish to file an application for leave to appeal and providing that your documents are otherwise in compliance with the Act and Rules, your application will be accepted for filing and will be submitted to a panel of the Court for a determination, in accordance with s. 43 of the *Supreme Court Act* and Part 5 of the *Rules of the Supreme Court of Canada*.

The views which were expressed in my earlier correspondence do not prejudice your position before the Court.

If you have any additional questions, please call the Registry Branch at 613-996-8666 or 1-888-551-1185.

Yours truly,

Roger Bilodeau, Q.C.
Registrar

cc: Mr. Richard Dearden
Mr. Peter Doody

301, rue Wellington Street, Ottawa, Ontario, Canada K1A 0J1
Tel./Tél. : 613 996-8666 • 1 888 551-1185 • Fax/Téléc. : 613 996-9138
Internet : www.scc-csc.gc.ca • E-mail/Courriel : registry-greffe@scc-csc.gc.ca

Ontario
Civil Liberties
Association

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."
—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

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—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

March 11, 2013 By registered mail

Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Chief Justice:

Re: Gowlings' March 7, 2013 letter about OCLA's concerns

We find it profoundly sad and unfortunate that Mr. Dearden has been so carried away by his desire to advance the interests of his client that he ventured to make an *ad hominem* attack against a nascent organization which has been endorsed by prominent civil liberties leaders.

We wish to express our sincere hope that Mr. Dearden's partisan intervention will not create an unnecessary distraction from the investigation of our serious concerns about the conduct of the Registrar of the Supreme Court of Canada towards self-represented litigants. These concerns are of a systemic nature and their scope are beyond any specific case or party.

Sincerely yours,

J. Hickey

Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

Cc: Canadian Judicial Council
Cc: Richard Dearden, Gowlings

excluding attachments

gowlings montréal · ottawa · toronto · hamilton · waterloo region · calgary · vancouver · moscow · london

Richard G Dearden
Direct 613-786-0135
Direct Fax 613-788-3430
richard.dearden@gowlings.com

BY HAND

March 7, 2013

Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada
Supreme Court of Justice
301 Wellington Street
Ottawa, ON K1A 0J1

Chief Justice:

Re: Ontario Civil Liberties Association/Denis Rancourt

1. I am counsel for Professor Joanne St. Lewis in a libel action against Denis Rancourt in the Ontario Superior Court of Justice. Mr. Rancourt published an article on his blog (U of O Watch) that accused Professor St. Lewis of *inter alia* acting as University of Ottawa President Allan Rock's House Negro.

2. I am responding to a letter dated March 4, 2013 sent to you by Joseph Hickey on behalf of an organization that calls itself the Ontario Civil Liberties Association (OCLA). Mr. Hickey is a partisan supporter of Mr. Rancourt and his letter failed to mention a number of facts you may wish to consider in assessing his request that you launch an investigation into the Registrar's conduct and the unfounded allegation that the Registrar had an apprehension of bias against Mr. Rancourt.

3. Mr. Hickey's letter enclosed two letters from the Registrar to Denis Rancourt who represents himself when he appears in court in Professor St. Lewis' libel action. Mr. Rancourt attempted to file an application for leave to appeal to the Supreme Court of Canada a decision of Ontario Superior Court of Justice Annis that denied him leave to appeal to the Ontario Divisional Court. Mr. Rancourt had prior notice that he had to exhaust all avenues of appeal in the lower courts before seeking leave to appeal to the Supreme Court of Canada but he intentionally ignored those warnings.

4. In my respectful submission the Registrar has not done anything to warrant the "investigation" called for by Mr. Hickey. There was no reasonable apprehension of bias

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on the part of the Registrar. However, the facts below certainly demonstrate the OCLA's bias in favour of Mr. Rancourt.

5. The OCLA was created by Mr. Hickey and two other individuals sometime around September 2012 and became publicly active sometime around January 2013.

6. The OCLA's founding principles dated September 18, 2012 as stated on its website **(Tab 1)** include support for hate speech and violent expression which is outside of the ambit of section 2(b) of the *Canadian Charter of Rights and Freedoms*. The OCLA's founding principles state that it supports:

> [...]
> - all individual expression of emotions, including **hate** and love;
> - all individual expression about **criminal behaviour, including expression about child pornography, genocide, war, slavery, and serial murder;**
>
> [...]

7. The executive membership of the OCLA, as stated on its website, consists of three individuals – Joseph Hickey (Executive Director), Caroline Wang (Treasurer) and Matthew Fournier (Technical Director). **(Tab 2)** Both Mr. Hickey and Ms. Wang are partisan supporters of Mr. Rancourt and Ms. Wang may be Mr. Rancourt's daughter.

8. Mr. Rancourt is involved in the OCLA's activities and is the coordinator of the OCLA's self-represented litigants working group. **(Tab 3)** In addition, almost all the material posted on the OCLA website addresses Professor St. Lewis' libel action against Mr. Rancourt. **(Tab 4)**

9. Since the libel action was commenced, Mr. Hickey has posted numerous articles in support of Mr. Rancourt on his blog "A Student's-Eye View", as well as links to articles posted by Mr. Rancourt. Mr. Hickey has attended almost all of the court proceedings in the libel action in support of Mr. Rancourt. Mr. Hickey also improperly refused to leave the examination room during a cross-examination of Mr. Rancourt that I conducted requiring me to obtain a court order prohibiting him and other supporters of Mr. Rancourt from attending future cross-examinations and examinations for discovery. **(Tab 5)**

10. Finally, in March 2012, Mr. Hickey brought a motion to intervene in support of one of the multiplicity of motions brought by Mr. Rancourt in Professor St. Lewis' libel action. Mr. Hickey's motion to intervene was denied and costs were awarded against him. (*St. Lewis v Rancourt*, 2012 ONSC 3309. **(Tab 6)**

11. Mr. Rancourt has publicly expressed his hope that the OCLA intervenes in his case at the Supreme Court of Canada to provide an independent or expert opinion. (Excerpt of Transcript: Interview with Radio-Canada, **Tab 7**). The complete lack of independence and expertise of the OCLA is palpable. The OCLA has no evidentiary or legal basis for

gowlings

accusing the Registrar of having an apprehension of bias regarding the two letters he wrote Mr. Rancourt and no investigation is warranted.

Yours truly,

Richard G. Dearden

Richard G. Dearden
RGD/mj

cc: Joseph Hickey, Ontario Civil Liberties Association (OCLA)
Canadian Judicial Council

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excluding attachments

Ontario Civil Liberties Association

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."
—John Carpay, President, Justice Centre for Constitutional Freedoms

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—Robert Martin, Professor of Law, Emeritus, Western University

ocla.ca

March 4, 2013

By registered mail

Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Your Honour:

The Ontario Civil Liberties Association is an organization formed to defend civil liberties at a time when fundamental freedoms are subjected to a real and palpable systemic erosion in all spheres of social life. We oppose institutional decisions that remove from the individual his or her personal liberty or exclude the individual from participation in the democratic functions of society.

We are writing to bring to your attention serious concerns about the conduct of the Registrar of the Supreme Court of Canada toward self-represented litigants, which deprives unrepresented parties from access to the Court.

It has come to our attention that in a number of cases involving unrepresented parties, the Registrar usurped the jurisdiction of the Court, and has taken it upon himself to rule on the merits of matters that the *Supreme Court Act* and the *Rules* explicitly require to be placed before a panel of the Court or a judge of the Court. A common feature of these cases is that the Registrar returned all documents to the unrepresented party, and thus the incidents left little or no trace in the Court's public records.

We pause here to note that we are aware of the Registrar's powers to refuse documents that do not meet the requirements of the *Rules*. In the cases that attracted our attention, however, the Registrar's reasons for returning the documents were related to the underlying substantive legal issues, and not the lack of compliance with any specific rule of the Court.

Our concerns are based entirely on the principles of the rule of law and access to justice: Since Parliament chose to entrust panels of at least three judges of the Court with determining leave applications, the Registrar ought not interfere with the access of unrepresented parties to the Court based on his opinions on the merits of their cases or the jurisdiction of the Court.

OCLA

Ontario
Civil Liberties
Association

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—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

We are particularly concerned by the Registrar shielding his own decision from review by not placing a motion pursuant to *Rule* 78 before a judge of the Court, but rather returning the motion record to the unrepresented party. Even if the Registrar is correct in stating that *Rule* 78 "is not applicable," it was inappropriate for him to get involved with a matter seeking to review his own decision, and it creates an apprehension of bias.

In light of your strong commitment to the issue of access to justice, we trust that you find these examples as disconcerting as we do. We ask that you launch an investigation into the Registrar's conduct, and make a public statement that you have done so, thereby reaffirming your known commitment to access.

Sincerely yours,

J. Hickey

Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

Enclosed:

1. Letter of Supreme Court Registrar to Mr. Robert Allan Stark, October 23, 2012
2. Letter of Supreme Court Registrar to Mr. Denis Rancourt, January 25, 2013
3. Letter of Supreme Court Registrar to Mr. Denis Rancourt, February 22, 2013

Cc: Canadian Judicial Council
Cc: made public

TAB 4

gowlings montréal · ottawa · toronto · hamilton · waterloo region · calgary · vancouver · moscow · london

BY HAND

Richard G Dearden
Direct 613-786-0135
Direct Fax 613-788-3430
richard.dearden@gowlings.com

December 14, 2012

Denis Rancourt
35 Simcoe Street
Ottawa, ON K1S 1A3

Dear Mr. Rancourt:

Re: St. Lewis v Rancourt - (Court File No.: 11-51657)

1. On August 21, 2012, your transferred to your spouse (Marie Therese Wang) your 60% interest in your residential property located at 35 Simcoe Street, Ottawa for $1.

2. On the date you transferred your property to your spouse for $1, you were aware that there were several costs motions under reserve by Justice Smith as well as your potential liability to pay significant costs to Professor St. Lewis and University of Ottawa regarding pending motions (your champerty motion, refusals motions and your leave to appeal motions).

3. I have submitted orally and in writing in proceedings before the Ontario Superior Court of Justice that your $1 conveyance is a fraudulent conveyance to judgment proof yourself. I assume you informed your spouse of this fact. In the event that my assumption is incorrect, please inform me whether I need to write your spouse directly to put her on notice that it is the position of Professor St. Lewis that your $1 conveyance constitutes a fraudulent conveyance and that until such time as this libel action has been decided by a jury and all appeals are exhausted she is not to convey the residential property nor encumber it to preserve the value of your 60% interest as of August 21, 2012.

Yours truly,

Richard G. Dearden

Richard G. Dearden
RGD/mj

OTT_LAW\ 3427148\1

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

PROFESSOR ST. LEWIS' REPLY
TO DEFENDANT'S JULY 15, 2013 COSTS SUBMISSIONS

(Defendant's Champerty Motion/
Costs pursuant to the March 13, 2013 Reasons of Justice R. Smith)

July 24, 2013

Gowling Lafleur Henderson LLP
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Richard G. Dearden (LSUC #019087H)
Anastasia Semenova (LSUC #60846G)
Tel: (613) 786-0135
Fax: (613) 788-3430

Counsel for Professor Joanne St. Lewis

I. PROFESSOR ST. LEWIS' DAMAGES

1. Paragraphs 4 and 71 of the Defendant's Costs Submissions state:

> 4. The plaintiff claims damages of $1,000,000.00, while not having disclosed any evidence that the plaintiff's reputation was actually impacted, and while not ever arguing that there is such evidence.
>
> 71. The counsel five times speaks to the reason for the lawsuit being to vindicate the plaintiff's reputation. This is in contrast to the fact that the plaintiff has not disclosed any evidence that the plaintiff's reputation was actually impacted, nor has the counsel ever argued that there exists such evidence (emphasis in original).

2. The Defendant ignores the law of libel in Ontario – general damages are presumed. In addition, an allegation that calling Professor St. Lewis a House Negro caused her no damage demonstrates his malice and racist attitude toward Professor St. Lewis.

II. INDEMNITY AND PROXY LAWSUIT

3. Paragraphs 5-6 of the Defendant's Costs Submissions state:

> 5. The plaintiff's legal costs are entirely paid by the University of Ottawa, based on an agreement with no spending limit.
>
> 6. As such, the plaintiff does not incur legal costs requiring indemnity.

4. The Defendant has previously argued that the Plaintiff does not require indemnity for legal costs because the University of Ottawa is paying her legal fees and his argument was unequivocally rejected in previous costs decisions in this action. In *St. Lewis v Rancourt*, 2012 ONSC 3320 *Decision Regarding Costs (Motion for Leave to Appeal)* (seeking leave to appeal the February 8, 2012 Order of Justice Beaudoin), costs were awarded in favour of the Plaintiff by Justice Smith notwithstanding that the Defendant argued:

> [3] … Mr. Rancourt submits that he acted reasonably in bringing the Motion for Leave to Appeal and that costs should not be awarded to the Plaintiff as the purpose for costs is indemnification, which is not applicable because St. Lewis' costs are being paid by the University of Ottawa…
>
> ***St. Lewis v Rancourt*, 2012 ONSC 3320 (CanLII) (June 6, 2012) at para 3.**

5. The Defendant's indemnification argument was rejected again in *St. Lewis v Rancourt*, 2012 ONSC 5998 (Defendant's Champerty Refusals Motion – *Decision With Regards to Costs Incurred by St. Lewis in Responding to Rancourt's Refusal Motion*); costs were awarded in favour of the Plaintiff by Justice Smith notwithstanding that the Defendant argued:

> [8] ... [The Defendant] also submits that Ms. St. Lewis does not need to be indemnified by him because her fees are being paid by the University of Ottawa (the "University") and that there is a possibility of double recovery if the plaintiff recovers fees both from University of Ottawa and from himself.
>
> ***St. Lewis v Rancourt*, 2012 ONSC 5998 (CanLII) (October 23, 2012) at para 8.**

6. The Defendant's indemnification argument was again rejected in the June 5, 2013 *Costs Decision on Mr. Rancourt's Refusal Motion on the Examinations for Discovery of Joanne St. Lewis* and costs were awarded in favour of the Plaintiff by Justice Smith:

> [8] The fact that St. Lewis' employer has decided to reimburse her for her legal expenses is not a reason to deny costs to the successful litigant on a motion where that litigant was successful.
>
> [9] St. Lewis has acknowledged, in the Champerty motion, that her legal fees are being paid by the University as it felt a moral obligation to defend her from the verbal attacks made by Rancourt and also because the alleged libellous statements were made because of her work as an employee of the University. The ultimate beneficiary of the award of costs will be the University of Ottawa who will recover some of the funds they have advanced to pay legal fees on behalf of St. Lewis. I have ruled that the agreement between the University and St. Lewis is not champertous or one of maintenance and that there was nothing improper in the University agreeing to pay the legal fees on behalf of its employee in the circumstances. I also see nothing improper with the University being reimbursed or indemnified for some of the fees it has incurred on behalf of St. Lewis. In the result, this argument by Rancourt is rejected.

7. In *Hill v Church of Scientology of Toronto,* where the plaintiff's libel action was entirely funded by the Ministry of the Attorney General of Ontario, Justice Carruthers ruled during the trial that details of the plaintiff's arrangements with his employer concerning the costs incurred by him in proceeding with this action were <u>not relevant</u> to the libel action. The plaintiff in this action obtained a jury verdict of $1.6 million in total damages <u>plus</u> costs.

***Hill v Church of Scientology of Toronto*, [1992] OJ No 451 (SCJ) at paras 8, 12, aff'd [1995] 2 SCR 1130, Tab 1.**

III. DEFENDANT DID NOT ACT IN GOOD FAITH

8. Paragraphs 11-14 of the Defendant's Costs Submissions state:

> 11. The defendant's arguments in the champerty motion were reasonable, and brought in good faith.
>
> 12. All of the defendant's motions are scheduled under case management by consent, and were brought in good faith.
>
> 13. The defendant has always sought that this action to be heard at trial as soon as is possible, reasonable, and fair, or be settled by mediation under fair circumstances.
>
> 14. While several emerging issues gave rise to additional motions in parallel with the instant champerty motion:
>
> > (a) these were legitimate emerging issues brought in good faith by a self-represented litigant;
> > (b) they were scheduled or re-scheduled under case management; and
> > (c) they led to separate additional individual costs orders;
> > (d) all on the partial indemnity scale.
>
> (Emphasis in original)

9. The Defendant's claim in paragraph 13 of his Costs Submissions that he "has always sought that this action to be heard at trial as soon as is possible" is incredible and clearly at odds with his actions. The Defendant continuously brings new motions, seeks leave to appeal almost every decision, and frequently requests last-minute adjournments. The Defendant has initiated proceedings at every level of court in the country – the Supreme Court of Canada, the Ontario Court of Appeal, Divisional Court and Superior Court. He does everything he can to delay the trial of this libel action and to force the Plaintiff to incur costs to defend his infinite motions and appeals. The Defendant is a vexatious, malicious, self-interested libel defendant.

IV. COMPLEXITY OF THE PROCEEDING

10. An enormous amount of work was required to defend the Defendant's champerty motion on the merits:

I. Legal research on **six separate issues**: 1. Champerty and maintenance; 2. Stay or dismissal of libel action as abuse of process; 3. Inadmissibility of affidavit; 4. Trial of an issue, 5. *Res judicata*, 6. Collateral attack. (9 hours – senior counsel, 22 hours – junior counsel);

II. Review of Defendant's Motion Record and Affidavit of **1,362 pages** (7 hours – senior counsel, 3.5 hours – junior counsel);

III. Preparation of Responding Motion Record, Supplementary Responding Motion Record, Affidavit of Professor St. Lewis and Affidavit of Dean Feldthusen (39 hours – senior counsel, 3.2 hours – junior counsel);

IV. Cross-examination on Affidavits – preparation and attendance for cross-examination of Professor St. Lewis and Dean Feldthusen. (45.5 hours – senior counsel, 15.5 – junior counsel);

V. Review of Defendant's Factum **(22 pages)** and Book of Authorities **(340 pages)** (2.5 hours – senior counsel; 2.0 – junior counsel);

VI. Drafting Responding Factum (49 hours – senior counsel, 17.2 – junior counsel);

The Plaintiff filed a 48 page Factum that set out detailed evidentiary citations for each element of the Defendant's abuse of process/champerty motion. The Plaintiff's Factum included evidentiary references to: (i) 530 pages of transcripts of cross-examinations: Professor St. Lewis (166 pages), Dean Bruce Feldthusen (50 pages), President Allan Rock (140 pages), Celine Delorme (68 pages) and the examination of U of O Board of Governors Chair Robert Giroux (106 pages); and (ii) 220 pages of affidavits (including exhibits): Professor St. Lewis (165 pages), Dean Bruce Feldthusen (14 pages), President Allan Rock (9 pages) and Celine

Delorme (32 pages). All this evidence had to be reviewed in detail to draft the Plaintiff's Factum.

VII. Preparation and attendance for Case Conferences (21 hours – senior counsel, 6.7 – junior counsel);

VIII. Preparation for Argument and Preparation of Compendium (23 hours – senior counsel and 9.7 hours – junior counsel)

Contrary to paragraph 84 of the Defendant's Submissions, the time claimed does not include time for attendance of argument; the mention of "attendance of argument" in the Costs Outline dealing with preparation of argument was inadvertent and the hours for "attendance of argument" were not double-counted.

11. In response to paragraph 19 of the Defendant's Costs Submissions, no costs have been claimed for any other motions or appeals in the Plaintiff's Costs Outline for the Champerty Motion.

12. In response to paragraph 22 of the Defendant's Submissions, the amount of costs that has been awarded for separate proceedings within the Champerty Motion is irrelevant to the amount of costs incurred actually opposing the abuse of process/champerty motion on its merits.

V. SUBSTANTIAL INDEMNITY SCALE

13. Paragraph 25 of the Defendant's submissions states that "[t]here is nothing in the record which is stated by the plaintiff to constitute egregious conduct sufficient to justify an elevated costs scale". To the contrary, the Plaintiff's Costs Outline sets out numerous examples of the Defendant's egregious conduct:

• the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

1. On numerous occasions Rancourt intentionally attempted to delay the date his champerty/abuse of process would be argued on the merits. Rancourt's most egregious conduct that provided him a 4 month delay took place on July 24th when he falsely accused Justice Beaudoin of bias and provoked Justice Beaudoin

to recuse himself as case management Judge. On May 4, 2012, Justice Beaudoin scheduled the hearing of the champerty motion for August 29, 2012. Rancourt's conduct on July 24th caused the argument of the champerty/abuse of process motion to be delayed by 4 months (December 13, 2012).

2. Another example of Rancourt's delay tactics occurred on the eve of arguing the champerty/abuse of process motion on its merits. On December 10th, Rancourt advised Counsel for the Plaintiff that he would seek to adjourn the December 13, 2012 hearing of his Champerty motion on the basis that he was seeking leave to appeal to the Supreme Court of Canada from an interlocutory decision of Justice Annis. The Defendant sought the adjournment despite being warned by Counsel for the Plaintiff in a letter dated December 11, 2012 that the Supreme Court has no jurisdiction to hear this appeal. Nonetheless, on December 13th, the Defendant proceeded to seek an adjournment. The Registrar of the Supreme Court of Canada agreed with the submissions of Counsel for the Plaintiff and refused to accept for filing Rancourt's attempted Leave To Appeal Application.

3. Rancourt filed numerous motions within his champerty/abuse of process motion. Rancourt appealed every Order. His conduct was vexatious and unnecessarily lengthened the duration of this proceeding.

• whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution

The libel action is solely about Professor St. Lewis obtaining remedies to vindicate her personal and professional reputation. The champerty/abuse of process motion was completely unfounded and filed to delay the trial of this libel action. There was never a champertous agreement. There was never trafficking in litigation.

14. In *Wasmund v Pellman*, 2006 CanLII 29529 (ON SC) (**Tab 2**), substantial indemnity costs were awarded against a self-represented person in a context where unfounded allegations of champerty were made. The Defendant should never have filed this abuse of process/champerty motion. Costs awarded on a substantial indemnity scale are warranted due to the Defendant's egregious conduct in filing this motion and the manner in which he litigated his abuse of process/champerty motion.

VI. NO COSTS WERE CLAIMED ON THE BASIS OF DISTINCT PARALLEL PROCEEDINGS (SUB-MOTIONS OR APPEALS)

15. The heading to paragraphs 26-33 of the Defendant's Costs Submissions is "The Court does not have jurisdiction to allow billing hours claimed on the basis of distinct

parallel/or sub-motions and/or appeals", suggesting that costs were claimed for parallel proceedings by the Plaintiff. The Plaintiff's costs are clearly itemized in the Costs Outline. No costs were claimed for any work that did not directly relate to the defence of the abuse of process/champerty motion on its merits.

VII. AMOUNTS SOUGHT BY PLAINTIFF

16. Paragraphs 34-39 and paragraphs 73-77 of the Defendant's Costs Submissions argue that the costs sought by the Plaintiff and the University of Ottawa are excessive. These arguments are without merit.

17. The stakes for Professor St. Lewis in opposing the abuse of process/champerty motion could not be higher. If the Defendant's motion to dismiss Professor St. Lewis' libel action was successful she would forever be branded as a House Negro and found to have abused the court's process as a lawyer and law Professor, a serious charge she had to vigorously defend. There were over a thousand pages of evidence in the motion records and transcripts of cross-examinations - the Defendant is responsible for the work that was required to oppose his abuse of process/champerty motion. It does not lie in the Defendant's mouth to argue that excessive hours were devoted to defeat his abusive attempt to prevent Professor St. Lewis from having a trial to argue for a vindication of her personal and professional reputation.

18. The Defendant has previously argued that time for research and preparation to oppose one of his motions was excessive given the experience of senior counsel. This argument was rejected in the October 23, 2012 *Decision With Regards To Costs Incurred by St. Lewis In Responding To Rancourt's Refusal Motion*:

> [19] Mr. Rancourt submits that the time claimed for research and preparation was excessive given the experience of senior counsel. Both the complexity of the matter and the length of materials and number of issues raised by the moving party are important factors when considering the reasonableness of time spent. I have already found that the matter of refusals is not a complex legal issue as relevance is the main factor. However, Mr. Rancourt produced a very lengthy 347 page record, sought answers to 145 separate questions, and all of the refusals were found to be justified. On his motion before me he was not successful in obtaining answers to any of the 35 questions. The same result occurred before

> Beaudoin J. with the three witnesses produced by the University. Again, the University witnesses were asked a large number of irrelevant questions and all of their refusals were found to be justified.
>
> [20] The fact that Mr. Rancourt is self-represented does not excuse his conduct or reduce his responsibility for costs when he unsuccessfully brought a lengthy motion and forced the opposing party to spend large amounts of time in preparation to respond to the many issues raised in the motion. I have not found that Mr. Rancourt conducted himself so improperly to justify substantial indemnity costs however, he caused Ms. St. Lewis and the University to incur substantial legal expenses to respond to his lengthy motion. The time spent by Ms. St. Lewis was proportionate to the number of issues raised by Mr. Rancourt.
>
> ***St. Lewis v. Rancourt*, 2012 ONSC 5998 (CanLII) (October 23, 2012) at paras 19-20. (Emphasis added)**

19. In the December 11, 2012 *Decision On Costs For Mr. Rancourt's Refusals Motion Against The University Heard By Beaudoin J. On June 20, 2012*, Justice Smith held:

> **Amount the Unsuccessful Party Would Reasonably Expect To Pay**
>
> [18] Rancourt was aware that he had sought an order that University representatives answer many questions that had been refused. As a result, I find Rancourt was aware that if he was not successful on his motion that he would have to pay a substantial amount of costs.
>
> ***St. Lewis v Rancourt*, 2012 ONSC 5998 (CanLII) (December 11, 2012) at para 18. (Emphasis added)**

20. Contrary to the Defendant's argument in paragraphs 40-41 of his Costs Submissions, no overlap in costs between the Plaintiff and the University of Ottawa occurred. The University of Ottawa is an independent third party, whose intervention was necessitated by the Defendant's allegations of champerty against the University which were dismissed.

VIII. ALL COSTS ITEMS ARE PROPER

21. In response to paragraph 73 of the Defendant's Costs Submissions, the Plaintiff's costs claim constitutes approximately 58% *of the total claim by the successful parties on this motion* ($79,556.50/$137,561.05). The Plaintiff's proportionately slightly higher costs are reasonable in view of the fact that the Plaintiff's Factum of 48 pages contained detailed evidentiary references to an enormous volume of motion records and transcripts of cross-

examinations. In addition, the Plaintiff had far more at stake than the University of Ottawa in defending the Defendant's abuse of process/champerty motion. This libel action involves Professor St. Lewis' personal and professional reputation - she had no choice but to devote considerable resources to preserve her ability to vindicate her reputation at trial.

22. Contrary to paragraphs 78-83 of the Defendant's Costs Submissions, preparation and attendance for case conferences was necessary to manage the Defendant's champerty/abuse of process motion that was filed on January 5th, 2012 and was not heard until almost a year later.

23. Contrary to paragraphs 84-86 of the Defendant's Costs submissions, there were no double costing claims for the attendance at Argument. The description "attendance at argument" appears in the "VIII. Argument" description in error. The hours for attendance at argument were not included in the total hours claimed for Preparation of Argument and Compendium of Argument.

24. Contrary to paragraphs 87-90 of the Defendant's Costs Submissions, counsel for the Plaintiff worked through lunch on the day of the argument of the champerty motion – it was an 8 hour day at court.

IX. DEFENDANT'S INABILITY TO PAY

25. Paragraphs 91-95 of the Defendant's Costs Submissions claim that the Defendant's inability to pay is a relevant factor in deciding costs. The Defendant has previously alleged an inability to pay costs in this action and these submissions were rejected:

> *Mr. Rancourt's Inability to Pay Costs*
>
> [8] Mr. Rancourt also argues that the amount of costs awarded should be reduced because he is impecunious and unable to pay any costs as he lost his employment in 2009. He submits that the requirement to pay a costs award would exhaust his financial savings...
>
> [25] Mr. Rancourt submits that he is unable to pay costs due to the loss of his employment. I do not have sufficient evidence before me to determine whether or not Mr. Rancourt is unable to pay legal costs. Whether he has made himself

> judgment proof as alleged by Ms. St. Lewis in her submissions by recently transferring his interest in his home to his spouse for $1.00 is not a reason for not awarding reasonable costs to the successful party. I am also unaware of how successful he has been with his on-line solicitation of financial support for his legal costs. Mr. Rancourt's alleged inability to pay costs is not a factor given much weight in the circumstances where his own conduct has caused the responding party to incur substantial legal costs to reasonably respond.
>
> ***St. Lewis v Rancourt*, 2012 ONSC 5998 (CanLII) (October 23, 2012) at paras 8, 25, per Smith J (Emphasis added).**

26. The Defendant must not be allowed to ignore the Rules of the court with impunity by alleging impecuniosity:

> [6] Rancourt also alleges that he is impecunious and therefore submits that an award of costs should not be made against him. I previously found in awarding costs to Ms. St. Lewis ("St. Lewis") in her part of the refusals motion that I do not have sufficient evidence that Rancourt is impecunious as there is no sworn evidence to this effect before me. The same situation applies when deciding to award costs in favour of the University. I agree with the reasoning in *Myers v. Toronto (Metropolitan) Police Force*, (1995) 84 O.A.C. 232 (Div Ct.), at paras. 19-22 where the Court stated that that it is important to avoid a situation in which litigants without means can ignore the rules of the court with impunity and by alleging impecuniosity, avoid the payment of costs.
>
> ***St. Lewis v Rancourt*, 2012 ONSC 7066 (CanLII) (December 11, 2012) at para 6, per Smith J, (Emphasis added).**
>
> [6] Mr. Rancourt for his part, argues that the cost award against him should be reduced to take into consideration his impecunious circumstances and the fact that the University and plaintiff expended considerable time on unsuccessful issues: to wit, opposing an extension of time, arguing that the letter of R. Smith J. was not a decision and that he was acting in bad faith.
>
> [7] Mr. Rancourt's impecuniosity would not be a ground to reduce costs payable by him. The same argument was rejected by R. Smith J. in his decision of December 11, 2012, (St. Lewis v. Rancourt, 2012 ONSC 7066 (CanLII), 2012 ONSC 7066) regarding the refusals motion of Beaudoin J. that the defendant sought leave to appeal from before me. See Lewis v. Rancourt, 2012 ONSC 7066 (CanLII), 2012 ONSC 7066 para. 6, also citing Myers v. Toronto (Metropolitan) Police Force, reflex, (1995), 84 O.A.C. 232 (Div. Ct.) at paras. 19-22.
>
> ***St. Lewis v Rancourt*, 2013 ONSC 472 (CanLII) (January 23, 2013) at paras 6-7, per Annis J, (Emphasis added).**

27. In paragraph 91 of the Defendant's Costs Submissions, the Defendant admits that he has registered savings and has initiated a legal fund for donations to pay for costs in this libel action. The Defendant's Costs Submissions also state in paragraph 93 that he made a "gift" to his spouse of his share in the matrimonial home. This "gift" was made after costs awards were made against the Defendant and with full knowledge that he had exposure to many more potential costs awards. The Plaintiff takes the position that the Defendant engaged in a fraudulent conveyance under the *Fraudulent Conveyances Act* in order to judgment-proof himself in this libel action. To date, the Defendant has left a trail of over $92,000 in unpaid costs awards since October 2012.

28. In paragraph 95 of his Costs Submissions, the Defendant asks that if costs are ordered, payment should be deferred until the defamation action is determined. The general rule is that costs follow the event, and there is no reason not to continue to follow this costs principle as had been done throughout the 2 year history of this libel action in which costs awards have been made against the Defendant.

XI. A "SIMPLE" MOTION

29. Paragraph 99 of the Defendant's Costs Submissions claims that the total amount of costs is disproportionate to the "simple" motion that was argued in 6.5 hours. If the champerty motion was "simple", why has the Defendant filed an appeal to the Court of Appeal involving over fifteen issues. The Defendant's champerty/abuse of process motion required a significant amount of work to defend and the costs sought by Professor St. Lewis were reasonable.

DATE: July 24, 2013

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TAB 1

Indexed as:

Hill v. Church of Scientology of Toronto

Hill v. Church of Scientology of Toronto and Manning

[1992] O.J. No. 451

7 O.R. (3d) 489

32 A.C.W.S. (3d) 379

Action No. 24079/84

Ontario Court (General Division),

Carruthers J.

March 11, 1992

Counsel:

Robert P. Armstrong, Q.C., and Kent E. Thomson, for plaintiff.

Paul D. Copeland and Victor Urban, for Church of Scientology, defendant.

David M. Brown, for Manning, defendant.

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1 **CARRUTHERS J.**:--This is an action for libel. The plaintiff, at all relevant times, was a Crown law officer in the employ of the Ministry of the Attorney General for the Province of Ontario. He claims that he was the object of defamatory statements which the defendant Manning made while he was acting as counsel to the defendant Church of Scientology.

2 The statements in question were made by the defendant Manning at a press conference which had been arranged by or on behalf of the defendant Church of Scientology. It took place outside the front entrance to Osgoode Hall on September 17, 1984. At that time, the defendant Manning while wearing his barrister's gown spoke to a number of representatives of the print media and appeared before the television cameras of both CBC and CTV. Portions of what the defendant Manning had to say at that time were published in newspapers and on the television networks' news broadcasts.

3 The primary thrust of what the defendant Manning said about the plaintiff is that he had aided and abetted the breach by others of an order of Osler J. and, as well, aided and abetted Crown counsel in the misleading of Sirois J., and, that his conduct in this respect amounted to "a public depreciation of the administration of justice, tending to interfere with the due course of justice, resulting in public disparagement of justice, tending to prejudice (Scientology) and perverting the due course of justice". The defendant Manning at the same time also said that these warranted a committal to prison or the imposition of a fine.

4 On the advice of the defendant Manning, the defendant Church of Scientology brought contempt proceedings against the plaintiff. These were founded solely upon the conduct which the defendant Manning had alleged on the part of the plaintiff as aforesaid. The defendant Manning appeared as counsel for the defendant Church of Scientology at the trial of the contempt charges which were contained in the notice of motion prepared by him. This trial took place before Cromarty J., and at its conclusion on December 7, 1984, he dismissed all of the charges on the ground that there was no evidence to support any of them.

5 This present action followed on December 14, 1984. The trial began on September 3, 1991 and the jury verdict was received on the night of October 3, 1991. The jury, in a special verdict, answered a number of questions which counsel agreed would permit a determination of the parties' respective positions in the action. The jury, inter alia, found that the words or statements about which the plaintiff complained were defamatory of him. The jury awarded general damages against both defendants in the total amount of $300,000. As well, the jury assessed aggravated damages in the amount of $500,000, and punitive damages in the amount of $800,000 against the defendant Church of Scientology.

6 In the course of the motion for judgment made on behalf of the plaintiff, counsel for the defendant Church of Scientology raised the fact that the amounts awarded for aggravated and punitive damages exceeded that claimed in the statement of claim. Originally the plaintiff only claimed general and aggravated damages, each in the amount of $400,000. On September 30, 1991, near the end of the trial, pursuant to leave then granted, he amended the statement of claim to include a claim for punitive damages in the same amount. Counsel for the plaintiff thereupon moved for leave to amend the statement of claim so as to claim amounts on behalf of both aggravated and punitive damages which corresponded to the award of the jury. As counsel were not prepared to fully argue this motion at that time it was agreed that written submissions would be made. As well, the issues of costs and pre-judgment interest were adjourned to be dealt with on the same basis. I had then learned from counsel that on July 9, 1991, the plaintiff had submitted an offer to settle pursuant to the provisions of rule 49.10(1) of the Rules of Civil Procedure, O. Reg. 560/84. That offer contained the following terms:

1. Payment by the defendants of amount of $50,000 in respect of damages and pre-judgment interest;
2. If the offer was accepted before July 19, 1991 payment of $85,000 in respect of the plaintiff's costs. Thereafter, the defendants were to pay Hill $85,000 together with an additional amount for costs on a solicitor-and-client basis to be agreed upon by counsel or determined by the court; and,
3. Execution of consents to an order dismissing the action and release by Hill in favour of the defendants.

7 On October 4, 1991, the day following the receipt of the jury's verdict, I spoke with counsel for the plaintiff and the defendant Church of Scientology by a telephone "conference call". I was then advised that the defendant Church of Scientology had that day issued a press release which, it was alleged, republished the libel. Counsel for the plaintiff wanted to attend upon me to obtain injunctive relief preventing its further publication. Counsel for the defendant Church of Scientology was not available for that day. However, he was told that if any order was made it would only remain outstanding until the parties could further attend before me on Monday, October 7, 1991.

8 The press release which was published on October 4, 1991, reads, in full, as follows:

> [bhCHURCH APPEALS OUTRAGEOUS VERDICT
>
> A jury verdict rendered today in a libel case, that started in 1984, brought against the Church of Scientology of Toronto by Casey Hill, a Crown Attorney, was thoroughly objected to by the Church.
>
> The Church declared the decision a "travesty of justice" and announced it had identified numerous grounds on which to lodge an immediate appeal.
>
> "The decision is outrageous and completely objectionable. An appeal will be filed as soon as possible," said Rev. Earl Smith, Vice-President of the Church of Scientology of Toronto. "Hill's case from Day One has been funded by the Attorney General's office and represents a continued persecution and attack on our Church and religious freedom by the Government of Ontario."
>
> The matter of Hill's funding was not allowed by the judge to be revealed to the jury. This was a key defense [sic] point.
>
> "This case does not resemble anything like justice," Rev. Smith protested.
>
> The suit stems from a 1984 breach of court orders that sealed privileged priest/penitent church documents to which Casey Hill had supervisory control in his capacity as an employee of the Attorney General's office. The Church's attorneys at the time discovered that some of these sealed documents had been opened in violation of the sealing orders and a legal action was brought against Hill by the Church.
>
> The Church was not allowed to put any of this material about the breached documents before the jury, as well, in it's [sic] defense.
>
> Hill's funding was exposed in the Legislature by MPP Bob Runciman in 1988, as $47,807.33 of Hill's legal fees were included in a larger sum paid to the firm of Tory, Tory, DesLauriers and Binnington with a cheque which was labelled "travel/claims".
>
> Access to Information documents from that time show that David Attley, Chief Administrative Officer of the Criminal Law Division was concerned that this

> case was "setting a dangerous precedent, in that it would appear that (Casey Hill's) immediate supervisors were funding a personal law suit investigated by them."
>
> An internal memorandum from Attley to Douglas Hunt, Assistant Deputy Attorney General of the Criminal Law Division, reveals that "it is quite strongly felt that this money should come from some general fund within the Ministry that should not be identified with the offices where these individuals work."
>
> Further Access to Information requests have been filed to find out the total extent of payments made on Hill's behalf by the Attorney General's office which may run into hundreds of thousands of dollars of taxpayer's money.
>
> The Ombudsman Office of Ontario is investigating a complaint lodged by the Church on this matter.
>
> Rev. Smith charged, "It is heinous that this taxpayer funding arrangement could not be brought to the attention of the jury. The Attorney General's office has kept this matter from public view prior to 1988 and it is outrageous that only Access to Information could bring this matter to light."
>
> "It is only natural that we would appeal the outcome of this case, as it is not just when certain important evidence cannot be used in one's defence. The jury did not have the whole picture and it is no wonder they came to the conclusion they did," commented Rev. Smith.

9 On both October 4 and October 7, 1991, I granted an order restraining the defendant Church of Scientology from further publishing the defamatory statements complained of by the plaintiff in this action. On October 11, 1991, the defendant Church of Scientology moved to set aside the order of October 7, 1991, which in effect either replaced or continued that which I had granted on October 4, 1991.

10 The motion of the defendant Church of Scientology was heard by me on December 16, 1991. At the same time I also heard a motion on behalf of the plaintiff to enjoin the defendant Church of Scientology from publishing certain information which it had obtained from the plaintiff on his examination for discovery. It was maintained on behalf of the plaintiff that this information was subject to an implied undertaking that it would not be used for any purpose other than that required for "preparing and making further submissions to the court in respect of this action".

11 The information in question concerned the details of the plaintiff's salary for certain years during which he was employed with the Attorney General for Ontario both before and after the date of the press conference. It had been given to the solicitors for the defendant Church of Scientology in a letter from the solicitors representing the plaintiff. That letter reads, in part, as follows:

> Further to our recent telephone discussions concerning Mr. Hill's answers pursuant to the order of Master Donkin dated March 19, 1991, they are set out below. It goes without saying that these answers are or will be provided to you

> subject to your client's implied undertaking not to use this information for any purpose other than proceeding with this litigation.

12 Master Donkin had ordered that the plaintiff provide answers to the question of what his salary was as of September 13, 1984, and in each subsequent year. No appeal was launched from that order. At trial, counsel for the defendant Church of Scientology advised me that it was his intention to adduce, through the plaintiff, this evidence of the salary he had earned during those years. In the course of doing so, counsel mentioned to me an amount or amounts earned by Mr. Hill at these times. In view of the fact that the plaintiff was not making any claim for lost income, past or future, I determined that such details were not relevant. In the process of reaching that conclusion I did say that counsel was not prevented from raising the fact that the salary of the plaintiff continued to increase during the period in question. Nothing further was said with respect to the details of the salary information during the balance of the trial. I note here that during the course of the trial I also concluded that details of the plaintiff's arrangements with his employer made in 1988 or thereabouts concerning the costs incurred by him in proceeding with this action were not relevant.

13 On the return of the two outstanding motions on December 16, 1991, following argument, I reserved my decisions to the date of my decision on the motion for judgment. It is my intention to now deal with all three outstanding matters: the motion for judgment, the motion to set aside my order of October 7, 1991, and the motion concerning the alleged breach of the undertaking concerning the information relating to the plaintiff's salary obtained on his discovery.

14 The provisions of rule 26.01 are central to the plaintiff's motion for judgment. That rule reads as follows:

> 26.01 On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

15 The plaintiff seeks leave to amend his statement of claim so as to have the amounts claimed for aggravated and punitive damages conform to the amounts awarded by the jury in that respect. The plaintiff then asks that judgment be granted in his favour for all of the amounts found by the jury.

16 Rule 26.01 came into being on January I, 1985, the date upon which the Courts of Justice Act, 1984 , S.O. 1984, c. 11 [now Courts of Justice Act, R.S.O. 1990, c. C.43], was proclaimed to be in force. Later that year, the Divisional Court had occasion to consider the wording of that rule in the case of Barker v. Furlotte (1985), 12 O.A.C. 76. At pp. 77-78, Osler J. says:

> In our view, the wording of s. 26.01 of the Rules of Civil Procedure make it mandatory for the court to grant the leave requested unless prejudice would result. Section 26.01 reads as follows:
>
> On motion at any stage of an action, the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

TAB 2

COURT FILE NO.: 43984/06
DATE: 2006-08-28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Wasmund v. Pellman

BEFORE: D. Ferguson J.

COUNSEL: Robert Wasmund, in person.

Richard W. Greene, for the Defendant

ENDORSEMENT ON COSTS

[1] I have considered the written submissions of both parties.

[2] The issues raised by the plaintiff concerning the timeliness of service do not warrant any relief. The manner of service of the costs submissions was ordered by me. The plaintiff has not shown any prejudice and, indeed, his material demonstrates there was none. In addition, the defendant offered him more time and he did not respond.

[3] In my view the defendant is entitled to costs on a substantial indemnity basis for both motions.

[4] This scale is appropriate because:

(a) The plaintiff made numerous allegations of champerty, bad faith equivalent to fraud, breach of the Law Society Rules of Professional Conduct and dishonest behaviour all of which were unfounded.
(b) The plaintiff has repeatedly pursued this same cluster of issues through a trial and an appeal.
(c) The plaintiff did not respond to the defendant's offer to have the action dismissed without costs.

[5] I have taken into consideration that the plaintiff has no counsel. He is an experienced litigant who is familiar with the sanction of costs from his previous attendances. He is an intelligent person. His research and materials demonstrate he has spent a great deal of time researching his position and, in my view, this research should have lead him to realize he was relying on erroneous theories and already decided issues.

[6] I find the time claimed by the defendant's counsel to be reasonable. I note that it does not appear to include time to prepare for the attendance on the defendant's motion or to prepare to respond to the plaintiff's motion.

[7] The amount claimed for the appearance is low in light of the time spent waiting in court and making submissions.

[8] The hourly rates are reasonable.

[9] I accept the defendant's claim for $10,811.16.

[10] In addition I propose to award costs for the submissions on costs. Again, the plaintiff produced materials and arguments which unnecessarily increased the preparation costs of the defendants.

[11] I conclude the additional sum of $900 should be awarded.

[12] Therefore I order that the plaintiff pay the defendant costs in a total of $ 11,611.16.

[13] The plaintiff has asked for time to pay these costs. He has advanced no reason.

[14] The usual basis is 'forthwith' and I order these costs paid forthwith.

[15] I also order that the approval of the plaintiff of the form and content of the orders on the motions and on costs is dispensed with. For the plaintiff's benefit, that means that the defendant's counsel can take out the formal orders without obtaining the plaintiff's approval of the form or content of the orders.

D. Ferguson J.

DATE: August 28, 2006

Joanne St. Lewis

Plaintiff

- and -

Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

PROFESSOR ST. LEWIS' REPLY TO DEFENDANT'S JULY 15, 2013 COSTS SUBMISSIONS
(Defendant's Champerty Motion/ Costs pursuant to the March 13, 2013 Reasons of Justice R. Smith)

GOWLING LAFLEUR HENDERSON LLP
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Peter K. Doody
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Borden Ladner Gervais LLP
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T 613.237.5160
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BLG
Borden Ladner Gervais

File No. 308227-000158

July 24, 2013

COPY

Delivered by Hand

The Honourable Justice Robert Smith
Superior Court of Justice
Judges Chambers
161 Elgin Street, 5th Floor
Ottawa, ON K2P 2K1

Your Honour

Re: St. Lewis v. Rancourt – Court File: 11-51657
re Reply of the University of Ottawa to Rancourt's Costs Submissions
(Rancourt's Champerty Motion– December 13, 2012)

Please accept this letter as the Reply of the University to the Submissions of the Defendant on the issue of the University's costs for its appearance before yourself to defend Mr. Rancourt's champerty motion.

The University can Claim Costs

Mr. Rancourt submits, as he has previously, that the University is not entitled to indemnity because there was no need for the University to intervene in the champerty motion. Your Honour has already decided this issue. In your decision, dated June 6, 2012, regarding costs of Mr. Rancourt's unsuccessful motion for leave to appeal Justice Beaudoin's order dated February 8, 2012, you noted:

> [10] The University of Ottawa would be affected by any Order made in the champerty motion and therefore based on rule 37.07(1) of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, the University had a right to file material and respond to the Notice of Motion. The University had the same right to attend and oppose the Motion for Leave to Appeal Beaudoin J.'s order. ...

As a result of those factors, you ordered Mr. Rancourt to pay costs to the University of that motion for leave to appeal. I submit the same principles apply in the present circumstances.

Counsel for the University's Fees are Appropriate and not Excessive

Mr. Rancourt submits the hours claimed by the University are excessive and could not have been anticipated by him. Mr. Rancourt has lost every motion and appeal he commenced, each of which included a costs award against him. He should not be shocked that his champerty motion, the most involved, complex and crucial motion to date, is associated with higher costs. It should

have been expected that the University (and the Plaintiff) would invest time and resources into its defence of the motion, given the allegations against it. Mr. Rancourt's suggestion that the University's time invested in the champerty motion should have amounted to less than 25 hours is absurd and would have scarcely covered attendance at the motion and cross-examinations, let alone any preparation, including the review of the thousands of pages of materials produced or caused to be produced by the Defendant in respect of the motion.

Mr. Rancourt further submits that preparation and attendance fees at case conferences and preparation of costs submissions are not permitted as a cost item. The case conferences and costs submissions were made necessary by the manner in which Mr. Rancourt prosecuted the champerty motion. The University is entitled to the costs it incurred as a result of having been drawn into the action as a result of Mr. Rancourt's unfounded allegations.

Mr. Rancourt also submits that the Court does not have jurisdiction to award costs for motions and appeals apart from the champerty motion. The University has not included the costs associated with those motions in its bill of costs. "All Other Work" as described in the University's bill of costs includes "meetings with clients; reporting to clients; review file; telephone conferences and correspondence" and does not include fees for other motions in which costs have already been awarded. Mr. Rancourt's submission in this respect is misleading and erroneous.

With respect to Mr. Scott's hourly rate of $540 (on a partial indemnity scale), the University submits that the "Information for the Profession" with respect to maximum partial indemnity rates, as referenced by Mr. Rancourt, is a matter to be considered by the Court in awarding costs, but that the Court has discretion to award a higher rate. In the circumstances of this case, it is appropriate to apply Mr. Scott's partial indemnity rate of $540 per hour.

Lastly, Mr. Rancourt's submission that it is inappropriate to bill over the lunch hour wrongly implies counsel was not working through that break.

The Alleged Impecuniosity of Mr. Rancourt should not prevent an Award of Costs

It is appropriate and reasonable for a court, when fixing costs, to refuse to take into account the alleged impecuniosity of a party. There is no practical way to determine whether the party is, in fact, impecunious. Furthermore, it is important to avoid a situation in which litigants without means can ignore the rules of the court with impunity (*Myers v. Toronto (Metropolitan) Police Force*, [1995] O.J. No. 1321 at paras. 19 to 22 (Div. Ct.)).

Yours very truly

Peter K. Doody

PKD/KH/js
c Mr. Denis Rancourt
Mr. Richard Dearden
OTT01: 5803437: v1

Ontario
Civil Liberties
Association

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."
—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

"I am very pleased to learn of the Ontario Civil Liberties Association, and wish it the greatest success in its work, which could not be more timely and urgent as elementary civil rights, including freedom of speech, are under attack in much of the world, not excluding the more free and democratic societies."
—Noam Chomsky,
Institute Professor, MIT

"Freedom of expression is our most fundamental and most precious freedom. It has been under attack in Canada for years. The Ontario Civil Liberties Association has taken a position on freedom of expression that is both courageous and principled. The OCLA now stands alone and its position should be supported by all Canadians who cherish democracy and freedom."
—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

August 28, 2013

By Fax and Email

Mr. Allan Rock, President, University of Ottawa
Office of the President
Tabaret Hall
550 Cumberland, Room 212
Ottawa, ON
K1N 6N5
Fax: (613) 562-5103

Re: The university's funding of a private defamation lawsuit against Denis Rancourt

Dear President Rock:

I am writing on behalf of the Ontario Civil Liberties Association (OCLA) to express our deep concern that you have authorized and continue to authorize university financing of a private defamation lawsuit against long-time and outspoken critic of the university Denis Rancourt.

As you know, the lawsuit is about a blog article on Mr. Rancourt's "U of O Watch" blog in which Mr. Rancourt concluded (correctly, it turned out) that you had asked a black professor to criticize a student report that accused the university of racial discrimination.

Based on court submissions for legal costs, OCLA estimates that the university has spent over $1 million to date pursuing Rancourt, using public money from the university's operating budget. The lawsuit is on-going, and the Ontario Superior Court recently scheduled the matter for a three-week trial starting May 12, 2014.

Following your instructions, the University of Ottawa is using public funds to finance the lawsuit without a spending limit, with "no cap", as you have testified under cross-examination. OCLA believes that the university's funding of this private defamation lawsuit is wrong.

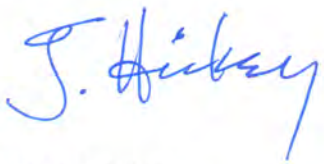
OCLA is also concerned that you appear to justify your decision with accusations of racism against Mr. Rancourt, and that you have done this by using a prominent lawyer to voice your accusations, rather than voice them yourself.

Furthermore, we note that the university appears to have done nothing to address the original student complaint of racial discrimination, which has been at the center

of the matter since the complaint was reported by the Student Federation in November 2008.

We ask you to stop using public funds to finance this private lawsuit against one of your critics, to consider spending the resources instead on addressing the reported problems of institutional racism, and to make a public statement that the university will refrain in the future from funding private defamation lawsuits against its critics.

Yours truly,



Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

uOttawa

Université d'Ottawa
Cabinet du recteur

University of Ottawa
Office of the President

September 11, 2013

Mr. Joseph Hickey
Executive Director
Ontario Civil Liberties Association
180 Metcalfe Street, Suite 204
Ottawa, ON K2P 1P5

Dear Mr. Hickey,

I am writing in response to your letter dated August 28, 2013 regarding the University of Ottawa's funding of the private defamation suit *St. Lewis v. Rancourt.*

We take note of the concerns outlined by the Ontario Civil Liberties Association and thank you for your input.

Sincerely,

Allan Rock

Allan Rock
President and Vice-Chancellor

613-562-5809
613-562-5103

550 Cumberland (212)
Ottawa ON K1N 6N5 Canada
www.uOttawa.ca

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

COSTS SUBMISSIONS OF THE DEFENDANT
(Refusals motion, Justice Beaudoin decision, University's costs)

Date: October 26, 2012

Denis Rancourt
(Defendant)

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

COSTS SUBMISSIONS OF THE DEFENDANT
(*Refusals motion, Justice Beaudoin decision, University's costs*)

Jurisdiction to entertain the cost request

1. The University of Ottawa's present costs submission relates to decisions presided over by Justice Beaudoin. Justice Beaudoin released his Reasons For Decision On Motion on August 2, 2012. **The said Reasons do not award costs to any party. Nor do the said Reasons assign cost jurisdiction to another judge.**

2. The defendant respectfully submits that Justice Smith does not have the jurisdiction to intervene, post-decision of Justice Beaudoin, in the absence of a judicial determination regarding reasonable apprehension of bias of Justice Beaudoin, to re-open the costs question in the decision of Justice Beaudoin.

3. The appropriate procedural step is for the University to bring a motion in Divisional Court seeking leave to appeal Beaudoin J.'s decision.

St. Lewis v. Rancourt, 2012 ONSC 5053 (CanLII), para. 5; [Tab 1]

4. Furthermore, there is a leave to appeal motion regarding reasonable apprehension of bias of Justice Beaudoin presently before the Court.

Why can the University claim costs in this private action?

5. On February 8, 2012, Justice Beaudoin ruled from the bench at a case conference that the University had intervener status in the defendant's champerty motion, without hearing arguments and without considering the University's motion for leave to intervene.

6. Thus, the University of Ottawa acquired party status without the defendant being given the opportunity to present arguments. In particular, arguments as to why the University should not be given costs in its interventions.

7. All the decisions of Justice Beaudoin in the present action are subject to a defendant's leave to appeal motion that is presently before the court, to be heard on November 15, 2012, on the grounds of reasonable apprehension of bias.

8. As it stands, the University of Ottawa is paying two law firms (Gowlings, and BLG) in the same motions and the defendant is requested to the Court to pay the costs of both firms.

In the alternative, if there is jurisdiction to make a cost order

Impact of cost orders against the defendant

9. The defendant has been unemployed since 2009 and has no income, and few savings. Thus, the defendant is self-represented. This action has forced the defendant to withdraw holdings from his few RRSPs and has put the defendant in the impossibility of paying the costs claimed by the University ($14,116.26) (and/or by the plaintiff in a separate submission, $21,203.53).

10. As such, new cost orders against the defendant would materially further impede his access to justice, in real terms of paying his own disbursements, transcript costs, and court fees. The defendant is unable to pay the claimed costs.

There is no money left

11. On October 6, 2011, in this action, the Court ordered the defendant to provide a detailed account of his personal financial situation and the defendant did so under oath in re-examination by counsel for the plaintiff, Mr. Dearden, on October 14, 2011.

St. Lewis v. Rancourt, 2011 ONSC 5923, paras. 5-7, 17-18; [Tab 2]
Transcript, October 14, 2011 cross-examination, p.166-176; [Tab 3]

12. The defendant affirmed under oath that his entire financial savings on October 14, 2011 (excluding a day to day chequing account) consisted in two RRSPs valued at $14,542.66 and $12, 876.64.

Transcript, October 14, 2011 cross-examination, p.166-176, esp. p.170; [Tab 3]

13. To date, the defendant has paid court-ordered costs on reasonably brought motions of $3,000.00, $2,000.00, $300.00, $6,412.10, and $4,144.84 (University) for a total of $16,056.94. In addition, the defendant has had to pay thousands of dollars in cross-examination transcript costs, court fees, court transcripts, and document production costs.

14. The defendant has no source of money (legal fund campaign, or other) that changes the financial reality that he cannot pay the claimed fees, or that such an order would further materially affect his access to justice, and his access to the court procedures. The defendant submits that his inability to pay is an important factor in the cost decision, regarding a just order.

Relevant behaviour of the counsel for the University of Ottawa

Misleading the Court, July 26, 2012 appearance

15. On July 26, 2012, at an appearance in the instant motion before Justice Smith, in the absence of the defendant, counsel for the University, Mr. Doody:

(a) Stated to the Court that he would seek $500. in costs for the court session of Tuesday July 24, 2012, **a session where Mr. Doody was neither present or involved**, thereby implying that he was present on July 24, 2012; and

(b) Proceeded to describe the events of July 24, 2012, in a manner meant solely to be prejudicial against the defendant, **without having stated to the Court that he was not present on July 24, 2012.**

Court Transcript, July 26, 2012, p. 11 line 14 to p.14 line 17; [Tab 4]

16. On July 26, 2012, following the said prejudicial statements of Mr. Doody, counsel for the plaintiff, Mr. Dearden, misled the Court by stating:

"Your Honour, if I may follow-up on what Mr. Doody said please? <u>As he told you, he – he wasn't here on Tuesday</u>." [Emphasis added.]

Court Transcript, July 26, 2012, p. 14 lines 12-14; [Tab 4]

17. On July 26, 2012, following the said misleading statement of Mr. Dearden, the Court responded:

THE COURT: Mr. Doody was not here on Tuesday?

Court Transcript, July 26, 2012, p. 14 line 17; [Tab 4]

<u>Misleading the Court, October 11, 2012 costs submission</u>

18. In the letter part of his costs submission, Mr. Doody alleges:

"Justice Beaudoin recused himself from any further participation in the case. He did so, after ruling that there was no basis for a finding of a reasonable apprehension of bias […]"

Letter, October 11, 2012, Mr. Doody to Justice Smith, p. 1, un-numbered 2nd para.; [instant costs submissions of the University]

19. It is plain and clear that the said statement of Mr. Doody is false. The court transcript of the July 24, 2012 session shows that Justice Beaudoin:

(a) Ruled that the defendant's request to adjourn in order to bring a recusal motion was denied; and

(b) Did not rule on any question of reasonable apprehension of bias, as such a motion was not before him; and
(c) Did not utter the words "reasonable" or "apprehension"; and
(d) Had, after the recess, already made up his mind to recuse himself prior to stating his opinion "M. Rancourt, je tiens à souligner qu'il n' y a, à mon avis, aucun conflit entre moi et l'Université d'Ottawa à cause d'une bourse [...] Pas de possibilité d'annuler cette bourse. Il y a pas de conflit d'intérêts." [Emphasis added.]

Court Transcript, July 24, 2012, esp. p. 34; [Tab 5]

20. Thus, Mr. Doody's said statement that Justice Beaudoin ruled on a question of reasonable apprehension of bias is incorrect. No such motion was before Justice Beaudoin.

21. In addition, in his October 11, 2002 letter to Justice Smith, Mr. Doody states that the "Reasons of Justice Beaudoin" are "dated June 20, 2012". The truth is the said Reasons are dated August 2, 2012, after Justice Beaudoin recused himself on July 24, 2012.

Letter, October 11, 2012, Mr. Doody to Justice Smith, p. 2, un-numbered 4th para.; [instant costs submissions of the University]

Mitigating reasons to not make a cost order

22. There are mitigating reasons to not make a cost order at this time:
(a) There are both a leave to appeal motion and a motion to stay pending leave to appeal regarding the instant decisions of Justice Beaudoin pending before the Court, scheduled to be heard November 15, 2012; and
(b) Justice Smith was not present on June 20, 2012, and so is unable to have first-hand impressions of the conduct of the parties.

23. The University's October 11, 2012 costs submissions quote and rely heavily on the August 2, 2012 Reasons of Justice Beaudoin. In particular, the University's cost outline quotes the entire paragraph 32 of the said Reasons of Justice Beaudoin. Yet, there are both a leave to appeal motion and a motion to stay pending leave to appeal from the August 2, 2012 Reasons of Justice Beaudoin presently before the Court.

Duplication and equitable costing

24. The University is paying two lawyers (Mr. Dearden and Mr. Doody), using public money, to oppose the defendant on the same motions. It would not be equitable to make the defendant pay for the costs of both lawyers, in this private lawsuit.

25. In addition, there is significant duplication, as both said lawyers oppose the same refusals motion on many of the same grounds.

26. The total claimed partial indemnity costs of the two lawyers is $14,116.26 (Doody) + $21,203.53 (Dearden) = $35,319.79. It is not reasonable for the defendant to have expected to pay this large amount for a refusals motion decision that lasted one day (June 20, 2012) and approximately one hour (July 27, 2012) of court time, and had five witnesses.

27. For example, a previous refusals decision in the same action lasted approximately one day (October 6, 2011) of court appearance, had two witnesses, involved 587 cross-examination questions, and resulted in a cost order of $3,350.00.

St. Lewis v. Rancourt, 2011 ONSC 5923, para. 25; [Tab 2]
***Rules of Civil Procedure*, Rule 57.01 (1)**

Implications for the separate plaintiff's costs claim on the *same* motion

28. The defendant submitted that Mr. Dearden's September 14, 2012 claimed disbursement costs ($1,391.03) are excessive in quantum: Defendant's September 24, 2012 submissions, paragraphs 34-36.

29. The University had **more** witnesses and **larger** motion record, factum, and book of authorities in the instant motion, yet is claiming disbursement costs of $417.76, **less than one third of the disbursement costs claimed by Mr. Dearden** (signed by Anastasia Seminova).

30. The defendant submits that the said difference in claimed disbursement costs is further evidence that the plaintiff's disbursement costs are excessive, for which insufficient breakdown was provided: The Rules require that disbursements be **detailed** (Form 57B) in an attached appendix, which was not done in Mr. Dearden's September 14, 2012 costs

submission, as photocopies, binding, “scanning”, and courier charges were all lumped in a single item.

***Rules of Civil Procedure*, Rule 57.01 (6), Form 57B**

Excessive University costs claim

31. The amount of legal research time claimed (33.4 hours) is excessive for an experienced lead counsel to require, on a refusals motion that does not give rise to novel questions of law on any point. Refusals motions are the “bread and butter” of interlocutory motions and do not require experienced counsels to make elaborate research and preparation.

Irrelevant and prejudicial statements

32. In the second un-numbered box on page 2 of his costs outline, Mr. Doody makes several ancillary and irrelevant complaints of procedure which were not retained by Justice Beaudoin, and which are solely meant to be prejudicial.

Orders requested

33. The defendant requests a finding that a judge of the same Court does not have the jurisdiction to change the cost order (August 2, 2012 Reasons) of Justice Beaudoin.

In the alternative,

34. An Order that the University should not be awarded costs, as it is paying two lawyers (from two law firms), using public money, to oppose the defendant on the same motions in a private lawsuit.

35. An Order that the University be disentitled to part of the costs to which it might otherwise be entitled, as a sign of the Court’s disapproval of the University’s behaviour, through its counsel, in relation to the July 26, 2012 appearance.

36. An Order that all further costs against the defendant be deferred until the action is determined.

37. In the alternative, an Order that the costs for the part of the motion determined by Justice Beaudoin (August 2, 2012 Reasons) be deferred until the relevant leave to appeal and stay pending leave to appeal motions are determined.

All of which is respectfully submitted.

October 26, 2012

Denis Rancourt
(Defendant)

List of Tabs

Tab	**Description**
1	Justice Smith's Reasons, September 6, 2012, pages
2	Master MacLeod's Reasons, October 6, 2011
3	Transcript, cross-examination of Denis Rancourt, October 14, 2011, pages
4	Court Transcript, July 26, 2012 [date typo on cover page: not July 27, 2012]
5	Court Transcript, July 24, 2012, pages

Tab 1

CITATION: St. Lewis v. Rancourt, 2012 ONSC 5053
COURT FILE NO.: 11-51657
DATE: 2012/09/06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
Joanne St. Lewis	)	
Plaintiff	)	Richard G. Dearden, for the plaintiff
– and –	)	
Denis Rancourt	)	
Defendant	)	Denis Rancourt, self-represented
	)	**HEARD:** July 27, 2012

REASONS FOR DECISION ON REFUSALS BY JOANNE ST. LEWIS IN CHAMPERTY MOTION

R. SMITH J.

Background to this Motion

[1] This is a continuance of the June 20, 2012 motion brought by Mr. Rancourt to address refusals to answer questions by the plaintiff Joanne St. Lewis ("St. Lewis"). Beaudoin J. had completed and decided Mr. Rancourt's ("Rancourt") refusals motion with regards to representatives of the University of Ottawa ("University") and had adjourned the balance of the motion with regards to refusals by St. Lewis to July 24, 2012.

[2] On July 24, 2012, Rancourt alleged that Beaudoin J. was not impartial and asked him to recuse himself based on his having established a bursary at the University to keep the memory of his deceased son alive and to assist him in dealing with his grief. Rancourt also raised the fact that Beaudoin J.'s deceased son had previously worked at the law firm representing the University before his untimely death. Beaudoin J. held that he did not have a conflict of interest and was not biased, but given the allegations made by Rancourt involving his personal grieving over the loss of his son, he was unable to continue and decide the remaining matters involving Mr. Rancourt with impartiality given the statements made by Mr. Rancourt on July 24, 2012.

[3] As a result of Beaudoin J.'s recusal, Regional Senior Justice Hackland assigned me to replace Beaudoin J. as the case management judge and directed that the balance of the champerty refusals motion related to St. Lewis be heard on Thursday, July 26, 2012. On July 26th, I adjourned this refusals motion to Friday, July 27, 2012 as Rancourt had written a letter indicating that he was unable to attend court due to a prior medical appointment.

[4] I refused Rancourt's request for an adjournment on July 27, 2012 because he had been prepared to argue this part of his motion on June 20, 2012 when it was originally set to be heard, and again on July 24, 2012 and as a result I was not persuaded that he needed any further time to prepare. In addition, the champerty motion had been previously scheduled to be heard at the end of August 2012.

[5] Rancourt further advised that he wished to overturn Beaudoin J.'s rulings on the refusals motion related to the representatives of the University. He sought an adjournment for this purpose. I advised Rancourt at the hearing and in a subsequent letter that I did not have jurisdiction to overturn an order of Beaudoin J. Rancourt has subsequently brought a motion in Divisional Court seeking leave to appeal Beaudoin J.'s decision, which is the appropriate procedural step. I have made no decision on whether leave to appeal should or should not be granted on this motion for leave to appeal.

[6] In addition, the balance of the refusals motion with regards to St. Lewis was not related to Rancourt's possible appeal of Beaudoin J.'s order and for this additional reason the adjournment was not granted.

The Refusals by St. Lewis

Background Related to Issues in Dispute

[7] This motion was brought in a libel action by St. Lewis against Rancourt for statements he made about St. Lewis in his blog. Rancourt submits in his Statement of Defence that the comments made by him were not defamatory and were within his right to freedom of expression.

[8] St. Lewis is a professor at the University of Ottawa who was asked to prepare a report for the University on whether or not there was systemic racism at the University. She reported that there was no systemic racism at the University. As a result of the conclusions she had reached in her report to the University, Rancourt referred to St. Lewis as Allan Rock's "house negro" in a blog published by him.

[9] The University has admitted that it has agreed to pay St. Lewis' legal fees incurred to sue Rancourt for libel. Rancourt has brought a motion alleging that the University's agreement to pay for St. Lewis' legal fees constitutes champerty and maintenance, and asks that her action be stayed.

[10] Champerty and maintenance were discussed in *McIntyre Estate v. Ontario (Attorney General)*, 61 O.R. (3d) 257 (Ont. C.A.), at paras 26-28. Maintenance occurs where an individual for an improper motive described as "wanton or officious intermeddling" becomes

about the plaintiff selecting counsel. The question about whose decision it was to select counsel is not a leading question, as the answer is not contained in the question.

Costs

[36] The plaintiff may make submissions on costs within ten (10) days, Rancourt shall have ten (10) days to respond and the plaintiff shall have seven (7) days to reply.

R. Smith J.

Released: September 6, 2012

CITATION: St. Lewis v. Rancourt, 2012 ONSC 5053
COURT FILE NO.: 11-51657
DATE: 2012/09/06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Joanne St. Lewis

Plaintiff

– and –

Denis Rancourt

Defendant

REASONS FOR DECISION ON REFUSALS BY JOANNE ST. LEWIS IN CHAMPERTY MOTION

R. Smith J.

Released: September 6, 2012

Tab 2

CITATION: St. Lewis v. Rancourt, 2011 ONSC 5923
COURT FILE NO.: 11-51657
MOTION HEARD: 2011/10/06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JOANNE ST. LEWIS, Plaintiff

AND:

DENIS RANCOURT, Defendant

BEFORE: Master MacLeod

COUNSEL: Richard G. Dearden, for the plaintiff

Denis Rancourt, in person

No one appearing for Claude Lamontagne

HEARD: October 6, 2011

REASONS FOR DECISION

[1] This is an action for defamation. The motion before me today is to compel answers to certain undertakings and refusals arising from cross examination of the defendant and of Claude Lamontagne who is a deponent of an affidavit.

[2] By way of context, the affidavits themselves were sworn in opposition to a motion brought by the plaintiff to compel the defendant to participate in mandatory mediation under Rule 24.1. In fact the motion as I understand it is to abridge the time for mediation and to require the parties to use an experienced private mediator rather than a mediator from the roster. That motion (the main motion) is returnable tomorrow before a judge.

[3] In response to the main motion, the defendant filed his own affidavit and an affidavit of Claude Lamontagne which is proffered as expert opinion. Mr. Dearden cross examined on those affidavits and brings this motion today to compel answers to certain refusals by Mr. Rancourt as well as two undertakings given by Mr. Lamontagne.

[4] The undertakings and the first group of the refusals are in response to questions directed to the independence of Mr. Lamontagne, to his neutrality, to the instruction or information he received from Mr. Rancourt or to his qualifications to give expert opinion evidence.

[5] A second set of refusals has to do with the means, income and assets of Mr. Rancourt. These questions were asked in response to Mr. Rancourt's own affidavit in which he attests he is of limited means and cannot afford the fees for the proposed mediator.

[6] There is a further group of refusals which relate to an application made by Mr. Rancourt to Law Help Ontario. These questions are also directed to the means and income of Mr. Rancourt. Again, this relates to the evidence given by Mr. Rancourt that he cannot afford the mediator proposed by the plaintiff. Mr. Dearden seeks access to the applications made to Law Help Ontario in order to verify whether the financial information provided to Law Help confirms or contradicts the evidence in the Rancourt affidavit.

[7] Finally there are two questions directed to the issue of insurance coverage. Rule 30.02 (3) deals with the obligation to answer such questions but these questions also also relate to the affordability of mediation. If there is coverage then the defendant has access to funding for legal counsel and of course for mediation fees.

[8] Mr. Rancourt argues that the main motion is itself improper and does not comply with the Rules of Civil Procedure. He will argue that there is no jurisdiction in the court to grant the relief sought by Mr. Dearden on the main motion. He asks me to deal with that today but I have declined to do so. This is one of the issues on the main motion which is returnable tomorrow before a judge.

[9] The issue before me is whether or not the questions must be answered in relation to the evidence the defendant himself has tendered in response to that very motion. Obviously if the judge dismisses the main motion without the need to consider the affidavit evidence or the cross examination, that decision may render any order I make today moot. In that event perhaps the judge will stay the order and relieve the defendant from providing the answers. On the other hand if the judge believes it appropriate to review the evidence before him or her and in that context must decide whether or not to admit the opinion evidence of Mr. Lamontagne my ruling today will in all probability be germane.

[10] Both parties refer to the decision of Perell, J. in *Ontario v. Rothmans Inc*. 2001 ONSC 2504 (S.C.J.); leave to appeal refused 2011 ONSC 3685 (S.C.J) as well as my own decision in *Caputo v. Imperial Tobacco Ltd*. (2002) 25 C.P.C. (5th) 78; [2002] O.J. No 3767 (Master). These cases contain the guiding principles in assessing cross examination on affidavits as opposed to discovery. *Caputo* is directly on point since it also deals with the relevance of questions directed to admissibility and weight of expert testimony proffered by way of affidavit.

[11] There can be no doubt that all of the questions asked are relevant because they are either directed to the admissibility of the expert testimony (including impartiality, bias and qualifications of the expert) or flow directly from evidence tendered by the

defendant himself. Relevance is the first consideration but just because a question is of some relevance does not mean the court will order it to be answered. Other considerations come into play.

[12] The defendant focuses on paragraphs 144-146 of the *Rothmans* decision. He interprets the comments of Perrell J. having to do with premature discoveries and not disturbing the fairness of the adversary system as somehow establishing a novel principle that would block any question which might also be asked on discovery.

[13] With respect, that is not the thrust of the Rothman decision. Perrell J. is simply exemplifying instances where the court will not order answers to apparently relevant questions. The court for example will not condone questions that are:

- Abusive or improper;
- Disproportionate in the sense of requiring efforts or expense not justified by the nature of the issues in dispute;
- Not directed to evidence which is admissible or probative; or,
- Asked for an improper purpose

[14] These categories are not exclusive. In any event, there is no blanket prohibition on asking a question on cross examination just because it might also be a question asked on discovery. The issue, once relevance has been established, is whether or not there is a basis for withholding an order because it would be unjust to make the order notwithstanding that the question may be relevant.

[15] In these matters the question of relevance is a question of law. The question of whether the court ought to order answers to be given is a matter of discretion.

[16] All of the questions are relevant as a consequence of the affidavits tendered in response to the main motion and the answers given under cross examination with the possible exception of the members of the committee discussed in the Lamontagne cross examination. Mr. Lamontagne volunteered the information however and it may be relevant to the question of bias. This is in my view was an undertaking and it should be answered.

[17] In the exercise of my discretion I am not prepared to order the Law Help Ontario applications to be produced. I regard that as overly intrusive and while the financial component of such a discussion may not itself be privileged, the extent to which lawyer client privilege attaches to discussions with a service such as Law Help has yet to be fully explored. I do not regard these answers as necessary in light of the other questions I am ordering answered. All of the other questions are to be answered.

[18] Mr. Dearden wishes to have the witnesses reattend to answer the questions under oath and to permit reasonable follow up questions. Notwithstanding that some of the questions might usefully be completely answered in written form, clearly not all of the questions are simple yes or no answers and many of them may invite proper follow up questions. In my view and notwithstanding the defendant's argument that the previous examination was conducted aggressively (a submission that I do not find to be supported by the evidence) I am ordering that the questions for production of documents be answered in writing by October 11th, 2011, that is prior to reattendance, and that the witnesses then reattend for examination. Mr. Rancourt and Mr. Dearden both confirmed their availability for October 14th, 2011. Unless otherwise agreed the witnesses are to attend on that date.

[19] Mr Dearden also asks for clear direction as to who may attend at the cross examination. The need for that is demonstrated by the exhibit at p. 154 of the motion record. Certain individuals who are not parties to the action attended at the cross examination and refused to leave notwithstanding Mr. Dearden's objections. One of these observers then posted comments on the internet describing the cross examination and attributing unethical behaviour to Mr. Dearden while also suggesting the plaintiff herself was somehow associated with evidence of wrongdoing at the university.

[20] Mr. Rancourt objects to such direction on the basis of the open court principle. In that he is misguided. Cross examination or discovery does not take place in open court (although it does take place under court supervision). It is only once a transcript or portions of a transcript are tendered in evidence that they become part of the court record. Motion records and exhibits at trial are part of the court record. Court hearings (such as this motion) are held in open court though that was not always the case. Prior to adoption of the "new rules" chambers motions were not considered to be in open court or on the record. In any event it is quite clear that there is no right for the public to attend an examination out of court at the office of the special examiner or court reporter. Even were that not the case however, the court could give direction about the conduct of such examinations.

[21] There will be a follow up cross examination if the plaintiff wishes it. No one but the parties and their lawyers and the reporter may be in attendance unless otherwise agreed.

[22] The plaintiff asks for costs. She, through her lawyer, seek costs against both Mr. Rancourt and Mr. Lamontagne. Mr. Lamontagne did not appear today although Mr. Rancourt stated that he was authorized to speak for him and advised the court that Mr. Lamontagne objected to answering the undertakings. I am advised that at one time Mr. Lamontagne had agreed to answer his undertakings but he did not do so. Mr. Lamontagne was advised that costs would be sought against him both in the notice of motion and subsequently. A minor costs award is appropriate for a non

party failing to comply with what he had agreed to do in a timely fashion. Claude Lamontagne shall pay costs fixed at $350.00 payable forthwith.

[23] The situation concerning Mr. Rancourt is more difficult. The motion was scheduled to take 1 hour and Mr. Dearden completed his submissions in half that time. The submissions of Mr. Rancourt then took until 4:30 p.m. On the other hand, of course, he will be submitting to the judge on the main motion that the entire motion – and therefore all of the costs – is improper and misguided. In the event that the judge agrees with this, it might not be reasonable for the defendant to be saddled with the costs of a motion within that motion. Of course he also argues that in the action as a whole he is the person being wronged because the action is simply an improper – and indeed unconstitutional – attempt by the University of Ottawa to muzzle free speech and criticism.

[24] The putative rule under our current costs regime is a "pay as you go" rule in which costs are presumptively to be fixed at each stage and payable forthwith. A main purpose of this is to encourage the parties not to argue unnecessary motions and to adhere to the rules. There is however the possibility that the judge hearing the main motion will dismiss it and as I have stated earlier – without in any way pre-judging that issue or suggesting it is the correct result - in that eventuality the judge might consider it appropriate to stay my order. Thus I am awarding costs of the motion before me. The defendant shall pay the plaintiff the sum of $3,000.00 on a partial indemnity scale. Subject to any contrary order of the judge hearing the main motion, those costs are to be paid within 30 days.

[25] In summary an order will go as follows:

a. The questions but for the Law Help questions are to be answered.

b. All questions that called for production of documents or copies of documents are to be answered in writing by October 11th, 2011.

c. The witnesses are to reattend at a place and time designated by counsel for the plaintiff to answer the questions under oath and to answer reasonable follow up questions on October 14th, 2011 unless otherwise agreed.

d. No one but the witness, the parties, their legal counsel and the court reporter may be present at the cross examination unless otherwise agreed.

e. Mr. Lamontagne shall pay costs of $350.00

f. The defendant shall pay costs of $3,000.00.

g. This order and the costs award is subject to variation by the judge hearing the main motion if she or he considers it appropriate.

Master MacLeod

Date: October 6, 2011

Tab 3

where Joseph Hickey was in attendance?

A. I did attend those meetings. I don't remember attending one where Joseph Hickey was present.

718. Q. Mireille Gervais. Did you attend meetings where she was present?

A. I don't remember attending a meeting at that restaurant where Mireille Gervais was present. I know she was present at Cinema Academica, I remember seeing her there. And it would have been natural for her if she was interested to join in those discussions afterwards, but I don't have a memory of it.

719. Q. And Alroy Fonseca?

A. Same.

720. Q. And that's the same individual you mentioned earlier that runs the website ---

A. Yes.

721. Q. --- *academicfreedom*?

A. He would have been at Cinema Academica not very often.

722. Q. Okay. Refusals 3, 4 and 5 essentially deal with what equity you have in your residential property that you co-own at [redacted]t?

A. Yes, they do. If we could do one at a time, I would appreciate it.

723. Q. If you wish, okay. So, Refusal 3:

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"What equity does Mr. Rancourt have in the residential property he co-owns at [redacted]?"

A. Okay. So, I looked up the word "equity" and got a definition from the Oxford online dictionary. And it says:

"Net value of mortgage property after deductions of charges."

And there's no mortgage on that property. So, I'm not sure what the term "equity" means precisely in this case.

724. Q. In fact, Mr. Rancourt, I'm going to show you a recent printout from the Ontario Government Land Registry Office dealing with your property. And indeed, it shows that a mortgage used to be on that property, but it's been discharged. So, as we sit here today, the house that you bought in 2000 for $226,200 is mortgage-free.

A. Okay.

725. Q. Is that fair?

A. Yes.

726. Q. This document is correct? I'll show it to you.

A. Oh, I may not have ever seen this document before. I've never seen this document before.

727. Q. I didn't say you did. I said, as I premised

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it, that we obtained this document, you know, last week or this week. Probably this week. So, it's the latest Registry printout that we got on your home, and it shows no mortgage. And then it shows that on November 1st, 2000, you bought the house for $226,000 ---

A. In November 2000, it says here. Is that right?

728. Q. Yes, the transfer?

A. Yes.

729. Q. So, $226,200?

A. Yes.

730. Q. And the ownership is you and your wife Marie Thérèse Wong?

A. That's what it says here that it's Rancourt, Denis, and Wong, Marie Thérèse are the owners.

731. Q. That would be you and your wife?

A. It's not relevant to this whether if that person is my wife or not. *O*

732. Q. Okay. That's you?

A. Yes.

MR. DEARDEN: Okay. Can we mark that as the next exhibit, please?

EXHIBIT NO. 13: Ontario Land Registry Office, printout of Mr. Rancourt's property information for [redacted].

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BY MR. DEARDEN:

733. Q. Have you had that property appraised at any time since you bought it?

A. I've never asked for an appraisal of that property.

734. Q. So, you're unaware of any appraisal of that property?

A. There might have been an appraisal for tax purposes done by the government, presumably.

735. Q. I'm referring to resale. Like, for you to sell it?

A. No, I've never -- I'm not aware of what the value of it is and I've never asked to have it be evaluated in any way with regards to selling it.

736. Q. Okay. So, Refusal 4 is:

"How much, if anything, exists in terms of a mortgage on the property?"

A. So none, obviously.

737. Q. Refusal 5:

"Do you have a mortgage on that property today that's outstanding?"

A. No.

738. Q. Refusal Number 6:

"Do you have any other real estate that you have an ownership interest in?"

A. The answer to that is no.

739. Q. "Do you own any RRSPs?" is Refusal Number 7.

A. The answer is yes.

740. Q. And what would the most current statement, RRSP statement that you have, or statements if you have different types of RRSPs, that would show me the value of the RRSPs?

A. Yes, I can give you the value. So, the present value of the RRSPs at two different financial institutions. At one institution, the present total value, current value is $14,542.66. So, that's fourteen, one-four, thousand. At the other financial institution, the current value is $12,000, one-two -- $12,876.64. Those -- yes, those are the values.

741. Q. Refusal 8:

"Do you have any investments such as shares, mutual funds, pension benefits?"

So, one at a time. Do you have any investments such as shares?

A. Yes, I have shares. Do you want to move on to 2?

742. Q. No, I want to know what the shares are and what the value of the shares are, and how you own those shares.

A. Okay. I have a share in the Ottawa Women's

Credit Union, and it has a value of $250.00.

743. Q. Yes?

A. That's it.

744. Q. So, those are the only shares you own?

A. Yes.

745. Q. Mutual funds?

A. I don't own any mutual funds. None.

746. Q. Pension benefits?

A. I do not receive any pension benefits. None.

747. Q. How many years did you teach at U. of O.?

A. Approximately twenty-three.

748. Q. Is there a pension plan for the time you were working there for 23 years?

A. Yes, there is.

749. Q. And when does that vest?

A. I'm sorry?

750. Q. When does it vest? When will you be entitled to get payouts of pension benefits that ---

A. When I choose to retire.

751. Q. And the value ---

A. But it has to be beyond a certain age, I believe. I'm not sure of those details.

752. Q. What's the value of the pension?

A. I don't know the exact number.

753. Q. Approximately?

A. I don't know.

754. Q. Can you provide me a value in an e-mail?

A. Yes. *U*

755. Q. Okay. "Do you have any kind of money that's coming in to you, like interest on whatever?" is Refusal Number 9.

A. "Do you have any kind of money that is coming to you, interest on whatever?" The answer is no.

756. Q. So, your Affidavits stated in various places that you can't financially afford Jim Chadwick's high fees as a mediator. And I suggest to you as we sit here today, sir, and with the answers that you just gave me, that that statement is not correct?

A. You're entitled to that opinion.

757. Q. Do you agree with it?

A. No.

758. Q. Why?

A. I just don't agree with it.

759. Q. Why?

A. Because I'm of the opinion, given the definition of "afford", that it is a significant burden on me to undergo the risk of having to go into my retirement savings.

760. Q. What retirement savings are you referring to?

A. RRSPs.

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761. Q. Those two RRSPs you gave me?
A. Yes.
762. Q. Do you have any money in -- well, I'm assuming when you say you don't have any kind of money coming in to you, interest or whatever, then you don't have any savings account or chequing account that's interest-bearing?
A. That's right.
763. Q. So, you have no cash savings?
A. No, there's no interest coming in.
764. Q. Do you have any cash savings? Like, do you have, you know, an account that has US dollars in it, for instance?
A. I don't have a US dollar account.
765. Q. Do you have a Canadian dollar account that has money in it?
A. Of course I have a Canadian dollar account.
766. Q. And how much money is in that account or accounts?
A. You're crossing a line that's not related to this. *O*
767. Q. Sure it is. It's your ability to afford to pay $3,000 for your half of Jim Chadwick's mediation fees.
A. I'm not going to answer that one. I'm not

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going to answer that one. *O*

768. Q. So, you haven't fully given me the picture, Mr. Rancourt, of what money that you have.

A. Well, you can interpret it how you want, but I don't think it's any of your business how much there might be in my chequing account.

769. Q. How many bank accounts are we talking about?

A. One.

770. Q. One chequing account?

A. That's right.

771. Q. And it's Canadian dollars, correct?

A. Yes.

772. Q. I mean, you know that the whole purpose of the questions dealing with whether you could financially afford such high fees ---

A. Mr. Dearden, let me be very clear.

773. Q. --- is dealing with what money you have?

A. I'm not going to answer this question about my personal chequing account, okay? Just -- it's on the Record, I'm not going to answer that question. *O*

774. Q. Okay, and I'm not going to argue with you.

A. Okay, thank you.

775. Q. You paid $2,000 in costs that were ordered by Justice MacKinnon this week. Where did you come up with that money? I received your cheque earlier in the week.

A. Well, if you received my cheque and I only have one chequing account, it must have come from my chequing account.

776. Q. So, Mr. Rancourt, when you swore your Affidavit saying you cannot financially afford such high fees, and painted this picture that you had no income coming in to you, you had enough money when you swore those Affidavits to actually cover off Mr. Chadwick's fees, if you chose to write a cheque in that amount. Would that be fair?

A. No, I don't think that's a fair question because we're talking about mediation that we're both hoping would be successful. And we don't know how long that mediation is going to take, and we don't know who the mediator is going to be. And I don't know what my expenses are going to be tomorrow, and so on. I mean, it's too hypothetical a question. It's --- *O*

777. Q. No, actually, it isn't. The specifics are, when you swore your Affidavits on August 25th and August 26th, and you had to cut a cheque to Jim Chadwick for $3,500 as your contribution to him mediating this action, did you have $3,500 in your chequing account that you could have paid that $3,500?

A. I'm not going to answer that. *O*

778. Q. Why not?

A. I am not ---

779. Q. It's on the issue of whether you can financially afford ---

A. Mr. Dearden, do what you like with the fact that I will not answer that question, but I am not going to answer that question. And let's not argue about it. *O*

780. Q. Okay. Are there any other accounts that may have money in them that you have an ownership interest in, bank accounts of any financial institution account that I have not asked you questions about ---

A. No, there are not.

781. Q. --- in terms of your ability to financially afford Jim Chadwick's fees?

A. No, there are not.

782. Q. Okay. Refusal 14. And when I say "okay", it's that I'm moving on, not that I'm in agreement with your refusals to answer questions about your financial ability to pay mediation fees. Refusal 14 deals with CURIE. And that refusal is, you are considering suing the University of Ottawa and/or CURIE for not covering you. Are you going to commence an action to get insurance coverage through the University of Ottawa and/or CURIE?

A. Yes. So, no, not "yes" is the answer. I mean, yes, I just heard your question, okay?

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MR. DEARDEN: Subject to whether we have to file another Refusals Motion with the Master, Mr. Rancourt, those are all my questions for now, thank you.

--- WHEREUPON THE CONTINUED CROSS-EXAMINATION ADJOURNED AT THE HOUR OF 12:08 O'CLOCK IN THE AFTERNOON.

* * * * * * * * * * * * * * *

I HEREBY CERTIFY THAT the foregoing is a true and accurate transcription from the Record made by sound recording apparatus, to the best of my skill and ability.

.....

Flavia Pella, Court Monitor.

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Examination No. 11-0990.1 Court File No. 11-51657

(Ottawa-Carleton)

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

****

CONTINUED CROSS-EXAMINATION OF DENIS RANCOURT ON AFFIDAVITS sworn August 25 and August 26, 2011, pursuant to an appointment made on consent of the parties to be reported by Cornell Catana Reporting Services, on October 14, 2011, commencing at the hour of 9:25 in the forenoon.

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APPEARANCES:

Richard G. Dearden for the Plaintiff
Anastasia Semenova

Denis Rancourt Self-Represented Defendant

This Examination was taken down by sound recording by Cornell Catana Reporting Services Ltd., at Ottawa, Ontario.

Tab 4

Court File No.: 11-51657

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

-and-

DENIS RANCOURT

Defendant

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P R O C E E D I N G S

(REFUSALS MOTION)

BEFORE THE HONOURABLE MR. JUSTICE R. SMITH

on FRIDAY, July 27th, 2012, at OTTAWA, Ontario

****

APPEARANCES:

Deardon, R.	Counsel for the Plaintiff – Joanne St. Lewis
Carr Harris, B.	Agent for the University of Ottawa
Rancourt, D.	Self-Represented Defendant

(i)
Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

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Transcript Ordered:.....July 27, 2012
Transcript Completed:.....September 02, 2012
Ordering Party Notified:.....September 05, 2012

Thursday, July 26th, 2012

MR. DEARDON: Good morning, Your Honour.
THE COURT: Good morning.
MR. DEARDON: Just as a quick housekeeping matter, Your Honour; I use, to take notes, an Echo Smart pen that actually records voices as well. And under the Courts of Justice Act, I need permission to....
THE COURT: Permission - does it also talk to you?
MR. DEARDON: No, but it plays back and – it plays back and you can put it on your computer and it translates it for you too.
THE COURT: Modern technology. Now, I see Mr. Rancourt is not present. Is that....
COURT REGISTRAR: Your Honour, I paged him about – several times.
THE COURT: Right, you have paged him?
MR. DEARDON: Four times.
THE COURT: Four times. Now, are we within the rules to – to – I know it was adjourned on what, Tuesday, or this week or earlier this week?
MR. DEARDON: So, Your Honour, if I could speak to the "No show"? Firstly, I hand to Your Honour an email that I sent to Mr. Rancourt July 25th, at 6:51 where I say – well, I'll hand it to you first, sorry.
THE COURT: I'm told there's also another letter sent to Justice Hackland.
MR. DEARDON: There is, and I'll get to that in a second, Your Honour.
THE COURT: I have not seen it, but I've heard from the CSO that he's seeking another judge from

outside of the region.
MR. DEARDON: Correct. But can I put on the record, Your Honour, the note – the notice that I've given him that today's...
THE COURT: Yes.
MR. DEARDON: ...refusals motion is proceeding. So you see, what I just handed you, this July 25th email, I inform him, "I'm requesting that a date be assign to hear your champarty's refusal motion on July 26th, 27th, (inaudible) the 30th. A date has now been assigned by the Court and the motion is proceeding on July 26th. If you fail to show up, I will request that your champarty's refusals motion, regarding questions you asked of Professor St. Lewis, be dismissed with costs on a substantial indemnity basis."

Now in addition to having the Court assign today's proceeding to occur, Your Honour, I, out of an abundance of caution, also served Mr. Rancourt with a notice of motion that should be in the file with the affidavit of service. I'm told the affidavit of service is in the file with a notice of motion that an order goes "That the defendant's champarty refusals motion, regarding Professor St. Lewis' cross-examination on her affidavit, to be heard on July 26th, 2012, on short notice."

So he's been served, out of an abundance of caution, with a notice on short notice from me that the refusals motion, that should've been argued on Tuesday, be argued today. So it's covered on two

basis, Your Honour.

So I'd ask you to make an order, if that was required, pursuant to my notice of motion that we are proceeding on short notice if that is necessary. I don't think it's necessary because the Court, the Regional Senior Justice, pursuant to my letter of July 24th, has assigned the refusals motion to be argued today.

And I note, Your Honour, that Mr. Doody reminded me that there is a rule on abandoned motions, Rule 37.09(2):

> "A party who serves a notice of motion and does not file it or appear at the hearing, shall be deemed to have abandoned the motion unless the Court orders otherwise."

So, Your Honour,....
THE COURT: But this is simply a hearing on the refusals – these are refusals by your client, is that right, Professor St. Lewis?
MR. DEARDON: Yes, on the cross-examination on her affidavit in the champarty motion.
THE COURT: Right. So it's your refusals that you're bringing the motion on?
MR. DEARDON: He's bringing the motion. It's his motion.
THE COURT: He brought this motion?
MR. DEARDON: Yes, yes.
THE COURT: Okay, so he brought a motion seeking an

order that the – the questions be answered.
MR. DEARDON: By Professor St. Lewis on a cross-examination. And that was supposed to be argued on Tuesday before Justice Beaudoin. Justice Beaudoin had set that date, um, weeks ago, that the refusals be heard.

What we have had occur, Your Honour, in terms of refusals motions by the defendant in the champarty motion, is Mr. Doody, on June the 20th, dealt with Mr. Rancourt's refusals motion regarding President Rock; Board of Governors Chair, Robert Giroux; and a lawyer named Celine Delorme.

We were supposed to argue Professor St. Lewis' refusals as well on that day, but we ran out of time. So Justice Beaudoin then adjourned that to today because – or to Tuesday rather, July 24th, because he had already set that date for hearing refusals arising out of the examinations for discovery in the liable action.

So he was supposed to be ready to go to argue his refusals motion on July 24th, that was a carryover from June the 20th, and then he did what he did. And I want to speak to Costs thrown away, after we finish with this, to Your Honour.

So he's been notified the date was assigned. He's been served with a notice of motion. He's not showing up here. I have no – I'm not gonna even speculate why not.

But Your Honour asked me, did he write a letter to Regional Senior Justice Hackland? Ad he also wrote a letter to Chief Justice Winkler as well; which, if you give me a second, Your Honour, I'll try to pull a copy.

THE COURT: Does he mention anything about an adjournment today or is that in his letter?

MR. DEARDON: We got this late last night. What I can tell you, Your Honour, is he never notified us that he wasn't gonna show up today.

I do have one additional copy of the letter that he sent to Chief Justice Winkler on July 25th that we got late yesterday. But I don't appear to have an extra copy of his July 25th letter to Regional Senior Justice Hackland. And if I could, Your Honour, I'll review it to see if he said he wasn't gonna show up.

MR. DOODY: I – I have a copy of that letter. I'll give you my copy. I'm sure Mr. Deardon will share his with me.

MR. DEARDON: Oh, yes, and prior – prior to the email that I handed up to Your Honour, um, I had an exchange with Mr. Rancourt where he – he – this was after the Court assigned today to hear his refusals motion involving Professor St. Lewis; he then said, I'll quote, "I have – unfortunately, due to a medical appointment that has been scheduled in advance, I'm not available for a hearing on July 26th. Kindly, please advise all parties about available court dates for a bilingual hearing in

the month of August."
THE COURT: So this is a letter he has sent?
MR. DEARDON: He sent an email to me and to Mr. Doody as well, and the trial coordinator. This was all brought to the attention of Justice Hackland and Justice Hackland assigned today's date.
THE COURT: Notwithstanding that he was not available on this date today.
MR. DEARDON: Well, we – he – he says, Your Honour, in the letter that was just handed up to you, on the second page, or the fourth page rather, the signing page, he says: "On July 24th I'd advised Mr. Labaky and the other parties that I'm unavailable July 26th due to a medical appointment. A copy of my email to that effect is attached." And that's the email I've just referenced.

But I trumped that by indicating to him a date had been assigned and served him. And, of course, he hasn't put any medical evidence. He just – he – in my respectful submission, Your Honour, he just made up an excuse. He wasn't gonna show. And he wants to put everything off until August. And it's just unacceptable.
THE COURT: So this is in response to your letter, is that right? Or is this his letter before you wrote? When is the....
MR. DEARDON: This is his July 25th letter. His email was July 24th at 4:32 where I – I had said I'm confirming, in response to Mr. Labaky indicating that we had July 26th as a date assigned, I confirmed "The champarty's refusals

motion will be argued July 26th at 10:00 a.m." And then he countered with his email of 4:32 saying, "Unfortunately, due to a medical appointment that's been scheduled in advance, I'm not available".

That's not good enough, in my respectful submission, Your Honour. He flaunts at the Court. He doesn't say when his medical appointment is. He doesn't have a medical certificate. We aren't supposed to be proceeding for more than 1.5 hours today, if, on the seven issues of refusals. And he's just – he's just thumbing his nose at the Court by not showing up today, in my respectful submission.

THE COURT: I'd be reluctant to dismiss everything if he's not available due to a medical appointment. If he had raised that with the Court, an adjournment would be granted. I – I recognize that he's....

MR. DEARDON: Well, it was – it was raised, Your Honour. It was raised....

THE COURT: But has that been raised by Justice Hackland?

MR. DEARDON: And Justice Hackland assigned the date today anyway.

THE COURT: Today's, notwithstanding that he had a medical appointment scheduled for today?

MR. DOODY: The fourth page of the letter to the Regional Senior Justice, Your Honour, subparagraph (b), "On July 24th, I have advised Mr. Labaky and the other parties that I am unavailable on July 26th, 2012, due to a medical appointment".

THE COURT: Well, the – I'm very – I'm reluctant to dismiss the action completely on a – I don't know exactly what's happened. I know that Justice – some – in my view, improper allegations were made or subjects raised [sic] concerning the death of Justice Beaudoin's son and caused him to recuse himself from this matter.

I don't know very much about it other than the leave to appeal that I dealt with you and Mr. Rancourt and Mr. Hickey on some – what, several months ago. So the....
MR. DEARDON: Your Honour, what he's doing is "Gaming" the system is what he's doing.
THE COURT: No, no, I – I....
MR. DEARDON: The Court knew that he....
THE COURT: I wouldn't – I'm just thinking of another solution. The – he has a medical appointment today. We could adjourn. Are you available tomorrow?

I'm on holidays. I'm going on holidays for the month of August. I should tell you that as a – as a – so I'm not sure. You have your motion, what, the end of August, is that....
MR. DEARDON: Yeah, August 29th is when the champarty motion is scheduled to be heard on its merits.
THE COURT: So I don't know who that will be. But it will be – it won't be me on the 29th. So – but I'm here tomorrow. I could be here next week.
MR. DEARDON: Well, I'm available tomorrow, Your

Honour.
THE COURT: Okay, so if he has a medical appointment today; if we adjourn it until tomorrow at, uh, let's say nine-thirty. Is that agreeable, Mr. Doody?
MR. DOODY: I'm not necessary, Your Honour.
THE COURT: Okay.
MR. DOODY: I just have a couple things to say.
THE COURT: Right.
MR. DOODY: I only came down here because I wasn't sure what Mr. Rancourt was going to do today. But I'm – as I'll indicate I'm not necessary....
MR. DEARDON: So, yes, nine-thirty, Your Honour.
THE COURT: So I'll adjourn it to nine-thirty. Give him notice by fax that it's been adjourned to that date due to his medical appointment. That would accommodate his medical issue. And the – it's his motion?
MR. DEARDON: It's his motion.
THE COURT: So that – and if he does not attend, then the consequence will be that his motion will be dismissed. But it doesn't necessarily – I wouldn't necessarily, subject to argument, dismiss the whole ship (ph), champarty....
MR. DEARDON: Oh, no, I'm only asking that his – his motion...
THE COURT: His refusals motion...
MR. DEARDON: ...for the refusals be dismissed...
THE COURT: ...be dismissed. Okay.
MR. DEARDON: ...because he didn't show up.
THE COURT: So he still has his champarty motion on the 29th, or whatever, of August. And he might be

happy that it's not me presiding. But, anyway, that's "C'est la vie...
MR. DEARDON: Well, he's not happy, Your Honour, just...
THE COURT: ... "C'est la vie, c'est la guerre".
MR. DEARDON: ...go on the record. He's – he's – he doesn't want any Eastern Region...
THE COURT: I've seen that.
MR. DEARDON: ...Judge...
THE COURT: I've seen that.
MR. DEARDON: ...to be hearing - but I think the time has come that Mr. Rancourt be informed that just because he writes a letter like he wrote....
THE COURT: I'm not inclined – I'll hear argument on that issue at the – if it's raised. But – and if the – whoever he's written to, if they feel that an out of jurisdiction judge should be hearing these matters, well, there'll be no objection from me.

But I'm not inclined to that view. Litigants don't get to choose. And I don't feel I have any conflicts with Mr. Rancourt, that I'm aware of, so that's my thinking. But subject to hearing argument on – by Mr. Rancourt and whoever else may make submissions on that point. So let's adjourn it to nine-thirty tomorrow.
MR. DEARDON: Now what about costs for our appearance, Your Honour, today? He – he didn't....
THE COURT: Costs?
MR. DEARDON: He didn't indicate he wasn't showing up other than to say, "I had a medical

appointment". I mean, we're talking conduct post him being told it was assigned. Post him being served with a notice of motion that this motion would be heard today on short notice. And he didn't show up.

THE COURT: What are you seeking for costs – seeking for costs?

MR. DEARDON: Um,....

THE COURT: You know what? Costs will be dealt with tomorrow morning at nine-thirty.

MR. DEARDON: Okay.

THE COURT: Mr. Doody, what are you seeking for costs?

MR. DOODY: Your Honour, I – I'd be seeking $500.

THE COURT: Okay.

MR. DEARDON: And I'll do the same, Your Honour.

THE COURT: Five-hundred dollars each?

MR. DEARDON: Yes.

THE COURT: Okay. It'll be dealt with.

MR. DOODY: Your Honour, if I could just take two minutes, because I'm – I'm not available tomorrow. I was supposed to be out of the country this week, but I'm only here - and to indicate, Mr. Rancourt thought I wasn't gonna be here; I'm only here because I – a new matter I've been retained on, I had to do some – some preparatory work before I do get to my holidays.

But the – the difficulty that I'm in is Mr. Rancourt has written this letter to the Regional Senior Justice setting out certain things, which, in my respectful submission, ought to be responded

to. And it is not my practice to write to judges. It's my practice to make submissions and remarks in court.

And so if I could just – with Your Honour's indulgence, take less than one minute to say a couple of things about what Mr. Rancourt said in that letter?

Your Honour, in my submission, we're here as a result of a malevolent, baseless, and contemptuous attack upon a judge of this Court, and a transparent attempt by Mr. Rancourt to avoid the effect of an unfavourable judicial ruling.

Mr. Rancourt's motion seeking an order that the witnesses' whose affidavits were filed by the University of Ottawa be required to answer questions or produce documents objected to was dismissed by Justice Beaudoin from the bench on June 20th. He lost his motion against my client, the University of Ottawa.

The transcript, which has been ordered but not yet ready, will show that those rulings were made. It will also show that Mr. Rancourt said words to the effect of, "I have no case now". Mr. Rancourt admits that the rulings were made in paragraph 13 of his letter of yesterday to Justice Hackland where he wrote, "Justice Beaudoin made rulings from the bench".

Mr. Rancourt could have sought leave to appeal that decision within seven days as required by the rules. He did not do so. Instead, he waited until July 24th, when he believed I would be out of town as I had advised Justice Beaudoin on our last court appearance. And with no notice whatsoever, Mr. Rancourt commenced a vituperative attack upon a judge of this court.

In my submission, there is absolutely no basis for any suggestion that Justice Beaudoin was in a position of reasonable apprehension of bias because his late son worked at my law firm, or because a scholarship was established in his memory at the university.

There is, however, every basis to suggest that this submission was a calculated attempt to (inaudible) Justice Beaudoin into a negative reaction. This caused Justice Beaudoin, in an illustration of his excellent judicial character, to recognize that Mr. Rancourt's personal attack and linkage of this case to his deceased son had actually made him unable to deal with Mr. Rancourt in a judicial manner.

So Mr. Rancourt succeeded in having Justice Beaudoin no longer rule with respect to his case. But he ought not to be rewarded for his abusive and contemptuous behaviour towards a judge of this court who has spent his entire career serving the judicial system in this province.

His motion was dismissed. He has missed the appeal period. The underlying champarty motion, in my respectful submission, must be decided in accordance with the original schedule or Mr. Rancourt will have successfully put off the judgment day yet again.

And, Your Honour, I will be unavailable tomorrow. But I'm not needed, because it only deals with the part – with Mr. Rancourt's motion against Mr. Deardon's client.

MR. DEARDON: Your Honour, if I may follow-up on what Mr. Doody said please? As he told you, he – he wasn't here on Tuesday. And he had informed the Court back on June 20th. And Mr. Rancourt fully knew that. I – I am....

THE COURT: Mr. Doody was not here on Tuesday?

MR. DEARDON: Mr. Doody was...

THE COURT: Okay.

MR. DEARDON: ...not here on Tuesday. And – and what I'm describing....

THE COURT: But he didn't have to be here because he – he'd already dealt with his matters.

MR. DOODY: Exactly.

THE COURT: So there's no real need to be here.

MR. DEARDON: Well, he was also supposed to be on holidays as well, but then other things came up, workwise, so. But Mr. Rancourt knew that and what I'm describing as an "ambushed attack" that, without notice, no record whatsoever, without telling us in an email that he was going to personally attack Justice Beaudoin on Tuesday

morning, knowing that the University of Ottawa's counsel wasn't here, was wholly improper.

And everything he did on Tuesday, I described it as, "Sickening", Your Honour. What he said about Judge Beaudoin and the use of his – his son's death to provoke Justice Beaudoin as a human being and as a father to have to recuse himself (ph).

I'm seeking Costs thrown away because Judge Beaudoin said, when he did recuse himself because of the personal attack on him, that another judge would deal with the costs of that date.

I'm assuming, Your Honour, that will be you, because you're following up on...
THE COURT: I....
MR. DEARDON: ...the refusals motion that we were supposed...
THE COURT: Yes.
MR. DEARDON: ...to argue?
THE COURT: Yes.
MR. DEARDON: So, Your Honour, I have – I have prepared a Costs thrown away outline.
THE COURT: So costs – costs for Tuesday?
MR. DEARDON: Um, yes.
THE COURT: You're seeking costs...
MR. DEARDON: Yes, costs thrown away.
THE COURT: Well, costs for the Tuesday motion that was continued....
MR. DEARDON: Yes, and Judge Beaudoin said another judge would have to deal with that.

THE COURT: Okay.
MR. DEARDON: And “That” I’m now hearing is you. I prepared a costs thrown away outline of the plaintiff for preparing for the three motions and the attendance that were supposed to be argued on Tuesday. And I’ll hand it up to Your – Your Honour now and I will have it served on Mr. Rancourt today so that we can deal with it...
THE COURT: Tomorrow.
MR. DEARDON: ...tomorrow.
THE COURT: Yes.
MR. DEARDON: In short, Your Honour, my – my argument is that the – that with an “Anarchist”, as Mr. Rancourt describes himself, the ends justify the means. And the end game here was to get the refusals motions on Tuesday adjourned.

And it didn`t matter to him what means he used. And he went to the lowest depths that any human being could do by saying the things that he said to Justice Beaudoin. And he – and you`ll see in my submissions, I’m arguing that his conduct was contemptuous because he ambushed us all.

He didn`t have a notice of motion before the Court. He had no material before the Court. And all he had to do was inform the Court, “I`m gonna bring a biased motion”. But no, he continues and puts material on the record like – like the Ottawa Citizen article that he was referring to, and the grief of Justice Beaudoin, knowing it was completely intentional what he was doing to achieve

his end game, which was to get the adjournment and delay this liable action as long as he can.

And what's amiss in all of this, Your Honour, is he called Professor St. Lewis a "House Negro" and she is suffering damages every day that his "House Negro" articles stay up on his website, because we're seeking an injunction to get them down. And his delay is deliberate.

And we can`t lose sight of the fact that this is a liable action where somebody is egregiously defamed. And he plays these games. He games the system, in my respectful submission, Your Honour, by – by doing what he did on Tuesday.

And that's why I've prepared this cost thrown away outline on a full indemnity basis because of what he did.

So I will, Your Honour, serve Mr. Rancourt of this copy of this Costs thrown away outline that I've provided to you. And I will serve him a notice by fax; I'll write him a letter by fax saying that the refusals motion involving Joanne St. Lewis' cross-examination will be heard at nine-thirty tomorrow before you.

THE COURT: Nine-thirty tomorrow. And I would intend that it proceed.

MR. DEARDON: Oh, yeah, can it....

THE COURT: The medical appointment is a reason that I would've granted an adjournment. And I

grant you that well, there's no certificate from a doctor, but I would intend to proceed tomorrow.
MR. DEARDON: Your Honour, I forgot....
THE COURT: It's my....
MR. DEARDON: I forgot to tell you that Justice Beaudoin allowed us to email Mr. Rancourt as service.
THE COURT: And I would allow service by email as well. And it will be on short notice.
MR. DOODY: Okay.
MR. DEARDON: Do you want me to mention that you took into account the medical appointment that he said he had today?
THE COURT: That is the reason. Yes, the reason or granting the adjournment is he – his letter, stating that he had a medical appointment and could not attend. He was here on Tuesday.

Whether he could've cancelled that medical appointment, or should`ve cancelled the medical appointment, it`s a separate issue. But if any other litigant had made the same request, I would've granted adjournment for that reason, so he will get the same benefit. But I would intend to proceed tomorrow, whether...
MR. DEARDON: Okay, thank you, Your Honour.
THE COURT: ...whether he's here or not.
MR. DEARDON: Thank you, Your Honour.
THE COURT: Okay.

THE COURT IS ADJOURNED

Form 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

I, RENEE COMMODORE certify that this document is a true and accurate transcript of the recording of J. St. Lewis v. D. Rancourt, in the Superior Court of Justice, held at 161 ELGIN ST. OTTAWA, ONTARIO, taken from Recording(s) CD #0411-36-20120726, which has been certified in Form 1 by A. Pressman.

SEPTEMBER 02, 2012
(Date)

_____
RENEE COMMODORE
COURT REPORTER

Tab 5

N^{o} de dossier: 11-51657

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

****

M O T I O N S

ENTENDUE DEVANT L'HON. JUGE ROBERT N. BEAUDOIN
Mardi le 24 juillet 2012 à Ottawa

****

(Tome II)

Comparutions:

R. Dearden — Avocat pour la Demanderesse

D. Rancourt — Pour lui-même

Mardi,
le 24 juillet 2012.

(10h06)

MR. DEARDEN: Good morning, Your Honour. I'll go get Mr. Rancourt.

...Le greffier annonce l'ouverture du Tribunal

LE TRIBUNAL: Bonjour, M. Rancourt.
M. RANCOURT: Bonjour.
THE COURT: So, to be clear: again today, Mr. Dearden, you can make your submissions in English without being translated – to you?
M. RANCOURT: Oui. Ça a toujours été comme ça qu'on a fonctionné.
LE TRIBUNAL: Okay. Mais on continue toujours comme ça.
M. RANCOURT: Oui.
LE TRIBUNAL: C'est uniquement le cas de représentations que vous allez faire en français.
M. RANCOURT: Qui sont traduites.
LE TRIBUNAL: Qui seront traduites pour M. Dearden. Okay? D'accord.

Là, je voudrais bel et bien…. Je sais qu'on continue toujours la question des refus…
MR. DEARDEN: Your Honour, sorry….
LE TRIBUNAL: ...lors des contre-interrogatoires.
MR. DEARDEN: My translators are standing there, Your Honour.
THE COURT: Oh, okay.
MS. BORRIS: We need to be affirmed, Your Honour,...
THE COURT: All right. I'm sorry.

À l'ordre. Levez-vous.

LA SÉANCE EST SUSPENDUE (10h33)

À LA REPRISE : (10h50)

LE TRIBUNAL: M. Rancourt, je tiens à souligner qu'il n'y a, à mon avis, aucun conflit entre moi et l'Université d'Ottawa à cause d'une bourse qu'on a créé à la mémoire de mon fils.

Mr. Rancourt, I want to tell you quite sincerely that there is no conflict between myself and the University of Ottawa because of a scholarship in the memory of my son – created in the memory of my son.

Il n'y a pas de possibilité d'annuler cette bourse.

There is no possibility of cancelling this scholarship.

C'est un contrat qui était conclu entre moi, le gouvernement de l'Ontario, qui a également contribué en fonds sommes égales, l'établissement de cette bourse.

It is a contract that was contracted between myself, the Government of Ontario, who also contributed an equal amount of money to the establishment of this scholarship.

Pas de possibilité d'annuler cette bourse. Il y a pas de conflit d'intérêts.

There is no possibility of this being cancelled, this scholarship. There's no conflict of interest.

Il faudra trouver un autre juge présider, acquitter frais, des frais dépens de cette présence aujourd'hui.

A new judge will need to be found to preside over this action and that will deal with the cost of your attendance today.

M. RANCOURT: M. le Juge, je dois signaler….

COURT SERVICES OFFICER: Order. All rise.

À l'ordre. Veuillez-vous lever.

M. RANCOURT: M. le Juge....

Your Honour….

LA SÉANCE EST LEVÉE (10h54)

****

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BLG
Borden Ladner Gervais

File No. 308227-000158

February 1, 2012

Delivered by Email and by Mail

[redacted]

Dear Mr. Rancourt

Re: St. Lewis v. Rancourt

Please find attached a copy of the Motion Record served by my client, the University of Ottawa, together with our Factum setting out the basis of the argument we intend to advance.

This letter and the Motion Record, together with the Factum, are being sent to you by email so that you will receive it immediately. In order to ensure that service of these documents is carried out in accordance with the *Rules of Civil Procedure*, a separate hard copy will be sent to you by ordinary mail.

You may wish to file evidence in response to this motion. A case conference in this action has been scheduled for this upcoming Wednesday, February 8, 2012, at 9:00 a.m. I will be asking, at that time, for a schedule to be established to ensure that my client's motion to intervene in your motion is heard in a timely way. In order to ensure that there is no delay, please provide me with any evidence you wish to file in response no later than the commencement of the case conference next Wednesday, February 8, 2012.

Yours very truly

Peter K. Doody

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Encls.
OTT01\4906002\v1

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

FACTUM OF THE UNIVERSTIY OF OTTAWA
[Motion for Leave to Intervene, Rule 13.01]

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Lawyers for the Proposed Intervenor,
University of Ottawa

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Court File No. 11–51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

– and –

DENIS RANCOURT

Defendants

FACTUM OF THE UNIVERSITY OF OTTAWA
[Motion for Leave to Intervene, Rule 13.01]

Part I – Overview

1. This action arises out of defamatory statements made by the Defendant, Denis Rancourt, on his blog, which is entitled "U of O Watch". He defamed the Plaintiff, Joanne St. Lewis, who is a Professor of Law at the University of Ottawa. He wrote about an evaluation Ms. St. Lewis had prepared at the request of the University of a report which had accused the University of systemic racism. His blog entry was entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?"

2. The University is reimbursing Professor St. Lewis for her legal fees because Mr. Rancourt's defamatory remarks were occasioned by work which she undertook on behalf of the University, in the course of her duties and responsibilities as an employee. Mr. Rancourt now brings a motion (the "Champerty Motion") seeking to stay or dismiss the defamation action on the grounds that it is an abuse of process. In essence, Mr. Rancourt is

alleging that the University of Ottawa is guilty of the torts of maintenance and champerty, and is party to an agreement to abuse the Court's process.

3. The University of Ottawa seeks leave to intervene as a party solely on the Champerty Motion. It seeks that status so that it may file evidence and make submissions at the hearing of the motion.

Part II – Summary of the Facts

A. Background as set out in the Pleadings

4. The Plaintiff, Joanne St-Lewis, is an Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa and in November 2008 was the Director of the Human Rights Research and Education Centre of the University of Ottawa.

> **Statement of Claim, para. 2, Exhibit "A" to Affidavit of Christopher Hart, sworn February 1, 2012 ("Hart Affidavit"), *Motion Record of the University of Ottawa* ("*Motion Record*"), Tab 2A, p. 12.**

5. The Defendant, Denis Rancourt, is a former professor at the University of Ottawa. He publishes a blog entitled "UofO Watch" which he claims is "devoted to transparency at the University of Ottawa" and "exposes institutional behaviour that is not consistent with the public good".

> **Statement of Claim, para. 22, Exhibit "A" to Hart Affidavit, *Motion Record*, Tab 2A, pP. 15-16.**

6. In or about November 2008, Professor St. Lewis was asked to prepare an evaluation of a report by the Student Appeal Centre of the Student Federation of the University of Ottawa ("Student Appeal Centre Report"), which was released on November 12, 2008. The Student Appeal Centre Report accused the University of Ottawa of systemic racism.

> **Statement of Claim, para. 23, Exhibit "A" to Hart Affidavit, *Motion Record*, at Tab 2A, p. 16.**

7. Professor St. Lewis' evaluation of the Student Appeal Centre Report was released on November 25, 2008. She concluded that the Student Appeal Centre Report was

methodologically flawed, lacked substantiation, and failed to provide a sufficient foundation to enable the University of Ottawa to identify the specific areas of concern or to assess the depth or existence of a problem.

Statement of Claim, para. 26, Exhibit "A" to Hart Affidavit, *Motion Record,* Tab 2A, p. 16.

8. Mr. Rancourt, the Defendant, published statements about Professor St. Lewis' evaluation on more than one occasion. In December 2008, in a publication which was republished in February 2011, he likened Professor St. Lewis' evaluation to academic fraud, and criticized the evaluation as unprofessional, intellectually dishonest, and lacking in independence. On February 11, 2011, the Defendant published statements about the Plaintiff's evaluation of the Student Appeal Centre Report on his UofO Watch blog and entitled the blog "Did Professor Joanne St-Lewis act as Allan Rock's house negro?"

Statement of Claim, paras. 30, and 35-37, Exhibit "A" to Hart Affidavit, *Motion Record,* Tab 2A, Pp. 17-19.

B. The Defendant's Motion to Stay or Dismiss (Champerty Motion) the Libel Action

9. The Defendant now brings a motion seeking to have the libel action against him stayed or dismissed on the ground that the libel action is vexatious or is otherwise an abuse of process pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure*. He alleges that the action is based on a "champertous agreement" between the Plaintiff and the University of Ottawa.

Notice of Motion, pp. 2-3, paras. 1, and 6-7, Exhibit "E" to Hart Affidavit, *Motion Record,* Tab 2E, pp. 73-74.

C. Allegations Against the University of Ottawa

10. The Defendant alleges that the action is based on a champertous agreement because the University's lawyer advised him that the University was reimbursing Professor St. Lewis for her legal fees incurred in this proceeding. On October 25, 2011, David Scott, counsel for the University, wrote to Mr. Rancourt, stating:

> Indeed, the University of Ottawa is reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the

> Courts against you. Your defamatory remarks about Professor St. Lewis were occasioned by work which she undertook at the request of the University and in the course of her duties and responsibilities as an employee. Her efforts were not personal, but in the interests of the University. Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and, in the view of the University, alone creates a moral obligation to provide support for her in defence of her reputation.
>
> **Letter, David W. Scott to Denis Rancourt, Exhibit "D" to Hart Affidavit, *Motion Record,* Tab 2D, p. 71.**

11. Mr. Rancourt relies, in his Affidavit in support of the Champerty Motion, on the pleading by the Plaintiff, in paragraph 60 of the Statement of Claim, that in the event that punitive damages are awarded against the Defendant, she will donate half of the award to the Danny Glover Routes To Freedom Graduate Law Student Scholarship Fund. He argues that because of this, the University is "receiving a share in the proceeds of the action".

12. The Defendant is involved in a labour arbitration in respect of his dismissal by the University. In the Champerty Motion, Mr. Rancourt relies on his evidence (disputed by the University) that :

> At the October 31, 2011 session of the present on-going binding labour arbitration about the dismissal the counsel for the University stated on the record to the tribunal that the University was using the fact of the instant defamation litigation and its content as evidence against me, in view of seeking an arbitration award to bar me from a return to my post even if the dismissal is found to have been unjustified.
>
> **Affidavit of Denis Rancourt, sworn January 16, 2012, para. 41; Exhibit "F" to Hart Affidavit, *Motion Record,* Tab 2F, pp. 85-86.**

Part III – Issues and the Law

A. Issue

13. The issue raised by this motion is whether the University of Ottawa should be granted intervenor status as a party solely on the Champerty Motion.

B. The Court May Grant Leave to Intervene as an Added Party to a Motion

1) Test Under Rule 13.01 of the *Ontario Rules of Civil Procedure*

14. Rule 13.01 of the *Ontario Rules of Civil Procedure* ("*Rules*") permits the court to grant leave to a non-party to intervene in a proceeding.

> LEAVE TO INTERVENE AS ADDED PARTY
>
> 13.01(1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,
>
> (a) an interest in the subject matter of the proceeding;
>
> (b) that the person may be adversely affected by a judgment in the proceeding; or
>
> (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.
>
> (2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.
>
> ***Rules of Civil Procedure,* Rule 13.01; [Tab A]**

2) Intervention is Permitted on a Motion

15. Although Rule 13.01 provides, on its face, only that a non-party may be added as a party to a proceeding (not a motion), the Court has jurisdiction, either through its inherent power to control its own process or by way of a purposive interpretation of the rule, to grant leave to allow a person to intervene as an added party on a motion. In exercising that jurisdiction, the court should consider the three tests found in clauses (a), (b), and (c) of Rule 13.02(1).

> ***Finlayson v. GMAC Leaseco Ltd.* (2007), 84 O.R. (3d) 680 at paras. 17-26 (S.C.J.) ("*Finlayson*"); [Tab 1]**
>
> ***Trempe v. Reybroek* (2002), 57 O.R. (3d) 786 at para. 13 (S.C.J.) ("*Trempe*"); [Tab 2]**

3) Leave May be Granted For One of Three Disjunctive Reasons

16. Under rule 13.01, a non-party may seek leave to intervene on the grounds that:

(a) he or she has an interest in the subject-matter of the proceeding or its outcome;

(b) the non-party may be adversely affected by a judgment in the proceeding; or

(c) there exists between the non-party and one or more of the parties to the proceedings a question of law or fact in common with one or more of the questions in issue.

17. It is only necessary for a proposed intervenor to meet one of the three tests found under clauses (a), (b) and (c) of Rule 13.01(1) in order to be added as a party to a motion.

> ***Trempe, supra,*** **at para. 23; [Tab 2]**
>
> ***Finlayson, supra,*** **at para. 26; [Tab 1]**

C. The University of Ottawa Meets the Test for Leave to Intervene

1) Champerty and Maintenance are Torts, Not Defences to an Action

18. Maintenance and champerty are torts. Neither of them, without more, provides a defence to an action.

> ***Webb v. Metro Toronto Condominium Corp. No. 973,*** **[2004] O.J. No. 5973 at para. 8 (S.C.J.); [Tab 3]**
>
> ***Woroniuk v. Woroniuk*** **(1977), 17 O.R. (2d) 460 (S.C.O.) (Ont. Master); [Tab 4]**

19. Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes of others in which the maintainer has no interest whatsoever and where the assistance he or she renders is without justification or excuse. Champerty is an egregious form of maintenance in which there is the added element that the maintainer shares in the profits of the litigation. Without maintenance there can be no champerty.

> ***McIntyre Estate v. Ontario (Attorney General)*** **(2002), 61 O.R. (3d) 257 at para. 26; [2002] O.J. No. 3417 (C.A.); [Tab 5]**

20. The element of officious intermeddling – which is encouraging litigation that the parties would not otherwise pursue – must be present to constitute the tort.

> ***Buday v. Locator of Missing Heirs Inc.*** **(1993), 16 O.R. (3d) 257; [1993] O.J. No. 2999 at p. 9 (C.A.); [Tab 6]**

21. If there is an allegation of maintenance, the Court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer. There can be no maintenance if the alleged maintainer had a justifying motive.

> ***McIntyre Estate, supra,*** **paras. 27 and 34; [Tab 5]**

22. If leave is granted to intervene in the Champerty Motion, the University proposes to file an affidavit from Mr. Rock explaining the reasons why he decided to reimburse Professor St. Lewis for her legal fees; the circumstances in which that decision was made; his lack of knowledge, at the time that the agreement was made, that Professor St. Lewis intended to donate to the University a portion of any punitive damages award she may receive; and that the University has not controlled the litigation in any way.

23. If leave is granted to the University to intervene in the Champerty Motion, the University proposes to file an affidavit from one of the University's lawyers in the labour arbitration, and attach a written submission filed by the University in that arbitration, to explain that the University is not using the "fact of the instant defamation litigation" in the arbitration. The University is not asking the arbitrator to determine issues relating to that proceeding; it is asking the arbitrator to consider the content of Mr. Rancourt's blog – the statement he made about Professor St. Lewis – not the fact that he is involved in the lawsuit.

2) Champerty and Maintenance can only be the Basis of a Finding of Abuse of Process Where There is "Trafficking in Litigation"

24. Although champerty and maintenance cannot, by themselves, be the basis of a finding of abuse of process, an action can be stayed where the torts are present and, in addition, the action is one in which there has been "trafficking in litigation" – that is, "an

unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation".

> ***Operation 1 Inc. v. Phillips,*** **[2004] O.J. No. 5290 at paras. 44-54, esp. 47 (S.C.J.); [Tab 7]**
>
> ***Adi v. Ditta,*** **[2011] O.J. No. 1899; 2011 ONSC 2496 at paras. 53-54 (S.C.J.); [Tab 8]**

3) The University of Ottawa Meets the Tests for Intervention

25. The University of Ottawa meets all of the tests for intervention in Rule 13.01(1).

26. It has an interest in the subject matter of the Champerty Motion, because Mr. Rancourt alleges that the University is guilty of the torts of maintenance and champerty, and is engaged in an abuse of the court's process. He alleges that the University is an officious intermeddler in this litigation, with an improper motive.

27. Similarly, the University may be adversely affected by the outcome of the motion. The allegations which the Defendant makes are serious, and if the Court finds them to be well-founded the University's reputation will be harmed.

28. There is a question of law and fact in common between the University and Mr. Rancourt with respect to the Champerty Motion. Mr. Rancourt is seeking a finding from the Court that the elements of the civil torts of maintenance and champerty are made out by him against the University. If he is successful in establishing this, and can prove special damages resulting therefrom, he would be entitled to commence a claim for damages against the University.

29. Finally, there will be no undue, or any, delay or prejudice to the parties if leave to intervene is granted. As is evidenced by the University's lawyers' correspondence of January 19, 2012, the University has no desire to delay the hearing of the Champerty Motion, the hearing of which Mr. Rancourt proposed for March 29, 2012. In fact, the University proposes that the Champerty Motion be heard before that date. It is prepared to agree to a schedule for its intervention motion which will ensure that there is no delay.

Email, Peter Doody to Denis Rancourt, January 19, 2012, Exhibit "H" to Hart Affidavit, *Motion Record,* Tab 2H, p. __.

Part IV – Order Requested

30. The University of Ottawa respectfully requests:

(a) an Order granting the University of Ottawa leave to intervene as a party solely on the Champerty Motion dated on January 5, 2012;

(b) an Order abridging the time for service of this motion, if necessary;

(c) its costs of this motion; and

(d) such further and other relief as counsel may advise and this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of February 2012.

Peter K. Doody

Jacquie El-Chammas

BORDEN LADNER GERVAIS
Barristers and Solicitors
1100 – 100 Queen Street
Ottawa, ON K1P 1J9

Tel: 613.237.5160
Fax: 613.230.8842

Lawyers for the Proposed Intervenor, University of Ottawa

Schedule A – Authorities

1. *Finlayson v. GMAC Leaseco Ltd.* (2007), 84 O.R. (3d) 680 (S.C.J.)
2. *Trempe v. Reybroek* (2002), 57 O.R. (3d) 786 (S.C.J.)
3. *Webb v. Metro Toronto Condominium Corp. No. 973,* [2004] O.J. No. 5973 (S.C.J.)
4. *Woroniuk v. Woroniuk,* (1977), 17 O.R. (2d) 460 (S.C.O) (Ont. Master)
5. *McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257; [2002] O.J. No. 3417 (C.A.)
6. *Buday v. Locator of Missing Heirs Inc.* (1993), 16 O.R. (3d) 257; [1993] O.J. No. 2999 (C.A.)
7. *Operation 1 Inc. v. Phillips,* [2004] O.J. No. 5290 (S.C.J.)
8. *Adi v. Ditta,* [2011] O.J. No. 1899; 2011 ONSC 2496 (S.C.J.)

Schedule B – Statutes, Regulations and Bylaws

1. *Rules of Civil Procedure,* Rule 13.01

Court File No. 11–51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

Rec'd 7-Feb-2012

DENIS RANCOURT

Defendant

MOTION RECORD OF THE UNIVERSTIY OF OTTAWA

[Motion for Leave to Intervene, Rule 13.01]

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
World Exchange Plaza
1100 – 100 Queen Street
Ottawa, ON K1P 1J9

Peter K. Doody (*LSUC #22423S*)
Jacquie El-Chammas (*LSUC #58027O*)
Telephone: (613) 237-5160
Facsimile: (613) 230-8842

Lawyers for the Proposed Intervenor,
University of Ottawa

MOTION RECORD OF THE UNIVERSITY OF OTTAWA

Table of Contents

Court File No. 11–51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

– and –

DENIS RANCOURT

Defendant

NOTICE OF MOTION FOR LEAVE TO INTERVENE
BROUGHT BY UNIVERSITY OF OTTAWA
(*Leave to Intervene*, Rule 13.01)

THE PROPOSED INTERVENOR, UNIVERSITY OF OTTAWA, will make a motion to the Court at a date and time to be fixed by the Case Management Master or Judge, to be heard at the Court House at 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

(a) an Order granting the University of Ottawa leave to intervene as a party solely on the Defendant's motion to stay or dismiss (champerty motion) ("Champerty Motion") filed on January 6, 2012;

(b) an Order abridging the time for service of this motion, if necessary; and

(c) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff, Joanne St-Lewis, is an Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa and, in November 2008, was the Director of the Human Rights Research and Education Centre of the University of Ottawa.

2. The Defendant, Denis Rancourt, is a former professor at the University of Ottawa. In May 2007, the Defendant started a blog entitled UofO Watch.

3. In or about November 2008, the Plaintiff was asked to prepare an evaluation of a report by the Student Appeal Centre of the Student Federation of the University of Ottawa ("Student Appeal Centre Report"), which was released on November 12, 2008. The Student Appeal Centre Report accused the University of Ottawa of systematic racism.

4. The Plaintiff's evaluation of the Student Appeal Centre Report was released on November 25, 2008 and concluded that the Student Appeal Centre Report was methodologically flawed, lacked substantiation, and failed to provide a sufficient foundation to enable the University of Ottawa to identify the specific areas of concern or to assess the depth or existence of a problem.

5. On February 11, 2011, the Defendant published statements about the Plaintiff's evaluation of the Student Appeal Centre Report on his UofO Watch blog and entitled the blog "Did Professor Joanne St-Lewis act as Allan Rock's house negro?" alleging that the Plaintiff was not independent in conducting her evaluation and was influenced by the University of Ottawa and specifically by Allan Rock, President of the University of Ottawa.

6. The Plaintiff commenced a libel action on June 23, 2011.

7. The Defendant now brings a motion (the Champerty Motion) seeking to have the libel action against him stayed or dismissed on the ground that the libel action is vexatious or is otherwise an abuse of process pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure.*

8. The Defendant's Champerty Motion is based on his allegations that a champertous agreement exists between the Plaintiff and the University of Ottawa.

9. The University of Ottawa may be adversely affected by a judgment in the Champerty Motion.

10. There exists between the University of Ottawa and the parties to the Champerty Motion a question of law and fact in common with one or more of the questions in issue.

11. There will be no undue, or any, delay or prejudice to the parties if leave to intervene is granted.

12. Rule 13.01(1) of the *Rules of Civil Procedure.*

13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Affidavit of Christopher Hart, sworn February 1, 2012; and

(b) such further and other evidence as counsel may submit and this Honourable Court may permit.

DATE: February 1, 2012

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
World Exchange Plaza
1100 – 100 Queen Street
Ottawa ON K1P 1J9

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Jacquie El-Chammas (*LSUC #58027O*)
(613) 237-5160 telephone
(613) 230-8842 facsimile
Lawyers for the Proposed Intervenor,
University of Ottawa

TO: **Denis Rancourt**
[redacted]

Defendant

AND TO: **GOWLING LAFLEUR HENDERSON LLP**
Barristers and Solicitors
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3

Richard G. Dearden
Wendy J. Wagner
(613) 786-0135 telephone
(613) 788-3430 facsimile

Lawyers for the Plaintiff

207

JOANNE ST. LEWIS
Plaintiff

– and –

DENIS RANCOURT
Defendant

Court File No. 11–51657

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding Commenced at OTTAWA

NOTICE OF MOTION FOR LEAVE TO INTERVENE

BORDEN LADNER GERVAIS LLP
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Jacquie El-Chammas (*LSUC #58027O*)
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(613) 230-8842 facsimile

Lawyers for the Proposed Intervenor,
University of Ottawa

Facsimile No. for Richard Dearden (613) 788-3430
Facsimile No. for Defendant: No Fax

(File: 308227-000158) BOX 368

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

– and –

DENIS RANCOURT

Defendant

AFFIDAVIT OF CHRISTOPHER HART
(Sworn February 1, 2012)

I, CHRISTOPHER HART, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

Background

1. I am an articling student at the law firm of Borden Ladner Gervais LLP ("BLG"), lawyers for the University of Ottawa, the proposed intervenor, and as such I have knowledge of the matters to which I hereinafter depose, save and except where I am advised by others, in which case I verily believe such information to be true.

2. The Plaintiff alleges that the Defendant published false, defamatory and racist articles about her that directly attack her personal and professional reputation as a lawyer and a Law Professor at the University of Ottawa. Attached as **Exhibit "A"** is a copy of the Statement of Claim issued on June 23, 2011.

3. The Defendant filed a Statement of Defence on July 22, 2011. Attached as **Exhibit "B"** is a copy of the Statement of Defence dated July 22, 2011.

4. The Plaintiff filed a Reply on August 5, 2011. Attached as **Exhibit "C"** is a copy of the Reply dated August 5, 2011.

5. On October 25, 2011, Mr. David W. Scott sent a letter to the Defendant. A copy is attached hereto as **Exhibit "D"**.

The Defendant's Motion to Stay or Dismiss (Champerty Motion) the Libel Action

6. The Defendant now brings a motion seeking to have the libel action against him stayed or dismissed on the ground that the libel action is vexatious or is otherwise an abuse of process pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure*. Attached as **Exhibits "E"** and **"F"** is a copy of the Notice of Motion dated January 5, 2012, and a copy of the Affidavit of Denis Rancourt, sworn January 16, 2012 in support, including Exhibits "A" to "Z" thereto.

7. On January 6 and 16, 2012, the Defendant sent an email to all counsel, including Mr. David Scott of this firm, advisng that he wished to examine, for the purposes of the Champerty Motion, Allan Rock, the President of the University of Ottawa, and Robert J. Giroux, the Chair of the Board of Directors of the the University of Ottawa. Attached as **Exhibit "G"** is a copy of the email string.

8. In response to that email, on January 17, 2012, Mr. Peter Doody, from BLG, advised the Defendant that a motion for leave to intervene would be brought on behalf of the University of Ottawa, which would also deal with the issues arising out of his request to examine Allan Rock and Robert J. Giroux. Mr. Doody's email is attached hereto as Exhibit "G".

9. On January 19, 2012, Mr. Peter Doody further wrote to the Defendant advising him that the University of Ottawa had no desire to delay the hearing of the Champerty Motion, in response to the Defendant's concerns. Attached as **Exhibit "H"** is a copy of the email from Mr. Doody to the Defendant.

SWORN BEFORE ME at
the City of Ottawa
in the Province of Ontario
this 1st day of February, 2012

A Commissioner for Taking Affidavits

CHRISTOPHER HART

OTT01\4896006\v2

Ryan Gardner Steeves, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

211 260

JOANNE ST. LEWIS
Plaintiff

– and –

DENIS RANCOURT
Defendant

Court File No. 11–51657

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding Commenced at OTTAWA

AFFIDAVIT OF CHRISTOPHER HART
(Sworn February 1, 2012)

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Facsimile No. for Defendant: No Fax

(File: 308227-000158) BOX 368

JOANNE ST. LEWIS
Plaintiff

– and –

DENIS RANCOURT
Defendant

Court File No. . 11–51657

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding Commenced at OTTAWA

MOTION RECORD
OF THE UNIVERSITY OF OTTAWA
[Motion for Leave to Intervene, Rule 13.01]

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University of Ottawa

Facsimile No. for Richard Dearden (613) 788-3430
Facsimile No. for Defendant: No Fax

(File: 308227-000158) BOX 368

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

January 26, 2011

R. Dearden for Pl.
Denis Rancourt in person.
P. Doody for the University of Ottawa.

The parties consent to the motion for case management and in my view this is a case which would benefit from the active management when having regard to the criteria in Rule 77.

The moving party has decided to defer a summary judgment motion. What the plaintiff does ask is an order establishing a timetable for the action and for a charpenty motion. Mr Doody appears because the University will seek leave to intervene in the charpenty motion. He also asks for a timetable to permit an orderly sequencing of the events which may involve the university.

Mr Rancourt agrees that the action should be case managed. He also indicates that he has no objection to a case conference being convened

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

MOTION RECORD OF THE PLAINTIFF

GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
Suite 2600
160 Elgin Street
Ottawa ON K1P 1C3

Tel: (613) 786-0135
Fax: (613) 788-3430

Richard G. Dearden (LSUC #019087H)
Wendy J. Wagner (LSUC#46380Q)
Counsel for the Plaintiff

and furthermore that he has no objection to the case management taking place in English. He advises however that he will be exercising his right to request the hearing of the motions at trial itself to be in French as bilingual. Ma Ruscent proposes however that the case conference be on a different day to give him time to prepare

Having regard to all of the above, to the purposes of case management & to the imperatives of efficiency and cost effectiveness for the parties and for the court an order will go as follows:

a) This action is subject to Rule 77.

b) There will be an immediate case conference to determine what aspect of the case may be scheduled at this time and whether any procedural orders should be made at this time.

Ver

MASTER C. MACLEOD

Costs

Mr Rancourt asked to make submissions on costs. He argues that the motion should not have been required because he had previously agreed to case management and he argues that the plaintiffs have refused to provide information such as the information at tab H of his motion record. This however was not the issue argued today. While it is true that the motion to schedule a summary judgment motion was not argued, Mr Rancourt knew perfectly well that the plaintiff was seeking an immediate case conference and Mr Rancourt opposed that. It took He spent the better part of our hour to deal with the argument against a case conference and to hear cost submissions. In my view the plaintiff has been successful on the matter that was argued & the plaintiff would be entitled to costs of the morning. Accordingly the plaintiff shall have costs of the portion of the morning devoted to this argument fixed at $300.00

MASTER C. MACLEOD

January 26, 2012 Endorsement of Master C. MacLeod

Plaintiff's "case management motion"
St. Lewis v. Rancourt, Court File No. 11-51657

(Typed from the handwritten endorsement)

[backsheet]

January 26, 2012

R. Dearden for Pl.
Denis Rancourt in person
P. Doody for the University of Ottawa

The parties consent to the motion for case management and in my view this is a case which would benefit from active management having regard to the criteria in Rule 77.

The moving party has decided to defer a summary judgement motion. What the plaintiff does ask is an order establishing a timetable for the action and for a champerty motion. Mr Doodey appears because the University will seek leave to intervene in the champerty motion. He also asks for a timetable to permit an orderly sequencing of the events which may involve the university.

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[page (2)]

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signed
MASTER C. MACLEOD

[page (3)]

Costs

Mr Rancourt asked to make submission on costs. He argues that the motion should not have been required because he had previously agreed to case management and he argues that the plaintiffs have refused to provide information such as the information at tab H of his motion record. This however was not the issue argued today. While it is true that the motion to schedule a summary judgement motion was not argued, Mr Rancourt knew perfectly well that the plaintiff was seeking an immediate case conference and mr Rancourt opposed that. It took the better part of an hour to deal with the argument against a case conference and to hear cost submissions. In my view the plaintiff has been successful on the motion that was argued and the plaintiff would be entitled to costs of the morning. Accordingly the plaintiff shall have costs of the portion of the morning devoted to this argument fixed at $300.00.

signed
MASTER C. MACLEOD

Gmail by Google

Denis Rancourt <denis.rancourt@gmail.com>

11-51657: St. Lewis v Rancourt

Estabrooks, Kathy (JUS) <Kathy.Estabrooks@ontario.ca> 26 January 2012 14:37
To: denis.rancourt@gmail.com, richard.dearden@gowlings.com, Peter Doody <PDoody@blgcanada.com>
Cc: "Low, Jacqueline (JUS)" <Jacqueline.Low@ontario.ca>

Good afternoon,

There will not be a hearing this afternoon *(January 26, 2012)* . The trial coordinator's office will be in contact with the parties to schedule a case conference date and time before a bilingual judge.

Thank you

Kathy Estabrooks

Case Management Coordinator

Ottawa Courthouse

5022-161 Elgin Street

Ottawa, ON K2P 2K1

Ph: (613) 239-1047

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Richard G Dearden
Direct 613-786-0135
Direct Fax 613-788-3430
richard.dearden@gowlings.com

BY HAND

September 27, 2012

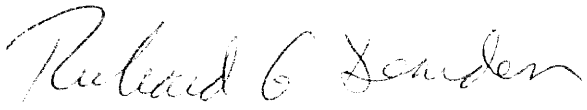
Elie Labaky
Trial Coordinator
Ottawa Court House
161 Elgin Street, 5th Floor
Ottawa, ON K2P 2K1

Dear Mr. Labaky:

Re: Professor St. Lewis v. Denis Rancourt
(Court File No.: 11-51657)

Please provide Justice Smith with a copy of the attached List of Motions Pending to be dealt with at today's Case Conference scheduled for 10:00am.

Yours truly,



Richard G. Dearden
RGD/mj
Enclosure

cc: Denis Rancourt
Peter Doody

OTT_LAW\ 3333411\1

SEPTEMBER 27, 2012 CASE CONFERENCE – LIST OF MOTIONS PENDING

I. CHAMPERTY MOTION

1. Defendant's Motion For Leave To Appeal To Divisional Court (Justice Beaudoin's June 20th refusals rulings – U of O witnesses)

   Defendant's Motion Record and Factum: serve and file [October 4th]

   Professor St. Lewis and University of Ottawa Motion Records And Facta: serve and file [October 18]

   Argument (1 day): [October 23, 24, November 5-9]

2. Defendant's Motion For Leave to Appeal To Divisional Court (Justice Smith's July 31st "Letter")

   Same schedule as #1 above

3. Defendant's Motion For Leave To Appeal To Divisional Court (Justice Smith's September 6th Refusals rulings – Professor St. Lewis' cross-examination)

   Same schedule as #1 above

4. Defendant's Champerty/Abuse of Process Motion

   No dates scheduled for serving Motion Records/Facta and 1 day argument

II. LIBEL ACTION

1. Plaintiff's Refusals Motion – Examination for Discovery of Mr. Rancourt

   Set a date for Argument (1/2 day)

2. Defendant's Refusals Motion – Examination For Discovery of Professor St. Lewis

   Set a date for Argument (1/2 day)

3. Plaintiff's Refusals Motion – Mireille Gervais Cross-Examination

   Set a date for argument (2 hours)

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Moving Party
(Plaintiff)

- and -

DENIS RANCOURT

Responding Party
(Defendant)

COSTS THROWN AWAY RECORD OF THE PLAINTIFF
PROFESSOR JOANNE ST. LEWIS

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Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Moving Party
(Plaintiff)

- and -

DENIS RANCOURT

Responding Party
(Defendant)

COSTS THROWN AWAY OUTLINE OF THE PLAINTIFF
PROFESSOR JOANNE ST. LEWIS

A. Request For Costs Thrown Away

1. The Plaintiff, Professor St. Lewis, requests an Order for costs thrown away during a Case Conference held before Master MacLeod on January 26, 2012 pursuant to paragraph 8 of Master MacLeod's Amended Endorsement at Case Conference dated January 26, 2012.

2. Master MacLeod's Amended Endorsement at Case Conference (January 26, 2012) states at paragraphs 4-8:

> [4.] It is arguable that Mr. Rancourt had already exercised his linguistic rights with respect to the case conference by arguing the motion in English and advising the court that he would proceed with case conferences in English and that attempting to change his mind in the middle of the proceeding is simply an abuse of process designed to obtain the adjournment he had already been refused. I am however reluctant to compel him to proceed in English because it is inefficient to add a further controversy to what has already become a highly publicized dispute. Ordinarily there are bilingual judicial officers readily available but I was unable to arrange to have another judge or master take the conference on short notice.
>
> [5.] Accordingly, the case conference is adjourned to a date and time to be set by the court before a bilingual master or judge. I had advised the parties that they would be required to check with the case management office at 3:30 p.m. to see if a bilingual case conference was available today unless they were notified by e-mail before that time that it was not necessary to do so. In the event, all of the judges in Ottawa were already

occupied.

[6.] My colleague Master Roger is fully bilingual but he has a conflict which prevents him hearing a matter involving his former partner, Mr. Doody.

[7.] Consequently the case conference is adjourned to a date to be set by the registrar before a bilingual judge so that Mr. Rancourt may make submissions in whichever language he chooses.

[8.] The case management judge may also deal with the question of costs for today.

B. The Importance Of The Issues

3. The Plaintiff, Professor Joanne St. Lewis, brought a motion seeking to have this libel action assigned to case management and requested a Case Conference to be held on January 26th to set a timetable for the libel action and the Defendant's champerty motion. On January 26th, Master MacLeod ordered that this libel action be assigned for case management and that a Case Conference take place immediately.

4. The Defendant had ample notice that the Plaintiff and the University of Ottawa would request that timetables be set on January 26th. In response, the Defendant informed counsel that he refused to set timetables. The Defendant had no intention whatsoever to set timetables for the libel action or champerty motion on January 26th which is why he circumvented Master MacLeod's Order that a Case Conference take place immediately.

5. Professor St. Lewis seeks a trial date as early as possible because the Defendant continues to publish additional defamatory statements and racial slurs about her. By letter dated January 30, 2012, counsel for the Plaintiff notified the Defendant to take down two articles he published on January 27th that falsely represent the proceedings that took place before Master MacLeod: "ENFRANCAIS: L'U d'O oppose le bilinguisme devant les tribunaux" and "Bilingual U of O hires English – only lawyers – University Senator reports".

6. Paragraph 1 of the Take Down notice (pages 11-15 of the Costs Thrown Away Record) states:

> "1. On January 27, 2012 you published an article entitled " Bilingual U of O hires English-only lawyers - University Senator reports" (attached). The University Senator you refer to is your supporter Joseph Hickey. Your January 27th article published the following false and defamatory statement: "English speaking lawyer Richard Dearden indicated to the Court that he would seek punitive (abuse of process) costs against the defendant (Rancourt) for demanding a bilingual proceeding". This statement is blatantly false and is a serious misrepresentation of the proceedings before Master MacLeod on January 26th. This letter notifies you to take down this article immediately."

7. Paragraphs 2 and 3 of the Take Down notice state:

> "2. On January 27, 2012 you published another article entitled "EN FRANCAIS: L'U d' O oppose le bilinguisme devant les tribunaux" (attached). This headline is blatantly false and you know that it is false. The University of Ottawa did not oppose bilingualism before Master MacLeod. I did not oppose bilingualism. Joanne St. Lewis did not oppose bilingualism. And Master MacLeod did not oppose bilingualism. This letter notifies you to take down this article as it seriously misrepresents the proceedings before Master

MacLeod on January 26th."

"3. Your January 27th article also publishes the following false and defamatory statements: "Cela a cause des plaintes aigues des avocats unilingues anglophone retenus par l'universite. Maitre Richard Dearden , en particulier, a indique a la cours qu'il chercherait a imposer des frais punitifs contre le professeur pour "abus de procedure" quand ce dernier devant un refus de la cours se mi simplement a adresser les intervenants en francais lors d'une seance juridique, apres avoir signale les regles du Procureur general pour l'Ontario vis a vis bilinguisme devant les tribunaux".

This statement is blatantly false and seriously misrepresents the proceedings before Master MacLeod on January 26th. Your conduct during the Case Conference before Master MacLeod on January 26th was contemptuous and circumvented the Master's Order that a Case Conference be held immediately. You intentionally omitted from your article that Master MacLeod's January 26th Endorsement At Case Conference states at paragraph 4:

"It is arguable that Mr. Rancourt had already waived his linguistic rights with respect to the case conference and that attempting to change his mind in the middle of the proceeding is simply an abuse of process designed to obtain the adjournment he had already been refused. I am however reluctant to compel him to proceed in English because it is inefficient to add a further controversy to what has already become a highly publicized dispute...".

Master MacLeod could not find a bilingual judicial officer on January 26th and was compelled to adjourn the Case Conference. Master MacLeod deferred the question of costs thrown away to the bilingual Judge or Master who would be presiding over the adjourned Case Conference. You resiled from a representation you made to the Court that the January 26th proceedings would be conducted in the English language. That conduct is inexcusable and caused costs thrown away that will be sought against you."

8. The Defendant did not stop at misrepresenting the proceedings before Master MacLeod. He spitefully published that Professor St. Lewis was a "reine negre". Paragraph 5 of the Take Down notice states:

"5. Lastly, and most egregiously, you have published a racial slur about Professor St. Lewis by calling her a "reine negre". This racist slur was spiteful, intentional and outrageous. This letter notifies you to take down your January 27th article immediately."

9. The Defendant refuses to take down his January 27th articles. Rather, he sent counsel for Professor St. Lewis an email on January 31st at 9:19 a.m. (page 17 of the Costs Thrown Away Record) stating that "the lawsuit which has no merit and is intended precisely to censor my public participation". The Defendant then proceeds to accuse counsel for Professor St. Lewis of "intimidation", "abuse of process" and making "contrived accusations of malice".

C. The Conduct Of Any Party That Tended To Shorten Or To Lengthen Unnecessarily The Duration Of The Proceeding

10. The inexcusable conduct of the Defendant during the January 26th Case Conference (detailed below) unnecessarily lengthened the duration of the Case Conference before Master MacLeod on January 26, 2012 in that the Case Conference had to be adjourned to February 8th.

D. Whether Any Step In The Proceeding Was Improper The Defendant's Conduct Was An Abuse Of Process and Contemptuous

11. The Defendant's conduct during the January 26th Case Conference was not only improper, it was contemptuous. This conduct caused costs thrown away.

12. The Defendant represented to Master MacLeod that the January 26th proceedings could take place in the English language. He exercised his language rights that day to proceed in the English language. The Defendant's arguments opposing the hearing of a Case Conference on January 26th were entirely in the English language.

13. After Master MacLeod ordered that a Case Conference be held immediately, the Defendant resiled from his representation to the Court that the proceedings that day would be conducted in English. The Defendant demanded that the Case Conference proceed in French and from that point onwards the Defendant spoke only in French. Counsel for the Plaintiff (Richard Dearden), counsel for the University of Ottawa (Peter Doody) and Master MacLeod are not bilingual.

14. As a result of this sharp practice, the Defendant succeeded in circumventing Master MacLeod's Order that a Case Conference take place immediately because a bilingual Judge was unavailable that day. The Case Conference was adjourned to February 8th. Costs thrown away are warranted because the Defendant's abusive and contemptuous conduct deprived Professor St. Lewis of an opportunity to have a timetable fixed in her libel action so that a trial can take place as soon as possible.

15. The Defendant clearly understood the Order - a Case Conference was to be held immediately. The Defendant deliberately and willfully disobeyed that Order and frustrated the fundamental purpose of the Order by changing his mind and demanding that the Case Conference be conducted bilingually.

16. Master MacLeod at all times respected the Defendant's right to a bilingual proceeding as did counsel for the Plaintiff and the University of Ottawa. The Court has the power to control its own process and has the means to address the Defendant's contemptuous conduct through a costs award. A costs sanction is also necessary to prevent the Defendant, a self-proclaimed anarchist, from ignoring future Orders of the Court. Accordingly, the Plaintiff Professor St. Lewis seeks costs thrown away on a full indemnity basis as detailed below.

E. The Experience Of The Party's Lawyer

17. Richard G. Dearden – Call to Bar 1979

F. The Hours Spent, The Rates Sought For Costs And The Rate Actually Charged By The Party's Lawyer

18. The Defendant's conduct caused costs thrown away as follows:

FEE ITEMS	PERSONS	HOURS	PARTIAL INDEMNITY RATE	SUBSTANTIAL INDEMNITY RATE	FULL INDEMNITY RATE
Attendance at January 26th case conference which had to be adjourned	Richard G. Dearden (1979)	2	$315/hr ($630.00)	$420/hr ($840.00)	$525/hr ($1050.00)
Preparation for re-attendance at the adjourned case conference and drafting of revised Timetables for the libel action and champtery motion	Richard G. Dearden	1	$315/hr ($315.00)	$420/hr ($420.00)	$525/hr ($525.00)
Preparation of the Costs Thrown Away Outline; argument of costs thrown away	Richard G. Dearden	3	$315/hr ($945.00)	$420/hr ($1260.00)	$525/hr ($1575.00)
Research	Anastasia Semenova	3	$120/hr ($360.00)	$160/hr ($480.00)	$200/hr ($600.00)
TOTAL:			**$2250.00**	**$3000.00**	**$3750.00**

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: February 3, 2012

Richard G. Dearden

Richard G. Dearden
Gowling Lafleur Henderson LLP

CITATION: St. Lewis v. Rancourt, 2013 ONSC 4729
COURT FILE NO.: 11-51657
DATE: 2013/07/26

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
JOANNE ST. LEWIS	)	Richard G. Dearden and Anastasia Semenova, for the Plaintiff
Plaintiff	)	
– and –	)	
DENIS RANCOURT	)	
Defendant	)	Self-Represented
	)	**HEARD:** By Written Submissions

COSTS DECISION – DEFENDANT SEEKING LEAVE TO APPEAL DECEMBER 7, 2012 DECISION RE: PLAINTIFF'S CROSS-EXAMINATION OF GERVAIS

KANE J.

[1] The plaintiff seeks costs of this motion in an amount of some $14,000 or $19,000 based on the scale of partial or substantial indemnity.

[2] The defendant opposes a costs award to the plaintiff and seeks costs against the plaintiff of some $8,600.

CONSIDERATIONS UNDER RULE 57

Success

[3] The defendant was, subject to further cross-examination ordered to occur by June 30, 2013, granted leave to appeal 8 refusals by Gervais out of approximately 90 questions objected to during Gervais' cross-examination.

[4] The limited leave granted was conditional on Gervais' further cross-examination by June 30, 2013 and her answering whether she prepared her affidavit or whether it was prepared by Mr. Rancourt. In the former case as stated in my decision, litigation privilege would not apply as Gervais is not the defendant and is not entitled to litigation privilege. If she prepared the affidavit, the objection to the questions would be invalid and leave to appeal the order directing they be answered was not granted.

[5] In the latter case of the defendant preparing the affidavit, litigation privilege would apply with the result that leave was granted to appeal the order requiring these questions to be answered.

[6] This court in its decision set the June 30 limit to conduct the cross-examination of Gravis and ordered the parties to advise this court of Gervais' response whether she or the defendant prepared her affidavit.

[7] In evidence on the motion for leave was the fact that Gervais, unlike the defendant, graduated from law school and provides advice to students and their association regarding internal university appeal proceedings as part of her employment.

[8] In submissions as to costs:

a) The defendant advised that Gervais by letter dated June 19, 2013 stated that "My affidavit … was prepared in consultation/discussion with the defendant."

b) The plaintiff advised that Gervais during her June 28, 2013 cross-examination stated that her affidavit was drafted and typed on her home computer by she and the defendant.

[9] Under a), the implication clearly is that Gervais used her legal education and training to prepare her affidavit and had consultation/discussion with the defendant in doing so. Translated, the defendant talked to Gervais as she drafted/typed her affidavit.

[10] Counsel preparing affidavits for the signature of their clients or witnesses customarily discuss the subject(s) addressed in the affidavit with the deponent before and at the time of the signing of the affidavit. Those discussions do not alter who authored the affidavit.

[11] With her degree in law and law related experience, Gervais could have easily stated in her letter or said under oath on June 28 that the affidavit was prepared by the defendant if that was the case. She was unable to state that. The conclusion therefore is that she prepared her affidavit which was then served by the defendant on the plaintiff with the result that no litigation privilege may be claimed by the defendant as to the affidavit and its preparation. As a result, the defendant does not have leave to appeal the order that those questions be answered.

[12] It is inappropriate for this court to consider proposals made by the defendant to the plaintiff after release of my decision. Those submissions, therefore, are not relevant.

[13] The result therefore is the dismissal of the defendant's motion for leave to appeal in relation to all or virtually all of the 90 questions objected to. The plaintiff was accordingly successful in defeating the defendant's motion.

AMOUNT CLAIMED AND THE AMOUNT RECOVERED

[14] Not applicable.

APPORTIONMENT OF LIABILITY

[15] Not applicable.

COMPLEXITY OF THE PROCEEDING

[16] The motion was voluminous and exceeded what was central. It did however have to be addressed by the plaintiff.

IMPORTANCE OF THE ISSUE

[17] Further cross-examination of Gervais is not central to the defamatory issues of this action. The service of this affidavit was a "gift" to the plaintiff who has gone to great lengths to maximize the benefits thereof which includes being able to examine a future trial witness of the defendant. This court recognizes that this affidavit also relates to the defendant's motion for further examination for discovery of the plaintiff.

[18] The point is however that this court should not be encouraging in the form of a costs award the pursuit of pre-trial examination of trial witnesses to be called by another party. This is clearly one of, or, the central purposes of this cross-examination. It is one of many causes of delay in getting this action on to trial thereby leading to more motions and additional costs.

[19] The above considerations are not determinative as to entitlement to costs. They are however a relevant consideration on the issue of quantum.

CONDUCT OF ANY PARTY THAT TENDED TO SHORTEN OR TO LENGTHEN THE PROCEEDING UNNECESSARILY

[20] See para. 5 above.

WHETHER ANY STEP WAS IMPROPER, VEXATIOUS OR UNNECESSARY OR TAKEN THROUGH NEGLIGENCE, MISTAKE OR EXCESSIVE CAUTION

[21] Not applicable.

A PARTY'S DENIAL OF OR REFUSAL TO ADMIT ANYTHING THAT SHOULD HAVE BEEN ADMITTED

[22] Not applicable.

EXPERIENCE OF THE LAWYER OF PARTY ENTITLED TO THE COSTS INCLUDING RATES CHARGED AND HOURS SPENT

[23] The hourly rates given the year of call and the hours expended are considered appropriate.

WRITTEN OFFERS OF SETTLEMENT

[24] No written offers of settlement of this motion for leave to appeal, served prior to my decision dated June 7, 2013, have been produced.

LEVEL OF COSTS TO BE AWARDED

[25] The appropriate scale of costs to be awarded is partial indemnity. The plaintiff does not argue otherwise.

AMOUNT OF COSTS THAT AN UNSUCCESSFUL PARTY COULD REASONABLY EXPECT TO PAY IN RELATION TO THIS PROCEEDING

[26] Subject to paras. 17 to 19 above, the amount of costs claimed using the above scales are within the reasonable expectations of an unsuccessful party in this action. They are proportional within that context.

[27] Given the outcome, the defendant is not entitled to costs.

[28] The plaintiff is entitled costs on a partial indemnity scale reduced by 60% for the reasons stated in paras. 17 to 19.

[29] The defendant is ordered to pay costs to the plaintiff within 30 days in the amount of $5,600 including disbursements and tax. That amount is also proportional to a motion for leave to appeal on a partial indemnity scale.

Kane J.

Released: July 26, 2013

Nº de dossier 11-51637

COUR SUPÉRIEURE DE JUSTICE

Entre:

JOANNE ST. LEWIS

Plaintiff

ET

DENIS RANCOURT

Défendeur

DEROULEMENT DE LA PROCEDURE
ENTENDU DEVANT L'HONORABLE JUGE R. SMITH,
le jeudi 1er août 2013, à OTTAWA (Ontario).

COMPARUTIONS:

Richard G. Dearden	Counsel for the Plaintiff
Denis Rancourt	En Personne

COUR SUPÉRIEURE DE JUSTICE

TABLE DES MATIÈRES

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Transcription demandée le: .....1er août 2013
Transcription complétée le: .....1er septembre 2013
Avis donné le: .....3 septembre 2013

Wednesday, July 31st, 2013

THE COURT: So, the first thing is probably l'agenda.

M. RANCOURT: Oui.

LE TRIBUNAL: De faire un agenda.

M. RANCOURT: Oui, j'avais demandé une conférence sur la cause, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Et le but principal c'était de trouver un moyen d'aller en médiation et....

LE TRIBUNAL: Médiation?

M. RANCOURT: Avec l'aide d'un juge, comme vous aviez proposé à deux reprises...

LE TRIBUNAL: Oui.

M. RANCOURT: ...au passé, n'est-ce pas?

LE TRIBUNAL: Oui. J'ai l'intention - pour M. Dearden, I am intending today to set a pre-trial date for you, and secondly I am intending to set a trial date, and this matter is going to move forward. That's my thinking.

M. RANCOURT: Okay, donc vous....

THE COURT: Subject to time limits, and I have some dates, so.

MR. DEARDEN: And, Your Honour, did you get my letter that I sent in?

THE COURT: Yes.

MR. DEARDEN: Yeah, okay, because I was asking for a pre-trial conference date...

THE COURT: You were.

MR. DEARDEN: ...in the letter.

THE COURT: I guess we may have been thinking the same way all three of us. Médiation c'est la même chose, conférence de pré-procès.

M. RANCOURT: Oui. Donc - donc, une médiation avec juge....

LE TRIBUNAL: Un pré-procès, c'est une....

M. RANCOURT: Donc, vous assimilez comme étant la même chose.

LE TRIBUNAL: Oui.

M. RANCOURT: Vous ne prévoyez pas commencer par une médiation qui pourrait avoir lieu le plus tôt possible?

LE TRIBUNAL: Non, non, non, c'est la médiation avec une juge. Finalement c'est ça.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est une conférence de règlement.

M. RANCOURT: Oui.

LE TRIBUNAL: Le juge, ça c'est des questions, d'habitude ça serait moi. I don't know. You can make some submissions about that. Sinon on – je ne dis pas le mot "brûle" les juges - burn up our judges. Il ne resterait pas de bilingue, sans de conflit...

M. RANCOURT: Okay.

LE TRIBUNAL: ...puis connaissance de la cause. I don't know, but you can make submissions on that issue.

M. RANCOURT: Si je peux....

THE COURT: I won’t - je ne serai pas le juge de procès.

M. RANCOURT: Non.

LE TRIBUNAL: Je peux vous assurer de ça, cette question.

M. RANCOURT: J'aimerais juste demander quelques clarifications, s'il vous plaît, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Alors, si je comprends bien, moi ce que j'avais compris c'est qu'il y avait une possibilité qu'on aille très tôt en médiation, de sorte à....

LE TRIBUNAL: La médiation, il existe – il y a une médiation avant les procédures que vous avez déjà passées, j'imagine.

M. RANCOURT: Si je peux finir ma pensée, M. le Juge.

LE TRIBUNAL: Oui, parce que de la médiation à travers de la cour, c'est des conférences de règlement ou, en civil, un pré-procès – "pre-trial conference" - avec un juge.

M. RANCOURT: Okay.

LE TRIBUNAL: Puis le but, c'est de la médiation avec un juge qui ne sera pas le juge de procès.

M. RANCOURT: Oui. Si je peux juste finir ma pensée, M. le Juge.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Ce que j'avais compris c'est d'aller assez tôt en médiation, de sorte à éviter, par exemple, d'être obligé d'aller à la Cour d'appel parce qu'on a déjà une date pour aller à la Cour d'appel, et à éviter les....

LE TRIBUNAL: Ça c'est - vous avez vos remèdes puis...

M. RANCOURT: Oui.

LE TRIBUNAL: ...vous allez à la Cour d'appel, vous aller à la Cour suprême, vous avez droit possiblement de faire ces choses-là. Ça c'est à vous ou c'est à Me Dearden, vous avez ces droits pareils, un et l'autre.

M. RANCOURT: Je voulais juste....

LE TRIBUNAL: Mais moi je veux que la cause avance.

M. RANCOURT: Oui, tout à fait.

LE TRIBUNAL: Parce que c'est ça qui - je vois ça perd - ça perd - plusieurs motions. As case management judge, comme juge qui gère la cause, moi je veux que la cause avance.

M. RANCOURT: Oui.

LE TRIBUNAL: Moi, j'ai un fardeau à m'assurer que cette cause va venir à la fin à un moment donné.

M. RANCOURT: Mais j'avais compr....

THE COURT: So that is my objective.

M. RANCOURT: Oui.

LE TRIBUNAL: Je t'ai dit cela.

M. RANCOURT: Oui, si je peux juste...

LE TRIBUNAL: Okay.

M. RANCOURT: ...exprimer ma pensée, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: J'avais compris que, si on allait en médiation, on pouvait - et si on pouvait régler l'action, tous les motions additionnelles qui pourraient être cédulées, tout ça tomberait et serait réglé, parce que toute l'action serait réglée. Et donc, je voyais un avantage à faire ça, et j'avais compris que c'est ça que vous nous

proposiez aux deux parties. Avec l'aide d'un juge, de faire une médiation.

LE TRIBUNAL: Oui, c'est les mêmes pensées que j'avais, mais pas un autre procès. Parce que ça va aller...

M. RANCOURT: Non.

LE TRIBUNAL: ...pré-procès, procès. Là vous avez - peut-être il en reste des choses à faire, d'autre questions à poser.

M. RANCOURT: Mon....

LE TRIBUNA: Je sais pas, un ou l'autre, je ne sais pas exactement où est-ce que vous êtes rendus. I don't know exactly where you're at in the process but – but, anyway, I am intending to move it forward to a pre-trial and a trial.

MR. DEARDEN: We agree, Your Honour, on this side of the table. Let me tell you for the record that, you know, going back almost two years ago, I had to bring a motion to compel Mr. Rancourt to attend a mandatory mediation. And finally after I filed the second refusals motion in the context of that mandatory mediation, he agreed to come to mediation. And as I said in the letter that I provided to Your Honour today, the next settlement - the next discussion of settling this case should occur in a pre-trial conference, and I would agree - this side of the table agrees entirely that you could be the pre-trial conference judge because of your familiarity with the issues, because so much has gone on in this case, it's going to be difficult for another judge to get up to speed on what's gone on and

what the real issues are, and we experienced that initially with Justice Kane when he - and Justice Annis, you know, because there's a lot of stuff that has gone on in this case. You would be the most likely candidate to be the pre-trial conference judge. But that's – there's a possibility of settlement there, if - but I mean we're talking apology, take down of the offensive blogs which Mr. Rancourt as of today still says aren't defamatory, and substantial payment of damages and cost. And as we sit here today, this defendant owes over a hundred thousand in costs that have been awarded against him, that he refuses to pay. So for him to stand there and say, "Oh, let's have another mediation, it might resolve things before the Court of Appeal," here's his Champerty appeal on November the 8th, is just meaningless words coming - to me on this side of the table. Let's get to a pre-trial conference, let's try to settle it there.

THE COURT: Yeah.

Mr. DEARDEN: If it doesn't settle, let's go to trial.

THE COURT: On to trial, so....

M. RANCOURT: Je ne comprends pas pourquoi....

LE TRIBUNAL: Les dates que j'ai - les dates que j'ai pour les pré-procès - I have a couple of dates in October but that - I don't know if that's - and December 12th, 13th, 19th or 20th, ce sont quatre jours au mois de décembre.

MR. DEARDEN: The dates that I suggested in my letter, Your Honour, of today were the time

period December 9th to 16th. So it's post Mr. Rancourt's arguments of his appeal before the Court of Appeal on November the 8th. And by the way, Your Honour, the Supreme Court denied him leave with respect with his leave application that happened on July the 4th. So there's nothing before the Supreme Court anymore. There is a matter before the Court of Appeal, and there are very few issues to be dealt with in the libel action, which is what we want to deal with today. Very few things to clear out of the way.

THE COURT: So, est-ce que les dates - est-ce que ça vous convient?

M. RANCOURT: Juste – excusez-moi j'ai - j'étais encore en train de penser à la discussion qui venait d'avoir lieu. Je n'ai pas noté les dates, mais je veux juste dire quelque chose. Il me semble clair qu'il faut attendre la décision de l'appel avant d'aller au procès?

LE TRIBUNAL: Ah, oui, je pense que ça vaudrait la peine, oui.

M. RANCOURT: Je pense que c'est....

LE TRIBUNAL: Ça sera du gaspillage de temps de....

M. RANCOURT: Oui. Donc, je vois mal comment on peut régler les dates de procès, si on veut savoir....

LE TRIBUNAL: Pour les dates de procès, les dates que j'ai c'est au mois d'avril, mai ou juin de l'année prochaine.

M. RANCOURT: Ah oui.

LE TRIBUNAL: Ça c'est les prochaines....

MR. DEARDEN: Is this trial, Your Honour, sorry?
THE COURT: I'm on trial dates, but first I want to set a pre-trial.
MR. DEARDEN: Yeah.
LE TRIBUNAL: La sorte de médiation, comme vous avez demandé.
M. RANCOURT: Oui. J'avais expliqué que, à mon sens, moi je suis confiant qu'on pourrait trouver un arrangement, et rapidement, si on allait en médiation tout de suite. Et je suis confiant de ça, et en plus ça pourrait régler toutes les motions et l'appel et le procès, rien de ça n'est nécessaire. Je connais les exigences de la plaignante, et je suis confiant qu'on pourrait trouver un arrangement. Ça ne serait pas un procès en soit, ça serait quelque jours de médiation, de bonne foi. Et je suis très confiant qu'on pourrait trouver un - un *settlement* qui serait final.
LE TRIBUNAL: Bien, on peut faire des choses - plusieurs choses.
M. RANCOURT: Oui.
LE TRIBUNAL: Si Mme St. Lewis est d'accord, vous pouvez - j'ai l'intention de fixer une date de pré-procès puis peut-être une date de procès. Ça c'est - et puis si vous voulez faire une médiation, ce n'est pas le juge, l'ancien juge Chadwick ou - si ça vaut la peine. Vous êtes ouvert, c'est toujours ouvert à des parties à s'entendre.
MR. DEARDEN: Your Honour, if I could....
LE TRIBUNAL: Et puis même parler à l'un et

l'autre. You can even....

M. RANCOURT: C'est parce que....

MR. DEARDEN: Your Honour, if I could. Unfortunately, Professor St. Lewis couldn't be with us today. It's the first date that she has actually missed. But she gave me instructions to inform the Court that she's not going to be re-victimized by this defendant again in mediation. So the pre-trial conference, that's where there's a chance to have a settlement. Not - you heard this defendant just indicated several days of mediation. This isn't a labour arbitration or a labour grievance that he's dealing with here. No, no, what he's saying - his confidence. We have zero confidence that he's going to wake up to reality here. He's - he doesn't think it's defamatory to call somebody a "house negro".

I'm not going - I'm not going to allow my client to be exposed to Mr. Rancourt in several days of mediation on what he thinks is going on with what he published, but to do it in a settlement conference, if it doesn't happen in the pre-trial conference - you know, if it happens, great. I mean - but he knows the terms; apology, take it down, which he absolutely refuses to do, and a huge sum of money. He won't even - he won't even - he hasn't paid a cost award since last October, Your Honour. Over a hundred thousand dollars owing and counting from this defendant.

So, I say yes, have the pre-trial conference

after the Court of Appeal deals with his argument on November the 8th. And that's why I said the time period post-December, you know, December 15th or 9th to - what did I say just to get it exact - 9th to 16th. You've got dates: 12, 13, 19, 20. We're available all of those dates in December.

THE COURT: So, shall we fix one of those dates? Est-ce que on devrait fixer une de ces dates?

M. RANCOURT: Pour ce qu'on appelle le "pre-trial".

LE TRIBUNAL: Un pré-procès, settlement - conférence de règlement.

M. RANCOURT: Oui.

LE TRIBUNAL: Pour une journée. I'll fix a date. D'habitude ils sont à peu près une heure. Parce que les parties sont au courant des questions. I'll set it for a day. I don't know if a day - I mean – but that would be - a day would be the maximum.

M. RANCOURT: Mais si notre but....

LE TRIBUNAL: Parce que si vous êtes - vous êtes au courant des faits vos deux, les options sont - je ne le sais pas là, mais moi de - en tout cas, je ne peux pas me lancer dans ce pré-procès sans les mémoires des parties et vos positions exactes. I mean, I have to hear your settlement proposals and I generally give my opinions, how I see it, okay, and maybe je peux vous aider, peut-être que non. Les parties sont libres à aller au procès, mais le but c'est de – c'est d'avoir une chance de régler. Donc, moi je veux....

M. RANCOURT: Donc, il y a des....

LE TRIBUNAL: Moi je veux...

M. RANCOURT: Oui.

LE TRIBUNAL: ...qu'on avance avec cette matière, j'ai indiqué ca au début. Donc, si ces dates-là vous conviennent....

M. RANCOURT: Pouvez-vous répéter les dates, s'il vous plaît. Je m'excuse.

LE TRIBUNAL: Les dates, j'ai - sont le 12, 13, 19 ou 20 de décembre.

M. RANCOURT: Ça serait une journée, en principe?

LE TRIBUNAL: Une journée au complet.

M. RANCOURT: Et je ne connais pas les règlements par rapport au "brief" qui doit être préparé. Je ne connais pas le contenu de ce "brief". J'image que c'est un contenu assez important?

MR. DEARDEN: It's rule 50, Mr. Rancourt, and briefs are due five days before the pre-trial conference dates.

LE TRIBUNAL: Cinq jours, c'est un mémoire, c'est semblable comme une factum de votre position. Le but c'est de - le but c'est de régler plusieurs - convaincre, parce que ça peut être un aspect de convaincre l'autre partie adverse de vos...

M. RANCOURT: Parce que si je comprends....

LE TRIBUNAL: ...- que vous avez raison de....

M. RANCOURT: Si je comprends bien, il y aurait pas un composante médiation dans le sens que quelqu'un fait une proposition, l'autre côté fait une contre-proposition, et il y a un échange comme ça.

LE TRIBUNAL: On pourrait le faire comme vous voulez le faire, soit - d'habitude je le fais

tout ensemble, mais des fois je peux me rencontrer avec un des côtés puis rencontrer avec l'autre. That's - I have done that as well, on the consent of the parties. Je peux vous rencontrer vous-même...

M. RANCOURT: Oui.

LE TRIBUNAL: ...seul avec votre position.

M. RANCOURT: Oui.

LE TRIBUNAL: Des fois ce n'est pas la même que – ou que avec Me Dearden et Mme St-Lewis.

M. RANCOURT: Moi je....

THE COURT: I forgot the name. What's it called when you do mediation? C'est quoi le - what's the word I'm missing, where the party goes and meets privately with....

MR. DEARDEN: Breakout?

THE COURT: No, it's not the word. Another word.

MR. DEARDEN: Caucus?

THE COURT: Caucusing, caucusing.

M. RANCOURT: Okay.

LE TRIBUNAL: Ça peut être "caucusing".

MR. DEARDEN: In a breakout room.

THE COURT: In a breakout room. So if the parties are consent... - if you think it's helpful, I will do that. If you don't think it's helpful, then we'll - I generally do them all...

M. RANCOURT: Moi je....

THE COURT: ...in the presence of everyone.

M. RANCOURT: J'aimerais....

THE COURT: Not in a courtroom, around a boardroom table.

M. RANCOURT: J'aimerais bénéficier de l'occasion

d'un – du type de médiation qui inclut "caucus", comme vous le décrivez. Je ne sais pas si mon adversaire est d'accord avec ça. J'aimerais savoir s'il est d'accord avec ça.

THE COURT: I would need the consent of the parties to do that.

MR. DEARDEN: I'm not giving him my consent right now, Your Honour. We'll wait to see how it unfolds. We can put our position - he already knows our position right now. Apology, take down, money. Okay? He can think about that between now and mid-December, and then he can let us know immediately at the pre-trial conference what his position is, and then we decide would a caucus be useful.

M. RANCOURT: Puisque M. Drearden est prêt à me donner sa position, peut-être qu'il peut donner la quantité d'argent dont il parle.

THE COURT: Well, I - unless you are prepared to....

MR. RANCOURT: What's the amount of money you're talking about, Mr. Dearden?

THE COURT: You know what, we're....

MR. DEARDEN: I'm not going to tell you that here. Mr. Rancourt, with Mr. Hickey, blogs on this and Ms. Gashoka who is continuing her publications on this. I'm not telling you that in a public court.

M. RANCOURT: Mais est-ce que vous acceptez de m'envoyer une note pour me le dire?

MR. DEARDEN: You can start with the $102,000 of cost orders that you owe. You can start by

paying those.

M. RANCOURT: Donc, ça ça donne une idée de la quantité d'argent qu'il cherche.

LE TRIBUNAL: Oui. It might be....

M. RANCOURT: Mais je....

THE COURT: It might be - very often - and I'm not in the role of a settlement judge here because I'm a case management judge. Je suis dans différents chapeaux des fois. Mais des excuses ça aide beaucoup...

M. RANCOURT: Oui.

LE TRIBUNAL: ...à un règlement. L'argent c'est une chose; réputation c'est une autre chose.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, peut-être le plus important c'est question de réputation puis – mais...

M. RANCOURT: Parce que....

LE TRIBUNAL: ...pour les dates, je veux fixer les dates.

M. RANCOURT: Oui, mais....

LE TRIBUNAL: Il faut qu'on en finisse aujourd'hui, une autre affaire.

M. RANCOURT: C'est juste que, avant de fixer les dates, je voulais savoir de quoi - qu'est-ce qu'on fixait. Alors, juste pour être clair, le "brief" serait notre position dans le cas, un peu l'historique du cas, mais la négociation serait un après l'autre, on essaye de trouver un arrangement.

LE TRIBUNAL: Un bref ce n'est pas – ce n'est pas énormément un document....

M. RANCOURT: Le bref est un document public, si

je comprends bien.

LE TRIBUNAL: Non.

M. RANCOURT: C’est soumis à la Cour.

LE TRIBUNAL: Oui.

M. RANCOURT: Donc, c'est un document public?

LE TRIBUNAL: Conférence de règlement, d'habitude ils sont retournés. Ils ne sont pas publics. They're usually returned to the parties, I believe. They’re not public, actually.

MR. DEARDEN: And nor is what goes on in the pre-trial conference.

THE COURT: It's not public.

MR. DEARDEN: It’s a settlement negotiation.

THE COURT: The trial judge will not know, should not know, cannot know. Maybe you offer something, maybe he offers something, but in trial – il peut demander le double, ça ne veut pas dire – comprends tu? You may take one position in a trial, in court – mais vous pouvez aussi, en négociation, faire des compromis. So it’s confidential. No one else knows.

M. RANCOURT: D'accord. Et moi je voudrais être accompagné, et la dernière fois qu'on a eu une médiation obligatoire, M. Dearden avait fait une motion, c’est vrai, mais c'est parce qu’il voulait choisir la médiateur de son choix. La motion était pour choisir le médiateur, et était aussi pour avoir la médiation immédiatement, avant de faire même un peu de découverte. Ça c'était la motion de M. Dearden, et c'est pour ça que je me suis objecté à cette motion-là. Donc je ne crois pas qu'un côté peut choisir le

médiateur, mais il y a une autre chose qui m`inquiète aussi. Quand on était allé en médiation, ils étaient cinq avocats, et j'étais seul. Il y avait cinq avocats dans la salle, incluant la plaignante. Il y avait plusieurs...

MR. DEARDEN: Just for the record,...

M. RANCOURT: ...collègues de Gowlings, et cetera.

MR. DEARDEN: ...Your Honour, it was for education, the associates that were attending that mediation, because he's written on this before and making it sound, like, you know, Gowlings is loading up on all kinds of talent against him. There were associates in the room including, Ms. Semenova beside me here, who was there for educational reasons.

M. RANCOURT: Je m'excuse, Monsieur le....

MR. DEARDEN: This is irrelevant to what we're talking about.

M. RANCOURT: M. le Juge - attendez une seconde.

LE TRIBUNAL: Je ne veux pas me lancer dans...

M. RANCOURT: Je m'excuse, mais...

LE TRIBUNAL: ...Est-ce qu'il y en avait quatre, est-ce qu'il y en avait....

M. RANCOURT: ...mais Wendy Wagner n'est pas quelqu'un qui a besoin de l'éducation, pour être là pour des raisons d'éducation. C'est une personne sénior à Gowlings. Ce que M. Dearden vient de dire est presque insultant. Et ainsi que M. Ryan Kennedy qui était là, je ne pense pas que c'est quelqu'un qui avait besoin d'être là. Mais le point est qu'il y avait....

LE TRIBUNAL: Vous voulez être accompagné par qui? Un avocat?

M. RANCOURT: Je veux être accomp... – j'aimerais que....

LE TRIBUNAL: Tu devrais avoir un avocat parce que vous - ça serait une bonne chose pour vous d'avoir un avocat avec vous.

M. RANCOURT: C'est une possibilité, mais le point est...

LE TRIBUNAL: C'est à votre choix.

M. RANCOURT: ...que j'aimerais avoir une personne qui m'accompagne de mon choix.

LE TRIBUNAL: Mais qui....

M. RANCOURT: J'ai quelqu'un en tête, qui est une personne qui est un directeur d'un organisme à but non-lucratif, qui est – s'appelle « Council for Canadians ». Ah non, pas « Council for Canadians », qui s'appelle « Canadians for Accountability ». Et il a accepté si son - si son cédule le permet, il pourrait m'accompagner. Et je demanderais....

MR. DEARDEN: Is he a lawyer?

THE COURT: Is he a lawyer?

M. RANCOURT: Non.

LE TRIBUNAL: Est-ce qu'il est avocat?

M. RANCOURT: Non, il n'est pas un avocat.

LE TRIBUNAL: D'habitude, les parties qui ne sont pas des avocats, des « paralegal » qu'on appelle, ne sont pas permises à faire des représentations. Ils ne sont pas obligés [sic] par des règles d'éthique comme des avocats.

M. RANCOURT: Bien, ce monsieur comprend très

bien les règles de confidentialité par rapport à la médiation.

LE TRIBUNAL: Mais ça c'est une autre question.

M. RANCOURT: Mais....

LE TRIBUNAL: Si vous proposez puis l'autre – Mme St. Lewis elle est d'accord ou pas d'accord, bon, vous pouvez répondre. Bon, la date, je vais fixer la date.

M. RANCOURT: Mais si ce monsieur peut venir ou si un avocat peut venir, j'ai besoin de savoir leurs dates. C'est pour ça que....

LE TRIBUNAL: Non, mais je veux fixer les dates. Je suis pas pour....

MR. DEARDEN: Delay, delay, delay.

M. RANCOURT: Ça c'est pas nécessaire, ce genre de commentaire de M. Dearden.

LE TRIBUNAL: Non, je suis d'accord, je suis d'accord.

M. RANCOURT: Oui.

LE TRIBUNAL: Adresse les commentaires – both to me. I think that would be the right way to do this.

MR. DEARDEN: Yes, Your Honour.

M. RANCOURT: Merci.

THE COURT: So - but the dates of December for a pre-trial, vous êtes libre.

M. RANCOURT: Oui, j'ai des - j'ai des temps de libre en décembre et je....

THE COURT: Okay, laquelle vous préférez, le 12, 13, 19 ou 20? Je crois que c'est des jeudis et puis des vendredis. C'est les dates que la coordinatrice m'avait....

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

NOTICE OF MOTION

The Defendant, Denis Rancourt, will make a motion to the court on March 29, 2012, at 10:00 a.m., or soon after that time as the motion can be heard, or at a date and time as set under case management if applicable, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

□ in writing under subrule 37.12.1 (1);

□ in writing as an opposed motion under subrule 37.12.1 (4);

X orally.

THE MOTION IS FOR:

1. An Order that the action be stayed or dismissed on the ground that the action is vexatious or is otherwise an abuse of process (Rule 21.01(3)(d) of the *Rules of Civil Procedure*).

2. The costs of this motion.

3. The Defendant's total costs in the action.

4. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff is a tenured assistant professor in law at the University of Ottawa. The Plaintiff's counsel (a law firm partner) is a part-time professor in law at the University of Ottawa.

2. The Defendant is a tenured full professor in physics dismissed after 23 years by the University of Ottawa in 2009. The dismissal is presently in on-going binding labour arbitration between the University and the Defendant's union.

3. This defamation action, filed in June 2011, is about the Defendant's public criticisms 2008-2011 of the University of Ottawa on his long-standing "U of O Watch" blog, centrally including criticisms of the Plaintiff's work for the University. The action seeks defamation damages of $1 million.

4. The Defendant denies that his criticism of the Plaintiff's work for the University was defamation at law (Statement of Defence) and takes the position that the action is champertous and improperly financed using public money.

5. The Court of Appeal for Ontario has defined maintenance and champerty (citing Halsbury) as:

> "Maintenance may be defined as the giving of assistance or encouragement to one of the parties to litigation by a person who has neither an [legitimate] interest in the litigation nor any other motive recognised by the law as justifying his interference. Champerty is a particular kind of maintenance, namely maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds or subject matter of the action."

Buday v. Locator of Missing Heirs Inc., 1993 CanLII 961 (ON CA)

6. That an action should be stayed or dismissed as an abuse of process because it is based on a champertous agreement is established at law. When maintenance and champerty are demonstrated, the courts have ruled the remedy to be to stay or dismiss the action, including at the Court of Appeal for Ontario.

7. Following the Defendant's request, the University of Ottawa stated in an October 25, 2011 letter to the Defendant that it is entirely funding the instant litigation.

8. The Plaintiff's Statement of Claim (June 23, 2011) claims $125 thousand in punitive damages to be paid to the University for a scholarship fund. Therefore, the University of Ottawa is receiving a share in the proceeds of the action which it is funding entirely.

9. The Plaintiff is refusing all discovery and to even discuss a discovery plan. (The Defendant provided an Affidavit of Documents early in the process.)

10. A need to examine the Plaintiff and witnesses for this motion (Rule 39.03) arises in part from the Plaintiff's sustained refusal of any discovery (see above) and is necessary in order to ascertain:
    (a) The funding agreement between the University and the Plaintiff;
    (b) The source of the funding;
    (c) The maintenance and champertous characteristics or circumstances of the funding; and
    (d) The motives for entering in the funding agreement for this action.

11. Rules 1.04(3), 2.01(1), 2.03, 3.02(1), 21.01(3)(d), 29.01, 30, 34.01(d), 34.02, 34.04(1), 34.04(4)-(5), 34.05-06, 34.08(1), 34.10, and 39.03 of the *Rules of Civil Procedure*.

12. Statutes *An Act respecting Champerty, R.S.O. 1897*; *Class Proceedings Act, 1992*; *Freedom of Information and Protection of Privacy Act, R.S.O. 1990*; and *University of Ottawa Act, 1965*.

13. Such further and other grounds as the Defendant may advise and this Honourable Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. An affidavit of the Defendant, sworn prior to serving the Motion Record, and the exhibits attached thereto.

2. Transcripts from the oral examinations for this motion (Rule 39.03) and documents produced on examinations for this motion (Rule 34.10), from witnesses:
   - Joanne St. Lewis, Plaintiff
   - Allan Rock, President of the University of Ottawa
   - Robert J. Giroux, Chair, Board of Governors, University of Ottawa

3. Such further and other evidence as the Defendant may advise and this Honourable Court may permit.

DATED: January 5, 2012

Denis Rancourt
Defendant

[redacted]

TO: Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

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UN exemplaire par étudiant

la Rotonde

- LE JOURNAL INDÉPENDANT DE L'UNIVERSITÉ D'OTTAWA -

L'AFFAIRE RANCOURT

Depuis 2005, l'U d'O est le théâtre de l'affaire Rancourt. Cette saga, loin d'être achevée, a ébranlé les fondements mêmes de la culture universitaire. Cette édition propose un retour sur cette histoire afin de faire la lumière sur les enjeux et de se préparer à un éventuel dénouement.

CHRONOLOGIE DES LITIGES ÉLECTORAUX À LA FÉUO DEPUIS 2006 PP. 5-6

LES CINÉMAS INDÉPENDANTS D'OTTAWA SONT-ILS EN PÉRIL? P. 13

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M. Rock, nous cacheriez-vous des choses?

L'Université d'Ottawa (U d'O) a grandement profité, ces dernières années, d'un relatif silence médiatique autour de toute l'affaire Denis Rancourt. Et ce, pour plusieurs raisons. D'abord, il s'agit d'un cas plutôt complexe s'étalant sur plusieurs années, avec divers acteurs, de multiples implications et plusieurs coups de théâtre. Ensuite, l'U d'O a fait preuve d'une grande habileté à minimiser cette affaire par la promotion d'une version officielle où le professeur Rancourt serait un mélange entre un fauteur de trouble en crise de la cinquantaine et un savant fou. Nous exagérons à peine, puisque quelques mois avant son congédiement, M. Rancourt recevait une lettre du doyen de la Faculté des sciences, André Lalonde, où ce dernier exprimait des inquiétudes sérieuses quant à l'état de santé mentale du professeur de physique. Finalement, quand l'U d'O emploie une employée du *Fulcrum*, Maureen Robinson, pour espionner un individu envers qui elle reconnaît avoir un ressentiment personnel, on peut légitimement en déduire que M. Rancourt n'aura pas droit à un traitement de faveur dans les pages du journal anglophone. Jusqu'à tout récemment, *La Rotonde* a également peu couvert les épisodes de l'affaire Rancourt.

illustration Maxime Charlebois

BIPP!

Après toutes ces années, peut-être une certaine lassitude s'installe autour de toute cette affaire, mais cela ne devrait pas nous distraire du fait que des enjeux majeurs sont mobilisés par tout ceci. Denis Rancourt accuse l'U d'O d'avoir entrepris un BIPP, un bâillon imposé à la parole publique, à son encontre. Un BIPP, pratique illégale au Québec depuis 2009, mais toujours légale en Ontario, est l'une des stratégies juridiques les plus odieuses qui soit. En lançant ainsi un BIPP, l'U d'O cherche à étouffer financièrement et tuer politiquement un Rancourt trop gênant qui encouragerait un peu trop à remettre en question la structure hiérarchique universitaire, l'oppression systémique ou encore la corporisation du savoir.

Allan Rock, le recteur de l'U d'O, et ses collègues ont carrément été répugnants dans leur gestion de tout ceci, non seulement à l'égard de M. Rancourt, mais aussi en raison de l'exploitation qu'ils font de la question du racisme. Si M. Rock et sa bande se souciaient vraiment du racisme sur notre campus, ils auraient pris le temps de lire sérieusement le contenu du rapport du Centre de recours étudiant (CRÉ), plutôt que de passer en mode panique pour sauver la face de l'U d'O. Le racisme subsiste dans nos sociétés en raison de gens comme Joanne St. Lewis, ces *native informants* qui banalisent et légitiment l'oppression en la niant.

Et puisque cette administration est sans gêne, elle a accordé à Mme St. Lewis un budget illimité pour poursuivre, avec notre argent, M. Rancourt. Ils se sont même chargés de lui trouver un avocat. L'un des plus chers et des plus réputés d'Ottawa. De fait, pas n'importe qui, puisque Me Richard Dearden a déjà représenté Stephen Harper. Et l'U d'O a été malhonnête en dissimulant la vérité sur son implication dans cette poursuite. Et aujourd'hui, cet avocat fier-à-bras fait la loi et est au-dessus de celle-ci en distillant les menaces et en répandant un terrorisme juridique sur notre campus. Joseph Hickey, pour avoir osé demander que le recteur s'explique publiquement sur le financement d'une poursuite privée, et Mireille Gervais, pour avoir voulu rétablir des faits, ont pu y goûter.

Et on nous explique éventuellement que ce budget illimité, provenant en grande partie de nos frais de scolarité, est justifiable au nom de l'antiracisme. Parce que tout le monde sait que M. Rancourt est un agent dormant du Klu Klux Klan et que M. Rock mène ici une croisade sincère pour nous débarrasser de ce fléau. Quelle noblesse! Non, mais de qui se moque-t-on ici? Surtout que, rappelons-le, tout ceci a commencé par le refus de l'U d'O de prendre les recommandations du rapport du CRÉ au sérieux.

Allan Rock is watching you

Il est un peu inquiétant de voir si peu de gens s'indigner du fait que l'U d'O ait payé une étudiante pour espionner M. Rancourt et ses étudiants. Comme si les efforts de l'U d'O en vue de marginaliser M. Rancourt avaient donné des résultats. On a de la difficulté à comprendre que ce qui est arrivé à M. Rancourt peut nous arriver aussi. Même le Syndicat canadien de la fonction publique section locale 2626, une organisation soi-disant progressiste et dont certains membres étaient sous surveillance, ne conteste pas l'essence du principe de surveillance et s'est contenté de demander à ce que les résultats de cette surveillance ne se retrouvent pas dans les dossiers des employés

L'U d'O a créé une culture de délation où ce genre de pratique est désormais légitime. La vie privée? La liberté académique? Ce ne sont pas les priorités de l'administration.

Que ce soit au niveau du BIPP entrepris contre M. Rancourt que des pratiques d'espionnage de l'U d'O, le fil conducteur demeure l'absence de transparence de l'U d'O, l'obsession à vouloir toujours tout dissimuler et la politique du « sans commentaires ». On pourrait rêver de voir M. Rock reconnaître publiquement toutes ces pratiques douteuses, mais, comme nous l'avons vu, la transparence n'a jamais été sont point fort.

Nous sommes étudiants. Nous sommes ici pour nous donner les moyens de réaliser nos rêves. Nous payons toujours plus, nous nous endettons toujours plus. Et pourquoi, M. Rock? Poursuivre ainsi M. Rancourt après une situation créée par vous-même en raison de votre obstination dans le déni. Trouvez-vous cet usage des ressources responsable et justifié, M. Rock ?

Et qu'allez-vous faire maintenant M. Rock? Nous envoyer vos avocats, que nous payons pour vous, ou bien prendre vos responsabilités et, pour une fois, faire preuve de transparence!

Comité éditorial de *La Rotonde*

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ASSEMBLÉE GÉNÉRALE ANNUELLE 2013

Ceci concerne tous les étudiants présentement inscrits à l'Université d'Ottawa aux deux cycles. *La Rotonde* vous convie à son Assemblée générale annuelle qui se déroulera le mardi **2 avril 2013 à 18 h à l'Auditorium des anciens**, au Centre Universitaire. *La Rotonde* espère vous y voir en grand nombre!

La Rotonde

CHRONOLOGIE DE L'AFFAIRE RANCOURT

Septembre 2005

Denis Rancourt obtient la charge d'enseignement du cours PHY1703 – Physics and Environment. Il en modifie le curriculum en fonction des recommandations des étudiants, pour en venir à un cours sans évaluations et principalement constitué d'ateliers où l'investissement des étudiants est encouragé, en vue de comprendre les impacts de la science sur la vie quotidienne et les relations avec les structures de pouvoir. M. Rancourt nommera ce procédé « *squatting* académique ». Dès le deuxième cours, le doyen de la Faculté des sciences, Christian Detellier, suite aux plaintes d'un étudiant, est entré dans la classe pour faire annuler le cours. Le cours est toutefois maintenu jusqu'à la fin de la session. Néanmoins, le cours ne sera pas de retour lors des sessions suivantes.

Septembre 2006

Après neuf mois de délibération par 16 comités administratifs, le cours SCI1101 – Science in Society, est finalement approuvé. Surnommé « le cours d'activisme », ce dernier sera encore dirigé par les étudiants, ne comprendra pas d'évaluations classiques et n'offrira pas de crédits universitaires. Le cours gagnera une certaine notoriété par ses conférenciers-invités, notamment la politicienne radicale féministe afghane Malalai Joya. M. Rancourt s'attendait à voir le cours revenir à l'automne 2007, mais ce ne fut pas le cas. Considérant qu'il s'agissait d'une atteinte à sa liberté académique, il décide de poursuivre l'Université d'Ottawa (U d'O) pour 10 millions de dollars.

Novembre 2006

Ce cours sera également marqué de deux importantes controverses. La première concerne un groupe de six étudiants inscrits dans le cours qui ont décidé de poursuivre l'U d'O en vue du remboursement du deux-tiers de leurs frais de scolarité pour la session, pour un montant collectif de 2069 dollars. Leur argument principal était que, compte tenu de la structure du cours axée autour de groupes de travail, le cours nécessitait plus que deux assistants d'enseignement et que les étudiants étaient souvent laissés à eux-même, ce qui nuisait à la qualité d'éducation que garantit l'U d'O.

Janvier 2007

Encore dans le contexte du cours d'activisme, les jumeaux Sebastian et Douglas Foster, tous deux âgés de 10 ans à l'époque, décident de poursuivre l'U d'O à la Commission ontarienne des droits de la personne suite à leur désinscription. Ils accuseront l'U d'O de discrimination sur la base de leur âge et de leur statut social et familial. M. Rancourt soutiendra activement la poursuite.

Novembre 2008

M. Rancourt se voit retirer l'accès à son laboratoire de physique sous prétexte qu'il y aurait admis des personnes non-autorisées.

Décembre 2008

M. Rancourt est indéfiniment suspendu de ses fonctions et interdit d'accès au campus. Pendant la session d'hiver 2008, il aurait accordé la note d'A+ à tous les étudiants inscrits dans deux cours de physique de quatrième année qu'il enseignait. Selon Rancourt, cette raison officielle dissimulerait d'autres raisons influencées par le lobby israélien et le complexe militaro-industriel et que sa suspension serait motivée par un agenda politique.

L'associé de recherche de M. Rancourt, le Dr. Mei-Zhen Dang, est licencié par l'U d'O. Une poursuite s'en suivra et sera réglée en arbitrage. Deux étudiants diplômés et supervisés par M. Rancourt seront également impliqués dans cette poursuite.

Janvier 2009

M. Rancourt est arrêté par la police d'Ottawa sur le campus de l'U d'O pour s'y être retrouvé sans autorisation. Des accusations seront portées, avant d'être retirées six mois plus tard.

Mars 2009

M. Rancourt est officiellement licencié par l'U d'O.

RANCOURT CONTRE ST. LEWIS… OU RANCOURT CONTRE L'U D'O?

Hamdi Souissi

Joanne St. Lewis est une professeure adjointe à la Section de common law de la Faculté de droit de l'Université d'Ottawa (U d'O). Elle est considérée comme une spécialiste des questions de droit touchant le racisme, la discrimination et « l'égalité raciale ». Depuis novembre 2008, elle est au centre d'une controverse suite à la publication d'un rapport du Centre de recours étudiant (CRÉ) accusant l'U d'O de pratiquer un racisme systémique et institutionnalisé. L'U d'O a alors mandaté Mme St. Lewis de produire une évaluation indépendante du rapport. Ce qui a provoqué l'indignation de Denis Rancourt sur son blogue *U Of O Watch*. D'abord sur le plan de la forme, en niant que cette évaluation puisse être qualifiée d'indépendante. Dans un courriel daté du 17 novembre 2008 et envoyé par le recteur Allan Rock à plusieurs membres de la haute-administration, ce dernier commente une version brouillon de l'évaluation faite par Mme St. Lewis et envoyée par cette dernière. Il trouve l'évaluation bien faite sauf en ce qui concerne la première recommandation qui semble suggérer qu'un certain racisme puisse exister à l'U d'O. M. Rock propose que le vice-recteur aux études, Robert Major, en fasse l'observation à Mme St. Lewis tout en lui accordant la latitude d'apporter les modifications qu'elle jugera pertinentes et garantir ainsi l'indépendance de l'évaluation. M. Rancourt critiquera également le contenu, où il accuse Mme St. Lewis de sous-estimer, voire de nier, les problèmes relevés par le CRÉ. M. Rancourt ira même plus loin en accusant en février 2011 d'être « une reine-nègre » (*house negro*) à la solde de M. Rock. Le 16 mai 2011, Richard Dearden, avocat de Mme St. Lewis, envoie une lettre à M. Rancourt lui demandant de retirer ses publications jugées diffamatoires et racistes sous peine de poursuite judiciaire. Mme St.Lewis et M. Dearden décident en juin 2011 de poursuivre M. Rancourt pour diffamation.

Une première controverse dans la poursuite a lieu en septembre lorsque le sénateur étudiant, Joseph Hickey, commence à questionner l'implication de l'U d'O et de M. Rock en faveur de Mme St. Lewis, en proposant une motion exigeant que M. Rock en informe le Sénat si c'est le cas. M. Rock ne s'est simplement pas présenté lors de la réunion du 30 septembre 2011 où devait être débattue cette motion. Le 6 octobre 2011, M. Rancourt a posé la même question en cour à M. Dearden qui a simplement refusé d'y répondre. Lorsque la même question fut encore posée le lendemain, l'avocat de Mme St. Lewis a répondu qu'il n'était pas pertinent de savoir qui payait les honoraires du cabinet Gowlings pour lequel il travaille. Le 25 octobre 2011, une lettre en provenance du cabinet Borden Ladner Gervais (BLG), qui représente l'U d'O, signée par David Scott à l'attention de M. Rancourt, reconnaît l'implication de l'U d'O dans la poursuite. L'U d'O s'engage en effet à rembourser les frais légaux de Mme St. Lewis. M. Scott considère que Mme St. Lewis est victime de racisme et de diffamation en raison du travail qu'elle a effectué suite à une requête de l'U d'O et dans le cadre de ses fonctions d'où la responsabilité de la soutenir financièrement. Il ajoute que les efforts de Mme St. Lewis ne sont pas personnels mais dans les intérêts de l'Université. De plus, compte tenu de la violence des propos reprochés à M. Rancourt, l'U d'O a une responsabilité

Joanne St. Lewis. - photo courtoisie

morale de soutenir son employée.

La Rotonde a contacté M. Dearden sur cette question précise. Ce dernier, jugeant que nos questions étaient caractérisées d'un manque flagrant d'objectivité et d'impartialité à l'égard de sa cliente (sic), a refusé de répondre.

La cause est amenée en médiation le 6 décembre 2011 et les deux parties n'en arrivent à aucune entente. Ce qui amènera Mme St. Lewis à déposer une motion de gestion de dossier pour accélérer les procédures et réduire les frais légaux. Encore le 6 décembre, Mme St. Lewis, par le biais de M. Dearden, envoie un avis de diffamation à M. Hickey concernant une publication faite sur son blog, *A Student's Eye View,* où il renvoie au blogue de M. Rancourt. M. Hickey accepte d'obtempérer s'il obtient la garantie de l'abandon de toute procédure contre sa personne. M. Dearden réplique qu'il souhaite attendre les instructions de sa cliente. M. Dearden refusera finalement toute négociation sur cette question tant que M. Hickey ne respectera pas la confidentialité de leurs échanges qu'il publie sur son blogue.

Suite à la comparution du 26 janvier 2012, le clan St. Lewis accepte d'abandonner la motion de gestion de dossier et de reprendre le procès. Cela permet alors à M. Rancourt de déposer une motion de maintenance et champartie concernant l'usage inapproprié de fonds de l'U d'O dans le financement d'une poursuite techniquement privée. Ce qui amène l'U d'O à déposer une motion d'intervention en réponse le 2 février 2012. Le 6 février 2012, M. Rancourt dépose une nouvelle motion exigeant que tous les interrogatoires et démonstrations de preuves soient publics. Cette motion sera rejetée par le juge Robert Beaudoin. M. Rancourt remplira une motion de demande d'appel suite à cette décision.

En attendant la décision sur cette nouvelle motion, deux sénateurs étudiants, Joseph Hickey et Hazel Gashoka, ont émis des requêtes pour que les interrogatoires concernant les allégations de maintenance et champartie soient publics. Le Sénat de l'U d'O était censé tenir une réunion le 26 mars 2012, soit deux jours avant le contre-interrogatoire de M. Rock, mais Diane Davidson, vice-rectrice à la gouvernance, a décidé d'annuler la réunion sous prétexte qu'il n'y avait pas suffisamment de points à l'ordre du jour. La motion sera également rejetée dans la mesure où le juge Beaudoin a déjà tranché sur cette question. Le 28 mars 2012, M. Hickey déposera une motion d'intervention en ce qui concerne la motion d'appel de M. Rancourt. Le juge Robert Smith a rejeté la motion, car M. Hickey n'aurait aucun intérêt dans l'affaire. M. Dearden a alors exigé 5326,98 dollars en compensation, notamment pour dissuader M. Hickey ou ceux qui voudraient l'imiter, de ralentir les procédures par de telles initiatives. Malgré l'indignation que tout cela suscitera dans la communauté étudiante, les échos se rendant jusqu'au Québec traversé alors par le Printemps érable, le juge Smith condamnera M. Hickey au versement de 3500 $. « Je ne regrette rien », confiera M. Hickey à *La Rotonde*. « En tant qu'étudiant, mon objectif était de voir le recteur justifier publiquement l'utilisation de l'argent des étudiants pour financer une poursuite privée et de démontrer que l'Université finance des pratiques d'intimidation contre les professeurs et étudiants. »

Le 18 avril 2012, le recteur Allan Rock sera contre-interrogé par M. Rancourt. M. Rock reconnaîtra qu'une réunion eut lieu entre lui, Mme St. Lewis et le doyen de la Section de common law de la Faculté de droit, Bruce Feldthusen, le 15 avril 2011. Au cours de cette réunion, si l'on en croit M. Rock, Mme St. Lewis aurait fait part de son intention de poursuivre M. Rancourt et demandé le soutien financier de l'Université à cette fin. Et, en date du 15 avril 2011, M. Rock acceptait la requête de Mme St. Lewis qui consistait à couvrir toutes ses dépenses légales dans la poursuite sans aucun plafond financier. M. Feldthusen, dans son contre-interrogatoire, a reconnu avoir recommandé M. Dearden à Mme St. Lewis.

Un autre rebondissement dans l'affaire fut le retrait volontaire du juge Beaudoin, le 24 juillet 2012, de l'affaire suite à des accusations de conflit d'intérêts de la part de M. Rancourt. M. Beaudoin financerait une bourse à l'U d'O en l'honneur de son fils décédé et une salle de réunion du cabinet BLG porte le nom de ce dernier en hommage. À noter que le cabinet BLG défend l'U d'O dans cette affaire. Le 30 novembre 2012, un autre juge, Peter Annis, tranchera que M. Beaudoin n'était pas en conflit d'intérêts. M. Annis est également un ancien membre du cabinet BLG.

Le 7 janvier 2013, M. Rancourt dépose une nouvelle motion, en réaction à la décision du juge Annis, d'appel à la Cour suprême du Canada. Le 25 janvier 2013, le registraire de la Cour l'informe qu'il juge sa requête prématurée, puisqu'il n'a pas épuisé tous les recours à sa disposition. M. Rancourt remplit alors une nouvelle motion, le 13 février 2013, adressée à un juge de la Cour suprême pour ignorer la décision du registraire. La décision se fait encore attendre et l'affaire demeure à suivre.

UNE ÉVALUATION CONTROVERSÉE

À la source du conflit entre Denis Rancourt et Joanne St. Lewis se trouve le rapport du Centre de recours étudiant (CRÉ) intitulé « Racisme, injustice et mépris envers les étudiant(e)s à l'Université d'Ottawa » et publié le 12 novembre 2008. La conclusion la plus controversée de ce rapport était que plus des deux tiers des étudiants accusés de fraude académique et ayant fait appel au CRÉ appartiennent à des minorités visibles. Le 25 novembre 2008, Joanne St. Lewis, professeure de common law à la Faculté de droit, produisait une évaluation du rapport. Ses principales conclusions étaient que le rapport du CRÉ avait de sérieuses défaillances méthodologiques et que cela le rendait du coup invalide.

Dans la déclaration de poursuite du clan St. Lewis, on y apprend, au point 25, que lors de l'élaboration de l'évaluation du rapport du CRÉ, Mme St. Lewis a rencontré des représentants du CRÉ auxquels elle a demandé l'accès aux données et registres de l'organisme. Le CRÉ aurait refusé d'accéder à ses demandes. Or, selon Mireille Gervais, directrice du CRÉ à cette époque et encore aujourd'hui, tout cela est archifaux. Entre le 12 novembre et le 25 novembre 2008, elle n'aurait même jamais parlé à Mme St. Lewis. Sa seule communication avec Mme St. Lewis a eu lieu presque un an après les faits, le 23 septembre 2009, alors que cette dernière lui a fait parvenir un courriel lui proposant une rencontre dans le but de travailler conjointement à la rédaction d'un nouveau rapport. « Je n'ai jamais été contactée dans le cadre de la préparation du deuxième rapport, j'ai d'ailleurs un courriel de Mme St. Lewis démontrant que notre premier contact ne s'est fait qu'après la rédaction du deuxième rapport », soutient Mme Gervais.

Nous avons demandé à Richard Dearden, avocat de Mme St. Lewis, s'il maintenait la validité du point de litige. Il a esquivé notre question en considérant qu'elle reflétait un biais contre sa cliente de la part du journal (sic). « Il n'y a pas de mots pour exprimer à quel point le système est injuste, je ne me suis pas présenté en cour par choix, mais par obligation », se défend Mme Gervais. Elle soutient qu'il était de son devoir en tant que directrice du CRÉ, de répondre aux allégations en cour à son égard par Mme St. Lewis. M. Dearden a mentionné à *La Rotonde* qu'il ne comprenait pas pourquoi Mme Gervais jugeait qu'intervenir dans cette affaire faisait partie de son travail au CRÉ.

La demande de Mme Gervais fut rejetée dans une décision rendue le 7 décembre 2012. Le 10 janvier 2013, le juge Robert Smith la condamnera à payer des frais juridiques de 5300 dollars suite à sa motion rejettée.

Une évaluation indépendante?

« Le vice-recteur aux études m'a demandé de faire une évaluation indépendante du rapport annuel du Centre de recours étudiant (CRE) 2008 […] ». C'est ainsi que débute le rapport rédigé par Mme St. Lewis. Mme Gervais conteste cette indépendance: « Des courriels rendus publics démontrent que Mme St. Lewis n'a pas agi de façon indépendante et qu'elle suivait les instructions de l'administration. »

En effet, les courriels disponibles sur le site du CRÉ et obtenus suite à une demande d'accès à l'information révèlent que Mme St. Lewis a envoyé le brouillon de son évaluation à l'administration en précisant qu'elle serait heureuse de répondre à toutes leurs suggestions. Une partie de la réponse d'Allan Rock peut être traduite ainsi:

« […] ma seule préoccupation quant à la première recommandation est le libellé qui semble sous-entendre qu'il y a déjà présence de racisme. Puisque la professeure St. Lewis conclut déjà qu'il n'y a pas de preuve à cet effet, un tel libellé est faux et ne concorde pas avec son propre rapport. […] Une dernière chose, j'aimerais que Robert [Major] soit le seul intermédiaire entre nous et la professeure St. Lewis. Même si son rapport est excellent, il pourrait être critiqué pour son manque "d'indépendance" de l'administration. Jusqu'à présent, nos communications ont été faites à travers Robert [Major] et ont été scrupuleusement objectives. Nous avons simplement cherché à obtenir sa perspective sans pourtant lui imposer de limites, de contraintes ou de conditions. Elle était tout à fait libre de dire ce qu'elle voulait. Afin de garder cette relation professionnelle et objective avec elle, je veux que Robert soit le seul intermédiaire. Robert [Major] pourrait simplement soulever que la première recommandation est incompatible avec ses conclusions. Il relèvera ensuite de la professeure St. Lewis de décider si elle y apportera des changements. Si plusieurs personnes lui envoient des courriels et l'appellent, notre sens du professionnalisme et de l'indépendance sera mis à risque. »


Denis Rancourt. - photo courtoisie

Déjà dans une lettre envoyée par David Scott, avocat de l'Université d'Ottawa (U d'O), à M. Rancourt, on pouvait lire que Mme St. Lewis a rédigé son évaluation à la demande de l'U d'O dans le cadre de ses devoirs et responsabilités d'employée, et que ses efforts n'étaient pas personnels, mais dans l'intérêt de l'U d'O.

Nous avons tenté de rejoindre Mme St. Lewis, ainsi que l'administration universitaire afin d'obtenir des clarifications sur l'indépendance du rapport. Mme St. Lewis nous a renvoyé à son avocat, tandis que l'Université s'est refusée à tout commentaire comme pour tout dossier concernant Denis Rancourt.

LORSQUE L'U D'O ESPIONNAIT DENIS RANCOURT

Durant l'année universitaire 2007 -2008, l'Université d'Ottawa (U d'O) a engagé une étudiante et employée du *Fulcrum*, Maureen Robinson, pour surveiller Denis Rancourt et certains étudiants. Rappelons que c'est cette année-là que M. Rancourt a été suspendu de ses fonctions. Dans un courriel daté du 4 juin 2007, Michelle Flaherty, conseillère juridique de l'U d'O au moment des faits, contacte Robert Major, alors vice-recteur aux études, pour l'informer qu'elle a trouvé une étudiante « pour [les] aider dans l'affaire Rancourt ». Le 30 août 2007, le doyen de la Faculté des sciences, André Lalonde, contactait Mme Robinson pour lui offrir un emploi. Dans sa réponse, Mme Robinson mentionne un ressentiment personnel envers un professeur de la Faculté des sciences qui serait condescendant envers les étudiants non-activistes. Ce professeur n'étant nul autre que Denis Rancourt. À partir de ce moment, Mme Robinson entreprendra une surveillance des activités de M. Rancourt pour le compte de l'U d'O: cours, conférences, émissions de radio, activités parascolaires, etc. Elle assurera également une surveillance des étudiants gravitant autour de M. Rancourt ou politiquement actifs. Dans une série de courriels allant de janvier à mars 2008, Mme Robinson partagera régulièrement ses observations avec Mme Flaherty et certains membres de l'administration.

En novembre 2009, suite à une demande d'accès à l'information, M. Rancourt obtient la confirmation que l'U d'O opérait une surveillance de ses activités et décide d'envoyer un grief aux services des ressources humaines de l'U d'O. L'affaire sera portée devant la Commission des relations de travail de l'Ontario (CRTO). Une partie des activités de Mme Robinson se faisait sous le faux nom de Nathalie Page. Notamment sur les réseaux sociaux. Lors des comparutions devant la CRTO, M. Lalonde a reconnu avoir eu accès à ce faux compte à la demande de Mme Robinson. M. Lalonde ajoutera qu'il désapprouvait l'idée de surveiller ainsi M. Rancourt et qu'il a même tenté de décourager Mme Robinson, mais cette dernière aurait insisté par intérêt personnel. Dans ce contexte, il acceptait de recevoir les informations qu'elle lui faisait parvenir. M. Lalonde reconnaîtra également avoir demandé conseil à un psychiatre, car il était inquiet de l'état de santé mentale de M. Rancourt, surtout que ce dernier avait accès à des matériaux radioactifs dans son laboratoire avant l'ordre de fermeture. Les informations de Mme Robinson lui servaient donc à évaluer la situation et le danger potentiel qu'était M. Rancourt et son entourage. Les comparutions devraient reprendre en mai 2013.

Dans la même affaire, le 27 janvier 2010, le Syndicat canadien de la fonction publique, section locale 2626 (SCFP 2626) a décidé de poursuivre l'U d'O, puisque certains de ses membres, qui entretenaient des relations avec M. Rancourt, ont également été sous surveillance. En octobre 2010, SCFP 2626 rapportait qu'une entente avait été signée avec l'U d'O et que la plainte avait été abandonnée. L'entente garantissait qu'aucune information collectée sur un employé ne figurerait à son dossier. Au moment de l'entente, l'U d'O niait les allégations de surveillance. M. Rancourt et certains étudiants ont exprimé leur désaccord avec l'entente, car elle contribuerait à légitimer la surveillance des étudiants et professeurs.

En ce qui concerne Mme Robinson, nous n'avons pas été en mesure de la retracer. Notre piste s'arrête à 2010 alors qu'elle aurait déménagé en Australie pour étudier à l'Université d'Adélaïde. Mme Flaherty a pour sa part quitté ses fonctions à l'U d'O et est désormais membre du Tribunal des droits de la personne de l'Ontario. Finalement, M. Lalonde a été emporté par le cancer en décembre dernier.

L'U d'O, comme pour toute affaire en cours concernant M. Rancourt, a refusé de faire le moindre commentaire ou de nous accorder une entrevue.

COURT OF APPEAL FOR ONTARIO

CITATION: St. Lewis v. Rancourt, 2013 ONCA 701
DATE: 20131115
DOCKET: C56905

Hoy A.C.J.O., Sharpe and Blair JJ.A.

BETWEEN

Joanne St. Lewis

Plaintiff (Respondent)

and

Denis Rancourt

Defendant (Appellant)

Denis Rancourt, appearing in person

Richard Dearden, for the plaintiff (respondent) Joanne St. Lewis

Peter Doody, for the University of Ottawa

Heard: November 8, 2013

On appeal from the order of Justice Robert J. Smith of the Superior Court of Justice, dated March 13, 2013.

APPEAL BOOK ENDORSEMENT

[1] The appellant appeals the March 13, 2013 order of Smith J., dismissing the appellant's motion to stay or dismiss the respondent, Joanne St. Lewis'

defamation order against him on the basis that it was the product of maintenance and champerty. We are not persuaded that any of the several grounds he advances has merit. We see no error of law on the part of the motion judge in concluding on the ample evidence before him that the respondent's employer's decision to fund the litigation did not amount to maintenance or champerty. Nor did the respondent's unilateral decision to donate a portion of any punitive damages she might receive to a scholarship at the employer university make out maintenance or champerty. Moreover, the underlying findings of fact made by the motion judge were reasonably supported by the record.

[2] As to the appellant's bias or appearance of bias submission, it in our view has no merit. It was fully considered by Annis J. and rejected. We agree with that decision and, in any event, that decision is not open to challenge in this court.

[3] The appellant also argued in his factum that the motion judge had not given him adequate time to make his submissions. We reject this argument. The time allocated was clearly announced and reasonable.

[4] This appeal is accordingly dismissed. The appellant shall pay the respondent, Ms. St. Lewis, costs in the amount of $20,000, all inclusive, and pay the respondent university costs in the amount of $15,000, all inclusive.

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C56905

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

APPELLANT'S MOTION RECORD - LEAVE TO APPEAL COSTS

Dr. Denis Rancourt

[redacted]

Email: denis.rancourt@gmail.com

Appellant