File number: _____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

Denis Rancourt

Applicant
(Defendant)

and

Joanne St. Lewis

Respondent
(Plaintiff)

and

University of Ottawa

Respondent
(Intervening Party)

APPLICATION FOR LEAVE TO APPEAL
FILED BY THE APPLICANT, DENIS RANCOURT (SELF-REPRESENTED)
(Pursuant to s. 40 of the Supreme Court Act, R.S.C. 1985, c. S-26)

Dr. Denis Rancourt, Applicant, Self-Represented

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IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

Denis Rancourt

Applicant
(Defendant)

and

Joanne St. Lewis

Respondent
(Plaintiff)

and

University of Ottawa

Respondent
(Intervening Party)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that Denis Rancourt hereby applies for leave to appeal to the Court, pursuant to s. 40(1) of the *Supreme Court Act*, from the judgment of the Court of Appeal for Ontario in file number C56905 made by endorsement on November 8, 2013, or such further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. An Ontario superior court judge had strong personal, family, emotional, and contractual financial ties to a party intervening for the plaintiff in the case, and also to the law firm representing the party in court, and did not disclose any of these ties. This party was also the employer of the plaintiff in the lawsuit, and funded the plaintiff's litigation. The judge was tasked with determining the propriety of the party's funding of the plaintiff, which was done with public money. The judge's ties made it inconceivable that he would rule against the party. When the defendant discovered the judge's ties and presented the evidence, the judge lost decorum, threatened the defendant with contempt of court, and recused himself, but refused to consider whether there was an appearance of bias, and continued to release decisions. The judge's in-court reaction and walkout further confirmed his ties with the party in the lawsuit. The defendant raised the matter with six more judges, up to the court of appeal, but all of them

refused to duly consider and properly apply the facts. As a result, all the decisions of the judge in the impugned motion to end the action stand to this day, even the decisions he released after recusing himself.

2. The judgement of the Court of Appeal for Ontario raises the following questions which are of national importance:

   (i) Do ss. 7, 11(d), and/or 15(1) of the *Charter* encompass a right for every individual civil litigant to an impartial process, both real and apparent?

   (ii) If there is such a right, consistent with *Charter* principles, what form does it take in judicial practice?

Dated at the City of Ottawa in the Province of Ontario this 6th day of January, 2014.

SIGNED BY:

Denis Rancourt

Dr. Denis Rancourt (Applicant)

ORIGINAL TO: THE REGISTRAR

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NOTICE TO THE RESPONDENTS: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.

File number: _____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

Denis Rancourt

Applicant
(Defendant)

and

Joanne St. Lewis

Respondent
(Plaintiff)

and

University of Ottawa

Respondent
(Intervening Party)

CERTIFICATE OF THE APPLICANT

I Denis Rancourt, applicant, hereby certify that

(a) there is no sealing or confidentiality order in effect in the file from a lower court or the Court and no document filed includes information that is subject to a sealing or confidentiality order or that is classified as confidential by legislation;

(b) there is no ban on the publication of evidence or the names or identity of a party or witness and no document filed includes information that is subject to that ban, pursuant to an order or legislation; and

(c) there is, pursuant to legislation, no information that is subject to limitations on public access and no document filed includes information that is subject to those limitations;

CITATION: St. Lewis v. Rancourt, 2013 ONSC 1564
COURT FILE NO.: 11-51657
DATE: 2013/03/13

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
Joanne St. Lewis	)	Richard G. Dearden / Anastasia Semenova, for the Plaintiff
Plaintiff	)	
– and –	)	
Denis Rancourt	)	Denis Rancourt, self-represented
Defendant	)	
University of Ottawa	)	Peter K. Doody, for the University of Ottawa
Rule 37 Affected Party	)	
	)	**HEARD:** December 13, 2012

REASONS FOR DECISION ON THE CHAMPERTY MOTION (CORRECTION)

R. SMITH J.

Corrected decision: The text of the original decision was corrected on May 13, 2013 and the description of the corrections are appended.

Overview

[1] Denis Rancourt ("Rancourt") seeks an order dismissing or staying Joanne St. Lewis' ("St. Lewis") defamation action against him as an abuse of process, because he alleges that the University of Ottawa's agreement to pay her legal costs constitutes champerty and maintenance.

[2] The defendant Rancourt is a former Physics Professor at the University of Ottawa (the "University"). He published a blog on February 11, 2011 in which he referred to St. Lewis as "Allan Rock's house negro".

[3] St. Lewis is an Assistant Law Professor employed by the University who teaches in the area of equality rights, and has a reputation in anti-racism. She became a tenured professor in 2001. She is also a Black woman.

[4] In the fall of 2008, St. Lewis was asked by President Rock to prepare an evaluation of the University Student Appeal Centre‟s report that had alleged systemic racism at the University. In her report, St. Lewis concluded that there was no systemic racism at the University and that the University‟s academic fraud process was well founded.

[5] In April 2011, shortly after St. Lewis became aware of Rancourt‟s blog referring to her as "Allan Rock‟s house negro", she met with Dean Feldthusen to advise him that she had to sue Rancourt for libel. St. Lewis and Dean Feldthusen then met with University President Allan Rock to request that the University pay for her legal costs for her libel action against Rancourt. President Rock agreed to pay St. Lewis‟ legal costs because the allegedly defamatory comments in Rancourt‟s blog were related to the report which St. Lewis had prepared as an employee of the University and at the request of the University.

[6] On June 23, 2011, St. Lewis issued a statement of claim against Rancourt claiming $1 million in damages for defamation.

Issues

[7] The following issues must be decided:

(1) Should Rancourt‟s affidavits, affirmed on April 23 and May 23, 2012, be admitted into evidence on the champerty motion?

(2) Should a trial of an issue be ordered?

(3) Does the University‟s agreement to pay for St. Lewis‟ legal costs of her defamation action against Rancourt constitute champerty and maintenance?

Background Facts

[8] Rancourt is a former Physics Professor at the University of Ottawa. He publishes a blog entitled "U of O Watch". On February 11, 2011, Rancourt published an article entitled "Did Professor St. Lewis Act as Allan Rock‟s House Negro?"

[9] St. Lewis is an Assistant Professor in the Common Law Section of the Faculty of Law at the University of Ottawa. She was awarded full tenure in 2001. St. Lewis co-chaired the Canadian Bar Association working group on racial equality and authored the report titled „Virtual Justice, Systemic Racism in the Canadian Legal Profession‟. St. Lewis has also taught a number of courses that examined issues of racism in a variety of contexts and has an established reputation as an expert in anti-racism and critical race theory as an academic public speaker and facilitator.

[10] In November 2008, the Student Appeal Centre ("SAC") published its 2008 Annual Report entitled "Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa". Shortly thereafter, University President Allan Rock asked St. Lewis, in her capacity as a Professor of Law and as the Director of the Human Rights Research and Education Centre, to provide an assessment of whether the allegations of systemic racism in the

University‟s Academic Fraud Process were well founded. St. Lewis accepted the President‟s request and conducted an evaluation of the SAC‟s 2008 Annual Report.

[11] St. Lewis completed her final report entitled "Evaluation Report of the Student Appeal Centre 2008 Annual Report" which was released on November 15, 2008. In her report, St. Lewis concluded that there was no systemic racism at the University. Rancourt was not mentioned in her report.

[12] St. Lewis alleges that a number of the statements contained Rancourt‟s February 11, 2011 blog are false, defamatory and racist.

[13] On May 18, 2011, Rancourt published a further statement in response to a Notice of Libel he received which St. Lewis also alleges contains false, defamatory, and racist statements about her.

[14] On or about mid-April of 2011, the plaintiff became aware that Rancourt had referred to her as a „House Negro‟ of the University of Ottawa President Allan Rock. St. Lewis met with Dean Bruce Feldthusen to advise him that she had to sue Rancourt for damages to her personal and professional reputation. At the meeting, Dean Feldthusen and St. Lewis decided to meet with the University of Ottawa President Allan Rock to advise him about her defamation action and to request that the University pay for the legal costs of her libel action. The meeting was held on April 15, 2011 between President Rock, St. Lewis and Dean Feldthusen at which time President Rock, on behalf of the University, agreed to fund the legal costs of St. Lewis‟ libel action against Rancourt.

[15] The University gave the following two reasons for funding St. Lewis‟ libel action:

(a) Rancourt‟s defamatory remarks about St. Lewis were occasioned by work, which she had undertaken at the request of the University and in the course of her duties and responsibilities as an employee of the University; and

(b) Rancourt‟s racist attack upon St. Lewis took the case out of the ordinary and created a moral obligation for the University to provide support for a professor in defence of her reputation.

[16] The University of Ottawa is an educational institution governed by statute and mandated to perform the public role of education and research. The University acknowledges that it receives some Government funding.

[17] In her statement of claim, St. Lewis unilaterally proposed to give half of the punitive damages awarded to the Danny Glover Routes to Freedom Graduate Law Student Scholarship Fund. The fund is administered by the University.

Issue #1 **Should Rancourt's affidavits, affirmed on April 23 and May 23, 2012, be admitted into evidence on the champerty motion?**

Facts related to the admissibility of the April 23, 2012 and May 23, 2012 affidavits

[18] On January 25, 2012, Rancourt served this notice of motion seeking an order that the action be stayed or dismissed on the ground that the action is vexatious or otherwise an abuse of process, contrary to Rule 21.01(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 on the grounds that the University"s agreement to fund St. Lewis" libel action constitutes champerty and maintenance.

[19] Rancourt"s motion relies on evidence contained in his affidavit affirmed on January 16, 2012 which consisted of a nine page affidavit plus 191 pages of attached exhibits. The plaintiff did not cross-examine Rancourt on his affidavit.

[20] Beaudoin J. was initially appointed as the Case Management Judge for this action. The University sought leave to intervene in the defendant"s motion to have the action stayed or dismissed on the basis of champerty and maintenance. Beaudoin J. held that leave was not required because the University would be affected by the order and pursuant to r. 37.07(1), and as a result, held that the University had the right to file material in response to Rancourt"s motion.

[21] The University filed affidavits from Allan Rock, the president of the University of Ottawa, and Céline Delorme, counsel for the University, in the labour arbitration arising out of the dismissal of Rancourt by the University in 2009. These affidavits were sworn on February 21 and 16, 2012 respectively. St. Lewis filed affidavits from Bruce Feldthusen, Dean of the Faculty of Common Law at the University, and herself, which were sworn on February 21, 2012.

[22] On April 2, 2012, a case conference was held before Beaudoin J. who issued an endorsement containing the following terms:

(1) Mr. Rancourt will examine Mr. Giroux, Chair of the Board of Governors of the University of Ottawa (as a witness on the 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. Feldthusen on his affidavit on April 23, 2012 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. Rancourt will deliver any supplementary affidavit to the evidence given by Mr. Giroux at his examination by April 23, 2012. [emphasis added]

[23] The cross-examinations by Rancourt took place on the dates and times set out in the above case conference endorsement.

[24] On April 23, 2012, Rancourt delivered a further affidavit affirmed by him. This affidavit attached three documents he received from St. Lewis in April 2012, and six documents which were copies of exhibits referred to in the cross-examination on the affidavits, all of which were attached as Exhibits A, B, C, E, F, G, H, I, and J, to his affidavit. A third section of this affidavit referred to unidentified documents that Rancourt believed would be produced by the University in his labour arbitration in May 2012.

[25] On May 4, 2012, a further case management conference was held before Beaudoin J. During that case conference, the University advised Rancourt and the court that its position was that Rancourt"s April 23rd affidavit was not admissible. On May 4, 2012, Beaudoin J. made the following endorsement related to this issue:

3. The Champerty Motion will be heard at 10:00 a.m. on August 29, 2012. The Defendant"s request to file additional affidavit material for use on the motion will be dealt with at that time.

[26] The documents attached as Exhibits A-J to Rancourt"s April 23, 2012 affidavit are all documents which he had in his possession prior to the cross-examination of Mr. Giroux. All but one of the exhibits relate to Mr. Rock and not to Mr. Giroux or his evidence. The exhibit relating to Mr. Giroux (Exhibit D) is a copy of an article written by a professor at the University of Waterloo about whether Rancourt"s dismissal by the University in 2009 was justified. This evidence is not relevant to the champerty motion.

[27] On June 20, 2012, Beaudoin J. heard a motion by Rancourt to compel the witnesses tendered by the University, including Mr. Giroux, to answer questions and produce documents which they had refused during their cross-examinations. Rancourt"s refusals motion was entirely dismissed by Beaudoin J. His written reasons were released on August 2, 2012. At paras. 30-31 of his decision, Beaudoin J. stated as follows:

> In the Compendium of Argument that he filed at the hearing of this motion, Dr. Rancourt alleges for the first time on page 1:
>
> > In order to establish that the University has engaged in maintenance and champerty to the extent that it constitutes an abuse of process, the Defendant wishes to demonstrate that the **real motive for the University funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process.** (Emphasis mine)

[28] Rancourt's allegation about the University's alleged improper motive was not mentioned anywhere in his Notice of Motion or in his Affidavit material filed in support of his champerty motion in January 2012.

[29] The issues addressed in Rancourt's April 23rd affidavit relate to copies of e-mails between St. Lewis and Allan Rock, as well as Stéphane Émard-Chabot, the article by Professor Westhues and e-mails to or from Allan Rock related to Rancourt's conduct as a professor or related to his dismissal. Rancourt's May 23rd affidavit relates to alleged covert surveillance of him by the University, the alleged use of Rancourt's medical information by the University without his knowledge or consent, and also an e-mail sent in 2008 related to Rancourt's dismissal.

[30] In para. 33 of Beaudoin J.'s August 2, 2012 decision, he stated:

> Relevancy is determined by an examination of the issues raised on the motion, and by a review of the affidavits filed in support and in response. However, a party cannot broaden the scope of cross-examinations beyond what is required to determine the issues in the motion by putting irrelevant material in his or her transcript.[1] I would add that a party cannot broaden the scope of cross-examination by including a reference to irrelevant material in his or her Notice of Examination.

[31] Beaudoin J. decided that the issues dealt with by Rancourt in his April 23rd and May 23, 2012 affidavits were not relevant to the champerty motion. On Issue 15 in the refusals motion with regard to Mr. Giroux, Mr. Giroux refused to answer the question "Does the University have any policy or directives about its use of surveillance of professors or students?" Beaudoin J. stated as follows:

> Ruling: Not relevant to the matters raised in the Notice of Motion. Dr. Rancourt was aware of surveillance of himself in 2008 before Mr. Rock became President, moreover, this is being litigated in the labour arbitration.

[32] Exhibit I attached to Rancourt's April 23rd affidavit was put to President Rock during his cross-examination as "evidence which Mr. Rock may or may not be aware of and extensive covert surveillance campaign of me and of my students that was run by the University of Ottawa". In his factum on this motion, Rancourt relies on Exhibits C, D, E, F, H and I to the April 23rd affidavit as evidence to establish that "the University ran an extensive covert information gathering campaign against full tenured Professor Rancourt, with a hired student who used a false identity and fraudulent methods."

[33] Rancourt abandoned the issue of asking Mr. Rock if he was aware that the University made a third party psychiatric assessment of him without his knowledge or consent. He also

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[1] *BASF Canada Inc. v. Max Auto Supply (1986) Inc.*, [1998] O.J. No. 3676 at para. 10 (S.C.J.) (Master Beaudoin); *Caputo v. Imperial Tobacco Ltd*., [2002] O.J. No. 3767 at para. 14 (S.C.J.) (Master Macleod).

abandoned the issue of whether Mr. Rock had ever paid to obtain recordings or transcripts of any of Rancourt‟s various talks or interviews.

[34] Exhibit J to Rancourt‟s April 23, 2012 affidavit is a copy of a letter from the University to Dr. Louis Morissette. Rancourt relies on this letter as evidence that the University obtained a psychiatric evaluation of him without his knowledge or consent. However, Beaudoin J. has already ruled this issue was irrelevant to the champerty motion.

[35] Rancourt brought a motion seeking Leave to Appeal from Beaudoin J.‟s determination of the relevance of these issues. Leave to Appeal was denied by Annis J. in his decision dated November 29, 2012 as a result Beaudoin J.‟s decision is final and binding.

[36] Rancourt worked at the University for 23 years as a Physics Professor until he was dismissed by the University in 2009. His dismissal is presently being contested in a labour arbitration between his union and the University. He attained the rank of a fully tenured Professor in 1997.

[37] In his affidavit of January 2012 filed in support of his motion, Rancourt set out the following reasons for finding an abuse of process based on champerty and maintenance:

(a) the University was using a fact of the defamation litigation and its content as evidence against him in the labour arbitration;

(b) the University was entirely funding the plaintiff‟s defamation action (the University agrees that it is fully funding St. Lewis‟ legal costs in the defamation action); and

(c) the University was receiving a share of the proceeds of the action because the plaintiff had stated in her Statement of Claim that if punitive damages were awarded against Rancourt, she would donate half of the award of punitive damages to the Danny Glover Routes to Freedom Graduate Law Student Scholarship Fund.

[38] The two allegations made in his January affidavit in respect of the motive of the University for funding St. Lewis‟ defamation action are as follows:

(a) Firstly, that the University was using the fact of the defamation litigation and its contents as evidence against him in the labour arbitration; and

(b) Secondly, that the University was receiving a share of the proceeds of the action.

[39] In a letter from the University‟s lawyer, David W. Scott, dated October 25, 2011, Rancourt was advised that the University was entirely funding the plaintiff‟s defamation action for the reasons set out in the letter. Mr. Scott wrote as follows:

> 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.

[40] In his affidavit, Mr. Rock stated that he made the decision that the University would reimburse St. Lewis for her legal fees incurred in her defamation action against Rancourt. Mr. Rock further stated that it was St. Lewis‟ action, and that only she provided instructions to her counsel. He further stated that the University has not, and does not provide instructions to St. Lewis‟ legal counsel.

[41] The senior management committee (known as the Administrative Committee) of the University and the Executive Committee of the University‟s Board of Directors were made aware of Mr. Allan Rock‟s decision on behalf of the University that it would reimburse St. Lewis for her legal fees in this proceeding.

[42] Mr. Rock has also stated that he never had any discussion with St. Lewis about her proposal to donate half of any punitive damages awarded to the Danny Glover Routes to Freedom Graduate Law Student Scholarship Fund. Mr. Rock stated "I never discussed this aspect of the matter with her. My decision to have the University reimburse her for her legal fees had nothing to do with her intention to donate a portion of any eventual award to a scholarship fund." Mr. Rock further stated at para. 10 of his affidavit:

> At the time that I agreed that the University would reimburse Professor St. Lewis for her legal fees, I had no idea that she intended to donate any portion of any damages she may be awarded to the scholarship fund. I first became aware of that fact after the Statement of Claim had been issued.

[43] Ms. Delorme stated in her affidavit that the University was not using St. Lewis‟ defamation action in the labour arbitration, nor was it asking the arbitrator to determine issues related to the defamation action. The University was only asking the labour arbitrator to consider the content of the defendant‟s blog – namely, the statements he made about St. Lewis, but not to consider the fact that he was involved in a defamation lawsuit.

[44] Robert Giroux, who was the Chair of the Board of Governors of the University, stated that he knew nothing of any proceeds of the action going to the University and he was told that the decision had been made because a Professor had been "tainted" and that Mr. Rock felt it appropriate to support her.

Analysis

Issue previously decided by Beaudoin J.

[45] In his decision, *St. Lewis v. Rancourt*, 2012 ONSC 4494, dated August 2, 2012, Beaudoin J. has already ruled that the evidence sought to be introduced in Rancourt‟s April 23 and May 23 affidavits was irrelevant to the issues involved in the champerty motion. As a result,

I agree with the University‟s submission that based on Beaudoin J.‟s findings, the defendant is estopped from relitigating the same issues raised in the above affidavits, in this champerty motion.

[46] In his decision of August 2, 2012, Beaudoin J. held that the only relevant allegations of fact related to champerty and maintenance motion were those made by Rancourt in his Notice of Motion and supporting affidavit dated in January 2012. Those allegations were as follows:

(1) The University is entirely funding the litigation;

(2) The University will receive a share of the proceeds; and

(3) The University is using the fact of the defamation suit to bar the defendant a return to his post even if his dismissal is found to be unjustified.

[47] Beaudoin J. ruled that the evidence which sought to establish "that the real motive for the University funding the litigation of the Plaintiff is to persecute, harm and/or suppress the Defendant and, as such, the action is vexatious and an abuse of process", was irrelevant and inadmissible on the champerty motion.

[48] If an issue has been decided by the Court between the same parties, then neither party can be allowed to argue the same issue over again. The interlocutory judgment of Beaudoin J. at para. 30 on that issue is binding, when the same question is raised between the same parties in the same action. (See *Diamond v. Western Realty Co.*, [1924] S.C.R. 308, at p. 8; *Hawley v. North Shore Mercantile Corp.*, 2009 ONCA 679, 255 O.A.C. 143, at paras. 25-26 and *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)* (1997), 35, O.R. (3d) 273 at pages 3-6.)

[49] In the case conference decision of April 2, 2012, Beaudoin J. decided that Rancourt was permitted to deliver a supplementary affidavit by April 23, 2012 to respond to the evidence given by Mr. Giroux at his cross-examination. The affidavits of April 23rd and May 23rd do not respond to Mr. Giroux‟s evidence other than attaching an irrelevant article about the merits of Rancourt‟s dismissal written by a professor from the University of Waterloo. Rancourt‟s supplemental affidavits attempt to introduce evidence of e-mails indicating that Allan Rock was upset with some of Rancourt‟s actions and statements made before the University decided to terminate Rancourt‟s employment as a professor.

[50] I agree with the University‟s submission that the evidence sought to be filed in Rancourt‟s April 23 and May 23, 2012 affidavits is irrelevant and inadmissible. Beaudoin J. has previously decided that relevancy was determined by an examination of the issues raised in his motion and by a review of the affidavits filed in support of the champerty motion by Rancourt in January 2012 and the affidavits filed in response. Leave to Appeal was denied and this decision remains final and binding on the parties.

Further affidavits not permitted after cross-examination under Rule 39.02(2)

[51] The University also submits that Rancourt‟s affidavits of April 23 and May 23, 2012 should not be admitted because they do not comply with Rule 39.02(2) which reads as follows:

> A party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver an affidavit for use at the hearing or conduct an examination under rule 39.03 without leave or consent, and the court shall grant leave, on such terms as are just, where it is satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence in the form of an affidavit or a transcript of an examination conducted under rule 39.03. R.R.O. 1990, Reg. 194, r. 39.02 (2).

[52] The Notice of Motion and supporting affidavit of January 16, 2012 filed by Rancourt made no mention of the alleged motive set out in para. 30 of Beaudoin J."s reasons of August 2, 2012. Rancourt"s affidavits of April 23rd and May 23rd only peripherally address an alleged improper motive which was not mentioned in Rancourt"s initial motion materials, and consequently this issue was not specifically addressed in any of St. Lewis" or the University"s responding materials. The responding parties argue that the affidavits should be inadmissible for this reason as well.

[53] Rule 39.02(2) requires that leave be obtained in order to file further affidavits after a party has completed his or her cross-examinations. In *Sure Track Courier Ltd. v. Kaisersingh*, 2011 ONSC 7388 (Ont. Sup.Ct.), at para. 29, the Court stated that leave to file affidavits after cross-examination should be granted sparingly.

[54] The criteria for granting leave to file additional affidavit material, after cross-examination on the affidavits have been completed, were set out in *First Capital Realty Inc. v. Centrecorp Management Services Ltd.*, (2009) 258 O.A.C. 76 (Ont. Sup Ct. (Div. Ct.)), at para. 13, where the Divisional Court stated as follows:

1) Is the evidence relevant?
2) Does the evidence respond to a matter raised on the cross-examination, not necessarily raised for the first time?
3) Would granting leave to file the evidence result in non-compensable prejudice that could not be addressed by imposing costs, terms, or an adjournment?
4) Did the moving party provide a reasonable or adequate explanation for why the evidence was not included at the outset?

[55] I find that leave to adduce the further affidavits of April 23 and May 23 by Rancourt after he completed his cross-examinations, do not meet the tests set out above in *First Capital Realty Inc., supra*. Firstly, the evidence contained in the affidavits is not relevant to the issues identified in Rancourt"s motion and affidavit materials filed in January 2012. This issue has already been decided by Beaudoin J. and leave to appeal denied. Secondly, the evidence contained in the two affidavits does not respond to a matter raised in the cross-examinations, nor does it respond to the evidence given by Mr. Giroux on his cross-examination. The only exhibit related to Mr. Giroux"s cross-examination is an irrelevant article written by a University of Waterloo professor about Rancourt"s dismissal (Exhibit D). In his case conference decision of April 2, 2012, Beaudoin J. permitted Rancourt to file a further affidavit only in response to Mr. Giroux"s examination. I would allow Rancourt"s April 23, 2012 affidavit to be filed but only

as it relates to Exhibit D. However, I also find that Exhibit D is irrelevant hearsay evidence which is not relevant to the champerty motion.

[56] Thirdly, the evidence attached to Rancourt"s affidavit consists of documents put to witnesses during cross-examination which the witnesses objected to or did not recognize. Rancourt had all of these documents in his possession before the cross-examination took place. I agree with the University"s submissions that a party cannot "bootstrap the admissibility of a subsequent affidavit by putting the evidence in that affidavit to a witness in cross-examination and using that witness" proper refusal or lack of knowledge to form the basis for its subsequent admissibility."

[57] Finally, I find that the University would suffer prejudice if the issues as pleaded in the motion filed in January 2012 were changed by filing new affidavits raising additional issues after cross-examinations were completed. Rancourt has not provided any reasonable or adequate explanation for why the evidence he attached to his April and May affidavits was not included in his affidavit and materials filed in January 2012, as these materials were in his possession before he cross-examined President Rock.

[58] Even if the April 23rd and May 23rd affidavits were admitted as evidence of the exhibits attached to the affidavits, I find that the exhibits (other than Exhibit D) consist of copies of e-mails to or from Allan Rock which indicate that Allan Rock disagreed with certain actions or statements made by Rancourt. This evidence is not surprising as President Rock decided to terminate Rancourt"s employment as a professor in 2009, because President Rock and the University disagreed with Rancourt"s conduct as a professor. However, the attached exhibits do not constitute evidence that the University agreed to fund St. Lewis" defamation action for improper reasons. To suggest that the e-mails attached as exhibits to the April 23rd and May 23rd affidavits constitute evidence of an improper motive by the University for funding St. Lewis" defamation action is pure speculation on Rancourt"s part.

Disposition of the admissibility of the April 23 and May 23, 2012 affidavits

[59] For the above reasons, I find that the April 23 and May 23, 2012 affidavits filed by Rancourt are inadmissible on the champerty motion and even if they were admissible they do not constitute relevant evidence of an improper motive of the University but are mere speculation.

Issue #2 Should a trial of an issue be ordered?

[60] In his factum, Rancourt requests that the issue of staying St. Lewis" action as an abuse of process on the basis of maintenance and champerty be disposed of by a trial of an issue pursuant to Rule 37.13(2)(b).

[61] St. Lewis submits that this is yet another attempt by Rancourt to delay the determination of his champerty motion, and is contrary to his previous representations to the Court that his champerty, maintenance and abuse of process motion had to be decided prior to trial because it could end the litigation.

[62] At the May 4, 2012 case management conference, Beaudoin J. set August 29, 2012 for Rancourt"s champerty motion to be heard. The August 29th hearing date was cancelled due to

Rancourt‟s allegations of bias against Beaudoin J. After I was appointed as the case management judge, I set the date of December 13, 2012 to hear Rancourt‟s champerty motion. This date was set at a case conference held on September 27, 2012.

[63] Rancourt did not give any notice to the responding parties prior to November 30, 2012 when he filed his factum that he would seek an order directing a trial of the maintenance and champerty issues rather than having his motion heard. Rancourt seeks to change his prior submissions that the champerty and abuse of process issues had to be decided prior to trial. He seeks to change his position and argue that this matter should be decided at trial or by a trial of an issue.

[64] Rule 21.01(3)(d) reads as follows:

> (3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,
>
> …
>
> (d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court, and the judge may make an order or grant judgment accordingly.

[65] Rule 37.13(2) reads as follows:

> A judge who hears a motion may,
> (a) in proper case, order that the motion be converted into a motion for judgment; or
> (b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge. R.R.O. 1990, Reg. 194, r. 37.13 (2).

[66] Rancourt brought this motion in January 2012 seeking to stay or dismiss St. Lewis‟ defamation action as an abuse of process based on champerty and maintenance. All parties have filed numerous affidavits, the responding parties have been cross-examined on their affidavits, a refusals motion was brought by Rancourt with regards to the University‟s affiant‟s refusal to answer certain questions, the date to hear the champerty motion was set for August 29, 2012 and then adjourned due to an allegation of bias against Beaudoin J. and rescheduled to December 13, 2012.

[67] Rancourt‟s first objection to this motion being heard and his request that the court order a trial of the issue, pursuant to Rule 37.13(2)(b) and (3) was in his factum dated and filed on November 30, 2012. This factum was delivered approximately 11 months after Rancourt had commenced this motion and after the motion date had been set for August 29th and then adjourned to December 13th for a full day hearing. In addition, the motion has now been fully argued by the parties.

[68] Rule 1.04 requires that the Rules "be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."

[69] Rancourt now submits that there is conflicting material evidence, in which credibility is an essential feature, which he submits requires a trial of an action to resolve.

[70] Rancourt submits that main material conflict in the evidence is that President Rock has given sworn evidence that the University‟s motive for funding the plaintiff‟s litigation were proper. Rancourt alleges that a possible *animus* of President Rock towards him because of his dismissal as a Professor in 2009 constitutes evidence of an improper motive for the University to pay legal costs of one of its employees, St. Lewis, to pursue a defamation action against him.

[71] The University and St. Lewis submit that there is no evidence of an improper motive for the University‟s decision to fund St. Lewis‟ defamation action because Beaudoin J. has held that the issues raised in the April 23rd and May 23rd affidavits are not relevant and as such, they are not admissible. I have held that Beaudoin J. has already decided this and I have not admitted the affidavits.

[72] Rancourt submits that the University‟s real motive for funding St. Lewis‟ defamation action against him was to persecute or harm him. Beaudoin J. has already ruled that the evidence by which Rancourt sought to establish the "real motive for the University funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process" was irrelevant and inadmissible on his champerty motion. As a result of his finding, this issue has been decided by Beaudoin J. and therefore, I find that there is no material conflict in the evidence which requires a trial of an issue.

[73] Even if the affidavits of April 23rd and May 23, 2012 were admitted, I conclude that there is no conflict in the material evidence related to the plaintiff‟s motive for commencing litigation against Rancourt. The plaintiff‟s uncontradicted evidence is that she decided to commence action against Rancourt to protect her reputation and that decision was not made by the University.

[74] With regards to Rancourt‟s submission that there is a conflict in the evidence over President Rock‟s motive for funding St. Lewis‟ defamation action, I find that even if the subsequent affidavits were considered, there is simply no evidence that Rancourt has produced showing that the University had an improper motive for funding an employee‟s defamation action other than his speculation about a possible improper motive because he is in a labour dispute with the University.

[75] I am also not satisfied that there is a conflict in the evidence related to the motive by President Rock. He has sworn an affidavit setting forth his reasons for agreeing to fund St. Lewis‟ defamation action. He has been cross-examined on his affidavit and no contradictions have arisen from President Rock‟s cross-examination that would warrant a trial of this issue.

[76] I also find that to order a trial of an issue after extensive cross-examinations were conducted, where the parties have spent time and incurred substantial expense over an 11 month period, where Rancourt has changed his approach and now seeks to have his motion turned into a trial of an issue would be inconsistent with the principles set out in Rule 1.04. Rancourt‟s request to convert his motion into a trial of an issue would create unnecessary expense and delay and is

not necessary to secure a just result because the issues have already been defined by Rancourt in his January motion materials and the respondents in their responding affidavits as confirmed by Beaudoin J."s decision. There is only mere speculation by Rancourt that the University agreed to fund St. Lewis" defamation action for an improper purpose or improper motive.

Disposition of Issue #2

[77] For the above reasons, a trial of the issues raised in this motion will not be ordered.

Issue #3 Does the University's agreement to pay for St. Lewis' legal costs of her defamation action against Rancourt constitute champerty and maintenance?

Maintenance

[78] Maintenance is defined as the officious intermeddling in the litigation of others for an improper purpose. At p. 157, in the *Introduction to the Canadian Law of Torts*, G.H.L. Fridman 2nd ed., LexisNexis, Canada, 2003, the author states as follows:

> Maintenance is the officious intermeddling in the litigation of others, for an improper motive, when the maintainer has no personal interest in such litigation and the assistance, which usually takes the form of financial support, is unjustified. Champerty occurs when, in return for such support, the parties to the arrangement agree that any profits of the action will be shared between them. Champerty is an "aggravated" or "egregious" form of maintenance, in which there is the added element that the maintainer shares the profits of the litigation. Without maintenance there can be no champerty.

[79] In *The Law of Civil Procedure in Ontario*, Morden and Perell, 1st ed., LexisNexis, Toronto, 2010, at pages 72-73 the authors state that maintenance and champerty were torts and state as follows:

> The presence of maintenance or champerty may be a bar to a proceeding. Maintenance and champerty are torts, and they were once regarded as criminal offences. The gravamen of these torts is a person"s officious intermeddling or profiteering in another person"s lawsuit. … An action that involves maintenance or champerty may be dismissed as an abuse of process. (*Operation 1 Inc. v. Phillips,* [2004] O.J. No. 5290 (Ont. S.C.J.) and *Wong v. Second Cup Ltd.*, [2005] O.J. No. 2897 (Ont. Master)

[80] At page 73, Morden and Perell write:

> The focus of attention of maintenance … There is no maintenance unless there is an improper motive, (*Lorch v. McHale*, [2008] O.J. No. 2807, 92 O.R. (3d) 305 (Ont. S.C.J.); *S. v. K.*, [1986] O.J. No. 3035, 55 O.R. (2d) 111 (Ont. Dist. Ct.)) and there is no maintenance if the alleged maintainer has a legitimate reason or justification for assisting the litigant. (*Lorch v. McHale, supra*; *Morgan v. Steffanini*, [2005] O.J. No. 1606 (Ont. S.C.J.); *Ingle v. ACA Assurance*, [2005] O.J. No. 4653 (Ont. S.C.J.))

[81] In *McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257 (Ont. C.A.) at para. 34, the Court of Appeal stated as follows on the subject of maintenance:

> For there to be maintenance the person allegedly maintaining an action or proceeding must have an improper motive which motive may include, but is not limited to, officious intermeddling or stirring up strife. There can be no maintenance if the alleged maintainer has a justifying motive or excuse.

[82] To summarize the above cases and statements, in order to succeed on his motion to obtain a stay of the action as an abuse of process based on maintenance and champerty, Rancourt must show that:

(a) there has been officious intermeddling by the University, namely, that the University has funded St. Lewis‟ defamation action that she would not have otherwise pursued;

(b) the University did not have a legitimate reason or justification for assisting St. Lewis by providing funding; and

(c) the University had an improper motive for funding St. Lewis‟ libel action.

(a) Officious intermeddling

[83] The uncontradicted evidence of St. Lewis and Dean Feldthusen was that St. Lewis had decided to sue Rancourt for defamation before she asked the University to pay for her legal fees to do so. Dean Feldthusen supported St. Lewis‟ request for funding and arranged a meeting with the President of the University. President Allan Rock agreed, on behalf of the University, to pay St. Lewis‟ legal costs to sue Rancourt for defamation to protect her reputation as an employee of the University.

[84] In *Hill v. Church of Scientology of Toronto*, [1992] O.J. No. 451 (S.C.J.), aff‟d [1995] 2 S.C.R. 1130, the Supreme Court of Canada found no impropriety in the Government of Ontario funding an employee‟s libel action against a private entity. The University of Ottawa is a private entity and is not a governmental body, however, does receive grants from governments.

[85] The reason the University agreed to pay St. Lewis‟ legal costs for her libel action were set out in a letter from the University‟s counsel, David Scott, which were referred to in the facts above. The relevant parts of the University‟s reasons were that the alleged defamatory remarks about 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 of the University. Her efforts were not personal but in the interest of the University. Furthermore, the racist attack upon her took this case out of the ordinary and in the view of the University created a moral obligation to provide support for her in defence of her reputation.

[86] The uncontradicted evidence before me is that the University agreed to pay an employee‟s legal fees, in this case, Professor St. Lewis, to fund her libel action which was commenced to defend her reputation. I therefore find that the University‟s agreement to fund an employee‟s defamation action does not, as was the case in *Hill v. Church of Scientology of*

Toronto, ibid, constitute officious intermeddling in litigation as St. Lewis had decided to sue Rancourt for libel to protect her reputation before the University agreed to fund her legal fees.

(b) and (c) Legitimate reason or justification for assisting St. Lewis or improper purpose

[87] Rancourt speculates and alleges that Allan Rock as President of the University had an improper motive for funding St. Lewis‟ libel action against him. He alleges that the University agreed to fund her defamation action in order to stigmatize and silence him after the University dismissed him from his full tenured professorship on April 1, 2009.

[88] There can be no maintenance if the University had a legitimate reason or justification for assisting the litigant. The evidence is uncontradicted from President Rock, Mr. Giroux, Dean Feldthusen and St. Lewis that, the University‟s reasons for assisting St. Lewis by paying her legal fees, was to defend her reputation. The reasons were set out in the letter from its counsel, David Scott, namely, because her reputation was attacked during the course of her employment by the University and also because the University felt that it had a moral obligation to assist her to defend her reputation in these special circumstances from a racist attack.

[89] In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, the Supreme Court of Canada made several comments about the fact that the Ontario Government paid for the legal fees for the Crown Attorney, S. Casey Hill, to sue the Church of Scientology for libel. Similar allegations to those made by Rancourt were levelled at the Ontario Government. Paragraph 70 of the *Hill* decision reads as follows:

> They further submit that Casey Hill commenced these legal proceedings at the direction and with the financial support of the Attorney General in order to vindicate the damage to the reputation of the Ministry resulting from criticism levelled at the conduct of one of its officials. It is, therefore, contended that this action represents an effort by a government department to use the action of defamation to restrict and infringe the freedom of expression of the appellants in a manner that is contrary to the Charter.

[90] At para. 71, the Supreme Court states that “These submissions cannot be accepted. They have no legal, evidentiary or logical basis of support.” At para. 75, the Court continued by stating that “The appellants impugned the character, competence and integrity of Casey Hill, himself, and not that of the government. He, in turn, responded by instituting legal proceedings in his own capacity.”

[91] In *Hill v. Church of Scientology of Toronto, ibid*, the Government of Ontario paid for the legal costs for one of its Crown Attorney, S. Casey Hill, to fund a libel action against the Church of Scientology. Rancourt is speculating that the University had other improper motives, namely to silence him. However, they are not supported by any evidence as his allegation denied by President Rock, by St. Lewis, by Dean Feldthusen and by Mr. Giroux. The University does not deny that it terminated Rancourt and he is involved in a labour arbitration with his union to determine whether his dismissal was justified. This is a separate issue and does not constitute evidence of an improper motive on the part of the University.

[92] Rancourt‟s speculation that the University agreed to pay St. Lewis‟ legal costs of her defamation action in order to silence and stigmatize him is unsupported by any evidence. Even if the April 23rd and May 23rd affidavits were considered, I find that the evidence introduced by Rancourt does not contradict the evidence of Mr. Rock, Ms. St. Lewis, Dean Feldthusen or Mr. Giroux, with regards with the reasons that the University agreed to fund St. Lewis‟ defamation action against the defendant. As a result, there is no issue of credibility on these matters that require a trial of an issue.

[93] The situation for St. Lewis is very similar to those in the case of *Hill v. Church of Scientology* as St. Lewis was an employee and made her own decision to commence a libel action to defend her reputation and the University, as her employer, agreed to pay for her legal costs because her reputation was damaged in the course of her employment. I find that the University had a legitimate reason for assisting St. Lewis and there is no evidence that the University agreed to fund St. Lewis‟ libel action for an improper purpose or based on an improper motive.

Champerty

[94] As set out in para. [78] of this decision:

> Champerty is an “aggravated” or “egregious” form of maintenance, in which there is the added element that the maintainer shares the profits of the litigation.

[95] The uncontradicted evidence before me is that there was never any agreement between St. Lewis and the University to share in the proceeds of the libel action. The University agreed to fund St. Lewis‟ costs to pursue a defamation action against Rancourt to defend her reputation at the meeting of April 15, 2011 without any agreement that the University would share in the proceeds of the litigation.

[96] Professor St. Lewis decided, when issuing her statement of claim, that half of any punitive damages awarded would be paid to a scholarship fund. Her statement of claim was issued after the University agreed to pay for her legal costs, St. Lewis‟ unilateral decision to donate a share of the punitive damages awarded to a scholarship fund administered through the University does not constitute a contractual agreement to share in the proceeds. This proposal could be unilaterally revoked by St. Lewis at any time.

[97] I therefore find that the University‟s agreement to fund St. Lewis‟ defamation action did not constitute champerty because there was no agreement that the University would share in the proceeds of the action.

Was there trafficking in litigation?

[98] In *Dugal v. Manulife Financial Corporation*, 2011 ONSC 1785, at para. 8, Strathy J. dismissed a defendant‟s claim that a third party funding agreement in a class action was champertous and unlawful under *An Act respecting Champerty*, R.S.O. 1897, c. 327.

[99] At para. 33, Strathy J. stated:

> (a) …Just as contingency fee agreements have been recognized as providing access to justice, so too third party indemnity agreements can avoid the unfortunate result that individuals with potentially meritorious claims cannot bring them because they are unable to withstand the risk of loss: see *McIntyre Estate* at para. 55.
>
> (b) There is no evidence that CFI stirred up, incited or provoked this litigation, within the meaning of the term "moved" in s. 1 of the *Champerty Act*: see *McIntyre Estate* at para. 41. On the contrary, the plaintiffs demonstrated a clear intention to proceed with this litigation before CFI came on the scene.

[100] In this case, St. Lewis advised Dean Feldthusen that she had to sue Rancourt for defamation and requested that the University provide funding for her legal costs.

[101] An action will be dismissed as being frivolous and vexatious or abusive under Rule 21.03(3)(d) only in the clearest of the cases if on the face of the action and in circumstances where it is plain and obvious that the case cannot succeed. In *Sussman v. Ottawa Sun*, [1997] O.J. No. 181, (Ont. Gen. Div.), the court held that the maintenance and champerty were not defences to an action and as such, pleas will not be struck out.

[102] In *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ON SC), at paras. 45 and 47, Cullity J. held that an action will rarely be stayed or dismissed as an abuse of process based on a champertous agreement. He held that the champerty must rise to a level of "trafficking in litigation", namely be an "unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation", to be considered an abuse of process, even then a stay will not necessarily be granted.

[103] I find the University"s agreement to fund St. Lewis" libel action does not constitute trafficking in litigation because St. Lewis had already decided to sue to protect her reputation and there is no evidence of the University buying or selling rights to litigation as it did not even have an agreement to share in the proceeds of the action.

Disposition of Issue #3

[104] I find that when the University agreed to pay for St. Lewis" legal fees for her defamation action as an employee to assist her to defend her reputation, which was allegedly damaged in the course of her employment for the University, does not constitute officious intermeddling, is a legitimate reason or justification for assisting her and does not constitute an improper purpose. I have found that the University did not enter into an agreement to share in the proceeds of litigation, and as a result, I find there is no champerty. For the same reason, the University"s agreement to fund the costs of the libel action does not rise to the level of trafficking in litigation as there was no purchase or sale of rights to the libel action by the University.

Disposition of Motion

[105] Rancourt"s motion to stay or dismiss the action on the basis that the agreement of the University to fund St. Lewis" defamation action was the product of maintenance and champerty is dismissed.

Costs

[106] The plaintiff and the University shall have fifteen (15) days to make submissions on costs, the defendant Rancourt shall have fifteen (15) days to respond and St. Lewis and the University shall have ten (10) days to reply.

Original signed by *'Mr. Justice Robert J. Smith'*

Mr. Justice Robert J. Smith

Released: March 13, 2013

Appendix

In paragraphs [17], [37](c) and [42], the typographical errors have been corrected to reflect the Danny "Glover" Routes to Freedom Graduate Law Student Scholarship Fund instead of the Danny "Grover" Routes to Freedom Graduate Law Student Scholarship Fund.

The third sentence of paragraph [21] has been changed to the following:

> St. Lewis filed affidavits from Bruce Feldthusen, Dean of the Faculty of Common Law at the University, and herself, which were sworn on February 21, 2012.

In the second sentence of paragraph [92], the typographical error has been corrected from Ms. Lewis to Ms. St. Lewis.

CITATION: St. Lewis v. Rancourt, 2013 ONSC 1564
COURT FILE NO.: 11-51657
DATE: 2013/03/13

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Joanne St. Lewis

Plaintiff

– and –

Denis Rancourt

Defendant

University of Ottawa

Rule 37 Affected Party

REASONS FOR DECISION ON THE CHAMPERTY MOTION

R. Smith J.

Released: March 13, 2013

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE ROBERT J. SMITH	))	Monday, the 13th day of December, 2012

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

- and –

THE UNIVERSITY OF OTTAWA

Rule 37 Affected Party

ORDER

THIS MOTION, made by the Defendant Denis Rancourt seeking an Order dismissing or staying this libel action as an abuse of process on the basis that the agreement of the University of Ottawa to pay the costs of Professor St. Lewis' libel action constitutes champerty and maintenance, was heard orally this day at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

ON READING of the Motion Records and Facta filed by the Plaintiff, the Defendant and the University of Ottawa, and upon hearing the submissions of counsel for the Plaintiff and the University of Ottawa, and submissions of the Defendant appearing in person;

THIS COURT ORDERS that the Defendant's motion to stay or dismiss this libel action is dismissed.

THIS COURT ORDERS that the Plaintiff and the University of Ottawa shall have 15 days from March 13, 2013 to provide submissions in respect of costs (until March 28, 2013), the

Defendant shall have until ~~April 30~~ July 15, 2013 to respond, and the Plaintiff and the University of Ottawa shall have 10 further days to reply (until ~~May 10~~ July 25, 2013).

The Honourable Justice Robert J. Smith

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DOCUMENT # 1517
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

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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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.

Court File: C56905

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE ASSOCIATE CHIEF JUSTICE OF ONTARIO FRIDAY, THE 8TH DAY
THE HONOURABLE JUSTICE BLAIR)
THE HONOURABLE JUSTICE SHARPE) OF NOVEMBER 2013

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

–and–

DENIS RANCOURT

Defendant
(Appellant)

–and–

UNIVERSITY OF OTTAWA

Rule 37 Affected Party
(Respondent)

ORDER

from the order of Smith J. March 13th 2013

THIS APPEAL was heard this day, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Appeal Book and Compendium, Books of Authorities, Exhibit Books, Factum and Transcripts of the Appellant, and the Joint Book of Authorities of the Respondents, Supplementary Authorities of the Respondent, Joanne St. Lewis, the Factum of the Respondent, Joanne St. Lewis, the Factum of the Respondent, University of Ottawa, and the Joint Compendium of the Respondents, and on hearing the submissions of the Appellant, and the Court not requiring any oral submissions from the Respondents:

1. **THIS COURT ORDERS** that this appeal be dismissed.

2. **THIS COURT ORDERS** that the Appellant pay to the Respondent, Joanne St. Lewis, the amount of $20,000.00, inclusives of fees, disbursements, and taxes.

3. **THIS COURT ORDERS** that the Appellant pay to the Respondent, University of Ottawa, the amount of $15,000.00, inclusives of fees, disbursements, and taxes.

4. **THIS ~~COURT~~** order **BEARS** interest at the rate of 3% per annum, commencing November 8th 2013.

(John Zytaruk)
Registrar: Court of Appeal for Ontario

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PER / PAR:

JOANNE ST. LEWIS Plaintiff (Respondent)	– and –	DENIS RANCOURT Defendant (Appellant)	– and –	UNIVERSITY OF OTTAWA Rule 37 Affected Party (Respondent)

Court File No. C56905

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at OTTAWA

ORDER

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Memorandum of Argument

Part I — Public Importance and Concise Statement of Facts

1. The courts in Canada must be fair, and must appear to be fair. The right to an impartial decision-maker is a cornerstone of all legal systems in democratic societies, and is enshrined in ss. 7, 11(d), and 15(1) of the *Charter*.

2. Summary: An Ontario superior court judge had strong personal, family, emotional, and contractual financial ties to a party intervening for the plaintiff in a case, and also to the law firm representing the party in court, and did not disclose any of these ties. This party was also the employer of the plaintiff in the lawsuit, and funded the plaintiff's litigation. The judge was tasked with determining the propriety of the party's funding of the plaintiff, which was done with public money. The judge's ties made it inconceivable that he would rule against the party. When the defendant discovered the judge's ties and presented the evidence, the judge lost decorum, threatened the defendant with contempt of court, and recused himself, but refused to consider whether there was an appearance of bias, and continued to release decisions. The judge's in-court reaction and walkout further confirmed his ties with the party in the lawsuit. The defendant raised the matter with six more judges, up to the court of appeal, but all of them refused to duly consider and properly apply the facts. As a result, all the decisions of the judge in the lawsuit stand to this day, even the decisions he released after recusing himself.

Concise Statement of Facts

3. *Court circumventing its duty to properly address a bias concern:* The chronology of the facts is simple:

   (a) during an interlocutory motion in the Ontario Superior Court of Justice (a refusals motion regarding affiants in an abuse of process motion to end the action), at a hearing on July 24, 2012, the applicant brought an evidence-based complaint of reasonable apprehension of bias;[1]

   (b) the motions judge (Beaudoin J.) circumvented making a judicial determination of reasonable apprehension of bias, by blaming the complainant for bringing the complaint, and recused himself for real bias moving forward;[1]

   (c) the applicant made a motion (to a single judge of the same court) for leave to appeal refusals of two judges (Beaudoin J., and R. Smith J.) to make a judicial determination of the complaint of apparent bias of Beaudoin J.;[2]

   (d) the leave to appeal motions judge (Annis J.) denied an appeal to the Divisional Court and gave as reason "This is not a case that could possibly give rise to a reasonable apprehension of bias on the part of Beaudoin J.";[3]

   (e) on November 8, 2013, the applicant agued to the Court of Appeal for Ontario that the appearance of bias complained of tainted a final decision in the action (regarding the abuse of process motion), and advanced reasonable apprehension of bias as a ground for appeal;[4]

   (f) the Court of Appeal dismissed the appeal, by endorsement on the appeal book, with its entire reasons regarding the bias ground given as:

> 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. [para. 2 of impugned endorsement]

[1] July 24, 2012, court transcript (which was before the appeal court); **Tab E-1**.
[2] August 8, 2012 Notice of Motion, leave to appeal motion to ONSC; **Tab E-7**.
[3] Amended Reasons of Annis J., at para. 40; **Tab E-10**.
[4] May 9, 2013 Factum of the appellant, appeal to ONCA; **Tab E-8**.

4. *Strong evidence of apparent bias:* The cogent evidence supporting a reasonable apprehension of bias of Beaudoin J. includes:[5]

   (a) A terms of reference financial contract between the judge and the University of Ottawa (an intervening party in motions before the judge), for a scholarship fund in the name of the judge's son;

   (b) A boardroom named in honour of the judge's son, at the BLG law firm (Ottawa branch), which represented the University of Ottawa before the judge;

   (c) A media article (*Ottawa Citizen*) — recognized by the judge on the court record of July 24, 2012 — in which the judge is quoted expressing the personal and emotional importance that he attributes to the said scholarship fund, and to the boardroom at BLG;

   (d) The fact that the judge recused himself for real bias moving forward, rather than accept his duty to determine the reasonable apprehension of bias question, by alleging improper behaviour of the applicant in bringing the apparent bias complaint,[6] while continuing to make findings from the bench (on July 24, 2012) and releasing decisions (on August 2, 2012) after the July 24, 2012 in-court events stated to have caused his real bias moving forward; and

   (e) The fact that, at the hearing where the bias concern was first raised, the judge threatened the applicant with contempt of court if the applicant continued to advance the concern.

5. *The judge had a shared interest in the outcome:* The cogent evidence supporting an appearance of bias of Beaudoin J. occurred in the following circumstances:

   (a) It is undisputed that the judge had not, at any time in several hearings with the parties, disclosed his ties to the intervener, the University of Ottawa, and to its counsel the BLG law firm;

[5] July 24, 2012, court transcript; **Tab E-1**; and July 30, 2012 Affidavit of applicant; **Tab E-5**. (Both documents were before the appeal court.)
[6] Pages 34-37 of the July 24, 2012 court transcript (which was before the appeal court); **Tab E-1**.

(b) The abuse of process motion ("champerty motion") in issue before the judge alleged bad faith of the University, such that the decisions of the judge in the champerty motion could impact the reputation of the University and its scholarships; and

(c) Consequently, there is additionally a reasonable appearance that the judge had a shared interest in the outcome of the champerty motion before him.

6. *The role of the highest court in Ontario:* Thus, the impugned endorsement of the Court of Appeal for Ontario:

(a) condones the court of first instance's circumvention (by four judges: Beaudoin J., Hackland J., R. Smith J., and Annis J.) of its duty to properly address a valid and documented complaint of reasonable apprehension of bias;

(b) incorrectly accepts reasons (of Annis J.) to deny a leave to appeal motion on interlocutory matters as a final determination of apparent bias (of Beaudoin J.), thereby erroneously precluding apparent bias as a ground for appeal; and

(c) also summarily dismisses the judicial bias complaint as a ground for appeal, while being silent on the particulars of the said complaint, and its factual basis.

7. *Harmful consequences of allowing the lower court judgements to stand:* As such, allowing the impugned judgement to stand:

(a) would allow a precedent to be created that permits an evidence-based judicial bias complaint to be circumvented without any check or balance, up to the court of appeal; and

(b) would risk putting the Canadian justice system into disrepute;

irrespective of the final outcome of the impugned abuse of process motion to dismiss the action, and irrespective of the fate of the action itself.

8. *Allowing the constructive avoidance of a judge's duty to determine bias would threaten the integrity of Canadian courts:* The applicant submits that if it is permitted for any judge, hearing a request for determination of a reasonable apprehension of bias, to recuse

himself without making the determination, for the reason given of real bias moving forward, as was done here, then we have crossed a line into a territory where the integrity of the courts is in question.

9. *The Supreme Court's current directives on the judicial practice of treating bias are not sufficient:* The Court has directed that a bias complaint will be either determined by the presiding judge first presented with the complaint (here Beaudoin J.), or determined on appeal as a ground for appeal.[7] In this case, both options were circumvented, including via a denial of leave to appeal, by a different judge (Annis J.) from the same court of first instance, where the test for granting leave on an interlocutory matter is an onerous one.[8] This was followed by the court of appeal refusing to consider bias as a ground for appeal.

National Importance

10. *An impartial court is of national importance:* It is of national importance that the common law and *Charter* right to an impartial decision maker be protected to a high and sufficient degree, in all proceedings in all Canadian courts, without allowing constructive loopholes.

11. *Canadians need a justice system that unquestionably is and appears to be just, in all of its judicial actions in every court:* There is a public interest that, in judicial practice:
    (a) an evidence-based complaint of apparent bias cannot be circumvented by the presiding judge first presented with the complaint;
    (b) a motion for leave to appeal an interlocutory matter, heard by a different judge of the same court where the said complaint is first raised, is not a legitimate venue to determine the said complaint; and

[7] *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, para. 99
[8] *Bell Expressvu Limited Partnership v. Morgan*, 2008 CanLII 63136 (ON SCDC), para. 1; **Tab E-13**; and Amended Reasons of Annis J., at paras. 34-36; **Tab E-10**.

(c) an appeal court cannot summarily dismiss apparent bias as a ground for appeal by relying on the reasons in the said leave to appeal motion from the lowest court, and without expressly addressing the factual basis of the apparent bias ground for appeal.

12. *Such an egregious case*[9] *implies a systemic problem:* It is of national importance and of public interest that the risk of disrepute to and loss of integrity of the Canadian justice system be mitigated and repaired in this egregious case[9] by closing the openings in permitted judicial practice that allowed the bias complaint to be circumvented, where this judicial bias complaint involves a major Canadian institution (University of Ottawa) and a former Canadian Ambassador to the UN and former Minister of Justice (university president Allan Rock), and where the bias complaint is strongly evidence-based, was first circumvented at the court of first instance, and the circumvention was condoned and continued at the highest appeal court of a province.

Concise Procedural History

13. The ongoing lower court action, heard in bilingual proceeding, is a $1 million private defamation lawsuit filed on June 23, 2011 with the Ontario Superior Court of Justice, over comments on a blog critical of the University of Ottawa. The plaintiff is a law professor at the University, and the defendant (applicant) is a former physics professor at the same University.

14. On October 25, 2011, the University disclosed that it is entirely funding the plaintiff's litigation. In addition, the plaintiff asserts in her statement of claim that she intends to donate part of the proceeds of the action to a University of Ottawa scholarship fund.

[9] Supporting affidavit of Mr. Joseph Hickey, Executive Director of the Ontario Civil Liberties Association; **Tab E-9**.

15. Thus, on January 5, 2012, the applicant (defendant) filed a motion to stay the action for abuse of process on the grounds of maintenance and champerty ("champerty motion"). The then case management judge (Beaudoin J.) summarily granted the University permission to file materials in the champerty motion (while refusing to hear a motion to intervene), scheduled out-of-court examinations of several witnesses, and presided over a resulting defendant's (applicant's) refusals and productions motion ("refusals motion").

16. The first day of hearing of the refusals motion was June 20, 2012. The hearing was to continue on July 24, 2012. On July 22, 2012 the applicant (defendant) discovered an April 24, 2012 newspaper article on the internet which reported that Beaudoin J. had established a scholarship endowment fund at the University, that a meeting room was named in honour of the judge's deceased son at the law firm representing the University, and that both these matters were of profound personal and emotional importance to the judge.[10]

17. Consequently, the applicant first brought forward his reasonable apprehension of bias concern on July 24, 2012. Beaudoin J. threatened the applicant with contempt of court if the applicant continued in the hearing to advance the bias concern; then the judge recused himself without determining the complained of apparent bias, while stating that he could not be impartial moving forward because the applicant had raised the concern:[11]

> "... vous tenez à souligner l'angoisse que j'éprouve toujours auprès de la mort de mon fils. Jamais, jamais de ma carrière juridique, que j'ai vu un geste aussi écœurant, provoquant, et complètement indigne. Vous aurez pu faire ça."

18. The Regional Senior Justice (Hackland J.) immediately assigned a replacement case management judge (R. Smith J.). R. Smith J. continued the interrupted refusals motion both at a hearing on July 27, 2012, and via written submissions until August 10, 2012, when the

[10] July 30, 2012 Affidavit of applicant (which was before the appeal court); **Tab E-5**.
[11] Page 35, lines 21-32, July 24, 2012 court transcript (which was before the appeal court); **Tab E-1**.

last written submissions were served and filed. The applicant (defendant) participated while objecting to the thus continued refusals motion.

19. On August 2, 2012, nine days after recusing himself on July 24, 2012 for stated bias moving forward, Beaudoin J. released "Reasons for decisions from the bench made on June 20, 2012", in the incomplete refusals motion.[12] R. Smith J. released his Reasons for part of the same refusals motion on September 6, 2012.[13]

20. The said August 2, 2012 Reasons of Beaudoin J. in the refusals motion barred the applicant (defendant) from material evidence for his champerty motion to end the action, which was heard on December 13, 2012.

21. Prior to the August 10, 2012 closing of written submissions in the refusals motion, the applicant made several attempts to have his concern of apparent bias addressed by the lower court, including:[14]
    (a) a July 25, 2012 letter to the Regional Senior Justice of the lower court; and
    (b) a July 26, 2012 motion for directions, to be heard on July 27, 2012; and
    (c) a motion for a judicial determination of reasonable apprehension of bias, served and filed on July 30, 2012; and
    (d) an August 8, 2012 motion to the lower court for leave to appeal to the Divisional Court.

22. R. Smith J. (the new case management judge):
    (a) stayed the applicant's said motion for directions on July 27, 2012; and
    (b) dismissed the applicant's said motion for judicial determination of reasonable apprehension of bias, without a hearing on the merits, by letter dated July 31, 2012.[15]

[12] August 2, 2012, Reasons of Beaudoin J.: *St. Lewis v. Rancourt*, 2012 ONSC 4494; **Tab E-11**.
[13] September 6, 2012 Reasons of R. Smith J.: *St. Lewis v. Rancourt*, 2012 ONSC 5053 (CanLII); **Tab E-12**.
[14] Documents at **Tabs E-2, E-3, E-4, E-6, and E-7**.
[15] July 31, 2012, letter of R. Smith J. to the applicant; **Tab E-6**.

23. The applicant's (defendant's) August 8, 2012 motion to the lower court for leave to appeal to the Divisional Court, was to seek leave to appeal from both:[16]
    (a) the June 20, 2012 and August 2, 2012 decisions of Beaudoin J., on the grounds of reasonable apprehension of bias; and
    (b) the July 31, 2012 decision of R. Smith J. to dismiss without a hearing on merits the July 30, 2012 motion for a judicial determination of reasonable apprehension of bias.

24. The said leave to appeal motion was heard by Annis J. of the Ontario Superior Court of Justice on November 15, 2012. The Reasons were released on November 29, 2012. The lower court leave to appeal motions judge found that leave to appeal to the Divisional Court should not be granted, in that:[17]
    (a) "This is not a case that could possibly give rise to a reasonable apprehension of bias … "; and
    (b) "I cannot see any problem with a Case Management Judge refusing to set down a motion entirely void of merit, such as occurred here when the defendant's request was to set aside the decision of a fellow Superior Court judge on grounds of apprehension of bias."

25. The applicant's (defendant's) champerty motion to dismiss the action was heard before R. Smith J. on December 13, 2013. The judgement and Reasons in the champerty motion were released on March 13, 2013.[18] The motion was dismissed.

26. The dismissal of the champerty motion was appealed by the applicant to the Court of Appeal for Ontario. One of the grounds for appeal was the reasonable apprehension of bias of Beaudoin J.[19] The appeal was heard on November 8, 2013. The judgement was

[16] August 8, 2012 Notice of Motion, leave to appeal motion to ONSC; **Tab E-7**.
[17] Amended Reasons of Annis J., at paras. 40, 47; **Tab E-10**.
[18] March 13, 2013 Reasons of R. Smith J.: *St. Lewis v. Rancourt*, 2013 ONSC 1564 (CanLII); **Tab C-1**.
[19] May 9, 2013 Factum of the appellant, appeal to ONCA; **Tab E-8**.

released by endorsement on the same day of the hearing, and the appeal was dismissed. The typed Appeal Book Endorsement was released by the appeal court on November 15, 2013.

Part II — Questions in Issue

27. The instant case gives rise to essential questions touching foundational principles for Canada's justice system, including:

(i) *Do ss. 7, 11(d), and/or 15(1) of the Charter encompass a right for every individual civil litigant to an impartial process, both real and apparent?*

(ii) *If there is such a right, consistent with Charter principles, what form does it take in judicial practice? And, in particular:*

- *Does the common law principle of "automatic disqualification" apply in Canada, and, if so, what is the test?*
- *Does the judge to whom a bias complaint is first brought have a qualified or unqualified duty to hear the complaint on its merits?*
- *If the judge to whom a bias complaint is first brought is unable to make a judicial determination, which court should hear the bias complaint on its merits, and under which circumstances?*
- *If the court of first instance refuses to make a judicial determination of the bias complaint on merits, is a motion for leave to appeal an interlocutory matter, heard at the same court of first instance by a different judge than the judge to whom the complaint was first raised, a*

proper venue to consider and/or determine the bias complaint, and, if so, under which circumstances?

- *Can an appeal court refuse bias as a ground for appeal because of reasons given in a leave to appeal motion heard in the court of first instance by a judge other than the judge to whom the bias complaint was first raised, and, if so, under which circumstances?*

Part III — Statement of Argument

Charter principles on real or apparent bias of the courts, and application to the instant case

28. Section 15(1) of the *Canadian Charter of Rights and Freedoms* states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. [s. 15(1)]

29. Although the Court has determined the law regarding the particularized discrimination component of s. 15(1),[20] the Court has not substantively addressed the question of whether s. 15(1) is also meant, in an absence of proven institutional or systemic discrimination, to encompass the common law principle of individual equality before and under the law, which implies an individual's right to an impartial court both in reality and in appearance.

30. The applicant's position is that s. 15(1) is meant to provide *Charter* protection to the individual regarding equality before and under the law, including real and apparent

[20] Canadian Charter of Rights Decisions Digest, Section 15(1), CanLII

impartiality in all judicial processes, irrespective of any added component of institutional or systemic discrimination, and that s. 15(1) in no way excludes from *Charter* protection the common law principle of equality for the individual.

31. The applicant's said position is based on both the inclusive and particularized wording of s. 15(1), and on the paramount common law doctrine of equality itself, which drives the requirement for judicial impartiality.

32. Sections 7 and 11(d) of the *Charter* state:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. [s. 7]
>
> Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. [s. 11(d)]

33. The Court has determined, although in a criminal case, that ss. 7 and 11(d) enshrine the right to an impartial court as a *Charter* right.[21] Thus, the applicant submits that these sections enshrine the general *Charter* principle of an independent and impartial court, including in civil cases. Civil judgements can put an individual into bankruptcy and poverty, and can, by injunctions, prevent freedom of expression and freedom of association, thus affecting the right to life, liberty and security of the person.

34. Furthermore, the Court has determined that the common law must be interpreted in a manner which is consistent with *Charter* principles.[22] This must include the common law of judicial treatment of bias complaints.

35. In the instant case, a valid bias complaint (of Beaudoin J.) was circumvented by seven judges in two courts, including the appellate court. The apparent bias question was not determined by the leave to appeal motions judge (Annis J.) in the court of first instance

[21] *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, at para. 93
[22] *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 SCR 1130, at para. 91

since the said judge did not have jurisdiction to find reasonable apprehension of bias of his colleague (Beaudoin J.), but only to grant or deny leave to appeal to the Divisional Court.[23] In addition, the test for granting leave to appeal an interlocutory matter is not a simple balance of probability, but is an onerous one.[24]

36. The applicant's position is that the leave to appeal motion heard in the court of first instance was not a proper venue to hear and/or determine the bias complaint on merits, and that such a determination is incompatible with a fair administration of justice and *Charter* principles, because:

    (a) the leave motions judge does not have the jurisdiction to find real or apparent bias of his colleague in the same court, in the absence of the said colleague;

    (b) the limited purpose of a leave motion is to grant or deny leave to appeal to a higher court (here, to a panel of three judges of the Divisional Court);

    (c) released reasons for granting or denying leave are not a judgement that can be appealed; and

    (d) the test for granting leave is not a simple balance of probability, but is an onerous one.

<u>National importance of judicial impartiality, and application to the instant case</u>

37. In *R. v. S. (R.D.)*, the Court expressed the importance of the issue of real or apparent bias in the strongest of terms, and its necessary resolution in any judicial process as:[25]

> The courts should be held to the highest standards of impartiality. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. The trial will be rendered unfair if the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer.

[23] Rule 62.02, Ontario *Rules for Civil Procedure*

[24] *Bell Expressvu Limited Partnership v. Morgan*, 2008 CanLII 63136 (ON SCDC), para. 1; **Tab E-13**; and Amended Reasons of Annis J., at paras. 34-36; **Tab E-10**.

[25] *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, 2nd and 3rd paras. of the introduction, and at para. 113

> Judges must be particularly sensitive to the need not only to be fair but also to appear to all reasonable observers to be fair to all Canadians of every race, religion, nationality and ethnic origin.
>
> If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision. A reasonable apprehension of bias, if it arises, colours the entire trial proceedings and cannot be cured by the correctness of the subsequent decision. The mere fact that the judge appears to make proper findings of credibility on certain issues or comes to the correct result cannot alleviate the effects of a reasonable apprehension of bias arising from the judge's other words or conduct. […]
>
> 113. … It is a finding that must be carefully considered since it calls into question an element of judicial integrity. Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice. … Where reasonable grounds to make such an allegation arise, counsel must be free to fearlessly raise such allegations. …

38. The Court reaffirmed the seriousness of the issue of real or apparent bias in *Wewaykum Indian Band v. Canada*:[26]

> Public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so. […]
>
> An allegation that a judgment may be tainted by bias or by a reasonable apprehension of bias is most serious. That allegation calls into question the impartiality of the Court and its members and raises doubt on the public's perception of the Court's ability to render justice according to law. Consequently, the submissions in support of the applicant bands and the other parties have been examined in detail as reflected in the following reasons.

39. In application, the *Ontario Court of Appeal* found that the legal principles and standards concerning apprehension of bias in trials and interlocutory proceedings are identical:[27]

> … the above cases arose from challenges to final decisions rather than interlocutory rulings like the one at issue. In my view, this is not a meaningful difference. … Further, there is no reason why the Divisional Court should approach an interlocutory ruling on bias in a different manner than if the issue was raised after the completion of the proceedings.

[26] [2003] 2 SCR 259, first para. of the introduction, and para. 2
[27] *Ontario Provincial Police v. MacDonald*, 2009 ONCA 805, at para. 38

40. Nonetheless, the right to judicial impartiality does not have its meaning expressed by the Court if, in practice, and in cases where cogent evidence for apparent bias exists, judges have discretion allowed by the Court to:

    (a) circumvent a determination of an apparent bias complaint when the bias complaint is first brought (by suddenly blaming the complainant to apply a recusal for true bias moving forward);

    (b) treat a bias complaint within a leave to appeal motion, heard in the same court by a leave motions judge other than the judge to whom the complaint was made;

    (c) condone lower court avoidances of determinations of bias complaints on merits; and

    (d) refuse to consider apparent bias as a ground for appeal in an appeal as of right of a final decision in an action, where the judge to whom the bias complaint was first brought never determined the complaint.

41. The applicant submits that refusing to make a determination of apparent bias by suddenly discovering a reason for finding real bias moving forward, is not likely to ever constitute a proper application of a judge's jurisdiction, that there is no jurisdiction in a leave motion to make a determination of bias of another judge from the same court, and that an appellate court cannot deny its own jurisdiction by using reasons from a leave motion heard in the court of first instance to justify refusing to consider bias as a ground for appeal.

    Thus, in the facts of this case, the applicant's right to an impartial court has been infringed or denied in the courts below, such that s. 24 of the *Charter* can be satisfied, in application and principle, solely if the Court grants the instant leave to appeal. Without the Court's intervention and express directives, the infringement or denial of the applicant's right to an impartial court will stand without ever having been properly heard on merits, and the right to judicial impartiality will continue to be denied in Canada's lower courts, by the same means as in the present case, and in other ways.

Need for Court's express acceptance of the common law rule of "automatic disqualification" in Canada

42. The Court has given consideration to whether the common law rule of "automatic disqualification" ought to apply in Canada, but has not had the benefit of a factual matrix where the question can be determined:[28]

> It is necessary to clarify the relationship of this objective standard to two other factors: the subjective consideration of actual bias and the notion of automatic disqualification. … With respect to the notion of automatic disqualification, recent English case law suggests that automatic disqualification is justified in cases where a judge has an interest in the outcome of a proceeding. This case law is not helpful here because automatic disqualification does not extend to judges somehow involved in the litigation or linked to counsel at an earlier stage. In Canada, proof of actual bias or a reasonable apprehension of bias is required. In any event, on the facts of this case, there is no suggestion that Binnie J. had any financial interest in the appeals, or had such an interest in the subject matter of the case that he was effectively in the position of a party to the cause.

43. In line with a rule of automatic disqualification, the Court has determined that "cogent evidence" that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias can displace the high threshold presumption that judges will carry out their oath of office.[29]

44. In application, in line with a rule of automatic disqualification, the *Ontario Court of Appeal* emphasised, citing *Pinochet,*[30] that:

> … the nature of the interest is such that public confidence in the administration of justice requires that the judge must withdraw from the case or, if he fails to disclose his interest and sits in judgment upon it, the decision cannot stand. It is no answer for the judge to say that he is in fact impartial and that he will abide by his judicial oath. The purpose of the disqualification is to preserve the administration of justice from any suspicion of impartiality. The disqualification does not follow automatically in the strict sense of that word, because the parties to the suit may waive the objection. But no further investigation is necessary and, if the interest is not disclosed, the consequence is inevitable. *In practice the application of this rule is so well understood and so consistently observed that no case has arisen in the course of this century*

[28] *Wewaykum Indian Band v. Canada*, [2003] 2 SCR 259, second para. of the introduction, and see paras. 70-72
[29] *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, at para. 117
[30] *R. v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte*, [1999] 1 All E.R. 577

> *where a decision of any of the courts exercising a civil jurisdiction in any part of the United Kingdom has had to be set aside on the ground that there was a breach of it.* [Emphasis added by CA][31]

45. Thus, a judge's non-disclosure of evidence of reasonable apprehension of bias, is a contributing factor in a determination of "automatic disqualification", and in a determination of appearance of bias itself regarding impugned decisions.

46. The *Ontario Court of Appeal* has stressed that with questions of bias, legal technicalities which would prevent a judicial determination of apparent bias must be avoided:[32]

> When the impartiality of a judge is in question, the appearance of bias is just as important as the reality. That is why, when the issue of apparent bias is raised, it is necessary that fine distinctions and legal technicalities be avoided. Although the judge may, with justification, believe that he or she is unbiased, if the appearance of bias is present he or she should withdraw from the case.

47. In application, in line with the principle that a court cannot avoid making a judicial determination of a complaint of apparent bias, the *Divisional Court* for Ontario determined that there is an "obligation" to hear the bias complaint:[33]

> … As is the custom and obligation in such disqualification motions, the judge being asked to disqualify himself on the basis of reasonable apprehension of bias and prejudgment is the judge who hears the disqualification motion. Indeed in this case the Judge would have preferred not to have heard the disqualification motion. …

<u>Application of the law to the facts</u>

48. The applicant was denied a proper hearing on merits to obtain a judicial determination of reasonable apprehension of bias, in a proper recusal motion governed by a balance of probabilities, and further denied bias as a ground for appeal, despite:[34]

[31] *Benedict v. The Queen*, 2000 Canlii 16884 (ON CA), at para. 19, citing Lord Hope
[32] *Benedict v. The Queen*, 2000 Canlii 16884 (ON CA), at para. 28
[33] *Authorson v. Canada*, [2002] O.J. No. 2050 (ON DC), at para. 1

(a) the egregious nature of the apparent bias, supported by cogent evidence;

(b) having raised the bias matter in mid-motion at the first opportunity;

(c) having sought judicial guidance from Regional Senior Justice Charles Hackland to bring a motion;

(d) having filed a motion for a judicial determination of apparent bias;

(e) having sought leave to appeal from the court of first instance both:

(i) from tainted decisions on the grounds of reasonable apprehension of bias; and

(ii) from the case management denial to schedule a served and filed motion for a judicial determination of reasonable apprehension of bias; and

(f) having appealed to the Court of Appeal for Ontario, on the grounds of reasonable apprehension of bias.

49. In the instant circumstances, the first judge (Beaudoin J.) recused himself, after the bias concern was raised, by suddenly blaming the applicant and declaring real bias moving forward; the lower court (Hackland J., and R. Smith J.) refused to hear a motion for judicial determination of reasonable apprehension of bias; a leave to appeal motions judge (Annis J.) of the lower court denied an appeal to the Divisional Court; and the Court of Appeal refused to consider the apparent bias as a ground to appeal a final decision in the action. As a result, the applicant's complaint of reasonable apprehension of bias, in an egregious case supported by cogent evidence, was circumvented by seven judges and two courts.[35]

50. In contrast, the Court has found that questions of reasonable apprehension of bias impact the integrity of the entire justice system, must be given detailed consideration when they arise, and taint the entire process when present.[36, 37]

[34] Supporting documents and affidavits at **Tabs E-1 to E-9**.
[35] *ibid.*; the lower court reasons of Beaudoin J. dated August 2, 2012 (**Tab E-11**), Annis J. dated January 2, 2013 (**Tab E-10**), and the impugned appellate court endorsement dated November 15, 2013 (**Tab C-2**).
[36] *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484
[37] *Wewaykum Indian Band v. Canada*, [2003] 2 SCR 259

51. In the instant circumstances, the judge to whom the bias complaint was addressed avoided making a determination of apparent bias by recusing himself for real bias moving forward, the complainant was denied leave to obtain a bias determination at the Divisional Court, and the appeal court refused to accept bias as a ground for appeal because leave for a bias determination had been refused in the court of first instance. These events allowed a litigant to be denied a proper judicial determination of reasonable apprehension of bias, and to be denied the remedies that necessarily follow from such a determination; namely that the tainted decisions cannot stand. Here, the said tainted decisions barred the applicant from material evidence in a motion of abuse of process that could end the action.

52. Real or apparent judicial bias is antithetical to equality before and under the law. The individual's equality before and under the law is a *Charter* right pursuant to s. 15(1). Impartiality of the court is a fundamental *Charter* principle, expressed in ss. 7, 11(d), and 15(1), with which the common law of judicial practice must be made consistent. Circumventing judicial determinations of real or apparent bias cannot be allowed by any contortion or combination of judicial practice, or it will become the norm. The existence of the present egregious case suggests that circumventing judicial determinations of bias may already be more prevalent in Canada than is acceptable in a democratic society.

53. The instant case illustrates a need for a clear "automatic disqualification" rule, and the factual matrix of the instant case allows a consideration of the conditions under which an "automatic disqualification" rule could be applied in Canada, including a consideration of the circumstances of:
    (a) cogent evidence;
    (b) an obligation for a bias concern to be heard by the first judge before whom it is brought;
    (c) appearance of constructive procedural avoidance;
    (d) a judge's non-disclosure of evidence that supports a reasonable apprehension of bias;

(e) a judge's shared interest in the outcome of the motion or trial, beyond strictly pecuniary considerations (such as reputational value of a named public scholarship);

(f) administrative policy when the judge to whom a bias complaint is made refuses to make a bias determination, thereby depriving the litigant of the consequences of a finding of the bias;

(g) administrative policy when treating bias in a motion for leave to appeal, before a different single judge of the same court of first instance, in which bias is a ground for appealing an interlocutory decision;

(h) the duty of an appeal court to consider bias if bias is brought as a ground for an appeal as of right in a final decision in an action.

Part IV — Costs

54. The issue of the application is one of national importance and public interest, irrespective of the outcomes of the motion to end the action, or the outcome of the on-going defamation action itself. As such, the applicant does not seek costs, and wished to not pay costs, in any event. It is uncontested that the costs of both other parties are entirely and voluntarily paid by the University of Ottawa, using public money. The self-represented and unemployed applicant has been made impecunious as a result of the defamation lawsuit.

Part V — Order Sought

55. The Applicant requests that this application for leave to appeal from the judgement of the Court of Appeal for Ontario, dated November 15, 2013 (release date of typed endorsement), be granted.

Part VI — Table of Authorities

Cases	Cited at paras.
Authorson v. Canada, [2002] O.J. No. 2050 (ON DC)	47
Bell Expressvu Limited Partnership v. Morgan, 2008 CanLII 63136 (ON SCDC) (**Tab E-13**)	9, 35
Benedict v. The Queen, 2000 Canlii 16884 (ON CA)	44, 46
Hill v. Church of Scientology of Toronto, 1995 CanLII 59 (SCC), [1995] 2 SCR 1130	34
Ontario Provincial Police v. MacDonald, 2009 ONCA 805	39
R. v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte, [1999] 1 All E.R. 577	44
R. v. S. (R.D.), [1997] 3 SCR 484	9, 33, 37, 43, 50
Wewaykum Indian Band v. Canada, [2003] 2 SCR 259	38, 42, 50

Other Materials

Canadian Charter of Rights Decisions Digest, Section 15(1), CanLII	29

Part VII — Statutes, Regulations, and Rules

1. ss. 7, 11, 15, and 24 *Canadian Charter of Rights and Freedoms* — 1, 27-33, 41, 52
2. Rule 62.02, *Rules of Civil Procedure* for Ontario — 35

Sections 7, 11, and 15 of the *Canadian Charter of Rights and Freedoms*

Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(*a*) to be informed without unreasonable delay of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*e*) not to be denied reasonable bail without just cause;

(*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Rule 62.02 of the *Rules of Civil Procedure* for Ontario

RULE 62 APPEALS FROM INTERLOCUTORY ORDERS AND OTHER APPEALS TO A JUDGE

MOTION FOR LEAVE TO APPEAL

Leave to Appeal from Interlocutory Order of a Judge

62.02 (1) Leave to appeal to the Divisional Court under clause 19 (1) (b) of the Act shall be obtained from a judge other than the judge who made the interlocutory order. O. Reg. 171/98, s. 23 (1).

(1.1) If the motion for leave to appeal is properly made in Toronto, the judge shall be a judge of the Divisional Court sitting as a Superior Court of Justice judge. O. Reg. 171/98, s. 23 (1); O. Reg. 292/99, s. 2 (2).

Time for Service of Motion

(2) The notice of motion for leave shall be served within seven days after the making of the order from which leave to appeal is sought or such further time as is allowed by the judge hearing the motion. R.R.O. 1990, Reg. 194, r. 62.02 (2); O. Reg. 14/04, s. 34 (1).

Hearing Date

(3) The notice of motion for leave shall name the first available hearing date that is at least three days after service of the notice of motion. R.R.O. 1990, Reg. 194, r. 62.02 (3).

Grounds on Which Leave May Be Granted

(4) Leave to appeal shall not be granted unless,

(a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted. R.R.O. 1990, Reg. 194, r. 62.02 (4).

Motion Record

(5) On a motion for leave, the requirement of rule 37.10 respecting a motion record may be satisfied by,

(a) requisitioning that the motion record used on the motion that gave rise to the order from which leave to appeal is sought be placed before the judge hearing the motion for leave; and

(b) serving and filing a supplementary motion record containing the notice of motion for leave to appeal, a copy of the order from which leave to appeal is sought and a copy of any reasons given for the making of the order as well as a further typed or printed copy of the reasons if they are handwritten. R.R.O. 1990, Reg. 194, r. 62.02 (5).

Factums Required

(6) On a motion for leave, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party. O. Reg. 14/04, s. 34 (2).

(6.1) The moving party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least seven days before the hearing. O. Reg. 394/09, s. 30 (1).

(6.2) The responding party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least four days before the hearing. O. Reg. 394/09, s. 30 (2).

(6.3) Revoked: O. Reg. 394/09, s. 30 (3).

Reasons for Granting Leave

(7) The judge granting leave shall give brief reasons in writing. R.R.O. 1990, Reg. 194, r. 62.02 (7).

Subsequent Procedure Where Leave Granted

(8) Where leave is granted, the notice of appeal required by rule 61.04, together with the appellant's certificate respecting evidence required by subrule 61.05 (1), shall be delivered within seven days after the granting of leave, and thereafter Rule 61 applies to the appeal. R.R.O. 1990, Reg. 194, r. 62.02 (8).

N° 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.

MS. BORRIS: ...if it please the Court.

MR. DEARDEN: And, Your Honour, while that's happening, may I have your permission again to use my Echo Smartpen to take notes?

THE COURT: Sure. No problem.

MS. BORRIS: Good morning, Your Honour.

ODETTE BORRIS AND DANIEL RENAUD: AFFIRMED

(as interpreters – French/English)

...Interpretation to be provided *sotto voce* from French to English only, appearing herein indented and in italics in order to set it apart from what is spoken in the courtroom

MR. DEARDEN: So, Your Honour, while they're getting into the booth, my list of things to do today would be firstly to deal with the defendant's champerty refusals motion with respect to Professor St. Lewis, and then the second motion would be Prof. St. Lewis's refusals motion in the libel action, and then followed by Mr. Rancourt's refusals motion in the libel action.

M. RANCOURT: M. le Juge, je dois soulever un point important immédiatement avant de commencer la séance.

We do have an important point here.

Pour les refus, ceci est la première occasion devant le Tribunal….

This is the first occasion in front of the Court.

Et je m'excuse. J'ai laissé mes lunettes de lecture à la maison. Je vais peut-être avoir un peu de misère.

I'm sorry, I may have a bit of a problem. I left my reading glasses at home.

Mais c'est la première occasion devant le Tribunal de soulever cette question difficile depuis que cette position s'est cristallisée pour moi.

This is the first opportunity in front of the Court to bring up this difficult question.

Je demande que la motion présente soit ajournée pour me permettre d'étudier le procès-verbal de notre dernière séance et de déposer une motion pour demander que vous vous récusiez pour crainte raisonnable de partialité et apparence d'un conflit d'intérêt.

I ask that the present matter be adjourned to allow me to read up on the transcript from the last and I ask that you recuse yourself for appearance of lack of confidentiality. **[sic]**

C'est la première occasion devant le Tribunal. J'avais des craintes et des impressions depuis notre première conférence sur la cause le 8 février 2012, mais pour moi il y a maintenant un patron qui s'est établi que je viens de comprendre, qu'il me paraît concret et réel maintenant….

From our first conference on the 8th of February heard by yourself, I now have established that I have understood.... It appears concrete and real for me….

Immédiatement après notre première séance du 20 juin 2012 sur la motion des refus pour la motion champartie, j'ai commandé le procès-verbal en urgence le 22 juin 2012.

Immediately after our first hearing on June 20th, 2012 on the refusals motion for the champerty motion, I ordered the transcript on the 22nd of June, 2012.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Je n'ai pas encore reçu ce procès-verbal. J'ai besoin de ce procès-verbal pour préparer la motion pour que vous vous récusiez pour crainte raisonnable de partialité. C'est une motion difficile et une position difficile que je dois maintenant prendre et que je dois maintenant exprimer.

I have yet to receive that transcript. I need that transcript to allow me to prepare the motion for your recusal because you have been partial. It is a difficult position that I need to now communicate to the Court and that I now need to express to you.

En tant que personne non-représenté, auto-représenté, j'avais des impressions, des premières réactions qui étaient perturbés, et maintenant je vois un patron, surtout suite à notre toute dernière rencontre du 20 juin 2012 dans la motion présente, et encore un patron, je crois, qui emmènerait une personne raisonnable et informée à avoir une

crainte raisonnable de partialité et d'un esprit fermé devant les questions de la motion de champartie et la motion pour refus et la cause en général.

> *As an individual – as an unrepresented, or self-represented, party, I was perplexed by your initial reactions and now, especially given the 20th of June, 2012 in the current refusal motions – and now I believe that a reasonable person, an informed, would see your partiality, given the questions with the champerty motion and the refusal motions, as well as the case in general.*

Je veux mettre sur le procès-verbal de la Cour des éléments qui m'emmènent à cette position aujourd'hui. Ces éléments sont incomplets sans le bénéfice du procès-verbal de la dernière séance, mais les voici; je les présente pour appuyer ma demande d'ajournement aujourd'hui.

> *I will now put on the record the items, or issues, that make me raise this today. Without the benefit of the transcript, this list will be incomplete. However, I will give you the list supporting my motion for adjournment.*

À la conférence sur la cause du 8 février 2012, nous avions la tâche, entre autres, de céduler ma motion pour champartie et maintenance qui a comme but

premier de radier ou d'arrêter l'action. La Notice de motion était devant la Cour le 8 février.

At the case conference of the 8th of February, 2012, we had the task, among others, to schedule the champerty motion which aim is to either stop or cancel this case – on the 8th of February.

J'ai un extrait du procès-verbal du 8 février ici en commençant à la page 21 – en fait, c'est les pages 21 à 35. J'aimerais souligner quelques éléments de ce procès-verbal.

I have an extract of the transcript of the 8th of February starting at page 21 – page 21 to 35. I have underlined a few elements of that.

MR. DEARDEN: I'll just go on record, by the way, Your Honour,...

M. RANCOURT: *Je veux....*

MR. DEARDEN: ...that Mr. Rancourt has not given me any prior notice that he was going to be making the submissions that he is making now, nor that he was going to be handing out the material that he's handing now; and I also will be strenuously objecting to his latest move here to delay the trial of this action.

M. RANCOURT: J'accepte mal cette caractérisation de M. Dearden et je ne mets pas ces documents en évidence, mais simplement pour un guide pour expliquer pourquoi dans les arguments pour un ajournement….

I don't accept this characterization by Mr. Dearden. This is to

explain why I am asking in my argumentation for an adjournment.

M. RANCOURT: À la page….

MR. DEARDEN: And just for clarity of the record….

M. RANCOURT: À la page 21....

MR. DEARDEN: Just for clarity of the record, Your Honour, if I could, could you have Mr. Rancourt confirm that he is not disputing the fact that he did not give me any prior notice that he was going to seek an adjournment today and claim that you are biased. Can we just have him confirm...

LE TRIBUNAL: C'est vrai?

MR. DEARDEN: ...for the record?

LE TRIBUNAL: Vous n'avez pas averti M. Dearden?

That's true? You didn't give Mr. Dearden any warning?

M. RANCOURT: J'ai préparé ces matériaux ces derniers jours.

I have prepared….

LE TRIBUNAL: Mais vous l'avez pas averti. C'est vrai?

You haven't given him any notice.

M. RANCOURT: Non. C'est vrai.

No. That's true.

LE TRIBUNAL: Okay. D'accord.

All right. So no notice was given.

M. RANCOURT: J'ai pas compris vos derniers mots, M. le Juge.

I didn't hear your last words.

LE TRIBUNAL: D'accord.

"All right," is what I said.

M. RANCOURT: Okay.

LE TRIBUNAL: J'ai compris.

I understood.

M. RANCOURT: Donc, à la page 21, la question de champartie, vous dites, M. Le Juge:

> "La question de champartie touche uniquement le cas entre Mme St. Lewis et l'Université. Donc ça n'affecte pas le bien-fondé de la poursuite de libelle diffamatoire contre vous."

So on page 21, the champerty issue, you say :

> *"That will be solely judged on the relationship between Ms. St. Lewis and the University and it doesn't deal with the defamation suit against you."*

Un peu plus bas, à la page 22, vous dites:

> "Le Tribunal tranche la question de champartie et dit, bon, et annule l'entente entre elle et l'Université au sujet des frais."

Further, you say :

> *"The Court will rule on champerty and will cancel – or would cancel – with regards to loans, the agreement on loans."*

À la page 23, vous dites, et ce sont que des extraits:

"C'est un gaspillage significatif des ressources."

"Du temps et des parties en question de la Cour?"

Ça c'est moi qui dis ça. Et vous répondez:

"Mais ça ne touche pas la question. Okay?"

On page 23 – these are all extracts:

"This is a waste of resources, of time."

I'm saying that.

And you answer:

"But it doesn't deal with the issue."

Ensuite, à la page 24, je dis:

"Alors, M. le Juge, ce que je veux dire c'est que si la motion pour champartie a un succès, l'action entière est annulée."

On page 24, I say:

"Also, Your Honour, what I'm saying is that if the champerty motion is successful, the entire action is brushed aside."

Et vous dites:

"Non."

You say:

"No."

Ensuite, à la page 25, je dis:

"Peut être annulée. C'est-à-dire qu'il y a une bonne chance que l'action soit annulée, étant donné la jurisprudence."

On page 25, I say:

"It could be struck. There's a good chance that, given case law."

Et vous dites:

"Non, non. Citez-moi une cause où l'action a été annulée."

And you say :

"No, no. Give me case law where an action was struck."

Ensuite vous dites, un peu plus bas à la page 25:

"Montre-moi une décision."

And then you say, a little further on page 25:

"Show me case law."

Ensuite je passe à la page 29. Vous dites en haute page à la ligne 3:

"Cette cause-là ne cite pas…. C'est pour…."

Then on page 29, you say, at the top of the page on line 3:

"This case, it's not applicable."

Et je dis:

"Je suis d'accord, M. le Juge."

And I say:

"I agree."

Vous dites:

"Ce n'est pas pour la proposition de la poursuite – que la poursuite annule."

"It is not for the proposition of the suit – that the suit is nul."

Ensuite, à la page 31, vous dites, à la ligne 16:

"Mme St. Lewis fait une poursuite contre vous de libelle diffamatoire."

On page 31, you then say, on line 16:

"Mrs. St. Lewis has launched a libel suit and defamation suit against you."

Ensuite vous poursuivez:

"Le bien-fondé de cette poursuite…"

And then you pursue:

"The foundation of this lawsuit is not that."

Et vous poursuivez:

"…ce n'est pas ça. Ce n'est pas l'introduction…."

Excusez-moi, ça c'est pas pertinent.

I'm sorry, that's not quite….

Vous dites:

> "Le mérite de cette poursuite n'est pas tranché par la question de champartie."

> *"The merit of this suit is not dealt with the champerty motion issue." [sic]*

Et un peu plus loin, à la page 32, vous dites:

> "Ça touche uniquement à la question, 'Est-ce qu'elle a le droit d'avoir l'université payer ses frais?'"

And on page 32, you say:

> *"It only deals – solely deals – with: does she have the right to have the University pay her legal costs?"*

À la page 33, vous dites:

> "Mais vous n'avez pas identifié dans vos matériaux une telle décision."

On page 33, you say:

> *"But you haven't identified in your materials such a caselaw."*

Et je dis:

> "Mais, M. le Juge, je n'ai pas eu l'occasion de faire mon Factum, mais je crois...."

And I say:

> *"Your Honour, I did not have the opportunity to*

prepare a Factum, but I do believe...."

Ensuite, à la page 35, vous dites:

"Non? Je peux vous dire que ça ne vaut pas la peine. Franchement, la question de l'entente, ça va être tranchée avant le procès."

And then, on page 35, you say:

"No? I can tell you that this is not worth.... Frankly, the agreement – the agreement issue will be dealt with before trial."

Je vais soumettre qu'une personne raisonnable et informée aurait, en entendant ces mots, une crainte raisonnable que votre esprit était fermé à la possibilité que la motion pour maintenance et champartie pouvait mener à l'arrêt de la cause principale même si plus tard vous admettiez la possibilité.

I submit that a reasonable and informed person could, hearing these words, have a belief that, given your words – that the champerty motion could lead to the full action being struck, even though you precluded that possibility.[sic]

Plus loin dans la même conférence sur la cause à la page 81 du procès-verbal du 8 février 2012 – et là j'ai un autre extrait juste à page 81 et 82 de ce même procès-verbal que je peux vous donner.

Further, in the same case conference on page 81 of the transcript on the 8th of February, 2012 – and there I have another extract, page 81 and page 82 of that transcript, which I can hand up to you and give to Mr. Dearden.

LE TRIBUNAL: Vous devriez, M. Rancourt,…

Mr. Rancourt,…

M. RANCOURT: Oui.

LE TRIBUNAL: Si vous retirez d'un procès-verbal, vous devriez le fournir au complet et non pas tirer de certaines pages.

…if you take an extract from a transcript, you should be supplying it in its entirety.

M. RANCOURT: Oui. Je comprends ça, M. le Juge. J'ai fait ça à la dernière minute…

Yes. I understand. But I did that at last minute.

LE TRIBUNAL: Ah, non, mais dans…. Écoute.

No. But we…

M. RANCOURT: …et….

LE TRIBUNAL: On doit avoir toute la transcription, tout le procès-verbal.

…need the full transcript, the full transcript.

M. RANCOURT: Oui. En ce moment aujourd'hui, je ne fais que mes arguments.

Presently, I….

LE TRIBUNAL: On ne peut pas ré – piéger ici et là, trouver des – des – des remarques d'une page ou

de l'autre, de sauter d'une page à l'autre. Faut le prendre dans son ensemble.

You cannot extract here and there remarks from one page or another and jump from one page to another. You have to take those extracts in their totality.

M. RANCOURT: Aujourd'hui – M. le Juge, je ne fais que présenter mes arguments pour ajourner aujourd'hui et sans mettre des documents devant la Cour. C'est ce que j'ai pu préparer à la dernière minute.

So here I am only presenting – making my arguments for an adjournment.

LE TRIBUNAL: Mais c'est un document qui est en date depuis le mois de février. On a eu plusieurs conférences relatives à la cause par la suite. Et là, vous soulevez la première fois le 24 juillet que les remarques que j'ai fait au mois de février…. Et depuis ce temps-là j'ai pris autres décisions où vous êtes mis en appel – c'est-à-dire la "*open-court principle*." Vous n'avez jamais touché cette question que j'étais préjugé contre vous pour présider à des motions traitant des refus lors des interrogatoires ou des contre-interrogatoires.

But this is a document that's dated since February. We've had several case conferences since – subsequently. And now you're raising for the first time, the 24th of July, that the remarks that I

made in February.... And since that time, I have taken other decisions where you've appealed my rulings – for example, the open-court principle – and you didn't deal with this question that I was prejudiced and biased against you and unable to preside over motions dealing with refusals during the discoveries or the cross-examinations on affidavits.

M. RANCOURT: Monsieur….

LE TRIBUNAL: Ça c'est….

M. RANCOURT: Oui.

LE TRIBUNAL: Ce procès-verbal existe depuis longtemps.

So this – this transcript has been available for a long time.

M. RANCOURT: Oui. M. le Juge, permettez-moi d'expliquer. Comme j'ai dit au début, je ne fais que faire un rappel historique, mais ce sont des événements de notre toute dernière séance qui me préoccupe le plus; et si vous voulez, je peux aller de l'avant à ces événements-là. Si vous avez une objection à ce que je lisse les éléments que je pense se rattachent….

Yes. Let me explain, Your Honour. As I said at the beginning, all I'm doing today is going over the historical, but it's the last occurrences from our last case conference that concern me the most. So

that's why I'm putting those. And if you object that I use those elements that I think pertain....

LE TRIBUNAL: Non. Si je n'ai pas un procès-verbal au complet, surtout des événements de février…. Moi, je prends connaissance de tout ce qui s'est passé depuis ce temps-là. Sans doute, vous n'avez pas aimé les résultats que vous avez reconnus à la dernière séance.

No. If I don't have a complete transcript, especially the one from February…. I will take – be made aware of everything. Unlikely – or likely, you have not appreciated the rulings and results from the last motion, or case conference.

M. RANCOURT: Là n'est pas la question, M. le Juge. Alors permettez-moi de faire mes arguments, s'il vous plaît.

That's not the question, Your Honour. So please allow me to make my arguments.

MR. DEARDEN: No.

M. RANCOURT: Je vais….

MR. DEARDEN: No.

No.

M. RANCOURT: Je vais donc….

I will therefore….

MR. DEARDEN: Just a minute.

M. RANCOURT: Je vais donc….

MR. DEARDEN: Mr. Rancourt,...

LE TRIBUNAL: Attendez un instant.

Please wait a moment.

MR. DEARDEN: ...can you please sit down so that I can address the Court, please?

LE TRIBUNAL: Attendez un instant.

MR. DEARDEN: Your Honour, Mr. Rancourt isn't putting grounds for an adjournment on the record when he's pointing to passages of an incomplete transcript back in February. What he's doing is arguing his bias motion and putting these things on the record – probably for the purpose of that he can write a blog, or Mr. Hickey, who is with us again, can write a blog on...

M. RANCOURT: Je dois m'objecter.

I must object. I must object.

MR. DEARDEN: ...his Student's-Eye View.

LE TRIBUNAL: Attendez.

M. RANCOURT: Complètement inapproprié.

It's highly inappropriate.

MR. DEARDEN: Okay?

LE TRIBUNAL: Attendez.

MR. DEARDEN: And it is completely inappropriate for Mr. Rancourt to be arguing his bias motion that he didn't give notice on. And I want the Court to know that there was twice last week where Mr. Rancourt offered me an opportunity to adjourn today's proceedings. He has – and you'll be hearing about this today if we do continue – he has put an affidavit in of a Mireille Gervais, knowing that she would not be available for my cross-examination,...

M. RANCOURT: C'est faux.

That's not true.

MR. DEARDEN: ...and then offered me....

Will you please be quiet?

M. RANCOURT: Je m'objecte.

I am objecting.

LE TRIBUNAL: Non, non.

MR. DEARDEN: You will have your opportunity, sir.

M. RANCOURT: Je m'objecte...

MR. DEARDEN: You will have...

M. RANCOURT: ...à ces caractérisations.

I am objecting, Your Honour.

MR. DEARDEN: ...your opportunity.

LE TRIBUNAL: M. Rancourt,...

M. RANCOURT: Absolument faux.

LE TRIBUNAL: ...vous aurez – vous aurez pouvoir répondre.

You will be able to reply.

MR. DEARDEN: He put in an affidavit in Prof. St. Lewis – in his refusals motion for Prof. St. Lewis's examination of Mireille Gervais at the very last second that he could do it on Friday, the 13th. He had that affidavit since July the 9th. I say on the weekend 'cause Friday – I got it just before office hours ended. I write him on the Sunday. I serve him with a Notice of Examination. He immediately writes me back and says, "She's gone 'til August 2nd but I'll give you an adjournment."

I'll get into that in more detail because I'm actually going to seek costs on a full-indemnity basis for what he did there.

Then he also cross-examined...

M. RANCOURT: M. le Juge,...

Your Honour, but...

MR. DEARDEN: ...on Friday....

LE TRIBUNAL: Asseyez-vous.

M. RANCOURT: ...la motion qui va venir....

...I want to intervene.

LE TRIBUNAL: Asseyez.

MR. DEARDEN: No. I'm just putting on the record, Your Honour, that this – there was attempts by Mr. Rancourt to adjourn today's three motions. And that was the first one, Mireille Gervais' cross-examination. "We'll adjourn today and you can cross her when she's back in August."

And then he cross-examined our process server, [sic] who we sent to try to attempt to personally serve Ms. Gervais on Friday the 13th, and he couldn't. He served at the office.

And again – so then Mr. Rancourt serves me with a Notice to Cross-examine the process server and I say, "He's on holidays Monday but he is available on Friday."

He initially refuses to do any of that. "No." You know, "You can have an adjournment, but I," you know, blah, blah, blah. So....

M. RANCOURT: C'est complètement faux.

It's false.

LE TRIBUNAL: Asseyez-vous.

M. RANCOURT: Et les...

LE TRIBUNAL: Asseyez.

M. RANCOURT: ...documents le montrent.

And the documents show it.

LE TRIBUNAL: Asseyez-vous. Asseyez-vous.

Please sit down, sir.

MR. DEARDEN: So he's twice tried to seek an adjournment of today; and to, without notice, stand up now and ask that these three motions be adjourned is nothing but his attempt again to get an adjournment that I was not agreeing to because Prof. St. Lewis wants to get on with this libel action as fast as possible. And that's what he's doing, in my respectful submission.

He could have ordered the June 20th transcript on an expedited basis. We are – what? – July 24th today. He could have ordered that on an expedited basis. He did not do that. He would've had it. He could have filed a proper motion. Didn't do it. He knows the Rules actually better than – than, I think, half the people in this city. He knows what he's doing; and to do what he's doing now is completely objectionable.

LE TRIBUNAL: M. Rancourt, j'insiste. Vous devez préciser les motifs sur lesquels vous dites que je devrais me retirer.

Mr. Rancourt, I insist that you be precise about the grounds on which you say that I should recuse myself.

M. RANCOURT: Oui. Si j'ai bien compris, M. le Juge, vous me demandez de préciser ces motifs; c'est-à-dire préciser les raisons pour lesquelles je fais cette demande. C'est ça?

Yes. If I understood correctly, Your Honour, you're asking me to be more precise with these

grounds; that is, be precise about my reasons for which I'm bringing about my request, yes?

Et oui, je suis prêt à faire ça. Je suis en milieu de présentations mais je – j'en ai pour une autre cinq ou dix minutes. Et c'est des choses qui m'inquiètent beaucoup et je veux les présenter très clairement, sans plus d'interruptions, je l'espère.

I am ready to do that. I'm in the middle of my presentation. I have another five to ten minutes of presentation. And these are things that preoccupy me a lot and I will present them very clearly without any further interruptions – I hope.

LE TRIBUNAL: Est-ce que…

Do you….

M. RANCOURT: Mais….

LE TRIBUNAL: …vous tenez sur des choses que j'ai dites au courant des conférences relatives à la cause lors de l'audition de la dernière motion…

Are you talking about things that I was aware during case conferences or the last hearing or...

M. RANCOURT: Non.

LE TRIBUNAL: …ou autre chose?

…other things?

M. RANCOURT: Oui, autre chose sûrement. Et je vais les présenter. Donnez-moi une chance, s'il vous plaît, M. le Juge.

Well, yes, other things. I want to present them. Please, Your Honour, give me a chance.

Mais avant de poursuivre ça, je veux m'objecter à la mécaractérisation des faits que M. Dearden vient de faire. C'est absolument, à mon sens, énorme. Il y a des documents; il y a des courriels qui montrent les dates. Il y a une contorsion des faits, que je n'apprécie pas du tout.

But before going in that vein, I want to object to the mischaracterization of the facts from Mr. Dearden, which, in my sense, is huge. There are documents, e-mail showing dates. There's a contortion of facts, that I don't appreciate at all.

Et en plus, M. le Juge, j'ai remarqué que quand M. Dearden a parlé de bloguer et de M. Hickey, j'ai remarqué votre regard avec les yeux agrandis qui regardaient vers M. Hickey.

And on top of that, Your Honour, I noticed that Mr. Dearden talked about blogging. I noticed your look with big eyes in the direction of Mr. Hickey.

À mon sens, M. le Juge, les blogs, les médias, ça fait partie du concept de la cour ouverte….

In my opinion, the blogs, the media, that is part of open-court concept.

MR. DEARDEN: Just…. Just for the record, Your Honour,...

M. RANCOURT: ...et on n'a pas...

We didn't do....

MR. DEARDEN: ...I want to...

M. RANCOURT: ...on n'a pas....

MR. DEARDEN: ...object to what he said here, what was....

Excuse me, sir. You're not....

M. RANCOURT: Il est en train de m'interrompre....

He's in the process...

MR. DEARDEN: You're not going....

M. RANCOURT: ...pendant que moi....

...of interrupting me.

M. RANCOURT: Alors....

THE COURT: Sit down, Mr. Dearden.

Je reviens. Je donne cinq minutes pour préciser les motifs sur lesquels vous dites je devrais me retirer de ce dossier.

I come back now to.... I'm giving you five minutes to be more precise on the grounds upon which you rely to say that I should recuse myself.

M. RANCOURT: Ça va peut-être prendre sept minutes, M. le Juge.

It might take seven.

LE TRIBUNAL: Cinq. Je vous donne cinq.

I am giving you five.

M. RANCOURT: Alors, je vais essayer de faire le tri, dans ce cas-là. Donnez-moi quelques secondes pour faire ça.

So I'll try and go through it in that case and just take out the significant items. Give me a few seconds to do that, please.

Okay. Le 20 juin 2012, l'Université avait mis de l'avant un affidavit de Me Roussy.

June 20th, 2012, the University had put forth an affidavit from Maître – from Alain Roussy.

Est-ce que c'est le meilleur exemple?

M. le Juge, la contrainte dans le temps me – me stresse beaucoup.

You know, the fact that I'm limited with time, I'm very stressed.

LE TRIBUNAL: Écoute. Vous avez fait ça à la dernière minute.

Well, you did that at the last minute. I'm listening to you.

M. RANCOURT: Oui.

LE TRIBUNAL: Je vous entends. J'aurais pu dire uniquement que vous n'avez pas donné un avis au préalable, c'est rejeté.

I could have said uniquely you didn't give forward motives and it's rejected.

M. RANCOURT: Merci de m'entendre, M. le Juge.

Well, thank you on my behalf, Your Honour.

LE TRIBUNAL: Est-ce que vous tenez uniquement – vous basez votre motion sur des remarques

que j'ai fait lors des conférences relatives à la cause ou dans le contexte de l'audition de la dernière motion?

Do you insist uniquely – uniquely – singularly – on comments I made at case conferences, or in the context of the last motions hearing?

M. RANCOURT: Non, M. le Juge.

No.

LE TRIBUNAL: Autre chose?

Other things?

M. RANCOURT: Oui, autre chose aussi.

Yes, also other things.

LE TRIBUNAL: Qu'est-ce qui est central?

Okay. What are they?

M. RANCOURT: Alors, il y a l'ensemble de certaines choses que vous avez dites pendant nos rencontres.

Well, there's the whole of certain comments that you made during our meetings.

On a eu trois rencontres pour la cause, je crois – le 8 février, le 4 avril et le 4 mai – et aussi pendant la dernière rencontre dans cette motion, qui était le 20 juin; et aussi en faisant ce travail maintenant que ça se concrétise dans mon esprit. J'ai fait une recherche sur le Web à votre regard, M. le Juge, et j'ai trouvé des éléments qui sont très inquiétants.

We had three meetings for the case, right? – 8th of February, April 2nd, May 4th – and also the

last meeting, 20th of June, for this motion; and also the work that was done now that it's becoming clear in my mind. I did a search on the Web about you, Your Honour, and I found elements that are very preoccupying.

LE TRIBUNAL: Okay.

M. RANCOURT: Et entre autres….

Among others….

Et donc, vous – si je comprends bien, vous voulez que j'aille à ces éléments-là, qui sont…

LE TRIBUNAL: Oui.

M. RANCOURT: …les éléments additionnels.

If I understand correctly, you want me to touch on the additional elements that I have.

Alors, j'ai ici – trouvé un article, auquel je viens juste de découvrir en faisant cette recherche il y a un jour, qui a apparu dans *le Citizen* le 24 avril 2012.

So here I have…. I found about you an article – I just discovered this a day ago – that appeared the 24th of April, 2012, an article that appeared in The Citizen.

J'en donne une copie à M. Dearden et je vous en donne une copie.

I give you a copy, and a copy to Mr. Dearden.

Dans cet article, qui pourrait contenir des erreurs factuelles mais qui aussi pourrait être correct – de

toute façon, c'est ce que le public voit – on dit, à la première page….

In this article, that may, or could, contain factual errors – may or may not – but in any event, this is what is read by the public, it is stated on page one….

On parle de votre fils et on dit:

We talk about your son, and it says:

> "Beaudoin is still picking his way through the rocky landscape of grief."

Donc cette affaire vous préoccupe encore beaucoup.

So this – you're still preoccupied by that.

Et un peu plus bas, on dit:

And a little further:

> "Says Beaudoin, 'One impulse you have when you lose a child is to make sure their name isn't lost and people remember them.'"

Dans l'article vous expliquez que c'est une chose que vous faites pour garder la mémoire de votre fils en vie.

In the article you explain that this is something that you do to keep the memory of your son alive.

Et un peu plus tard dans cet article, il est dit:

And a little further in this article, it is said:

> "The first – after a few rough months, the first step his family took was to set up a

> scholarship in Ian's name at the University of Ottawa Law School. Beaudoin was also delighted that the law firm Borden Ladner Gervais, where his son was a second-year patent lawyer, named a meeting room after him."

Et ensuite on vous cite en disant:

And then you're quoted:

> "So every day someone says, 'You can meet in the Ian Beaudoin Room.'"

Alors il y a, M. le Juge….

So therefore there is, Your Honour....

MR. DEARDEN: What you just did, Mr. Rancourt....

M. RANCOURT: M. le Juge….

MR. DEARDEN: I am objecting.

LE TRIBUNAL: Attends.

M. RANCOURT: Pourquoi cette interruption?

Why is there an interruption?

MR. DEARDEN: What you just did...

LE TRIBUNAL: Attendez. Just wait.

MR. DEARDEN: ...is sickening. It is sickening, what you just did, sir.

M. RANCOURT: Pourquoi à ce que….

MR. DEARDEN: I'm putting that on the record. I cannot believe that you would do that.

M. RANCOURT: M. le Juge, je – je – je prends note que vous permettez une telle interruption – ce qui n'est pas correct donc, ce que M. Dearden a fait. C'est comment….

Your Honour, I take notice that you are allowing such an

interruption. What is not right....
What is not....

MR. DEARDEN: No. I did it knowing full well, Mr. Rancourt, that you were going to object; and I'm standing up again saying what you just did has me actually shaking. I'm actually shaking – that you would do that, sir.

M. RANCOURT: Moi, je trouve ces commentaires inappropriés.

I find that comment inappropriate.

LE TRIBUNAL: Je trouve….

I find….

M. RANCOURT: Alors….

LE TRIBUNAL: Je trouve vos remarques tellement choquantes et provoquantes, qui voulaient utiliser l'angoisse que j'éprouve au décès de mon fils et d'un projet qu'on a lancé dans la communauté à sa mémoire, ou prétendent que cet esprit d'angoisse me bouleverse tellement que je suis incapable de trancher les questions en jeu, je – je trouve ça….

I find your remarks so provocative and so insulting, that you would use them, the anguish that I would be going through as a result of the death of my son, and a project that was launched in the community in his memory, to purport that this feeling of anguish is so perturbing to me that I am incapable of ruling questions at issue. I find it....

M. RANCOURT: Je n'ai pas prétendu ça, M. le Juge. J'aimerais corriger. Je n'ai pas…

I did not put that out there. I'd like to correct.

LE TRIBUNAL: Je trou'….

M. RANCOURT: …prétendu ça.

LE TRIBUNAL: Je trouve tellement choquant qu'un homme qui se dit professionnel à la recherche de la justice a pu pencher aussi bas que ça.

I find it so – so shocking that a man who would claim to be professional, seeking justice, would have stooped so low as to do that.

M. RANCOURT: Mais permettez-moi de faire mon argument, M. le Juge.

But please allow me to make my….

LE TRIBUNAL: Votre motion est complètement – de retard – est rejetée.

Your motion is out of time and it is not granted.

M. RANCOURT: M. le Juge….

LE TRIBUNAL: Nous procédons.

M. RANCOURT: M. le Juge,…

LE TRIBUNAL: Nous procédons.

M. RANCOURT: …je n'ai même pas fait mon argument.

I have not even….

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: M. le Juge….

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: Je n'ai pas fait mon argument.

I did not even….

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: J'ai lu…

LE TRIBUNAL: Nous procédons.

M. RANCOURT: …quelques pages.

THE COURT: Go ahead with….

M. RANCOURT: Vous avez une entente financière avec l'Université d'Ottawa.

You have a financial agreement with the University of Ottawa.

Il y a une bourse au nom de votre fils. L'Université d'Ottawa a dû approuver cette entente financière. Elle peut annuler cette entente financière. Et vous avez exprimé publiquement, M. le Juge, que c'est – c'est…

There is a scholarship in the name of your son. The University of Ottawa had to approve that financial arrangement and can annul that financial arrangement. And you publicly expressed that…

LE TRIBUNAL: Je répète….

I will repeat….

M. RANCOURT: …c'est important pour vous.

LE TRIBUNAL: M. Rancourt, je répète: votre motion pour un ajournement est refusée. Refusée. Continue.

M. Rancourt, I will repeat: your motion for an adjournment is denied. Denied.

M. RANCOURT: Et donc est-ce qu'on….

And therefore….

LE TRIBUNAL: Est refusée.

Denied.

M. RANCOURT: Oui. Est-ce que on….

Yes.

LE TRIBUNAL: Motion d'ajournement – refusée.

Your adjournment motion is refused.

M. RANCOURT: J'avais….

LE TRIBUNAL: Refusée!

It's refused.

M. RANCOURT: D'accord. J'ai compris.

I understood, Your Honour.

M. le Juge, je tiens à signaler que vos....

Your Honour, I would like to….

LE TRIBUNAL: Je prends une pause, et quand je reviens, dans 15 minutes, si vous osez continuer cette attaque personnelle contre moi en évoquant la mémoire de mon fils, je vais vous reconnaître en outrage au Tribunal. Nous procédons, dans un retard de 15 minutes, avec la motion pour les refus.

I will take a recess, and when I come back, in 15 minutes, if you dare continue this personal attack against me invoking the memory of my son, I will find you in contempt of court, sir. We are going to proceed, with 15 minutes' delay, with the motion to deal with the refusals.

CLERK OF THE COURT: Court is now in recess.

COURT SERVICES OFFICER: Order. All rise.

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.

Par contre, je trouve que votre geste ce matin en me remettant une copie de cette article qui existe depuis trois mois….

However, I find that your conduct this morning, by giving me a copy of this article that has been available for the last three months….

Et vous faites ça souvent, hein? Vous arrivez à la dernière minute. Vous vous prétendez, "Je viens de découvrir." C'est un truc favori chez vous.

You do that often. You arrive at the last minute. You pretend, "I've just discovered." It's one of your favourite tricks, isn't it?

Pourtant, c'était dans le grand public depuis trois mois.

However, it's been available to the members of the public for three months – over three months.

Et vous tenez non seulement à lire le paragraphe qui fait référence à la bourse, vous tenez à souligner l'angoisse que j'éprouve toujours auprès de la mort de mon fils.

And you insist not only in reading the paragraph that refers to the scholarship, you underline the anguish that I am still dealing with as a result of the death of my son.

Jamais, jamais de ma carrière juridique, que j'ai vu un geste aussi écœurant, provoquant, et complètement indigne. Vous aurez pu faire ça. Pour…

Never, never in my legal career have I seen such a dispicable action, provocative, completely unbecoming. You could do that,...

M. RANCOURT: M. le Juge, je....

Your Honour….

LE TRIBUNAL: …prendre mon angoisse et me le jeter en face comme ça…

…take my anguish and throw it in my face.

M. RANCOURT: M. le Juge, c'est….

Your Honour….

LE TRIBUNAL: …j'ai, malheureusement….

I have, unfortunately….

M. RANCOURT: Vous…. Vous….

LE TRIBUNAL: Vous avez réussi. Vous avez réussi, M. Rancourt. Je ne peux plus continuer à présider dans votre présence. Je serais incapable. Vous avez réussi.

You have succeeded, Mr. Rancourt. You've succeeded. I cannot continue to preside in your case. I will be incapable. You have succeeded, sir.

Vous m'avez provoqué tellement avec ce geste le plus pénible on aurait pu m'imposer, que je suis incapable d'être juste envers….

You have provoked me to such an extent with this action, the most painful that I could have been asked to deal with, I can't – I can't be just towards you.

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)

****

Formule 2

CERTIFICAT DE TRANSCRIPTION

Loi sur la preuve, paragraphe 5(2)

Je, **la soussignée,** **Leona M. Scott** **certifie que** ,
(Nom de la personne autorisée)

le présent document est une transcription exacte et fidèle de l'enregistrement de l'affaire

Joanne St. Lewis c. Denis Rancourt dans la **Cour supérieure de justice**
(Nom de la matière) (Nom de la cour)

entendue à **161, rue Elgin à Ottawa mardi, le 24 juillet 2012**
(adresse de la cour)

prise de l'enregistrement **0411-35-20120724** , qui a été certifié en Formule 1.

Le 20 août 2012
(Date)

(Signature de la personne autorisée

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

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TRANSCRIPTION DEMANDÉE LE: 24 juillet 2012

DEMANDE REÇUE LE: 24 juillet 2012

TRANSCRIPTION COMPLÉTÉE LE: 17 août 2012

AVIS DONNÉ LE: 20 août 2012

BY HAND

July 25, 2012

Regional Senior Justice Hackland
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

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

I am a self-represented defendant in the above-noted action. I am writing to ask for your guidance and intervention in order to restore the orderly conduct of the proceeding.

1. The action is under case management, by consent, and up until July 24, 2012, the case-manamgenet judge was Justice Beaudoin.

2. The plaintiff is a professor at the Faculty of Law at the University of Ottawa. The present lawsuit is fully funded by the University of Ottawa. The decision to fund the action was made by the university's president, Mr. Allan Rock.

3. Currently, there is a motion seeking to dismiss the action on the grounds of maintenance and champerty pending before the Court. The University of Ottawa was granted intervener status in this motion. The University of Ottawa is represented by the BLG law firm.

4. The hearing of a refusals motion brought by myself in relation to cross-examinations of affidavits from officers of the University of Ottawa started on June 20, 2012, and was to continue on July 24, 2012, when also motions related to discoveries were to be heard.

5. Since the appointment of Justice Beaudoin as case management judge, he has made a number of statements and/or determinations in the courtroom that show a reasonable apprehension of bias (particulars can be provided upon request).

6. On or around July 22, 2012, I found out from an article published in the Ottawa Citizen (April 24, 2012) that Justice Beaudoin has financial and/or emotional ties both to the University of Ottawa, and the BLG law firm representing the University of Ottawa in the present proceeding. The article states that Justice Beaudoin donated money to the University of Ottawa to establish a scholarship in the name of his late son, that his late son was a lawyer at BLG, and that BLG named a boardroom after his late son.

7. On July 24, 2012, at the beginning of the continuation of the said refusals motion hearing, I advised the Court that I was seeking to adjourn the hearing to allow me to prepare a motion

to request that Justice Beaudoin recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

8. In the course of my argument, I quoted from the April 24, 2012 article of the Ottawa Citizen, but before I could make further submissions, Justice Beaudoin interrupted me, barred my attempt to proceed to fully express my concerns, expressed disapproval of me, and called for a 15 minute recess after stating that if I brought my request to adjourn again after recess he would find me in contempt of court. There had been loss of decorum. The interventions of opposing counsel had not been helpful and only aggravated the situation.

9. Following recess, Justice Beaudoin was visibly angry and distraught. He made several negative statements about me, and stated that he was not in conflict of interest. He added that he was so perturbed with me (his actual words may have been stronger) that he would recuse himself from the entire case and he closed the session.

10. While I have personal experience of loss comparable to that of Justice Beaudoin and I have great compassion and sympathy for his loss, I believe that it was my duty and obligation to bring these concerns to the Court's attention in order to promptly resolve such a significant liability in the administration of justice.

11. I believe that it was inappropriate for Justice Beaudoin to have failed to disclose that he had a financial association with the University of Ottawa, one that is tied to the institution's image and reputation, which in turn is at stake by virtue of my motion to dismiss the action on the grounds of maintenance and champerty.

12. I further believe that it was inappropriate for Justice Beaudoin to not disclose to the parties that his late son was associated with the BLG law firm, and that the firm named a board room in the honour of his late son.

13. On June 20, 2012, the hearing of my refusals motion was not completed. Although Justice Beaudoin made rulings from the bench — including to find my expert's affidavit inadmissible on technical grounds, to not allow me to cross-examine the University's affiant for the motion, and to not allow several of my refusals requests — no endorsement and/or written reasons and/or order were provided.

14. In these circumstances, and where a judge recuses himself in mid-motion, I seek direction from the Court as to whether a motion is necessary to set aside the justice's rulings and/or determinations made prior to his recusal. If a motion is necessary, then I intend to bring such a motion without delay on the grounds of a reasonable apprehension of bias and appearance of conflict of interest, based on evidence up to and including the events of July 24, 2012.

15. In addition, I intend to bring a motion that Justice Beaudoin's court statements about me and my person of July 24, 2012 and prior to July 24, 2012 be struck from the record after their use in any motion to have the justice's rulings set aside.

16. The above matters (setting aside prior determinations, *de novo* motion hearing, use of in-court statements) need to be determined before any other further motions are heard, as I wish to remove all prejudice against me before we resume the proceedings.

17. I seek your guidance and intervention in having these matters determined in the most fair and efficient way.

18. Also, given the central place of the University of Ottawa law school in the Ottawa legal community, I am concerned that a reasonable apprehension of bias is nearly impossible to be avoided with a bilingual judge from East Region.

19. I therefore seek that a bilingual judge, from a judicial region other than East Region, and having no connections with the University of Ottawa or the BLG and Gowlings law firms, and no ties to Mr. Allan Rock, be assigned to the proceedings using video conference and/or conference call technology.

20. I request your guidance in the best way to achieve this. In my view travelling outside of Ottawa with all the documents would be a prohibitive barrier to access.

21. And, I wish to address points in Mr. Dearden's July 24, 2012 letter to you. Plaintiff's counsel's representations are incorrect and/or incomplete to the point of being misleading:
    (a) Mr. Dearden omits that I was impeded from making any further submissions after reading a few passages from the above-noted Ottawa Citizen article (his para. 4). In this respect, Mr. Dearden's statement that "Justice Beaudoin heard further argument from Mr. Rancourt" (his para. 5) is contrary to the fact that strong resistance against my making further submissions was exercised.
    (b) Three motions were scheduled to be heard on July 24, 20120. Contrary to Mr. Dearden's allegation, I offered to adjourn one of these three as a courtesy to him to allow him a fair opportunity to cross-examine one of my affiants. Mr. Dearden made his same incorrect statement also to the court on July 24, 2012.
    (c) I have never sought to delay the proceedings, only to ensure fair proceedings.
    (d) Mr. Dearden incorrectly attached only a single refusals chart to his letter of July 24, 2012 to you. As a matter of fact, there are a total of 4 refusals charts, all of which are attached to my instant letter.

22. Finally, I must also correct the record with respect to the July 25, 2012 letter of Mr. Dearden to you, which contains significantly prejudicial misrepresentations:

(a) I have no knowledge of a hearing scheduled for July 26, 2012. This was a date that was proposed by Mr. Labaky, and Mr. Dearden misled him to believe that it was accepted by all parties by sending him a confirmation without any prior communication with me.
(b) On July 24, 2012, I have advised the Mr. Labaky and the other parties that I am unavailable on July 26, 2012 due to a medical appointment. A copy of my email to that effect is attached.
(c) I have never authored or published the article entitled "Judge Accused of Conflict of Interest Loses Decorum and Withdraws From Case." Mr. Dearden ought to have known that this article was published on the "Student's-Eye View" over which I have neither direct nor indirect control.
(d) Mr. Dearden knows that I post hyperlinks on my blog to all media reports related to this and other cases involving the University of Ottawa. As an expert on defamation law, I am sure Mr. Dearden is familiar with the significant distinction between a hyperlink and publishing content that the Supreme Court of Canada made in *Crookes v. Newton.*

Yours truly,

Denis Rancourt

Denis Rancourt
(Defendant)

Cc: Richard Dearden
Cc: Peter Doody
Cc: Warren K. Winkler, Chief Justice of Ontario (excluding attachments)

Gmail by Google

Denis Rancourt <denis.rancourt@gmail.com>

Letter to Trial Coordinator and Letter to Regional Senior Justice Hackland

Denis Rancourt <denis.rancourt@gmail.com> Tue, Jul 24, 2012 at 4:32 PM
To: "Dearden, Richard" <Richard.Dearden@gowlings.com>, "Labaky, Elie (JUS)" <Elie.Labaky@ontario.ca>, pdoody@blg.com, "Semenova, Anastasia" <Anastasia.Semenova@gowlings.com>

Dear Mr. Labaky,

I have seen the correspondence between Mr. Dearden and you only now.

(a) Mr. Dearden never consulted with me about my availabilities.

(b) Unfortunately, due to a medical appointment that has been scheduled in advance, I am not available for a hearing on July 26, 2012. Kindly please advise all parties about available court dates for a bilingual hearing in the month of August.

(c) In the unique circumstances of the case (which will be addressed in a longer letter later), I anticipate that hearing the refusals related to the champerty motion will require at least a full day, and not 1.5 hours as Mr. Dearden suggests.

(d) A longer letter, addressing what happened today in the courtroom and its implications will follow later on this week. Mr. Dearden's representations on this point are incomplete, to say the very least.

Sincerely,
Denis Rancourt

On Tue, Jul 24, 2012 at 4:00 PM, Dearden, Richard <Richard.Dearden@gowlings.com> wrote:

> I am confirming the champerty refusals motion will be argued July 26th at 10am
>
> **Richard Dearden**
> Partner
> T 613-786-0135
> **gowlings.com**

From: Labaky, Elie (JUS) [mailto:Elie.Labaky@ontario.ca]
Sent: July 24, 2012 3:48 PM
To: Dearden, Richard

Cc: denis.rancourt@gmail.com; pdoody@blg.com; Semenova, Anastasia
Subject: RE: Letter to Trial Coordinator and Letter to Regional Senior Justice Hackland

Mr. Dearden,

I only have the date of July 26th, 2012 available to have the said motion heard. Parties have all been CC'd on this e-mail.

Regards.

E. Labaky

From: Dearden, Richard [mailto:Richard.Dearden@gowlings.com]
Sent: July 24, 2012 3:10 PM
To: Labaky, Elie (JUS)
Cc: denis.rancourt@gmail.com; pdoody@blg.com; Semenova, Anastasia
Subject: Letter to Trial Coordinator and Letter to Regional Senior Justice Hackland

Good afternoon Mr. Labaky - the attached original letters are being delivered to you as i write this email.

Richard Dearden
Partner
T 613-786-0135

gowlings.com

From: Jette, Marie
Sent: July 24, 2012 2:40 PM
To: Dearden, Richard
Subject: Letter to Trial Coordinator and Letter to Regional Senior Justice Hackland

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REFUSALS AND UNDERTAKINGS CHART

(Defendant's "champerty" motion; affiant Allan Rock)

June 11, 2012

Denis Rancourt
(Defendant)

REFUSALS AND UNDERTAKINGS CHART

REFUSALS					
Refusals to answer questions on the examination of Allan Rock, dated April 18, 2012.					
Issue & relationship to pleadings or affidavit *(Group the questions by issues.)*	**Question No.**	**Page No.**	**Specific question**	**Answer or precise basis for refusal**	**Disposition by the Court**
1. Issue: Search and production of notes of President's chief of staff: Stephane Emard-Chabot. Issue: Rule 34.10	85-87	16-17	Request for relevant notes from chief of staff. **(Also requested for production in the Notice of Examination.)**	Will not make undertakings.	
2. Issue: University policy regarding reimbursing legal costs of employees or professors. Issue: Rule 34.10 Related to: Abuse of process, maintenance.	206-210	38-39	Request to know whether there is a university policy regarding reimbursing legal costs of employees or professors. **(Also requested for production in the Notice of Examination.)**	No answer.	
	206	38-39	What is the policy regarding reimbursing legal fees of employees or professors?	I am not sure that we have a specific policy governing reimbursing the legal fees of professors who are defamed as a result of work they have done at the request of the university.	
	207	39	I am asking generally what is the policy?	I don't think generally we have such a policy.	
	208	39	Do you know that you don't have one or do you not know?	I don't think we have a policy governing the reimbursement of legal fees for professors who institute defamation proceedings arising out of work they have done at our request.	
	209	39	I am asking in a general sense if there is a university policy regarding reimbursing legal fees of employees or professors?	I don't know.	

	210	39	So you don't know and you answered yes to this question at the meeting for funding without even knowing if there was a policy, am I correct?	I think my answers speak for themselves.	
	213	40	Which question are you answering now?	(in part) It wasn't to me a matter of a policy, Mr. Rancourt. It was a matter of a principle, and I answered yes we would stand with her.	
3. Issue: University insurance policy for legal liability (CURIE). Issue: Rule 34.10 Related to: Abuse of process, maintenance.	215-217, 220-221, 223	41-42	Request to know if there is a university insurance policy that covers legal liabilities of employees. **(Also requested for production in the Notice of Examination.)**	Not relevant.	
	215	41	Is there any insurance policy for legal fees of professors?	I don't know.	
	216	41	You don't know?	I imagine there is but I haven't looked into it.	
	217	41	Is there a legal liability insurance policy at the University of Ottawa?	Not relevant.	
	223	42	Does that insurance policy (CURIE) discuss funding litigation?	I don't know. The reason I am aware of it is I remember when you said the name seeing an e-mail from you asking for coverage under that policy for your legal expenses in this proceeding.	
4. Issue: University annual budget for outside counsel fees; "professional honoraria". Related to: Abuse of process, maintenance.	199	37	What typically would be the amount of that budget, the annual amount?	Not relevant.	
	205	38	If it is not public could you provide it?	Not relevant.	

5. Issue: Funding limit ("cap") in the agreement to reimburse legal costs, nature of the agreement. Related to: Abuse of process, maintenance.	(185-186) 187	(35-36) 36	(Was there no cap established in terms of funding? –No. None? –No.) And do you stand by that today?	 I am answering your question. You asked me if there was a cap and I told you no.	
	188	36	do you stand by that today?	Not relevant.	
	189	36	Do you stand by the decision to fund this law suit without a cap?	Not relevant.	
6. Issue: Payments made towards fulfilling the agreement to fund the litigation, nature of the agreement. Related to: Abuse of process, maintenance.	276	52	Mr. Rock, how much in amount has been billed so far to date in this litigation?	Not relevant.	
	278	52	How much has been paid so far to date in this litigation?	Not relevant.	
	279	52	Was a retainer or more than one retainer provided to the Gowlings law firm and how much were they?	Not relevant.	
7. Issue: Implementation and financial administration of the agreement to fund the litigation. Issue: Rule 34.10 Related to: Abuse of process, maintenance, champerty.	134-158	27-30	Requests for information about the financial administration of the agreement to fund the litigation. **(Also requested for production in the Notice of Examination.)**	No answers.	
	(133) 134	(27) 27	(And did you or did you instruct your staff to inform Mrs. St. Lewis about the mechanics of how those payments would be made? –No.) Well, how was that information conveyed to Professor St. Lewis?	 I don't know.	
	140	28	Who would you have told first?	I don't remember.	
	141	28	The VP resources presumably? I am asking you.	Could be. I don't know. I just told you I don't know.	

	149	29	Is it likely? I mean this law suit presumably is going to start soon. The university needs to know how to handle these payments. So presumably you would have to tell someone early on.	And presumably I did.	
	150	29	Who did you tell?	I am not sure of that.	
	152	29	You have no recollection of any of that?	I have no specific recollection of the order in which I informed the vice presidents.	
	153	29-30	But, you see, what I am trying to find out is early on there has to be some information that this has happened. How did that information get conveyed from you, the decision-maker, to the person who had to make sure it was going to happen?	It may also be that Stephane Emard-Chabot communicated the decision to others.	
	158	30	Okay, but you will agree with me that early on the administrative system of the university had to know that this was going to happen.	I will agree with what I have already told you in answer to your questions, and if you wish to draw conclusions from that that is up to you.	
8. Issue: Statutory and/or policy and/or other authority to commit public funds to private law suit. Related to: Abuse of process, maintenance, public policy.	294	56	Mr. Rock, what gives you the legal authority to spend taxpayer money on a private law suit in this way?	Witness will not answer questions of law.	
	296	56	Mr. Rock, what gives you the authority, legal or otherwise, to spend taxpayer money on a private law suit in this way?	I've answered your question.	
	297	56-57	No, I haven't hear the answer to that.	Well, read the transcript then.	
	298	57	So you are refusing to answer that?	I have answered your question. I told you the reasons I arrived at my decision. I talked about the obligation we had to members of our academic staff.	

9. Issue: Appearance of a conflict of interest in the University's decision to fund the law suit. Related to: Abuse of process, maintenance, champerty, public policy.	491	98	Mr. Rock, is there an appearance of conflict of interest here in that you are centrally criticized in the blog post that you decided to fund a private law suit against me?	Not relevant.	
	499	101	But it is a fact that the blog post centrally criticizes you, Mr. Rock, and it is a fact that you are funding this litigation against that blog post. Is that not an appearance of conflict of interest?	Not relevant.	
	501	101	As the decision-maker in funding the law suit you have a personal interest in that the blog criticizes you. Do you not see that as a conflict of interest?	Is this your argument, Mr. Rancourt?	
	502	101	Is that a conflict of interest?	Not relevant.	
10. Issue: Defendant's "U of O Watch" blog web site as motive for the maintenance. Related to: Abuse of process, maintenance.	521	105	Does my blog, the U of O Watch, bother you, Mr. Rock?	Not Relevant.	
	524	106	Are you aware of a blog post that directly lists your alleged ethical mishaps throughout your career?	Not relevant.	
11. Issue: Common motives for dismissal and maintenance. Related to: Abuse of process, maintenance.	508	102	Before I was dismissed from the university, that happened on April 1st, 2009, did you have strong views about why it would be beneficial or good for me to be dismissed?	Not relevant.	
	510	103	I am exploring other motives that you may have and that is what these questions are related to.	Not relevant.	
	511	103	Now did you have strong views about why it would be good for me to be dismissed before I was dismissed, Mr. Rock?	Not relevant.	

	513	103-104	But I am asking you more questions that explore your motivation, Mr. Rock, based on other evidence and I want answers to these questions. Did you have strong views about why it would be beneficial that I be dismissed from the university?	Not relevant.	
	515	104	Before 2009, Mr. Rock, did you have reasons for wanting me dismissed in addition to the official reasons that were given?	Not relevant.	
	517	104-105	I suggest that you did have reasons other than the official reasons that were given and that you expressed these reasons clearly to some of your staff?	Not relevant.	
	518	105	Mr. Rock, I suggest that you wanted me gone and silenced, isn't that correct?	Not relevant.	
	520	105	I suggest that you have done everything you could and this law suit is just a continuing of this campaign in order to have me gone and silenced?	Not relevant.	
	525	106	After I was dismissed, Mr. Rock, did you not continue to express negative views about me to executives and staff at the University of Ottawa?	Not relevant.	
12. Issue: Improper surveillance of the defendant as evidence of inappropriate motive for the maintenance. Related to: Abuse of process, maintenance, public policy.	568	114	Mr. Rock, under your mandate as president have you ever paid to obtain recordings or transcripts of any of my various talks or interviews(?)	No answer.	
	569	114-115	Mr. Rock?	No answer.	
	570	115	Are you aware, Mr. Rock, of the university's surveillance of me?	No answer.	

	572	115	Are you aware of a student being hired to assume a false identity to collect information about me?	Not relevant.	
	573	115	Of a hired student collecting my talks on other campuses as far as Vancouver?	No answer.	
	594	121	Do you have any knowledge, Mr. Rock, of recordings and/or transcripts of my presentation at other university campuses that would have been known about or used or communicated to members of the upper administration? I mean a vice president or yourself. Do you have any knowledge of that?	Not relevant.	
13. Issue: Improper use of medical information as evidence of inappropriate motive for maintenance. Related to: Abuse of process, maintenance, public policy.	603	123	Mr. Rock, are you aware that the university made a third party psychiatric assessment of me without my knowledge or consent?	No answer.	
	605	123	Mr. Rock, do you think it is even legal to obtain a psychiatric evaluation of an employee without his knowledge or consent without ever seeing the patient?	Legal question.	
	606	123-124	Do you think it is right, Mr. Rock, to do that kind of thing?	Not relevant. No basis established.	
	610	125	In order to obtain such psychiatric evaluation, third person, without the knowledge or consent of the patient it would require that the university give employee's personal information without his knowledge or consent. Do you think that sort of thing would be acceptable, Mr. Rock?	Not relevant.	
	621	128	Mr. Rock, does the university do psychiatric evaluations of employees without their knowledge or consent?	No relevant.	

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REFUSALS AND UNDERTAKINGS CHART

(Defendant's "champerty" motion; affiant Céline Delorme)

June 11, 2012

Denis Rancourt
(Defendant)

REFUSALS AND UNDERTAKINGS CHART

REFUSALS					
Refusals to answer questions on the examination of Céline Delorme, dated April 24, 2012.					
Issue & relationship to pleadings or affidavit *(Group the questions by issues.)*	**Question No.**	**Page No.**	**Specific question**	**Answer or precise basis for refusal**	**Disposition by the Court**
1. Issue: Production of relevant correspondence between counsel for the University (Harnden) and counsel for the Defendant's union (Nelligan). Issue: Rule 34.10 Related to: Affiant's credibility.	7	4-5	Are there other such documents that exist? **(Also requested for production in the Notice of Examination.)**	Not relevant.	
	8	5-6	So, my question was: are there other documents that exist within this category? **(Also requested for production in the Notice of Examination.)**	Not relevant.	
2. Issue: "I have knowledge of the matters to which I hereinafter depose", affidavit of Céline Delorme sworn on February 16, 2012. Related to: Affiant's credibility.	(37) 38	(13) 13	(I understand, but --- – So, there may be other areas.) Do you foresee any important areas where you might have this gap in knowledge?	 Question already answered.	
	45	15	What role did you play in general terms without disclosing anything that's privileged, but what role did you play in preparing your Exhibit "A", the Exhibit "A" of your Affidavit? (Exhibit "A" of Céline Delorme's affidavit sworn on February 16, 2012.)	Privileged.	

3. Issue: Credibility of Exhibit "A" of Céline Delorme's affidavit sworn on February 16, 2012. Issue: Rule 34.10 Related to: Credibility of the affiant, maintenance-motive.	65	19-20	Well, I'm going to show you an exhibit that may help your memory. I'm going to show you in a moment an e-mail that was sent by Mr. Sean McGee, the counsel for the Professors' Union, to Mr. Harnden. And it was sent on November 2nd, 2011. And I would like to know if you are aware of this e-mail or if you recognize it. **(Exhibit "A" for identification; and had been requested in the Notice of Examination.)**	Not relevant.	
	67	20-21	To be clear, my question was: do you recognize this e-mail or its content? Do you have any knowledge of its content? **(Exhibit "A" for identification; and had been requested in the Notice of Examination..)**	Not relevant.	
	70	23-24	In part, this document which is an e-mail from Lynn Harnden to Mr. McGee says the following: "I agree that I did not clarify to Mr. Foisy that the e-mail exchange had been shared by Mr. Stojanovic before the formal acceptance of the dismissal recommendation and the communication of the decision to dismiss Dr. Rancourt. I will communicate with Mr. Foisy to clear the record in that regard and will acknowledge my personal error in not highlighting the relevant dates." Are you aware of Mr. Harnden having admitted in this way to an error in your document which is Exhibit "A"? (Exhibit "A" of Céline Delorme's affidavit sworn on February 16, 2012.)	(1) Not relevant; (2) Document quoted from not shown to witness.	
	71	25	Do you know whether or not Mr. Harnden is aware of any errors in your Exhibit "A" of your Affidavit? (Exhibit "A" of Céline Delorme's affidavit sworn on February 16, 2012.)	Not relevant.	
	72	25	Do you know if Mr. Harnden has corrected an error in this document with Arbitrator Foisy? (Exhubit "A" of Céline Delorme's affidavit sworn on February 16, 2012.)	Not relevant.	

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REFUSALS AND UNDERTAKINGS CHART

(Defendant's "champerty" motion; affiant Joanne St. Lewis)

June 11, 2012

Denis Rancourt
(Defendant)

REFUSALS AND UNDERTAKINGS CHART

REFUSALS					
Refusals to answer questions on the examination of Joanne St. Lewis, dated April 23, 2012.					
Issue & relationship to pleadings or affidavit *(Group the questions by issues.)*	**Question No.**	**Page No.**	**Specific question**	**Answer or precise basis for refusal**	**Disposition by the Court**
1. Issue: Vulnerability of the plaintiff. Related to: Abuse of process, maintenance, champerty.	49	14-15	Mrs. St. Lewis, you mentioned that you had made an application in the fall of 1999. Was that the application for tenure?	Not relevant.	
	53-54	15-17	Have you ever applied for a promotion to the Associate Professor level?	Not relevant.	
	56	18	How many times have you applied for any promotions since becoming Assistant Professor in 1992?	Question speaks to defendant's malice, aggravated damages, and punitive damages.	
	64	19-20	Do you feel that the calibre of your work is at the Associate or full Professor level?	Not relevant.	
	76-78	21-22	And is that the only time you were enrolled in a graduate degree program?	Not relevant.	
2. Issue: Plaintiff's inclination and/or intent to litigate prior to securing third-party funding. Related to: Abuse of process, maintenance, champerty.	99	32	Do you recall having received this e-mail dated December 7th, 2008?	Document (Exhibit "A" for identification) not in motion record.	
	103	33-34	It is something that you've included in your Discovery documents? (Exhibit "A" for identification)	Not relevant.	
	104	34	Do you recognize this? (Exhibit "A" for identification)	Not relevant.	

	107	35	So, you're refusing to answer any questions or to deal with this or to acknowledge this e-mail at all?	Not relevant.	
	110	36-37	This is an e-mail dated February 11, 2011, at 8:14 p.m. It is from me to Allan Rock and to Joanne St. Lewis. And it says: "Dear Mr. Rock and Ms St. Lewis, this blog post is about you --", it provides a link. And then it says: "Please provide any factual corrections or comments for posting." And it's signed "Yours truly, Denis Rancourt". Do you recall having received this e-mail? (Exhibit "B" for identification)	Not relevant.	
	(135)	(50)	(Then the e-mail says a little later that the blog post is "a disgusting attack". Is that correct? – Yes, it does.) (Exhibit 1)		
	136	50-51	What was your reaction to this information about the blog post? (Exhibit 1)	Not relevant.	
	137	51-52	So, what was your reaction when you received this information? (Exhibit 1)	Not relevant.	
3. Issue: Plaintiff's inclination and/or intent to litigate without substantial third-party funding. Related to: Abuse of process, maintenance, champerty.	(192)	(75-76)	(What criteria did you provide him with? – In part: I said, "I need to know who's the best in town in defamation law.")		
	193	76-77	At that point when you were describing these criteria, were you prepared to pay for the best defamation lawyer in town from your own financial resources?	Not relevant.	

	232	91-92	Could you not afford to pay your own private litigation?	Not relevant.	
4. Issue: Independence of plaintiff's choice of counsel. Issue: Plaintiff's credibility. Related to: Abuse of process, maintenance, champerty.	(195)	(77-78)	(Were you personally aware of the lawyer work of Richard Dearden at the time it was discussed with the Dean? – In part: After my meeting with the President when there was an Agreement to actually pay for my legal fees, I then spent my afternoon looking up this counsel and the others that I was interested in because I saw the selection of counsel as solely in my discretion.)		
	196	78-79	Who were the other lawyers that you were interested in that you researched that afternoon as you just said?	Not relevant.	
5. Issue: Plaintiff's financial situation, independent access to justice. Related to: Abuse of process, maintenance, champerty.	(237)	(93-94)	(Did you make any comments about your financial situation to Mr. Rock in relation to your request? –In part: I don't really remember, I'm not saying that I didn't.)		
	238	94-97	What is your financial situation?	Qualified "not relevant".	
	239	97	I want to know your answer. Will you answer this question or not?	In the absence of your taking a position on the ability of my counsel to fully defend me and deal with it as an objection at a future point, I won't answer. If you're in a position to agree with my counsel in the context that he's just said, I will answer. That's my answer.	

	240	97	I'm not going to answer anymore of your counsel's questions on this matter. I only want to know if you're refusing to answer.	Because of your refusal to provide my counsel with the approval of our subsequent ability to object, I cannot answer you. You are preventing me from answering, it's not my refusal. I'm willing to answer you, but not in this context that you've provided. You have to take a position.	
	(241)	(97)	(In part: My position is that that is a refusal. Let's move on.)		
6. Issue: Implementation and financial administration of the agreement to fund the litigation. Related to: Abuse of process, maintenance, champerty.	(242)	(97-98)	(Did you ask about how payments would actually be made or how reimbursement would be made at that meeting? – No, no, I didn't.)		
	243	98	How did you find out those details?	Not relevant.	
	244	98	How does the reimbursement occur?	Not Relevant.	
	245	98	How much has the university reimbursed you so far?	Not relevant.	
	247	99	Do you verify the costs that are charged by Gowling's?	Refusal.	
	248	99	Is there a limit or a checking point or a flag about how much this can cost?	Refusal.	
	249	99	Are you expected to keep track of costs?	Refusal.	

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REFUSALS AND UNDERTAKINGS CHART

(Defendant's "champerty" motion; witness Robert Giroux)

June 11, 2012

Denis Rancourt
(Defendant)

REFUSALS AND UNDERTAKINGS CHART

REFUSALS					
Refusals to answer questions on the examination of Robert Giroux, dated April 18, 2012.					
Issue & relationship to pleadings or affidavit *(Group the questions by issues.)*	**Question No.**	**Page No.**	**Specific question**	**Answer or precise basis for refusal**	**Disposition by the Court**
1. Issue: Refusal to produce relevant documents requested in the Summons to Witness.	8-9	3-4	Requested documents should be produced.	No documents produced for reasons given in counsel's letter which witness accepts as his answer (Exhibit 3): No such documents; or not relevant; or not in control or possession of witness.	
2. Issue: University liability policies, directives, or procedures for funding legal costs of an employee being sued. Related to: Abuse of process, maintenance.	11	5	if an employee at the University of Ottawa is being sued by a third party for some aspect of his or her work at the university, then is there a policy or provision that covers the sued employee's legal fees?	Not relevant (see Exhibit 3).	
	12	5-6	This is a situation where an employee or a professor is being sued for something they did as part of their work. Is there not some kind of a provision or an insurance policy or something that would allow the legal fees of that person to be paid?	Not relevant (see Exhibit 3).	
3. Issue: University policies for funding legal costs of an employee's private litigation. Related to: Abuse of process, maintenance.	13-22	6-8	University policy or procedure or directive for funding an employee wanting to sue a third party in a private lawsuit.	Witness refuses to inform himself.	

4. Issue: University budget for outside legal counsel services. Related to: Abuse of process, maintenance.	37	12	what would typically be the annual legal budget of the University of Ottawa for outside counsel services?	Not relevant.	
	38	12	Could you tell me that?	Not relevant.	
5. Issue: Witness did not search his own email account for relevant documents. Related to: Abuse of process.	124-135	33-36	Request for relevant documents in the witness' own email account.	Witness refuses to search his own email account.	
	124	33	Were there any e-mail communications between you and the vice president governance about this matter?	Witness does not recall.	
	125	33	Could you find out?	Counsel answers: "We have already --- "	
	126	33-34	Could you find out, please, Mr. Giroux. I am asking you to find out if there were e-mails.	Counsel answers: University made a search and university's answer contained in its letter (Exhibit 3).	
	130	35	He has access to his own e-mails.	Counsel answers: "Fine."	
	131	36	Mr. Giroux, will you search for those e-mails?	No.	
	133	36	You will not personally look for these e-mails?	No.	
	134	36	Okay, you are refusing to look for e-mails that are under your possession and control that relate directly to this matter, is that correct?	Yes	
	135	36	But you are refusing to search your own e-mails, am I correct?	Yes	

6. Issue: Relevant communications between the witness and university vice-president governance Diane Davidson. Related to: Abuse of process, maintenance, champerty, credibility.	136-154	36-42	For the University to undertake to search and produce all its email communications between the witness and Diane Davidson for the period April 2011 to October 2011, inclusive.	Refused, following an under advisement: Only one possible communication that was probably by telephone and was within two weeks prior to October 19, 2011 in which period there is no relevant email. (As per letters exchanged.)	
	148	40	Yes. For example, here it is: Are you certain that you did not have a communication with Diane Davidson about this matter a month before October 19th?	I am not certain. I am telling you to the best of what I can recall it was two weeks before, and it was probably a telephone conversation. I am consistent in that answer.	
	154	41-42	This question (154, p. 41-42) is the concluding statements about the under advisement discussed on pages 36 to 42.	Requested undertaking refused. (As per letters exchanged.)	
7. Issue: Information about and/or agenda and/or minutes of the October 19, 2011 meeting of the Executive Committee of the Board of Governors (EBOG). Related to: (Issue 1.), abuse of process.	188-194	48-49	Produce documents (Issue 1.) and inform yourself about the agenda and minutes of the meeting.	Not relevant (see Exhibit 3).	
	188	48	Could you find out who was present at the meeting and inform me?	No.	
	190-191	48	How would I find out?	Ask counsel who will ask University; Counsel refuses to make undertaking.	
	193	49	So who were these four or five other members probably?	Refused.	
8. Issue: Witness' reaction and position regarding University sharing in the proceeds of the action. Related to: Champerty.	244	58-59	What is your reaction to this knowledge?	Refused.	
	245	59	Do you not see a public policy difficulty or problem in a situation like this where a university funds a private law suit and that there is a chance that some of the proceeds would go to a university scholarship fund?	Not relevant.	

9. Issue: Expected cost of the litigation. Related to: Abuse of process, maintenance.	273	64-65	Do you think it could be over $100,000.	Not relevant.	
10. Issue: Reasons the litigation is an important matter for the University. Related to: Abuse of process, maintenance, champerty.	286	67	What is another reason that this matter is important?	I would suggest that you ask the question of the president.	
	287	68	I am asking you.	I would suggest that you ask the question of the president.	
	288	68	You are refusing to answer?	Right.	
11. Issue: Cap in the amount in the agreement to fund the litigation. Related to: Abuse of process, maintenance.	341	79-80	Is there a cap?	Refused.	
12. Issue: University plan to ascertain the financial impact of the agreement to fund the litigation. Related to: Abuse of process, maintenance.	(348-349) 350-351	(80-81) 81	(Do you know the potential financial impact of this agreement? –No. Do you care? –Yes, I care.) Are you going to find out?	 Not relevant.	
13. Issue: University policy limiting discretionary funding agreements made by the President. Related to: Abuse of process, maintenance.	359	83	Okay, could you find out please?	Not relevant.	
	360	83	So you refuse to find out?	Yes.	

14. Issue: Quantum that triggers control by authorization in capital expenditures. Related to: Abuse of process, maintenance.	362	83-84	What is the kind of amount that triggers this kind of a process?	Not relevant.	
15. Issue: University policy or directive about surveillance of professors and students. Related to: Abuse of process, maintenance, motive.	381	87	Does the university have any policy or directives about its use of surveillance of professors or students?	Not relevant.	
16. Issue: Acceptable practices of surveillance at the University of Ottawa. Related to: Abuse of process, maintenance, motive.	383	88	Would you find it acceptable for university staff to adopt a false identity in order to integrate and spy on student groups?	Not relevant.	
	384	88	Or to report to the administration about student electoral politics?	Not relevant.	
	385	88	Or to use a false name and a false e-mail address to impersonate another in order to collect information?	Refused.	
	386	88-89	Do you have any knowledge about the university every hiring someone to do this kind of thing?	Not relevant.	
	387	89	No, do you have any knowledge about the university ever doing this sort of thing?	Not relevant.	
	389	89	If this occurred at the University of Ottawa would you be concerned about it?	Not relevant.	
	393	90-91	Does this kind of evidence (cross-examination exhibit A) give rise to concern on your part?	Not relevant.	

17. Issue: University policy for obtaining and using medical information of employee without consent. Related to: Abuse of process, maintenance, motive.	416	96	does the university have a policy about obtaining medical information or using medical information of an employee without the knowledge or consent of the employee?	I am not aware of such a policy.	
	417	96-97	Do you think there might be one?	Not relevant.	
18. Issue: Acceptable practice of third party psychiatric evaluations without consent at the University of Ottawa. Related to: Abuse of process, maintenance, motive.	421	98-99	in your judgment is it acceptable to do a third party psychiatric evaluation of a person without their knowledge or consent? If you were convincingly made aware with evidence that this was happening at the University of Ottawa would you be concerned?	Not relevant.	
	422	99	Does this arouse any concern on your part regarding the behaviour of the institution?	Not relevant.	
	423	99-100	does the university have any policy or guidelines or directives about the use of third party psychiatric evaluations of a professor without the professor's knowledge or consent?	Not relevant.	
	424	100	Do you personally find such a practice acceptable?	Refused.	
	425	100	Do you have any personal knowledge of any attempt by the university to ever obtain a psychiatric evaluation of an employee or past employee?	Not relevant.	
	426	100	Do you have any knowledge of the university using a psychiatric evaluation of me in any way?	Not relevant.	

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

NOTICE OF MOTION

(Defendant's Motion for directions and order of motions)

July 26, 2012

Denis Rancourt
(Defendant)

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 July 27, 2012, at 9:30 a.m. or thereafter as scheduled, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

X orally.

THE MOTION IS FOR:

1. An Order to abridge the time limitation period to serve this motion, as required; and
2. An Order to allow service of this motion by email on short notice; and
3. An Order that this motion be heard prior to any further motions in the action; and
4. An Order that no further motions be scheduled in this action until after a new case management judge has been assigned by Regional Senior Justice Hackland and a case conference has been held; and
5. An Order that no further motions in this action be heard until Regional Senior Justice Hackland has responded to the Defendant's letter to him of July 25, 2012, in regards to:

(a) Assigning the new case conference judge from a judicial region other than East Region; and

(b) Using video conference and/or conference call technology with the new case conference judge for hearings in Ottawa; and

(c) Setting aside the rulings and/or determinations from the bench of Justice Beaudoin from the June 20, 2012 hearing (motion adjourned) in the defendant's refusals motion in the defendant's maintenance and champerty motion; and

(d) A *de novo* hearing of the defendant's refusals motion in the defendant's maintenance and champerty motion; and

(e) A motion that Justice Beaudoin's court statements about the defendant and the defendant's person of July 24, 2012 and prior to July 24, 2012 be struck from the record after their use in any motion to have the justice's rulings set aside; and

6. An Order that the next motion to be heard in this action, if needed according to the Court's recommendation, be the defendant's motion to set aside the rulings and/or determinations from the bench of Justice Beaudoin from the June 20, 2012 hearing (motion adjourned) in the defendant's refusals motion in the defendant's maintenance and champerty motion, and that the self-represented defendant be given sufficient time to prepare this motion after Transcripts are obtained; and
7. The costs of this motion on an appropriate scale; and
8. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Introduction

1. The action is under case management, by consent, and up until July 24, 2012, the case-management judge was Justice Beaudoin.

2. The plaintiff is a professor at the Faculty of Law at the University of Ottawa. The present lawsuit is fully funded by the University of Ottawa. The decision to fund the action was made by the university's president, Mr. Allan Rock.

3. Currently, there is a motion seeking to dismiss the action on the grounds of maintenance and champerty pending before the Court. The University of Ottawa was granted intervener status in this motion. The University of Ottawa is represented by the BLG law firm.

4. The hearing of a refusals motion brought by the defendant in relation to cross-examinations of affidavits from officers of the University of Ottawa started on June 20, 2012, and was to continue on July 24, 2012.

5. Since the appointment of Justice Beaudoin as case management judge, he has made a number of statements and/or determinations in the courtroom that show a reasonable apprehension of bias.

6. On or around July 22, 2012, the defendant found out from an article published in the Ottawa Citizen (April 24, 2012) that Justice Beaudoin has financial and/or emotional ties both to the University of Ottawa, and the BLG law firm representing the University of Ottawa in the present proceeding. The article states that Justice Beaudoin donated money to the University of Ottawa to establish a scholarship in the name of his late son, that his late son was a lawyer at BLG, and that BLG named a boardroom after his late son.

7. On July 24, 2012, at the beginning of the continuation of the said refusals motion hearing, the defendant advised the Court that he was seeking to adjourn the hearing to allow him to prepare a motion to request that Justice Beaudoin recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

8. In the course of the defendant's argument, he quoted from the April 24, 2012 article of the Ottawa Citizen, but before he could make further submissions, Justice Beaudoin interrupted him, barred his attempt to proceed to fully express his concerns, expressed disapproval of him, and called for a 15 minute recess after stating that if the defendant brought the request to adjourn again after recess he would find the defendant in contempt of court. There had been loss of decorum. The interventions of opposing counsel had not been helpful and only aggravated the situation.

9. Following recess, Justice Beaudoin was visibly angry and distraught. He made several negative statements about the defendant, and stated that he was not in conflict of interest. He added that he was so perturbed with the defendant (his actual words may have been stronger) that he would recuse himself from the entire case and he closed the session.

10. On June 20, 2012, the hearing of the defendant's refusals motion was not completed. Although Justice Beaudoin made rulings from the bench — including to find the defendant's expert's affidavit inadmissible on technical grounds, to not allow the defendant to cross-examine the University's affiant for the motion, and to not allow several of my refusals requests — no endorsement and/or written reasons and/or order were provided. The judge has recused himself in mid-motion.

Events following the July 24, 2012 hearing

11. Following the July 24, 2012 hearing, the plaintiff through her counsel immediately set a motion hearing date for July 26, 2012 at a time he knew the defendant had a medical appointment.

12. The plaintiff through her counsel wrote two letters to Regional Senior Justice Hackland, dated July 24, 2012, and July 25, 2012, in order to insist on scheduling motion hearing dates even though the action is in case management and despite the difficult and unusual circumstances surrounding the recusal of Justice Beaudoin.

13. The defendant responded by writing to Regional Senior Justice Hackland on June 25, 2012, and raised several issues that need to be addressed before any further motions are heard in this action.

14. In blatant disregard for the defendant's letter to Regional Senior Justice Hackland, which was sent in copy to Chief Justice of Ontario Warren Winkler, the plaintiff through her counsel did not withdraw her July 26, 2012 hearing request, which hearing was adjourned by Justice Smith.

15. In his letters to Regional Senior Justice Hackland, counsel for the plaintiff made several incorrect and/or misleading and/or prejudicial statements which the defendant corrected in his July 25, 2012, letter to Regional Senior Justice Hackland.

Grounds for the specific requests to the Regional Chief Justice

16. Given the central place of the University of Ottawa law school in the Ottawa legal community, a reasonable apprehension of bias is nearly impossible to be avoided with a bilingual judge from East Region, having no connections with the University of Ottawa or the BLG and Gowlings law firms, and no ties to Mr. Allan Rock.

17. In the hearing of June 20, 2012, and in prior hearings (case conferences), Justice Beaudoin made many statements that attract a reasonable apprehension of a closed mind, a reasonable apprehension of bias.

18. In the hearing of July 24, 2012, Justice Beaudoin made many statements that confirm at the least a reasonable apprehension of a closed mind, a reasonable apprehension of bias.

19. The special circumstances of the proceedings and of the case are such that the questions and requests before Regional Senior Justice Hackland must be determined prior to any further motions in this action.

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

DEFENDANT'S NOTICE OF MOTION

(Reasonable Apprehension of Bias)

July 30, 2012

Denis Rancourt
(Defendant)

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 Oct 18, 2012, at 10:00 a.m., at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

X orally.

THE MOTION IS FOR:

1. A judicial determination that there was reasonable apprehension of bias regarding Justice Beaudoin in this action; and
2. In the alternative of the latter determination, a judicial determination that Justice Beaudoin's July 24, 2012 recusal was, although not stated explicitly by Justice Beaudoin, for the reason of reasonable apprehension of bias; and
3. An Order that all the rulings and/or determinations and/or findings and/or orders of Justice Beaudoin in this action be set aside, including:

(a) the case management ruling that discoveries continue in parallel with the maintenance and champerty motion; and

(b) the case management ruling that the University of Ottawa has intervener status in the maintenance and champerty motion; and

(c) the findings of credibility of the defendant made on June 20, 2012; and

(d) the ruling made on June 20, 2012, to not allow the defendant an adjournment to cross-examine University of Ottawa's affiant Alain Roussy in the refusals motion for the maintenance and champerty motion; and

(e) the ruling made on June 20, 2012, of inadmissibility of the affidavit of the defendant's expert information technology engineer, Louis Beliveau; and

(f) the rulings made on June 20, 2012, on refusals in the refusals motion for the maintenance and champerty motion; and

4. An Order that all rulings set aside cannot stand, and, where needed to continue the proceedings, can only be resolved by *de novo* hearings; and
5. An Order that all other motions in the action be stayed pending determination of the instant motion; and
6. An Order that the plaintiff's costs thrown away submission for the July 24, 2012 hearing be stayed pending determination of the instant motion; and
7. The costs of this motion on an appropriate scale; and
8. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Introduction

1. The action is under case management, by consent, and up until July 24, 2012, the case-management judge was Justice Beaudoin.

2. The plaintiff is a professor at the Faculty of Law at the University of Ottawa. The present lawsuit is fully funded by the University of Ottawa. The decision to fund the action was made by the university's president, Mr. Allan Rock.

3. Currently, there is a motion seeking to dismiss the action on the grounds of maintenance and champerty pending before the Court. The University of Ottawa was granted intervener status in this motion (by Justice Beaudoin, without its motion for intervener status being argued). The University of Ottawa is represented by the BLG law firm.

4. The hearing of a refusals motion brought by the defendant in relation to cross-examinations of affidavits from officers of the University of Ottawa started on June 20, 2012, and was to continue on July 24, 2012.

Request to bring a recusal motion

5. Since the appointment of Justice Beaudoin as case management judge, he has made a number of statements and/or determinations and/or findings in the courtroom that show a reasonable apprehension of bias.

6. On July 22, 2012, the defendant found out from an article published in the Ottawa Citizen (April 24, 2012) that Justice Beaudoin has financial and/or emotional ties both to the University of Ottawa, and the BLG law firm representing the University of Ottawa in the present proceeding. The article states that Justice Beaudoin donated money to the University of Ottawa to establish a scholarship in the name of his late son, that his late son was a lawyer at BLG, and that BLG named a boardroom after his late son.

7. On July 24, 2012, at the beginning of the continuation of the said refusals motion hearing, the defendant advised the Court that he was seeking to adjourn the hearing to allow him to prepare a motion to request that Justice Beaudoin recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

8. The transcript of the July 24, 2012 hearing (not yet available) will show that shortly after the defendant started presenting his argument that the refusals motion needed to be adjourned, Justice Beaudoin expressed that he wished the reasons for recusal to be given and that he would limit the reasons to five minutes.

9. Within the five minutes, Justice Beaudoin asked if the defendant was relying only on the June 20, 2012 hearing, then asked if the defendant was relying on something other than that.

10. The defendant stated that he relied on an ensemble of elements and that recently he had discovered media articles of further concern.

11. The defendant then quoted from the April 24, 2012 article of the Ottawa Citizen, but before the defendant could make further submissions, Justice Beaudoin expressed disapproval, impeded the defendant's attempt to proceed to explain his concerns, and called for a 15 minute recess

after stating that if the defendant dares to again after recess bring forth the personal matter invoking the memory of the Justice's son he would be found in contempt of court.

12. Following recess, Justice Beaudoin was visibly angry. He made negative statements about the defendant's character, and stated that, in his opinion, he was not in conflict (of interest) with the University of Ottawa by a scholarship in the memory of his son, that it was a contract concluded between himself, involving the government of Ontario which had contributed equal funds, and that the University of Ottawa could not end the agreement.

13. Justice Beaudoin stated that in his judicial career he had never seen a gesture so disgusting. He added that the defendant had so provoked him that he would recuse himself from all matters involving the defendant. He stated that the question of costs would be dealt by another judge.

14. On June 20, 2012, the hearing of the defendant's refusals motion was not completed. Although Justice Beaudoin made rulings from the bench — including to find the defendant's expert's affidavit inadmissible on technical grounds, to not allow the defendant to cross-examine the University's affiant for the motion, and to not allow several of the defendant's refusals requests — no endorsement and/or written reasons and/or order were provided.

Unique circumstances

15. These are unique circumstances in which a judge has recused himself in mid-motion, without a motion for recusal having been brought or heard, without allowing an adjournment to allow a recusal motion to be brought, while not finding a reasonable apprehension of bias, but rather concluding an absence of conflict (of interest) and stating the reason of the recusal as being the defendant's in-court behaviour.

16. This has deprived the defendant of a judicial determination of whether reasonable apprehension of bias existed and thus represents a liability in the maintenance of public confidence in the judiciary. In the words of the Divisional Court:

> "The appearance of justice must be addressed"
>
> ***Authorson v. Canada*, [2002] O.J. No. 2050 (ON DC); para. 1**

17. A determination of reasonable apprehension of bias is needed both to restore harm to confidence in the judiciary and because a finding of reasonable apprehension of bias necessitates the remedies established in the jurisprudence to restore justice.

18. The Ontario Court of Appeal has stated it this way, by approval of other decisions:

> "... in any case where the impartiality of a judge is in question the appearance of the matter is just as important as the reality"

And concluded, again by citing another authority:

> ... if he fails to disclose his interest and sits in judgement upon it, the decision cannot stand.
> ... if the interest is not disclosed, the consequence is inevitable.
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); para. 19**

19. And further, if reasonable apprehension of bias is found, the matter cannot be solved by determinations of the impugned rulings of Justice Beaudoin at a hearing of the instant motion.

> Counsel for Mr. Benedict submitted that even if we were to find apparent bias we should, nevertheless, affirm the result reached by Molloy J. on the motion, or, in the alternative, permit counsel to argue the motion *de novo*. We declined counsel's request. For the reasons discussed in Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities), 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623 at 625, if a reasonable apprehension of bias arises, it colours the entire proceedings and it cannot be cured by the affirmation of the underlying decision. As stated in Pinochet and in Lannon, where there is a reasonable apprehension of bias, the decision cannot stand.
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); para. 33**

20. Also, the Court of Appeal applies the same standard for ruling on bias to both interlocutory and final decisions:

> ... the above cases arose from challenges to final decisions rather than interlocutory rulings like the one at issue. In my view, this is not a meaningful difference. ... Further, there is no reason why the Divisional Court should approach an interlocutory ruling on bias in a different manner than if the issue was raised after the completion of the proceedings.
>
> ***Ontario Provincial Police v. MacDonald*, 2009 ONCA 805; para. 38**

Events following the July 24, 2012 hearing

21. The plaintiff through her counsel wrote two letters to Regional Senior Justice Hackland, dated July 24, 2012, and July 25, 2012, in order to insist on scheduling immediate motion hearing dates even though the action is in case management and despite the difficult and unusual circumstances surrounding the recusal of Justice Beaudoin.

22. The defendant responded by writing to Regional Senior Justice Hackland on June 25, 2012, and raised several issues that needed to be addressed before any further motions were heard in the action, including a request for time to file the instant motion.

23. On a motion hearing of July 27, 2012, the newly assigned case management judge, Justice Robert Smith, refused to adjourn the continuing refusals motion, initiated under Justice Beaudoin, in the defendant's maintenance and champerty motion to allow the defendant time to bring the instant motion. The defendant proceeded but in protest. The refusals motion hearing is continuing in writing, with stringent deadlines set by Justice Smith.

24. A motion hearing before Justice Smith was also held on July 26, 2012, in the absence of the defendant. Its relevance to the instant motion will be argued after the transcript is obtained.

Grounds for reasonable apprehension of bias

25. In case conferences prior to June 20, 2012, Justice Beaudoin made statements and/or determinations and/or findings that, in the complete circumstances that have emerged, attract a reasonable apprehension of bias.

26. In the hearing of June 20, 2012, and in prior hearings (case conferences), Justice Beaudoin made statements and/or findings and/or determinations that show a reasonable apprehension of bias.

27. As one particular, the June 20, 2012 findings of credibility of the defendant were contrary to the defendant's affidavit evidence that was not cross-examined, and were made in the absence of any counter evidence properly before the court.

28. As one particular, on June 20, 2012 Justice Beaudoin did not allow a recent University of Ottawa affiant to be cross-examined by the defendant, despite the defendant's evidence properly before the Court and that was not challenged by cross-examination, that the University's affidavit was in doubt.

29. On June 20, 2012 Justice Beaudoin ruled the defendant's expert's affidavit (of Certified Professional Engineer and LSUC member lawyer, Louis Beliveau) to be inadmissible on technical grounds (a late signed Form 53, brought to court that day; and no attached Curriculum Vita), and on grounds supported only by plaintiff's counsel's arguments that were contrary to the said affidavit expert evidence which had not been challenged by cross-examination. The expert's evidence was to be used to question the credibility and involvement of Allan Rock, the president of the University of Ottawa, which would impact the University's reputation and image.

30. Overall, the June 20, 2012 rulings of Justice Beaudoin on the defendant's refusals motion appear as a pattern of systematic shielding of the University of Ottawa witnesses and affiants from the defendant's questions, where most of the questions speak to motives and could thereby potentially impact the University's image and reputation.

31. In the hearing of July 24, 2012, the transcript will show that Justice Beaudoin made statements that confirm a reasonable apprehension of bias. Justice Beaudoin also stated the existence of a contract between himself and the University of Ottawa.

32. The contract is a "terms of reference for an endowed fund" at a public university and names Justice Robert Beaudoin as the Donor contact for the donor party. The endowed scholarship fund is in the name of Justice Beaudoin's late son.

33. One of the refusals issues in the defendant's refusals motion in the maintenance and champerty motion that was before Justice Beaudoin concerns a letter to the defendant from Mr. David W.

Scott, Co-Chairperson of the BLG law firm, and this refusals issue is the object of the University's affiant that was not allowed to be cross-examined by the defendant, in a June 20, 2012 ruling from the bench of Justice Beaudoin. The above-noted *Ottawa Citizen* article of April 24, 2012 reports that BLG has named a boardroom in honour of Justice Beaudoin's late son and that this is important to Justice Beaudoin.

34. The University of Ottawa is represented by BLG in the defendant's maintenance and champerty motion where it was granted intervener status by Justice Beaudoin.

35. Image and reputation are a common feature which link Justice Beaudoin's media published efforts to preserve the memory of his son and to build his late son's legacy with a University of Ottawa scholarship fund on the one hand, with the accusation of maintenance and champerty against the University of Ottawa on the other hand. The scholarship's prestige is tied to the image and reputation of the University, which in turn is potentially impacted by the decisions in the maintenance and champerty motion.

36. As such, there is an appearance that Justice Beaudoin has a common interest with the University of Ottawa to not allow probing questions of motive (for the maintenance) in the defendant's refusals motion and to not find maintenance or champerty.

37. The scholarship fund invites donations and the "The University of Ottawa may invest the capital as it sees fit" (terms of reference). Donations both depend on reputation and image of the University and assure the longevity and status of the Endowed Fund named after Justice Beaudoin's late son.

38. The terms of reference of the university scholarship fund are accessible to the public and show an active contract with Justice Beaudoin regarding future cicumstances that may impact the fund's use.

39. Therefore, there is an appearance that Justice Beaudoin had an interest in the outcome of the champerty motion and/or a relevant interest in its subject matter.

40. Justice Beaudoin did not disclose the scholarship fund or the BLG boardroom.

Other specific grounds for the motion

41. Rules 1.04, 4.1, 34, 34.10, 37, 39, 53.03, 57, 58, and 77 of the Rules of Civil Procedure;

42. 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. The affidavit of Denis Rancourt affirmed on July 30, 2012; and
2. The transcripts of case conferences with Justice Beaudoin that the defendant files; and
3. The transcript of the June 20, 2012 court hearing with Justice Beaudoin; and
4. The transcript of the July 24, 2012 court hearing with Justice Beaudoin; and
5. The transcript of the July 26, 2012 court hearing with Justice Smith (defendant was absent from the hearing); and
6. The transcript of the July 27, 2012 court hearing with Justice Smith; and
7. The defendant's motion record and factum in the defendant's refusals motion in the maintenance and champerty motion; and
8. The letters to Regional Senior Justice Hackland (plaintiff's letters of July 24 and 25, 2012; defendant's letter of July 25, 2012); and
9. Communications between the defendant and the plaintiff's counsel and/or counsel for the University of Ottawa as the Defendant may advise and this Honourable Court may permit.
10. Such further and other evidence as the Defendant may advise and this Honourable Court may permit.

DATED: July 30, 2012

Denis Rancourt
Defendant

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
100 Queen Street, Suite 1100
Ottawa, ON K1P 1J9

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

AFFIDAVIT OF DENIS RANCOURT

(Affirmed July 30, 2012)

(In support of Defendant's Reasonable Apprehension of Bias Motion)

Denis Rancourt
(Defendant)

I, **Denis Rancourt**, of the City of OTTAWA, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I am the self-represented Defendant in the action. As such, I have knowledge of the matters sworn to in this affidavit.

2. This affidavit is in support of my "Reasonable Apprehension of Bias Motion" as the moving party.

A. Introduction

3. The action is under case management, by consent, and up until July 24, 2012, the case-management judge was Justice Beaudoin.

4. The plaintiff is a professor at the Faculty of Law at the University of Ottawa. The plaintiff's litigation in the present lawsuit is fully funded by the University of Ottawa. The decision to fund the action was made by the university's president, Mr. Allan Rock, according to his sworn testimony in this action.

5. Mr. Rock has testified under oath also that the said funding agreement with the plaintiff is without a spending limit.

6. Currently, there is a motion seeking to dismiss the action on the grounds of maintenance and champerty pending before the Court. The University of Ottawa was granted intervener status in this motion (by Justice Beaudoin, without its motion for intervener status being argued). The University of Ottawa is represented by the BLG law firm.

7. The hearing of a refusals motion brought by the defendant in relation to cross-examinations of affidavits from officers of the University of Ottawa started on June 20, 2012, and was to continue on July 24, 2012.

8. A witness and affiants which had been cross-examined by the defendant included: Allan Rock, president of the university; Robert Giroux, chair of the board of governors of the university; Bruce Feldthusen, dean of common law at the university; the plaintiff who is a law professor at the university; and Céline Délorme, a lawyer for the university.

9. On June 20, 2012, Justice Beaudoin made several rulings and/or determinations and/or findings from the bench, without any written reasons and/or endorsements and/or orders, and without indicating that there would be any released written judicial record prior to the closing of the motion hearings.

B. Bringing of defendant's concerns

10. Starting at the first case conference with Justice Beaudoin, held on February 8, 2012, I had impressions of unfairness towards me regarding several of the justice's comments and/or findings.

11. A sequence of statements in the transcript of the February 8, 2012 case conference (pages 21-35) shows the appearance of a closed mind of Justice Beaudoin regarding whether maintenance and champerty can lead to the stay of an action, although in a later statement on February 8, 2012 he appears to admit the possibility that champerty can lead to staying an action.

12. During the February 8, 2012 case conference, in referring to my maintenance and champerty motion, Justice Beaudoin said (Transcript, page 81, lines 4-6):

> "Vous avez entraîné ces gens-là dans votre… C'est vous qui apportez cette motion."

13. The latter statements (including that champerty cannot lead to a stay of an action) of Judge Beaudoin gave me concern at the time but I also thought that they could have arisen from lack of familiarity regarding champerty jurisprudence and/or temporary frustration.

14. Such statements and other statements appeared hostile to me but, given that I am not a lawyer, I did not know if they were consistent with judicial practice. Later, in late July 2012, I came to consider these and other statements of Justice Beaudoin to be part of a broad pattern showing reasonable apprehension of bias.

15. The June 20, 2012 hearing into my refusals motion in my maintenance and champerty motion caused me concern in terms of both the findings and/or rulings from the bench and the procedural treatment of me. From the start, on June 20, 2012 after the hearing, I intended to seek leave to appeal the motion's rulings as soon as its hearings were completed. I requested the transcript of the June 20, 2012 hearing for this purpose on June 22, 2012, with the Transcript Office order form marked "Date Required by: ASAP" and "for: Appeal". This transcript became available only on July 25, 2012, and I purchased it the same day, although at this time I have not yet had time to study it.

16. In addition, the June 20, 2012 hearing immediately left me with a sense of unfairness towards me, in particular, because Justice Beaudoin made a finding of my credibility that was in opposition to the evidence that was properly before the Court. But, again, as I am not a lawyer, I did not know how significant this was compared to accepted judicial practice. I decided to research the relevant judicial practice by searching case law on credibility findings, as soon as time would permit.

17. Three large refusals motions were scheduled to be heard on July 24, 2012. This left little time after June 20, 2012, beyond preparing motion records, factums, arguments, books of

authorities, compendia of arguments, and researching the law for the motions. As a self-represented litigant, I was overwhelmed with the immediate practical constraints for the foreseen motions.

18. On July 13, 2012, I served and filed my motion record in my discovery refusals motion. On July 18, 2012, I served and filed my responding motion record in the plaintiff's discovery refusals motion. On July 20, 2012, I cross-examined a plaintiff's affiant put forth in a responding motion record in my discovery refusals motion, Mr. David Newell.

19. On July 21, 2012, I continued my legal research on credibility findings and learned about reasonable apprehension of bias. On July 22, 2012, through web searches, I discovered an article about Justice Beaudoin (the April 24, 2012 *Ottawa Citizen* article) that was of great concern to me in terms of one's duty to advance a reasonable apprehension of bias position when it is visibly justified.

20. The said April 24, 2012 *Ottawa Citizen* article is attached to my affidavit as **Exhibit "A"**, as it was downloaded by me from the Citizen's web page. It is entitled "Working to keep a son's memory alive." This article was the element that tilted the scales for me. It was for me unavoidable evidence for a reasonable apprehension of bias, even in the absence of my many other concerns which also for me supported this conclusion. I decided I would probably need to take the important step of requesting that Justice Beaudoin recuse himself.

21. On July 23, 2012, I continued my legal and background searches and study regarding a reasonable apprehension of bias position and its implications for me. Late on July 23, 2012, I decided to bring a request on July 24, 2012, at the scheduled hearing, to adjourn in order to allow me time to bring a recusal motion, after I obtain the June 20, 2012 hearing transcript.

22. This was the first occasion, in mid-motion, to bring my request before the Court following the previous (June 20, 2012) hearing in the same motion (refusals, maintenance and champerty) that was to continue first on July 24, 2012. In the morning of July 24, 2012, I prepared my speaking notes, for the 10:00 a.m. hearing of that day, to make the request to adjourn the day's scheduled motions for me to prepare and bring a recusal motion.

C. July 24, 2012 hearing before Justice Beaudoin

23. Regarding the words spoken on July 24, 2012, the transcript (which is not yet available) will speak for itself. I have been advised that the transcript is expected within a few weeks or so. The following are my best recollections, expressed in English.

24. On July 24, 2012, at the beginning of the continuation of the hearings for my refusals motion in the maintenance and champerty motion, I advised the Court that I was seeking to adjourn the hearing to allow me to prepare a motion to request that Justice Beaudoin

recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

25. Shortly after I started presenting my argument that the refusals motion needed to be adjourned, Justice Beaudoin expressed that he wished the reasons for recusal to be given and that he would limit the reasons to five minutes.

26. Within the five minutes, Justice Beaudoin asked if I was relying solely on the June 20, 2012 hearing, then asked if I was relying on something other than that.

27. I stated that I relied on an ensemble of elements and that recently I had discovered media articles of further concern.

28. I then quoted from the April 24, 2012 article of the *Ottawa Citizen* (**Exhibit "A"**), but before I could make further submissions beyond reading passages from the article, Justice Beaudoin expressed disapproval and stated that he found my presentation shocking and provocative. Justice Beaudoin referred to me as claiming to be a professional seeking justice that could stoop so low.

29. Justice Beaudoin then impeded my attempt to proceed to explain my concerns. This included stating that my motion to adjourn was refused, directing several times in succession that we immediately proceed to the refusals motion, and shouting "Refusé."

30. Justice Beaudoin next called for a 15 minute recess after stating that, if I dared to again after recess bring forth the personal matter invoking the memory of the Justice's son, I would be found in contempt of court. All of this was without me having an occasion to make further submissions beyond having read some passages from the April 24, 2012 *Ottawa Citizen* article (**Exhibit "A"**).

31. Following recess, Justice Beaudoin was visibly angry. He stated that, in his opinion, he was not in conflict (of interest) with the University of Ottawa by a scholarship in the memory of his son, that it was a contract concluded between himself, involving the government of Ontario which had contributed equal funds, and that the University of Ottawa could not end the agreement.

32. Following recess, Justice Beaudoin also made findings about my character which included that I make claims to have discovered things at the last minute and that this is a favourite trick of mine, that in his judicial career he has never seen a gesture so disgusting, and that I had provoked him so much that this was why he would withdraw from all judicial matters involving me. The session was closed without any occasion for me to respond. I had not had the opportunity to make any further submission in the day's hearing beyond reading passages from the *Ottawa Citizen* article (**Exhibit "A"**).

D. July 26, 2012 hearing before Justice Smith

33. The July 26, 2012 hearing was scheduled on short notice by plaintiff's counsel, Mr. Richard Dearden, after he was advised by me (by email, with Trial Coordinator Labaky in cc) that I had a medical appointment on that day, and this hearing was held in my absence despite the fact that I had informed in writing Regional Senior Justice Hackland, all parties (cc by email), and the Trial Coordinator (cc by email) that I had a medical appointment. It was adjourned to July 27, 2012 without consulting me.

E. July 27, 2012 hearing before Justice Smith

34. On July 26, 2012 I filed and served on short notice a "motion for directions and order of motions" to be heard on July 26, 2012. A main goal in the motion was to adjourn my refusals motion in the maintenance and champerty motion to allow me time to file the instant motion after receiving and studying the transcripts of the June 20, 2012 and July 24, 2012 hearings.

35. My July 26, 2012 motion to adjourn was adjourned under protest. The refusals motion was ordered continued immediately. I proceeded under protest, as stated on the Court record.

F. Documents

36. Attached to my affidavit as **Exhibit "A"** is the *Ottawa Citizen* article of April 24, 2012 entitled "Working to keep a son's memory alive", as it was downloaded by me from the *Citizen*'s web page (mentioned above).

37. Attached to my affidavit as **Exhibit "B"** is an article on the University of Ottawa, Common Law web site about a "Lecture" held at the Faculty of Law on October 6, 2009. The article is entitled "Third Annual Warren Winkler Lecture: Alternative Ideas for Civil Justice Reform". The opening lecturer at the event was introduced by Allan Rock. Justice Beaudoin was a featured panellist at the event.

38. Attached to my affidavit as **Exhibit "C"** is the Notice of Motion for my July 26, 2012 "motion for directions and order of motions". As para. 6 in "the motion is for:" it states:

> An Order that the next motion to be heard in this action, if needed according to the Court's recommendation, be the defendant's motion to set aside the rulings and/or determinations from the bench of Justice Beaudoin from the June 20, 2012 hearing (motion adjourned) in the defendant's refusals motion in the defendant's maintenance and champerty motion, and that the self-represented defendant be given sufficient time to prepare this motion after Transcripts are obtained;

39. Attached to my affidavit as **Exhibit "D"** is my compendium of argument used at the June 20, 2012 hearing and distributed to the Court and to the other parties.

40. Attached to my affidavit as **Exhibit "E"** is my affidavit affirmed on June 19, 2012, served on June 19, 2012, and used in Court at the June 20, 2012 hearing. It presents evidence pointing to deficiencies in the University's affidavit of the University of Ottawa Legal Counsel, Mr. Alain Roussy.

41. Attached to my affidavit as **Exhibit "F"** is the June 1, 2012 affidavit of my expert affiant Louis Beliveau. It was put forth in my refusals motion in the maintenance and champerty motion.

42. Attached to my affidavit as **Exhibit "G"** is the "Our People" page for David W. Scott which I downloaded from the BLG law firm web site. I believe it to be an authentic document. It states that Mr. Scott is "Co-Chairperson of the Firm and Counsel in the Ottawa Office".

43. Attached to my affidavit as **Exhibit "H"** is a document entitled "Université d'Ottawa | University of Ottawa" and "Terms Of Reference For An Endowed Fund", with name of the endowment fund as "Ian Beaudoin Memorial Award". I located and downloaded this document from the web on July 28, 2012.

Sworn and affirmed before me at the City of Ottawa, Ontario, on

July 30, 2012

.....

Commissioner for Taking Affidavits
(or as may be)

.....

(Signature of deponent)
Denis Rancourt

Nataliya Serdynska, a Commissioner, etc., Province of Ontario, for the Government of Ontario, Ministry of the Attorney General. Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc., Province de l'Ontario, pour le gouvernement de l'Ontario, Ministère du Procureur général. Date d'expiration: le 27 avril 2014.

This is Exhibit "A"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Working to keep a son’s memory alive

BY SHELLEY PAGE, THE OTTAWA CITIZEN APRIL 24, 2012

Anyone who says you eventually “move on from” or “get over” the loss of a child is wrong, says Robert Beaudoin. Instead of moving forward, he says a parent can get caught between two intense feelings; deep grief, and a need to celebrate your child’s brief time on Earth.

Photograph by: Jean Levac, CanWest News Service, The Ottawa Citizen

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OTTAWA — When Ontario Superior Court Justice Robert Beaudoin leaves next month for Zambia with 20 other lawyers and judges it will be as much a journey to keep his son’s memory alive as a mission to build a school.

It has been three-and-a-half years since Iain, a lawyer, died aged 28, and Beaudoin is still picking his way through the rocky landscape of grief.

Anyone who says you eventually “move on from” or “get over” the loss of a child is wrong, says Beaudoin, 63.

Instead of moving forward, the judge says a parent can get caught between two intense feelings; deep grief, and a need to celebrate your child’s brief time on Earth.

The push and pull of these two contradictory instincts can be overwhelming, but one way to deal with it is by focusing on the gift that was the child’s life.

“Any bereaved parent will tell you that there are two things that help you cope,” says Beaudoin. “One

impulse you have, when you lose a child, is to make sure their name isn’t lost and people remember them. The other impulse is to do the kinds of things you think your child would have wanted to do.”

In a quiet voice, Beaudoin describes all he and his wife, Claudia, have done to keep Iain’s name alive, and participate in activities they imagine he would have enjoyed or found meaning in. This includes participating in a fundraising play next week at the Great Canadian Theatre Company and organizing the impending trip to Zambia.

Iain — a husband to Laleah and father to Emma, a then-21-month-old — died in November, 2008, of myocarditis believed to have been caused by a rare reaction to an anti-inflammatory drug. He was taking Asacol to treat ulcerative colitis when he began complaining of chest pains. He died at home the morning he had an appointment scheduled to discuss the results of an echocardiogram.

“Losing a child, it leaves a hole in your life,” Beaudoin explains.

After a few rough months, the first step his family took was to set up a scholarship in Iain’s name at the University of Ottawa Law School. Beaudoin was also delighted that the law firm Borden Ladner Gervais, where his son was a second-year patent lawyer, named a meeting room after him.

“So everyday, someone says, ‘You can meet in the Iain Beaudoin room.’”

Next week (April 24 — 28), the County of Carleton Law Association and the GCTC are putting on the comedy His Girl Friday. The 2012 charity partner is the Zambia School Project, created in memory of Iain.

Beaudoin also has a role in the production, set in 1930s Chicago. He will play the crooked mayor, who along with a crooked sheriff, is “bound and determined to see somebody hung in record time to improve their chances of re-election.”

This is not his first role. Beaudoin has acted in nine of the so-called Lawyer Play’s 13 productions.

Each year, through Lawyer Play, Ottawa’s legal community raises funds to support the GCTC as well as a charity of choice. So far, they have raised around one million dollars for GCTC and partner charities.

This year more than $50,000 has been raised in Iain’s memory toward a school in Munenga, Zambia in partnership with the Emmanuel United Church of Ottawa.

Beaudoin, his wife, and a group of lawyers went to El Salvador through Emmanuel United Church in 2006 to build houses for the working poor.

This project will serve 138 children who don’t currently attend school.

The lawyers will travel to support the project, but Beaudoin points out they won’t actually construct the building because they don’t want to take jobs away in a country that suffers from wide-scale unemployment.

“He (Iain) thought it was far more important to go down there and give them skills. We thought building

a school would be in keeping with Iain’s philosophy. He felt strongly about libraries and learning.”

The legal team will meet with Zambia’s legal community and attend a tribal court.

Beaudoin is looking forward to the journey with a heavy but hopeful heart. He feels he is embarking on an adventure his son would very much appreciate.

“For him to know there will be 138 kids who will now go to school, who otherwise wouldn’t have would be everything he would be most happy about.”

This is Exhibit "B"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Faculty of Law

Faculty of Law Common Law Section

Third Annual Warren Winkler Lecture: Alternative Ideas for Civil Justice Reform

The third annual **Warren Winkler Lecture on Civil Justice Reform** entitled, "Perspectives on Procedural Reform in Family Law Matters," took place at the Faculty of Law on October 6, 2009.

This year's lecture opened with special guest speaker, Ontario Attorney General Chris Bentley, who was introduced by University of Ottawa President, Allan Rock. "There are opportunities to make [the justice system] faster, more effective and more affordable for the people in this province," stated Mr. Bentley. "We need to give more advice upfront," he continued, "and we need to make it more affordable […]. We need less paper and we need to get to decisions more quickly."

The lecture was divided into three panels throughout the afternoon. According to Professor Jane Bailey, who organized the event along with LL.B. student Mouna Hanna, "The panel discussions revealed a number of serious concerns in family law procedure, but they also demonstrated a remarkable level of innovation in jurisdictions across Canada that are committed to resolving those concerns."

The first panel questioned, **"Does the Unified Family Court Model Work?"** and featured Chief Justice of Ontario, Warren K. Winkler, Chief Justice of Manitoba, Richard Scott, and Justice Jennifer MacKinnnon of the Ontario Superior Court of Justice.

In her presentation, Justice MacKinnon emphasized, "The rationale for a unified family court is now stronger than ever…but we have a very long way to go in Ontario…let's stop debating the model." She continued with some advice, including the need for a distinct case management person in every courthouse; mandatory information and mediation sessions; setting up processes that reflect what actually happens; and the need to have fixed settlement conference dates tied to trial dates.

The second panel, moderated by Jane Murray from Burke-Robertson LLP, focused on **"Procedural Initiatives in Ottawa to Make Family Law Work"** and featured panellists Justice Robert Beaudoin, Justice Jennifer MacKinnon, and Justice Maria Linhares de Sousa of the Ontario Superior Court of Justice.

The final panel entitled, **"Mediation/Arbitration in Family Law – Pros and Cons,"** featured key note speaker, Stephen Grant from McCarthy Tétrault LLP. Panellists in this panel included Pamela Cross, Barrister and Solicitor; Chief Justice of Québec Superior Court, François Rolland; and the Honourable Donald Brenner, Q.C.

Chief Justice Rolland discussed the family law mediation system in Quebec—specifically, its strengths and weaknesses—and he also made some observations on the Quebec Superior Court's family mediation

program, which he feels has been a success. Click here to read Chief Justice Rolland's presentation.

"This annual event provides an important forum for students, lawyers, judges and other members of the community to come together to discuss the critical challenges surrounding the justice system's inaccessibility to many citizens," states Prof. Bailey. "The Faculty is very grateful to have the support of generous donors like Martin Teplitsky to support these kinds of events, which are of relevance to so many members of the legal community."

The annual Warren Winkler Lecture on Civil Justice Reform is made possible through generous support of Mr. Martin Teplitsky, Q.C., Air Canada and the Carleton County Law Association.

Last updated: 2009.12.15

This is Exhibit "C"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

NOTICE OF MOTION

(Defendant's Motion for directions and order of motions)

July 26, 2012

Denis Rancourt
(Defendant)

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 July 27, 2012, at 9:30 a.m. or thereafter as scheduled, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

X orally.

THE MOTION IS FOR:

1. An Order to abridge the time limitation period to serve this motion, as required; and
2. An Order to allow service of this motion by email on short notice; and
3. An Order that this motion be heard prior to any further motions in the action; and
4. An Order that no further motions be scheduled in this action until after a new case management judge has been assigned by Regional Senior Justice Hackland and a case conference has been held; and
5. An Order that no further motions in this action be heard until Regional Senior Justice Hackland has responded to the Defendant's letter to him of July 25, 2012, in regards to:

(a) Assigning the new case conference judge from a judicial region other than East Region; and

(b) Using video conference and/or conference call technology with the new case conference judge for hearings in Ottawa; and

(c) Setting aside the rulings and/or determinations from the bench of Justice Beaudoin from the June 20, 2012 hearing (motion adjourned) in the defendant's refusals motion in the defendant's maintenance and champerty motion; and

(d) A *de novo* hearing of the defendant's refusals motion in the defendant's maintenance and champerty motion; and

(e) A motion that Justice Beaudoin's court statements about the defendant and the defendant's person of July 24, 2012 and prior to July 24, 2012 be struck from the record after their use in any motion to have the justice's rulings set aside; and

6. An Order that the next motion to be heard in this action, if needed according to the Court's recommendation, be the defendant's motion to set aside the rulings and/or determinations from the bench of Justice Beaudoin from the June 20, 2012 hearing (motion adjourned) in the defendant's refusals motion in the defendant's maintenance and champerty motion, and that the self-represented defendant be given sufficient time to prepare this motion after Transcripts are obtained; and
7. The costs of this motion on an appropriate scale; and
8. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Introduction

1. The action is under case management, by consent, and up until July 24, 2012, the case-management judge was Justice Beaudoin.

2. The plaintiff is a professor at the Faculty of Law at the University of Ottawa. The present lawsuit is fully funded by the University of Ottawa. The decision to fund the action was made by the university's president, Mr. Allan Rock.

3. Currently, there is a motion seeking to dismiss the action on the grounds of maintenance and champerty pending before the Court. The University of Ottawa was granted intervener status in this motion. The University of Ottawa is represented by the BLG law firm.

4. The hearing of a refusals motion brought by the defendant in relation to cross-examinations of affidavits from officers of the University of Ottawa started on June 20, 2012, and was to continue on July 24, 2012.

5. Since the appointment of Justice Beaudoin as case management judge, he has made a number of statements and/or determinations in the courtroom that show a reasonable apprehension of bias.

6. On or around July 22, 2012, the defendant found out from an article published in the Ottawa Citizen (April 24, 2012) that Justice Beaudoin has financial and/or emotional ties both to the University of Ottawa, and the BLG law firm representing the University of Ottawa in the present proceeding. The article states that Justice Beaudoin donated money to the University of Ottawa to establish a scholarship in the name of his late son, that his late son was a lawyer at BLG, and that BLG named a boardroom after his late son.

7. On July 24, 2012, at the beginning of the continuation of the said refusals motion hearing, the defendant advised the Court that he was seeking to adjourn the hearing to allow him to prepare a motion to request that Justice Beaudoin recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

8. In the course of the defendant's argument, he quoted from the April 24, 2012 article of the Ottawa Citizen, but before he could make further submissions, Justice Beaudoin interrupted him, barred his attempt to proceed to fully express his concerns, expressed disapproval of him, and called for a 15 minute recess after stating that if the defendant brought the request to adjourn again after recess he would find the defendant in contempt of court. There had been loss of decorum. The interventions of opposing counsel had not been helpful and only aggravated the situation.

9. Following recess, Justice Beaudoin was visibly angry and distraught. He made several negative statements about the defendant, and stated that he was not in conflict of interest. He added that he was so perturbed with the defendant (his actual words may have been stronger) that he would recuse himself from the entire case and he closed the session.

10. On June 20, 2012, the hearing of the defendant's refusals motion was not completed. Although Justice Beaudoin made rulings from the bench — including to find the defendant's expert's affidavit inadmissible on technical grounds, to not allow the defendant to cross-examine the University's affiant for the motion, and to not allow several of my refusals requests — no endorsement and/or written reasons and/or order were provided. The judge has recused himself in mid-motion.

Events following the July 24, 2012 hearing

11. Following the July 24, 2012 hearing, the plaintiff through her counsel immediately set a motion hearing date for July 26, 2012 at a time he knew the defendant had a medical appointment.

12. The plaintiff through her counsel wrote two letters to Regional Senior Justice Hackland, dated July 24, 2012, and July 25, 2012, in order to insist on scheduling motion hearing dates even though the action is in case management and despite the difficult and unusual circumstances surrounding the recusal of Justice Beaudoin.

13. The defendant responded by writing to Regional Senior Justice Hackland on June 25, 2012, and raised several issues that need to be addressed before any further motions are heard in this action.

14. In blatant disregard for the defendant's letter to Regional Senior Justice Hackland, which was sent in copy to Chief Justice of Ontario Warren Winkler, the plaintiff through her counsel did not withdraw her July 26, 2012 hearing request, which hearing was adjourned by Justice Smith.

15. In his letters to Regional Senior Justice Hackland, counsel for the plaintiff made several incorrect and/or misleading and/or prejudicial statements which the defendant corrected in his July 25, 2012, letter to Regional Senior Justice Hackland.

Grounds for the specific requests to the Regional Chief Justice

16. Given the central place of the University of Ottawa law school in the Ottawa legal community, a reasonable apprehension of bias is nearly impossible to be avoided with a bilingual judge from East Region, having no connections with the University of Ottawa or the BLG and Gowlings law firms, and no ties to Mr. Allan Rock.

17. In the hearing of June 20, 2012, and in prior hearings (case conferences), Justice Beaudoin made many statements that attract a reasonable apprehension of a closed mind, a reasonable apprehension of bias.

18. In the hearing of July 24, 2012, Justice Beaudoin made many statements that confirm at the least a reasonable apprehension of a closed mind, a reasonable apprehension of bias.

19. The special circumstances of the proceedings and of the case are such that the questions and requests before Regional Senior Justice Hackland must be determined prior to any further motions in this action.

This is Exhibit "D"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

MOVING PARTY'S COMPENDIUM OF ARGUMENT

(Refusals and Productions Motion – "Champerty")

June 20, 2012

Denis Rancourt

Defendant
(and Moving Party)

OVERVIEW

This refusals and productions motion arises from a motion to stay or dismiss the action on the ground that the action is vexatious or is otherwise an abuse of process.

In order to establish that the University has engaged in maintenance and champerty to the extent that it constitutes an abuse of process, the Defendant wishes to demonstrate that the real motive for the University funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process.

The Defendant's Notice of Motion in the motion to stay or dismiss the action clearly identified maintenance and champerty as grounds for the motion and identified the motives of the University for entering into the funding agreement as one of the questions of fact needing to be determined by examining the Plaintiff and other witnesses:

> A need to examine the Plaintiff and witnesses for this motion [...] is necessary in order to ascertain: [...]
>
> (c) The maintenance and champertous characteristics or circumstances of the funding; and
> (d) The motives for entering in the funding agreement for this action.
> [Emphasis added.]
>
> **Notice of Motion, Exhibit "A", Rancourt Affidavit of June 2012, para. 10**

The Defendant's January 2012 affidavit in support of the motion to stay or dismiss the action identified several facts demonstrating improper motive of the University for funding the litigation.

> **Defendant's Affidavit of January 2012, para. 40 and exhibit N;**
> **University of Ottawa's Responding Motion Record, para. 40 in Tab 4, and Tab N.**

These items of bad faith include covert surveillance and its particulars, showing egregious employer behaviour falling squarely outside of the norms of accepted labour practices in the Canadian academic environment.

Defendant's Affidavit of january 2012, para. 5 and exhibit N;
University of Ottawa's Responding Motion Record, para. 5 in Tab N at Tab 4.

Throughout the examinations of the witness and affiants, counsels for the Plaintiff and the University objected to all questions which sought facts outside of their theory of the case, thereby excluding queries into the accepted considerations needed to support and establish maintenance and champerty, including:

- Improper motive of the alleged maintainer
- Justification or excuse of the maintainer
- Nature of the maintenance agreement
- Quantum of funding
- Maintained litigant's prior intent to litigate
- Vulnerability of the maintained litigant
- Access to justice by the maintained litigant

and thereby making it impossible for the Defendant to prove his case.

ISSUES

The issues are:

(a) whether refused questions (including undertakings) at examinations should be answered, including follow up questions;

(b) whether a witness should be compelled to search his own email account for relevant requested documents;

(c) whether documents requested in Notices of Examination, in a Summons to Witness, and at examinations should be produced, including follow up questions; and

(d) whether questions in the re-examination of Bruce Feldthusen should be expunged.

A preliminary issue is whether an expert's affidavit is admissible.

LEGAL CONTEXT: MAINTENANCE

Supreme Court of Canada on maintenance

1. The *Supreme Court of Canada* has consistently until present held the same definition of maintenance since 1907, reaffirmed in 1939, and in 1993, as centrally based on intervening "officiously or improperly":

> A person must intervene "officiously or improperly" to be liable for the tort of maintenance. Provision of financial assistance to a litigant by a non-party will not always constitute maintenance. Funding by a relative or out of charity must be distinguished from cases where a person wilfully and improperly stirs up litigation and strife. The society's support was "out of charity and religious sympathy" and so did not constitute maintenance.
>
> ***Young v. Young*, 1993 CanLII 34 (SCC), p.22; [Tab 1]**

> To be liable for maintenance, a person must intervene "officiously or improperly": *Goodman v. The King*, [1939] S.C.R. 446. Provision of financial assistance to a litigant by a non-party will not always constitute maintenance. Funding by a relative or out of charity must be distinguished from cases where a person wilfully and improperly stirs up litigation and strife: *Newswander v. Giegerich* 1907 CanLII 33 (SCC), (1907), 39 S.C.R. 354.
>
> ***Young v. Young*, 1993 CanLII 34 (SCC), p.155; [Tab 1]**

2. The latter is a disjunctive condition. The intervening need only be either officious or improper to establish maintenance.

Definition of "trafficking in litigation"

3. "Trafficking in litigation" is a broad concept which is consistent with the *Supreme Court of Canada* definition of maintenance:

> Trafficking in litigation is, by the very use of the word "trafficking" something which is objectionable and may amount to or contribute to an abuse of the process. We think that it is undesirable to try to define in different words what would constitute trafficking in litigation. It seems to us to connote unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation. 'Wanton and officious intermeddling with the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse' may be a form of trafficking in litigation. [Emphasis added.]
>
> ***Stocznia Gdanska SA v. Latreefers Inc.*, [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC), para. 45; [Tab 2]**

DETERMINATION OF ABUSE OF PROCESS

4. Abuse of process is a finding made on the totality of the evidence and conduct, not on features in isolation:

> Abuse of the court's process can take many forms and may include a combination of two or more strands of abuse which might not individually result in a stay.
>
> ***Stocznia Gdanska SA v. Latreefers Inc.*, [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC), para. 45; [Tab 2]**

5. In Ontario all champertous agreements are illegal and contrary to public policy by virtue of an Act that remains in force (entire Act):

> *R.S.O. 1897, Chapter 327*
>
> **An Act respecting Champerty**
>
> His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:
>
> **Definition of Champertors**
>
> 1. Champertors be they that move pleas and suits, or cause to be moved, either by their own procurement, or by others, and sue them at their proper costs, for to have part of the land in variance, or part of the gains. 33 Edw. I.
>
> **Champertous agreements void**
>
> 2. All champertous agreements are forbidden, and invalid. (Added in the Revision of 1897.)
>
> ***Galati v. Edwards Estate*, [1998] O.J. No. 4128, paras. 9, 22; [Tab 3]**
>
> ***Robinson v. Cooney*, [1999] O.J. No. 1341, para. 18; [Tab 4]**

6. Champerty rarely admits any just cause or excuse:

> A review of the common law cases makes it clear that champerty was regarded as a species of maintenance for which the common law would rarely admit any just cause or excuse.
>
> ***Galati v. Edwards Estate*, [1998] O.J. No. 4128, para. 18; [Tab 3]**

7. An action involving maintenance or champerty may be dismissed as an abuse of process:

> An action that involves maintenance or champerty may be dismissed as an abuse of process. [Emphasis added.]
>
> ***Adi v. Datta*, 2011 ONSC 2496, para. 53; [Tab 5]**

RELEVANT CONSIDERATIONS
IN MAINTENANCE AND CHAMPERTY

A. Maintenance must be proved to establish champerty

8. There can be no champerty without maintenance:

> Importantly, without maintenance there can be no champerty. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 26; [Tab 6]**
> **Factum for the University of Ottawa, June 14, 2012, para. 31**

B. Motive of the maintainer is determinative

9. Propriety of motive is a relevant and determinative consideration in establishing maintenance:

> The courts have made clear that a person's motive is a proper consideration and, indeed, determinative of the question whether conduct or an arrangement constitutes maintenance or champerty. It is only when a person has an improper motive which motive may include, but is not limited to, "officious intermeddling" or "stirring up strife", that a person will be found to be a maintainer. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 27; [Tab 6]**

> First, the involvement must be spurred by some improper motive.
>
> ***Metzler Investment v. Gildan Activewear*, 2009 ONSC 41540, para. 44; [Tab 7]**

> The objection to the assistance is that the person providing it is doing so without a proper purpose and is acting maliciously or to stir up strife. 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. [Emphasis added.]
>
> ***Adi v. Datta*, 2011 ONSC 2496, para. 54; [Tab 5]**

10. Counsel for the University of Ottawa agrees that motive and conduct of the parties are relevant considerations that must be carefully examined.

> **Factum for the University of Ottawa, June 14, 2012, para. 33**
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 27; [Tab 6]**

11. Justification or excuse for funding the litigation is relevant in establishing maintenance and champerty:

> Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties is without justification or excuse. [Emphasis added]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 26; [Tab 6]**

12. In contemporary maintenance and champerty, contingency fee agreements are tolerated when the benefit from access to justice outweighs the potential for abuse:

> There can be no doubt that from a public policy standpoint, the attitude towards permitting the use of contingency fee agreements has undergone enormous change over the last century. The reason for the change in attitude is directly tied to concerns about access to justice.
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 55; [Tab 6]**

13. Reliance on applicable policies, rules, and/or statutes can be an acceptable justification and proper motive for funding a litigation.

> ***Lorch v. McHale*, 2008 CanLII 35685 (ON SC), para. 32; [Tab 8]**

C. Nature of the agreement is central

14. The nature of the agreement and all facts which inform the nature of the agreement to fund the litigation are relevant to establishing motive in maintenance and champerty:

> The motive can be inferred from the very nature of the agreement itself.
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 48; [Tab 6]**

15. The quantum of funding is a defining feature of the agreement. It informs the propriety of motive of the maintainer via administrative and/or contractual and/or policy and/or statutory limits or oversights on spending.

> A large mathematical disproportion between any pre-existing financial interest and the potential profit of funders may in particular cases contribute to a finding of abuse but is not bound to do so.
>
> ***Stocznia Gdanska SA v. Latreefers Inc.*, [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC), para. 45; [Tab 2]**

> When considering the propriety of the motive of a lawyer who enters into a contingency fee agreement, a court will be concerned with the nature and the amount of the fees to be paid to the lawyer in the event of success. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General)*, 2002 CanLII 45046 (ON CA), paras. 76, also 3-4, and 84; [Tab 6]**

16. The prospect of "double recovery," from the maintainer as well as costs recovered from the defendant in the action, is a relevant consideration is establishing maintenance and champerty.

***McIntyre Estate v. Ontario (Attorney General)*, 2002 CanLII 45046 (ON CA), para. 79; [Tab 6]**

D. Prior intent of the litigant is a defining consideration

17. Intent to litigate prior to third-party funding is a defining consideration in establishing maintenance and champerty:

> Whatever its historical origin, the authorities, both English and Canadian, have consistently treated champerty as a form of maintenance requiring proof not only of an agreement to share in the proceeds but also the element of encouraging litigation that the parties would not otherwise be disposed to commence. [Emphasis added.]
>
> ***Buday v. Locator of Missing Heirs Inc.*, 1993 CanLII 961 (ON CA), 5th-last para.; [Tab 9]**

> In cases of champerty - such as this - the question whether the aggrieved party had shown an interest in commencing litigation, or would have been likely to do so without the officious intermeddling of the maintainer, may be material on the issue of abuse of process.
>
> ***Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC), para. 53; [Tab 2]**

E. Vulnerability of the funded litigant is an overriding consideration

18. Vulnerability of the funded litigant is relevant to a determination of abuse in the relationship with the maintainer, and is a central public policy concern in maintenance and champerty:

> The overriding purpose of the common law of champerty has always been to protect the administration of justice from abuse by those who wrongfully maintain litigation. Its origins are rooted in a policy directed to ensuring a fair resolution of disputes and protecting vulnerable litigants from abuse. The protection afforded by the common law is advanced by looking to the propriety of the motives of those who become involved in litigation. [Emphasis added.]
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), para. 47; [Tab 6]**

> One of the originating policies in forming the common law of champerty was the protection of vulnerable litigants.
>
> ***McIntyre Estate v. Ontario (Attorney General),* 2002 CanLII 45046 (ON CA), paras. 76; [Tab 6]**

IN SUMMARY:

The following considerations are immediately and directly relevant to maintenance and champerty:

(a) Motive of the maintainer

(b) Prior intent of the funded litigant

(c) Nature of the agreement

(d) Vulnerability of the funded litigant

Several established factors inform the above considerations, including:

(i) evidence of malice or improper motive,
(ii) absence of justification or excuse,
(iii) impacted policies, rules, and statutes
(iv) access to justice
(v) quantum of funding
(vi) prospect of double recovery
(vii) relation between the maintainer and the litigant

CONSIDERATIONS ON REFUSALS AND PRODUCTIONS MOTIONS

19. The scope of relevancy depends on the nature of the motion, such as the breadth of the issues:

> The proper scope of the cross-examination of a deponent for an application or motion will vary depending upon the nature of the application or motion.
>
> ***Ontario v. Rothmans Inc.*, 2011 ONSC 2504, para. 143; [Tab 10]**

20. The scope of cross-examination on a motion which may end the litigation and potentially grant a final judgement has to be wider than motions of narrower focus.

> ***Aghaei v. Ghods*, 2011 ONSC 4308, para. 22; [Tab 11]**

21. The Defendant agrees with counsel for the University of Ottawa that staying of an action on the basis of maintenance and champerty as abuse of process is a final decision to conclusively determine the action.

> **Factum for the University of Ottawa, June 14, 2012, para. 36**

22. The questions to witnesses and affiants on a motion must be relevant to:

(a) the issues on the motion;

(b) the matters raised in the affidavit by the deponent, even if those issues are irrelevant to the motion; or

(c) the credibility and reliability of the deponent's evidence.

> ***Ontario v. Rothmans Inc.*, 2011 ONSC 2504, para. 143; [Tab 10]**

23. All matters raised or put in issue can be cross-examined even if irrelevant and immaterial to the motion before the Court:

> If a matter is raised in, or put in issue by the deponent in his or her affidavit, the opposite party is entitled to cross-examine on the matter even if it is irrelevant and immaterial to the motion before the court.
>
> ***Ontario v. Rothmans Inc.*, 2011 ONSC 2504, para. 143; [Tab 10]**

24. Questions solely intended to test bias of a deponent of an affidavit are permitted in cross-examination:

> The solicitor should be compelled to reattend to answer the disputed questions, which would tend to show he was biased […] The deponent of an affidavit may be cross-examined to show that the affidavit should not be given great weight because of bias.
>
> ***Di Giacomo v. D & G Mangan Investments Inc.*, 1986 CarswellOnt 563, 8 C.P.C. (2d) 175, para. Held; [Tab 12]**

25. Requests for undertakings in examinations on motions are allowed as common practice and are consistent with an efficient administration of justice:

> The deponent for an application or motion may be asked relevant questions that involve an undertaking to obtain information, and the court will compel the question to be answered if the information is readily available or it is not unduly onerous to obtain the information.
>
> ***Ontario v. Rothmans Inc.*, 2011 ONSC 2504, para. 143; [Tab 10]**

> A cross-examination on a motion is not similar to discovery, and there is no provision in the Rules that requires a party being cross-examined to obtain information. Neither counsel on the motion were able to cite any precedent for such a requirement. <u>It is, however, common practice to ask for undertakings on such a cross-examination, and to receive undertakings that the party being cross-examined will inform himself and pass the information on to the other side</u>. In my view the Court has inherent jurisdiction to see that all relevant evidence is before it on a motion such as this, and so long as it is not unduly oppressive to order that the information be obtained. [Emphasis added.]
>
> ***Mutual Life Assurance v. Buffer Investments*, 1985 CarswellOnt 579, 5 C.P.C. (2d) 5, 52 O.R. (2d) 335 (appellate court), para. 10; [Tab 13]**

26. Deponents on information and belief may be compelled to inform themselves:

> The deponent for a motion or application who deposes on information and belief may be compelled to inform himself or herself about the matters deposed.
>
> ***Ontario v. Rothmans Inc.*, 2011 ONSC 2504, para. 143; [Tab 10]**

27. The Defendant submits that to hold otherwise than to allow reasonable undertakings at examinations on motions would permit a party to give an affiant only certain relevant facts and to insulate the other facts from disclosure.

ADMISSIBILITY OF EXPERT AFFIDAVIT OF LOUIS BELIVEAU, *P. ENG.*

28. Rule 53, entitled "Evidence at Trial," is applicable only to evidence tendered at trial. In particular, Rule 53.03 cited by counsel for the Plaintiff applies only to expert evidence at trial, not on motions.

29. In the alternative, even if Rule 53 applies on motions, an expert's opinion in affidavit for a productions motion should not be excluded on technical grounds:

> While I agree that one of the purposes behind the amendments to Rule 53.03 is to eliminate evidence from expert witnesses who are clearly biased and consequently, their opinion is of little, if any, assistance to the court, in my view, this does not usurp the function of the lawyers to demonstrate the lack of expertise through cross-examination on qualifications before a witness is deemed to be an expert or to demonstrate the lack of impartiality. That is one of the functions of an advocate. [Emphasis added.]
>
> ***Grigoroff v. Wawanesa Mutual Insurance Company*, 2011 ONSC 2279, para. 25; [Tab 14]**

> I can put my basic orientation as a trial judge no better than Barr J. did in Hunter v. Ellenberger, (1988), 25 C.P.C. (2d) 14, [1988] O.J. No. 49 (H.C.):
>
> > In my view, it should be remembered that any time a court excludes relevant evidence the court's ability to reach a just verdict is compromised. Relevant evidence should not be excluded on technical grounds, such as lack of timely delivery of a report, unless the court is satisfied that the prejudice to justice involved in receiving the evidence exceeds the prejudice to justice involved in excluding it. [Emphasis added.]
> >
> > ***Brandiferri v. Wawanesa Mutual Insurance, et al.*, 2011 ONSC 3200, para. 11; [Tab 15]**

30. Form 53, signed by Mr. Beliveau at the same time as his affidavit, is available, and was not included in the Defendant's motion record for this refusals and productions motion due to inadvertence.

Table of Authorities

Tab

1. *Young v. Young*, 1993 CanLII 34 (SCC), pages
2. *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC)
3. *Galati v. Edwards Estate*, [1998] O.J. No. 4128
4. *Robinson v. Cooney*, [1999] O.J. No. 1341
5. *Adi v. Datta*, 2011 ONSC 2496
6. *McIntyre Estate v. Ontario (Attorney General)*, 2002 CanLII 45046 (ON CA)
7. *Metzler Investment v. Gildan Activewear*, 2009 ONSC 41540
8. *Lorch v. McHale*, 2008 CanLII 35685 (ON SC)
9. *Buday v. Locator of Missing Heirs Inc.*, 1993 CanLII 961 (ON CA)
10. *Ontario v. Rothmans Inc.*, 2011 ONSC 2504, pages
11. *Aghaei v. Ghods*, 2011 ONSC 4308
12. *Di Giacomo v. D & G Mangan Investments Inc.*, 1986 CarswellOnt 563, 8 C.P.C. (2d) 175
13. *Mutual Life Assurance v. Buffer Investments*, 1985 CarswellOnt 579, 5 C.P.C. (2d) 5, 52 O.R. (2d) 335
14. *Grigoroff v. Wawanesa Mutual Insurance Company*, 2011 ONSC 2279
15. *Brandiferri v. Wawanesa Mutual Insurance, et al.*, 2011 ONSC 3200

This is Exhibit " E "

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

AFFIDAVIT OF DENIS RANCOURT

(In support of Defendant's Refusals and Productions Motion)

Denis Rancourt
(Defendant)

I, **Denis Rancourt**, of the City of OTTAWA, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I am the self-represented Defendant in the action. As such, I have knowledge of the matters sworn to in this affidavit.

2. This affidavit is in response to the affidavit of Alain Roussy sworn on June 13, 2012, a copy of which is attached to my affidavit as **Exhibit "A"**, served on me on June 14, 2012 as part of the University of Ottawa's responding motion record for my refusals and productions motion scheduled for June 20, 2012.

3. On June 18, 2012, Mr. Joseph Hickey advised me and I do verily believe that he received from the University of Ottawa emails with subject "David Scott" as part of a response to an access to information request for communications between Allan Rock and Stephane Emard-Chabot. Mr. Hickey also advised me that said documents are available on his "A Student's-Eye View" blog.

4. On June 18, 2012, after having spoken with Mr. Hickey, I downloaded the above-noted documents, totalling 250 pages, from the "A Student's-Eye View" blog. Page 246 of the file of documents, labelled as record "348", is attached to my affidavit as **Exhibit "B"**. I was not aware of the existence of **Exhibit "B"** prior to June 18, 2012.

5. **Exhibit "B"** is an email from Stephane Emard-Chabot to Allan Rock dated September 1, 2011 at 4:26 PM. It has subject line "RE: David Scott" and it states in part:

> That being said, there is no rush to respond. In fact, my view is that we do not respond at this point and prepare the time to announce the role we play.

6. Based on my communication with Mr. Hickey, I verily believe that **Exhibit "B"** was disclosed by the University of Ottawa to Mr. Hickey in response to an access to information request.

7. Attached to my affidavit as **Exhibit "C"** is an email I sent to Mr. Allan Rock on August 28, 2011 at 5:30 PM, inquiring about the University of Ottawa funding the Plaintiff in the action, and requesting an answer by September 2, 2011.

Sworn and affirmed before me at the City of Ottawa, Ontario, on

June 19, 2012

.....
Commissioner for Taking Affidavits
(or as may be)

Jason Daniel Bouchard, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires December 2, 2014.
Jason Daniel Bouchard, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement de
l'Ontario, Ministère du Procureur général.
Date d'expiration le 2 décembre 2014.

.....
(Signature of deponent)
Denis Rancourt

This is Exhibit "A"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

19 day of June, 2012.

A Commissioner for taking affidavits

Jason Daniel Bouchard, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires December 2, 2014.
Jason Daniel Bouchard, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement de
l'Ontario, Ministère du Procureur général.
Date d'expiration le 2 décembre 2014.

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Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

– and –

DENIS RANCOURT

Defendant

AFFIDAVIT OF ALAIN ROUSSY
(Sworn June 13, 2012)

I, **ALAIN ROUSSY**, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a barrister and solicitor employed by the University of Ottawa. As a result, I have knowledge of the matters hereinafter deposed to unless expressly stated to be on information and belief.

2. I understand that a search was conducted in relevant locations within the University for documents described in the Notice of Examination dated April 9, 2012 directed to Allan Rock, the President of the University. That search included a search for documents described as follows:

> David Scott letter dated October 25, 2011
>
> 2. All documents about the October 25, 2011 David Scott letter (para. 5 of your affidavit), including and not limited to: all internal University of Ottawa communications (memos, emails, letters, text messages, etc.) relevant to the David Scott letter.

3. I have reviewed the documents which were discovered as a result of that search.

4. I am advised by Mr. Peter Doody, and believe, that a series of emails between David Scott and Richard Dearden, commencing October 24, 2011 at 11:47 a.m., and concluding October 26, 2011 at 1:49 p.m., located as a result of the search, were sent to Mr. Rancourt together with a letter from Mr. Doody to him dated April 18, 2012.

5. I have reviewed the other documents uncovered as a result of that search. All of those documents consist of either:

(a) communications originating from Borden Ladner Gervais, the law firm retained by the University to provide it with legal advice, and the University, or between the University and Borden Ladner Gervais, for the purpose of or to facilitate the obtaining of or provision of legal advice; or

(b) internal communications within the University in respect of the advice provided by Borden Ladner Gervais to the University.

6. To the best of my knowledge, the University has at all times treated the documents described in paragraph 5 confidentially.

SWORN BEFORE me at the)
City of Ottawa)
in the Province of Ontario)
this 13th day June 2012.)
)
)
)

A Commissioner for Taking Affidavits, etc.

Alain Roussy

OTT01\5123808\v1

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JOANNE ST. LEWIS
Plaintiff

– and –

DENIS RANCOURT
Defendant

Court File No. 11–51657

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding Commenced at OTTAWA

AFFIDAVIT OF ALAIN ROUSSY

(Sworn June 13, 2012)

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
1100 – 100 Queen Street
Ottawa ON K1P 1J9

Peter K. Doody
(613) 237-5160 telephone
(613) 230-8842 facsimile

Lawyers for the University of Ottawa

Facsimile No. for Richard Dearden (613) 788-3430
Facsimile No. for Defendant: No Fax

(File: 308227-000158) BOX 368

200

This is Exhibit "B"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

19 day of June, 2012.

A Commissioner for taking affidavits

Jason Daniel Bouchard, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires December 2, 2014.
Jason Daniel Bouchard, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement de
l'Ontario, Ministère du Procureur général.
Date d'expiration le 2 décembre 2014.

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Allan Rock

From: Stephane Emard-Chabot
Sent: September-01-11 4:26 PM
To: Allan Rock
Subject: RE: David Scott

He is away, as is his assistant. I have managed to reach someone else and have just sent Mr. Scott an email to his BB asking to speak with him.

Keep you posted.

That being said, there is no rush to respond. In fact, my view is that we do not respond at this point and prepare the time to announce the role we play.

Stéphane Émard-Chabot

Chef de cabinet | Chief of Staff
Cabinet du recteur | Office of the President
Université d'Ottawa | University of Ottawa

613-562-5800 x 1032 stephane.emard-chabot@uottawa.ca

From: Allan Rock
Sent: Thursday September 1, 2011 3:51 PM
To: Stephane Emard-Chabot
Subject: David Scott

Any luck?

Allan Rock
Recteur et vice-chancelier | President and Vice-Chancellor
Cabinet du recteur | Office of the President
Université d'Ottawa | University of Ottawa
Pavillon Tabaret | Tabaret Hall
550 Cumberland (212)
Ottawa ON K1N 6N5
613-562-5809 | 1-888-uOttawa

uOttawa

This is Exhibit "C"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

19 day of June, 2012.

A Commissioner for taking affidavits

Jason Daniel Bouchard, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires December 2, 2014.
Jason Daniel Bouchard, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement de
l'Ontario, Ministère du Procureur général.
Date d'expiration le 2 décembre 2014.

Gmail by Google

Denis Rancourt <denis.rancourt@gmail.com>

University's involvement in Professor Joanne St. Lewis' defamation lawsuit against Denis Rancourt

Denis Rancourt <denis.rancourt@gmail.com> Sun, Aug 28, 2011 at 5:30 PM
To: allan.rock@uottawa.ca, president@uottawa.ca

Allan Rock
President
University of Ottawa

Re: University's involvement in Professor Joanne St. Lewis' defamation lawsuit against Denis Rancourt

Dear Mr. Rock,

As you know, Joanne St. Lewis has undertaken a defamation lawsuit against me.

Links to the public record pleadings and other information are posted to the web here:
http://rancourt.academicfreedom.ca/background/stlewislawsuit.html

As you know, if the legal action is successful, the University could receive a donation worth $125 thousand.

As you know, the defamation allegations are about you, as President, as a central figure.

At this time I respectfully ask that you answer the following questions regarding the University's possible involvement in the action.

(1) Has the University directly or indirectly paid or guaranteed all or part of Professor St. Lewis' legal expenses (such as representation or court fees, etc.), at any time?

(2) Has the University directly or indirectly paid a retainer to Professor St. Lewis' counsel(s) or to the counsel(s)'s law firm?

(3) Has the University provided any of my personal information (e.g., such as my home address or any record or information) to the plaintiff or to her counsels?

(4) Has the University facilitated the legal action in any way; if so, in what way?

(5) Did you or any agent of the University play any facilitating role in obtaining representation by Mr. Dearden or other counsel for Professor St. Lewis?

(6) Have you or the University entered into any agreements or understanding, written or spoken, with Professor St. Lewis or her counsels about the legal action?

Please acknowledge the present email.
Please provide answers by Friday September 2, 2011.

Sincerely,
Denis Rancourt

This is Exhibit "F"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

Court File No.: 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

AFFIDAVIT OF LOUIS BÉLIVEAU

(sworn: ~~May~~ June 1, 2012)

I, Louis Béliveau, of the Town of Sackville, in the Province of New Brunswick, MAKE AN OATH AND SAY THAT:

I. INTRODUCTION

1. I am submitting this affidavit to provide my expert opinion on the interpretation of a chain of electronic communications. More specifically, the Defendant provided me with a chain of electronic communications, and asked me the following questions:

(a) Who were the senders and recipients of the the communications on pages 1-3?

(b) At what time and date was each of these communications sent?

(c) What was the content of each of these communications?

(d) What software was used for sending each of these communications?

2. This Report is prepared for the purpose of the above-noted action in the Ontario Superior Court of Justice, including (but not limited to) a hearing in June 2012 concerning refusals. I have been retained by the Defendant, Professor Denis Rancourt.

II. QUALIFICATIONS

3. I hold a Bachelor of Engineering degree from McGill University. I graduated in 1999.

4. From 1999 to 2002, I was employed as a computer systems administrator by York University. My duties included setup, maintenance, and support of servers and work-stations using a wide range of operating systems in all three of the Microsoft Windows, the Apple Macintosh, and the Unix families. A substantial portion of these tasks involved systems of electronic data storage and electronic communications.

5. From 2002 to 2004, I studied Law. I hold degrees LL.B. and B.C.L. from McGill University. I graduated in 2004. Since 2008, I have been a member in good standing of the Law Society of Upper Canada, roll number 55432B.

6. In 2004, I was a summer research intern at the Canadian Internet Policy and Public Interest Clinic (CIPPIC).

7. Since 2005, I have been mainly a self-employed consultant. A large part of my business is the setup and maintenance of electronic document storage, websites, and email systems.

8. Since 2008, I have been a member in good standing of the Professional Engineers Ontario, license number 100097322.

9. I have provided expert opinions on electronic data storage and electronic communications in the past in proceedings before the Ombudsman Manitoba and the Canadian Transportation Agency.

III. MATERIALS REVIEWED

10. This Report is based on "Exhibit 2 on the examination of Ms. St. Lewis in *St. Lewis v. Rancourt* held on April 23, 2012, examination no.: 12-0408, Canata Reporting Services," an 8-page document, a copy of which is attached and marked as Exhibit "A".

IV. FINDINGS

11. As a preliminary matter, I note that pages 1 and 2 of Exhibit "A" are identical, except for the exhibit mark of Canata Reporting Services on page 1, which is not present on page 2. Thus, in what follows, I refer only to pages 2-8 of Exhibit "A".

First Communication

12. The first communication in the chain on pages 2-3 of Exhibit "A" ("First Communication") starts at the bottom of page 2, below the second occurrence of "Original Appointment".

13. The sender of the First Communication is Allan Rock, and the recipients are Allan Rock and Bruce Feldthusen.

14. The First Communication was sent on April 11, 2011 at 10:03 am. I was not able to ascertain the timezone; however, in light of the reference to "(GMT -05:00) Eastern Time (US & Canada)" in the "When:" field of the communication, it is very probable that this is also the timezone of the time shown on the communication.

15. The content of the First Communication starts at the line "Subject: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)" at the bottom of page 2 of Exhibit "A", and ends on page 3 before the "IMPORTANT NOTICE".

16. The First Communication also had two attachments, entitled "RE: DEMANDE DE RENCONTRE - Bruce Feldthusen" and "Meeting with President Rock," respectively. Since the title of the first attachment matches the "Subject" line of the email on pages 7-8, it is probable that it was indeed the content of the first attachment. Similarly, since the title of the second attachment matches the "Subject" line of the email on page 6, it is probable that it was indeed the content of the second attachment.

17. The format of the First Communication suggests that it was sent using Microsoft Outlook, but I do not have sufficient information to ascertain the version of the software. Since the sender included himself as a recipient to the communication, the sender kept a copy of the communication on a central server in addition to his own computer. This is a common practice for those who use more than one computer on a regular basis (e.g., a desktop and a laptop).

Second Communication

18. The second communication in the chain on pages 2-3 of Exhibit "A" ("Second Communication") starts below the middle of page 2, below the first occurrence of "Original Appointment".

19. The sender of the Second Communication is Allan Rock, and the recipients are Allan Rock, Joanne St. Lewis, and Bruce Feldthusen.

20. The Second Communication was sent on April 11, 2011 at 10:35 am. I was not able to ascertain the timezone; however, in light of the reference to "(GMT -05:00) Eastern Time (US & Canada)" in the "When:" field of the communication, it is very probable that this is also the timezone of the time shown on the communication.

21. The content of the Second Communication starts at the line "Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)," about one-third from the bottom of page 2 of Exhibit "A", and ends on page 3 before the "IMPORTANT NOTICE". It includes the First Communication in its entirety, including the two aforementioned attachments.

22. The format of the Second Communication strikes me as identical to the First Communication, which suggests that it was sent using Microsoft Outlook, and likely the same version of the software as the First Communication.

Third Communication

23. The third communication in the chain on pages 2-3 of Exhibit "A" ("Third Communication") starts below the thin horizontal line that is located about one-third from the top of page 2.

24. The sender of the Third Communication is Allan Rock, specifically, the email address arock@mail.uottawa.ca, and the recipients are Richard Dearden and Allan Rock.

25. The Third Communication was sent on March 30, 2012 at 11:29 am. I was not able to ascertain the timezone; however, in light of the reference to "(GMT -05:00) Eastern Time (US & Canada)" in the "When:" field of the communication, it is very probable that this is also the timezone of the time shown on the communication.

26. The content of the Third Communication starts at the line "**Subject:** FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)," about one-third from the top of page 2 of Exhibit "A", and ends on page 3 before the "IMPORTANT NOTICE". It includes the Second Communication in its entirety, which in turn includes the First Communication and its attachments.

27. The format of the Third Communication suggests that it was sent using Microsoft Outlook. However, it was sent using a different version of the software and/or from a different computer than the First and the Second Communications. I have come to this conclusion based on a number of differences in the style of the Third Communication and the first two:

(a) the name of the sender (Allan Rock) appears last in the "**To:**" field of the Third Communication, while it appears first in the same fields of the First and the Second Communications;

(b) header labels (such as From, Sent, To, etc.) are bold in the Third Communication, while they are in normal font in the First and the Second Communications;

(c) there is a 5-letter-wide space between the header labels and the content of the fields in the Third Communication, while in the First and Second Communications this space is only one (1) letter wide;

(d) the lines starting with the header labels are printed with a smaller font size than the body of the message in the Third Communication, while this is not the case in the First and the Second Communications.

Fourth Communication

28. The fourth communication in the chain on pages 2-3 of Exhibit "A" ("Fourth Communication") starts below the thick horizontal line a the top of page 2, and ends at the bottom of page 3.

29. The content of the Fourth Communication starts with the line "**Subject:** FW: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)," continues with "Hi Joanne - can you print out a copy of this appointment for me off your computer please," includes the Third, Second, and First Communications, including the attachments to the

First Communications, and ends with the following small print:

> IMPORTANT NOTICE: This message is intended only for the use of the individuals or entity to which it is addressed, The message may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Gowlings immediately by email at postmaster@gowlings.com. Thank you.

30. Some headers (such as From, Sent, To) of the Fourth Communication are not displayed in Exhibit "A", which makes it very difficult to determine the sender, recipient, or the date it was sent. However, based on the content and the bold text "Joanne St. Lewis" at the top of page 2, I am able to conclude the following:

(a) The sender of the Fourth Communication was affiliated in some way with Gowlings;

(b) Joanne St. Lewis was a recipient of the Fourth Communication, although I am unable to determine whether there were other recipients.

SWORN BEFORE ME at)
SACKVILLE,)
in the PROV of NEW BRUNSWICK)
this 1 day of ~~May~~, 2012.)
)
)
~~Commissioner for Taking Affidavits~~)
NOTARY)

PUBLIC
CANADA
NEW BRUNSWICK

R. Béliveau

LOUIS BÉLIVEAU, P.ENG.

LIST OF EXHIBITS

A. Copy of Exhibit 2 on the examination of Ms. St. Lewis in *St. Lewis v. Rancourt* held on April 23, 2012, examination no.: 12-0408, Canata Reporting Services.

This is **Exhibit "A"** to the
Affidavit of Louis Béliveau
sworn this 12 day of ~~May~~ JUNE, 2012.

Commissioner for Taking Affidavits
NOTARY PUBLIC

OVE B. SAMUELSEN
NOTARY
PUBLIC
CANADA
NEW BRUNSWICK

Joanne St. Lewis

Subject: FW: FW: Mtg with Bruce Feldthus
Location: TBT - 212

Start: Fri 15/04/2011 11:00 AM
End: Fri 15/04/2011 11:30 AM

Recurrence: (none)

Organizer: Allan Rock

Hi Joanne - can you print out a copy of this appointment for me off your computer please

From: Allan Rock [mailto:arock@mail.uottawa.ca]
Sent: Friday, March 30, 2012 11:29 AM
To: Dearden, Richard; Allan Rock
Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday, April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

When: Friday April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

-----Original Appointment-----
From: Allan Rock
Sent: Monday April 11, 2011 10:35 AM
To: Allan Rock; Joanne St. Lewis; Bruce Feldthusen
Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Hi Joanne:
Please note that the meeting with Mr. Rock is scheduled for this Friday, April 15 at 11:00 in TBT -212.

-----Original Appointment-----
From: Allan Rock
Sent: Monday, April 11, 2011 10:03 AM
To: Allan Rock; Bruce Feldthusen
Subject: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday, April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Joanne St. Lewis

Subject: FW: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
Location: TBT - 212

Start: Fri 15/04/2011 11:00 AM
End: Fri 15/04/2011 11:30 AM

Recurrence: (none)

Organizer: Allan Rock

Hi Joanne - can you print out a copy of this appointment for me off your computer please

From: Allan Rock [mailto:arock@mail.uottawa.ca]
Sent: Friday, March 30, 2012 11:29 AM
To: Dearden, Richard; Allan Rock
Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday, April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

When: Friday April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*~*

-----Original Appointment-----
From: Allan Rock
Sent: Monday April 11, 2011 10:35 AM
To: Allan Rock; Joanne St. Lewis; Bruce Feldthusen
Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Hi Joanne:
Please note that the meeting with Mr. Rock is scheduled for this Friday, April 15 at 11:00 in TBT -212.

-----Original Appointment-----
From: Allan Rock
Sent: Monday, April 11, 2011 10:03 AM
To: Allan Rock; Bruce Feldthusen
Subject: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday, April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Note :

* Meeting with Bruce Feldthusen.
* Approved by Stéphane. Mjoe 11/04/11

Contact:
Dany Chung – 5927
Mjoe 5809

Correspondance:

<<RE: DEMANDE DE RENCONTRE - Bruce Feldthusen >> <<Meeting with President Rock>>


RE: DEMANDE DE RENCONTRE - Bru...


Meeting with President Rock

Joanne St. Lewis

Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
Location: TBT - 212

Start: Fri 15/04/2011 11:00 AM
End: Fri 15/04/2011 11:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Allan Rock

FW: FW: Mtg with Bruce Feldthu...

-----Original Appointment-----
From: Allan Rock
Sent: Monday April 11, 2011 10:35 AM
To: Allan Rock; Joanne St. Lewis; Bruce Feldthusen
Subject: FW: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Hi Joanne:
Please note that the meeting with Mr. Rock is scheduled for this Friday, April 15 at 11:00 in TBT -212.

-----Original Appointment-----
From: Allan Rock
Sent: Monday, April 11, 2011 10:03 AM
To: Allan Rock; Bruce Feldthusen
Subject: Mtg with Bruce Feldthusen - AR (together with Joanne St Lewis)
When: Friday, April 15, 2011 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: TBT - 212

Note :

- Meeting with Bruce Feldthusen.
- Approved by Stéphane. Mjoe 11/04/11

Contact:
Dany Chung – 5927
Mjoe 5809

Correspondance:

RE: DEMANDE DE
RENCONTRE - Bru...

Meeting with
President Rock

Joanne St. Lewis

From: Dany Chung
Sent: Monday April 11, 2011 9:15 AM
To: Cabinet du recteur - Office of the President
Subject: Meeting with President Rock

Hi Marie Josée

Dean Feldthusen would like to schedule a meeting with Mr. Allan Rock pertaining a subject matter which I'll summarize as "Deflamation Action". He will be accompanied by Professor Joanne St Lewis. Dean Feldthusen will call Stephane Emard Charbot some time today for more details. In the meantime could you please let me know if either of the following time is convenient for Mr. Rock. Thank you.

April 12 - 9:00 to 17:00
April 13 - 9:00 to 11:00 or 14:00 to 17:00 April 15 - 9:00 to 17:00 April 18 - 9:00 to 17:00 April 19 - 14:00 to 17:00 April 20 - 9:00 to 17:00 April 22 - 9:00 to 17:00

Ms. Dany Chung
Cabinet du doyen / Dean's Office
Faculté de droit / Faculty of Law
Section de common law / Common Law Section
Université d'Ottawa / University of Ottawa
57 Louis-Pasteur, pièce/room FTX 111
Ottawa, ON K1N 6N5

dany.chung@uOttawa.ca
Tél./Tel.: (613) 562-5927
Téléc./Fax: (613) 562-5124

www.uOttawa.ca

Joanne St. Lewis

From: Stephane Emard-Chabot
Sent: Monday April 11, 2011 9:54 AM
To: Cabinet du recteur - Office of the President
Subject: RE: DEMANDE DE RENCONTRE - Bruce Feldthusen

Oui, stp.

Stéphane Émard-Chabot

Chef de cabinet | Chief of Staff
Cabinet du recteur | Office of the President
Université d'Ottawa | University of Ottawa

613-562-5800 x 1032 stephane.emard-chabot@uottawa.ca

From: Cabinet du recteur - Office of the President
Sent: Monday April 11, 2011 9:46 AM
To: Stephane Emard-Chabot
Subject: DEMANDE DE RENCONTRE - Bruce Feldthusen

Allo Stéphane,

Es-tu d'accord que je lui donne cette semaine?

Merci,
Mjoe

From: Dany Chung
Sent: Monday April 11, 2011 9:15 AM
To: Cabinet du recteur - Office of the President
Subject: Meeting with President Rock

Hi Marie Josée

Dean Feldthusen would like to schedule a meeting with Mr. Allan Rock pertaining a subject matter which I'll summarize as "Deflamation Action". He will be accompanied by Professor Joanne St Lewis. Dean Feldthusen will call Stephane Emard Charbot some time today for more details. In the meantime could you please let me know if either of the following time is convenient for Mr. Rock. Thank you.

April 12 - 9:00 to 17:00
April 13 - 9:00 to 11:00 or 14:00 to 17:00 April 15 - 9:00 to 17:00 April 18 - 9:00 to 17:00 April 19 - 14:00 to 17:00 April 20 - 9:00 to 17:00 April 22 - 9:00 to 17:00

Ms. Dany Chung
Cabinet du doyen / Dean's Office
Faculté de droit / Faculty of Law
Section de common law / Common Law Section
Université d'Ottawa / University of Ottawa

57 Louis-Pasteur, pièce/room FTX 111
Ottawa, ON K1N 6N5

dany.chung@uOttawa.ca
Tél./Tel.: (613) 562-5927
Téléc./Fax: (613) 562-5124

www.uOttawa.ca

This is Exhibit "G"

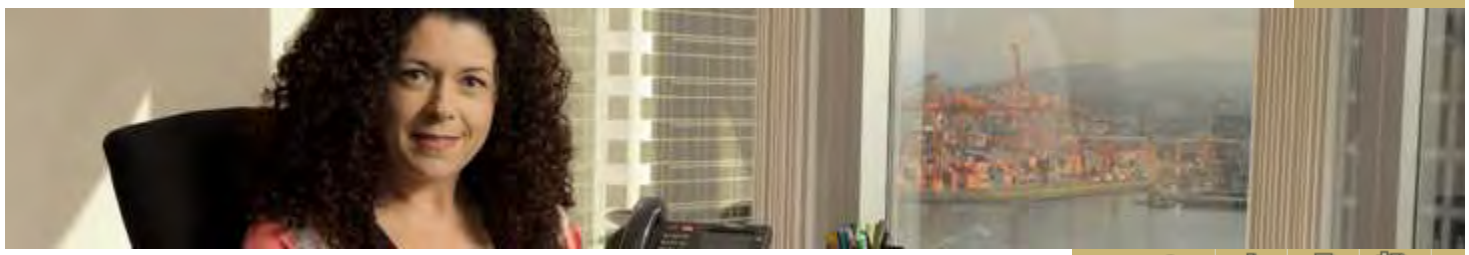
to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.



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PUBLICATIONS & DIGITAL LIBRARY

David W. Scott, O.C., Q.C.

Phone 613.787.3525
Fax 613.230.8842

Email dscott@blg.com
vCard

BACKGROUND

David W. Scott is Co-Chairperson of the Firm and Counsel in the Ottawa Office. David received a Bachelor of Arts from Loyola College (University of Montréal) and a Bachelor of Laws from the University of Ottawa. He was called to the Bar of the Province of Ontario in 1962 and is certified by the Law Society of Upper Canada as a Specialist in Civil Litigation. He was appointed Queen's Counsel in 1976. In 1988, David occupied the Milvain Chair in Advocacy at the University of Calgary Law School and in 2010 was the first Silas Hylak Chair in Advocacy at the University of Saskatchewan College of Law. In 1984, he was elected a fellow of the American College of Trial Lawyers and was its first Canadian President in 2003-2004. In 2001, he received Honorary Doctor of Law degrees from both the Law Society of Upper Canada and the University of Ottawa. In 1999 he was awarded the Advocates' Society Medal and in 2003 the Carleton Medal from the County of Carleton Law Association. In 2005, he received the OBA Award for Excellence in Civil Litigation. In 2010, he was recognized with a Lifetime Achievement Award for his pro bono contributions from Lexpert's Zenith Awards. In 2011, he was invested as an Officer of the Order of Canada. David is a member of the Ottawa General Litigation Professional Group.

AREAS OF PRACTICE

General Counsel work including: Intellectual Property Litigation, Commercial Litigation, Professional Negligence, Personal Injury, Criminal Litigation, Administrative Law.

RANKINGS AND RECOGNITIONS

Recognized in the 2012 edition of *Chambers Global – The World's Leading Lawyers for Business* (Dispute Resolution: Ontario)

Recognized by *The Best Lawyers in Canada*© as the 2011 Ottawa Corporate and Commercial Litigator of the Year

Selected by peers for inclusion in *The Best Lawyers in Canada* 2012 (Administrative and Public Law; Alternative Dispute Resolution; Bet-the-Company Litigation; Corporate and Commercial Litigation; Defamation and Media Law; Director and Officer Liability; Insurance Law; Intellectual Property Law; International Arbitration; Legal Malpractice Law; Personal Injury Litigation; Product Liability Law; Securities Law)

Martindale-Hubbell AV® Preeminent™ 5.0 out of 5 Peer Review Rating

Recognized in *Benchmark Canada - The Definitive Guide to Canada's Leading Litigation Firms & Attorneys* (Commercial Litigation; Intellectual Property; Personal Injury)

Recognized in the 2010 edition of *PLC Which Lawyer?* (Dispute Resolution)

Recognized in *The 2011 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada* ® (Corporate Commercial Litigation/Product Liability)

Recognized in the 2011 *Canadian Legal Lexpert Directory* (Intellectual Property; International Commercial Arbitration; Litigation - Commercial Insurance; Litigation - Corporate Commercial; Litigation – Defamation & Media; Litigation – Directors' & Officers' Liability; Litigation – Product Liability; Litigation - Public Law; Litigation – Securities; Personal Injury; Professional Liability)

Recognized in *Who's Who Legal: Canada 2011* (Commercial Litigation)

PROFESSIONAL AND COMMUNITY ACTIVITIES

Fellow of the American College of Trial Lawyers, 1984. Ontario Provincial Chair for the College, 1993-1994, Regent, 1996, Secretary, 2000, President Elect, 2002, President, 2003.

Bencher, Law Society of Upper Canada, elected 1991, re-elected 1995.

Appointed by the Minister of Justice as the Chair of the Triennial Review Commission established under the Judges Act of Canada, 1996.

Lecturer: University of Ottawa Law School.

First Director of the Administrative Law and Charter of Rights section of the Law Society of Upper Canada Bar Admissions Course – Ottawa.

Representative of Chief Justice of Ontario's Committee of Bench and Bar.

Milvain Chair in Advocacy, University of Calgary Law School, 1988.

Past-president of the County of Carleton Law Association.

Past-member of the Board of Governors of Carleton University.

Fellow of the Intellectual Property Institute of Canada (IPIC).

Silas Hylak Chair in Advocacy at the University of Saskatchewan College of Law, 2009.

Acted as a Director of numerous social and philanthropic organizations, including the United Way, John Howard Society, CARE Canada, Ottawa General Hospital. He was the Chair of the Board of the Canadian Stroke Network, a neuroscience research organization, from its inception in 1999 until 2005. He is currently on the Board of Directors of the University of Ottawa Heart Institute and chairs its Quality of Care Committe.

Member of the Board of Directors of Pro Bono Law Ontario. Chair from 2008 to 2010.

Has published extensively on a variety of legal topics.

LINKS FOR PRACTICE AREAS TO WHICH DAVID W. SCOTT BELONGS

Ottawa General Litigation

Appeal and Review

Intellectual Property Litigation

Commercial Litigation

Defamation and Media Law

This is Exhibit "H"

to the Affidavit of Denis Rancourt,

sworn before me at the City of Ottawa this

30 day of July, 2012.

A Commissioner for taking affidavits

Nataliya Serdynska, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.
Expires April 27, 2014.
Nataliya Serdynska, un commissaire, etc.,
Province de l'Ontario, pour le gouvernement
de l'Ontario, Ministère du Procureur général.
Date d'expiration: le 27 avril 2014.

TERMS OF REFERENCE FOR AN ENDOWED FUND

NAME OF ENDOWMENT FUND (OTSS[1])

IAIN BEAUDOIN MEMORIAL AWARD

INTRODUCTION

This award was created in honour of Iain Beaudoin ('06). As a proud graduate of the French Common Law Program, Iain Beaudoin was keenly aware of the financial constraints felt by many of his classmates. The family of Mr. Beaudoin has generously created this award in order to assist law students with financial need.

The donors thank the Government of Ontario who helped create this fund through their generous matching contributions.

PURPOSE OF FUND

To provide financial support to second-year students in the French-language JD program at the Faculty of Law, Common Law Section.

AWARD DETAILS

Eligibility Criteria:

The applicant must:

1. be registered as a full-time second-year student in the French-language JD program at the Faculty of Law, Common Law Section;
2. be an Ontario resident, as per OSAP[2] rules; and
3. demonstrate financial need, as determined by the Financial Aid and Awards Service of the University of Ottawa.

Value of the Award:	$1,000; variable, according to the income available in the fund and at the discretion of the selection committee.
Number of Awards:	One
Frequency of the Award:	Annual
Level of the Award:	JD (French Common Law Program), second year
Application Contact:	Director, Financial Aid and Awards Service
Application Deadline:	February 28 or September 30, as determined each year by the Financial Aid and Awards Service.

APPLICATION PROCEDURE

Application must be made to the Director of Financial Aid and Awards Service and should include:

1. a completed OTSS application form, including the "Financial Questionnaire", available online at www.infoweb.uottawa.ca; and
2. a copy of the applicant's academic transcript.

[1] OTSS: Ontario Trust Student Support
[2] OSAP: Ontario Student Assistance Program

SELECTION COMMITTEE
The Selection Committee will comprise:
1. the Director of Financial Aid and Awards Service, or his/her delegate, as Chair of the Committee;
2. the Dean of the Common Law Section, or his/her delegate; and
3. an additional faculty member as identified by the Dean.

AWARDING PROCEDURE
The Financial Aid and Awards Service will:
1. verify that the student is in good standing;
2. confirm the granting of this award in writing to the recipient and to the Common Law Section; and
3. arrange to credit the student's account at the University.

RECOGNITION
The Financial Aid and Awards Service agrees on an annual basis to:
1. send a letter to the donor contact advising the name of the recipient; and
2. recommend that the recipient acknowledges the award in a letter to the donor contact, the delivery of which will be coordinated by the Development Office.

FINANCIAL ARRANGEMENTS
1. All donations should be sent to the Development Office for credit to the appropriate accounts (endowment or expendable). All cheques should be made payable to the University of Ottawa.
2. Receipts for income tax purposes accompanied by an acknowledgement letter will be sent to all donors by the Development Office.
3. The University of Ottawa may invest the capital as it sees fit.
4. The portion of the income allocated for the purposes of the fund will be credited to an expendable account of the endowed fund at the Financial Aid and Awards Service, in accordance with Policy #111: *Investment of non-expendable endowment funds*.
5. The financial year of the fund is from May 1 to April 30.
6. At the end of each University fiscal year, Financial Services will notify the Financial Aid and Awards Service, who will in turn notify the Common Law Section of the amount available for the purposes of the fund.

GENERAL
If future circumstances make it impossible or impractical for the University of Ottawa to continue using the fund for the stated purposes, the University will endeavor to contact the donors to explore other purposes for the fund. If the University is unable to locate the donors or if the donors are deceased, the University may use the fund in the way it deems most beneficial for the institution, but must adhere as closely as possible to the spirit of the fund and to the donors' original intent.

The University of Ottawa must maintain OTSS regulations concerning financial aid and Ontario residency requirement.

ADMINISTRATION CONTACTS

Donor contact:
The Honourable Mr. Justice Robert Beaudoin
853 Wingate Prom.
Ottawa, Ontario K1G 1S4
Tel (work): 613-239-1451 Fax: 613-239-1507
E-mail: Robert.Beaudoin@scj-csj.ca

Common Law Section:
Dean
111 - 57 Louis Pasteur St.
Tel: 613-562-5927 Fax: 613-562-5124

Development Office:
Director, Scholarships and Stewardship
202 - 190 Laurier Ave. E.
Tel: 613-562-5800, ext. 3877 Fax: 613-562-5127

Terms of Reference Officer
207 - 190 Laurier Ave. E.
Tel: 613-562-5800, ext. 3694 Fax: 613-562-5127

Financial Aid and Awards Service:
Director
123 - 85 University St.
Tel: 613-562-5932 Fax: 613-562-5155

Financial Services:
Assistant Director, Research, Trust and Endowment
029 - 550 Cumberland St.
Tel: 613-562-5800, ext. 1509 Fax: 613-562-5988

University of Ottawa
Ottawa, Ontario K1N 6N5

APPROVED ON NOVEMBER 10, 2010 BY THE ADMINISTRATIVE COMMITTEE OF THE BOARD OF GOVERNORS (T-51155).

BY FAX

July 31, 2012

Justice Robert Smith
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

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

Your consideration is requested regarding the following points.

1. On July 30, 2012, I served and filed a Reasonable Apprehension of Bias motion that, if successful, will set aside all the decisions of Justice Beaudoin in the action. This would have an impact on the on-going refusals motion with which you are seized.

2. I have asked Regional Senior Justice Hackland and yourself, via an email to the Trial Coordinator, to schedule my Reasonable Apprehension of Bias motion as soon as is practical and prior to other motions in the action, for obvious reasons.

3. At the July 27, 2012 hearing into my refusals motion in my maintenance and champerty motion your honour set deadline dates for written submissions, however the deadline for my reply submission was inadvertently not set.

4. Please provide the needed time delay that will apply to my reply submission in this motion. (I am proceeding with this motion under protest, as I stated at the July 27, 2012 hearing.)

5. Please extend my present written submission deadline of August 1st to August 3rd.

Yours truly,

Denis Rancourt
(Defendant)

Cc: Richard Dearden
Cc: Peter Doody
Cc: Elie Labaky, Trial Coordinator

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 APPEAL

(Reasonable Apprehension of Bias)

August 8, 2012

Denis Rancourt
(Defendant)

The Defendant, Denis Rancourt, will make a motion to the Ontario Superior Court of Justice to be heard at 10:00am on 16 October 2012 at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order that Leave to Appeal be granted to the defendant to appeal rulings and/or orders and/or findings and/or decisions of Justice Robert N. Beaudoin made from the bench on June 20, 2012, and to appeal the decisions of Justice Beaudoin made in his Reasons for Decision on Motion, released on August 2, 2012, in the defendant's refusals and productions motion in the defendant's maintenance and champerty motion.

2. An Order extending the time to bring the instant leave to appeal regarding the said rulings and/or orders and/or findings and/or decisions of Justice Robert N. Beaudoin, as required, if necessary.

3. An Order that Leave to Appeal be granted to the defendant to appeal the decision by letter of July 31, 2012 of Justice Robert J. Smith to dismiss the defendant's July 30, 2012 motion for Reasonable Apprehension of Bias of Justice Beaudoin, without a hearing on its merits and without reasons for dismissing the said motion.

4. An Order abridging the time for hearing of this motion, if necessary.

5. The costs of this motion on an appropriate scale.

6. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Introduction

1. This defamation action is under case management, by consent, and up until July 24, 2012, the case-management judge was Justice Robert N. Beaudoin. After July 24, 2012, the case management judge is Justice Robert J. Smith.

2. The plaintiff is a professor at the Faculty of Law at the University of Ottawa. The present lawsuit is fully funded by the University of Ottawa. The decision to fund the action was made by the university's president, Mr. Allan Rock.

3. Currently, there is a motion seeking to dismiss the action on the grounds of maintenance and champerty pending before the Court. The University of Ottawa was granted intervener status in this motion. The University of Ottawa is represented by the BLG law firm.

4. The hearing of a refusals motion brought by the defendant in relation to cross-examinations of affidavits from officers of the University of Ottawa started on June 20, 2012, and was to continue on July 24, 2012.

Reasonable Apprehension of Bias

5. On July 22, 2012, the defendant found out from an article published in the *Ottawa Citizen* (April 24, 2012) that Justice Beaudoin has financial and/or emotional ties both to the University of Ottawa, and the BLG law firm representing the University of Ottawa in the present proceeding. The article states that Justice Beaudoin donated money to the University of Ottawa to establish a scholarship in the name of his late son, that his late son was a lawyer at BLG, and that BLG named a boardroom after his late son.

6. On July 24, 2012, at the beginning of the continuation of the said refusals motion hearing, the defendant advised the Court that he was seeking to adjourn the hearing to allow him to prepare a motion to request that Justice Beaudoin recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

7. The transcript of the July 24, 2012 hearing (not yet available) will show that shortly after the defendant started presenting his argument that the refusals motion needed to be adjourned, Justice Beaudoin expressed that he wished the reasons for recusal to be given and that he would limit the reasons to five minutes.

8. Within the five minutes, Justice Beaudoin asked if the defendant was relying only on the June 20, 2012 hearing, then asked if the defendant was relying on something other than that.

9. The defendant stated that he relied on an ensemble of elements and that recently he had discovered media articles of further concern.

10. The defendant then quoted from the April 24, 2012 article of the *Ottawa Citizen*, but before the defendant could make further submissions, Justice Beaudoin expressed disapproval, impeded the defendant's attempt to proceed to explain his concerns, and called for a 15 minute recess after stating that if the defendant dares to again after recess bring forth the personal matter invoking the memory of the Justice's son he would be found in contempt of court.

11. Following recess, Justice Beaudoin was visibly angry. He made negative statements about the defendant's character, and stated that, in his opinion, he was not in conflict (of interest) with the University of Ottawa by a scholarship in the memory of his son, that it was a contract concluded between himself, involving the government of Ontario which had contributed equal funds, and that the University of Ottawa could not end the agreement.

12. Justice Beaudoin stated that in his judicial career he had never seen a gesture so disgusting. He added that the defendant had so provoked him that he would recuse himself from all matters involving the defendant. He stated that the question of costs would be dealt by another judge.

13. In this way, Justice Beaudoin avoided dealing with the defendant's submission of reasonable apprehension of bias. This also *a priori* deprived the defendant of the necessary remedies, firmly established in jurisprudence, that flow from a finding of reasonable apprehension of bias.

14. Reasonable apprehension of bias must be a fundamental concern of the courts. It directly impacts a litigant's rule of law right to a fair trial.

> The courts should be held to the highest standards of impartiality. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. The trial will be rendered unfair if the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer.
>
> ***R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, p. 3**

15. The same reasonable apprehension of bias principle and standards apply to interlocutory proceedings.

***Ontario Provincial Police v. MacDonald*, 2009 ONCA 805, para. 38**

Events Following Justice Beaudoin's Recusal

16. As particularized in the following paragraphs, starting at the July 24, 2012 motion hearing, in mid-motion, the defendant has continually sought to have a motion for a judicial determination of

reasonable apprehension of bias regarding Justice Beaudoin received, heard on its merits, and determined.

17. The plaintiff through her counsel wrote two letters to Regional Senior Justice Hackland, dated July 24, 2012, and July 25, 2012, in order to insist on scheduling immediate motion hearing dates even though the action is in case management and despite the difficult and unusual circumstances surrounding the recusal of Justice Beaudoin.

18. The defendant responded by writing to Regional Senior Justice Hackland on June 25, 2012, and raised several issues that needed to be addressed before any further motions were heard in the action, including a request for time to file the instant motion.

19. On short notice, the plaintiff scheduled a motion at a time for which the defendant had advised he had a medical appointment. This motion nonetheless proceeded to hearing on July 26, 2012, in the morning, in the absence of defendant. After hearing arguments from both the plaintiff and the University of Ottawa, Justice Smith adjourned the motion to the following day. Any relevance of the latter July 26, 2012 motion to the instant motion will be ascertained after the July 26, 2012 court transcript becomes available.

20. On July 26, 2012, in the afternoon, the defendant filed and served a motion for direction and to determine the scheduling order in which further motions should be heard, in view of the defendant's intent to file a motion for reasonable apprehension of bias of Justice Beaudoin, as soon as possible.

21. On July 27, 2012, the defendant's July 26, 2012 motion (for direction and to determine the scheduling order in which further motions should be heard) was heard first. It was adjourned by Justice Smith under protest from the defendant.

22. On July 27, 2012, the next issue at the hearing was the defendant's argument that his continuing refusals motion should be adjourned until after the defendant's intended motion for reasonable apprehension of bias of Justice Beaudoin is served, filed, heard on its merits, and determined. The adjournment was denied and the defendant's refusals motion continued, under protest from the defendant.

23. Some oral arguments were heard on July 27, 2012, and the refusals motion was continued in witting. The parties were given deadlines for written submissions. The submissions and reply are not completed at this time.

24. On July 30, 2012, the defendant served and filed a motion seeking a judicial determination of reasonable apprehension of bias regarding Justice Beaudoin, for the first available hearing date with a bilingual judge.

25. On July 31, 2012, Justice Smith made a case management decision (by letter dated July 31, 2012) to dismiss the defendant's July 30, 2012 motion for Reasonable Apprehension of Bias of

Justice Beaudoin, without a hearing on its merits and without providing reasons for dismissing the motion.

26. On August 1, 2012, the defendant wrote to Justice Smith to ask for clarification about the Justice's July 31, 2012 letter, regarding dismissing the defendant's July 30, 2012 motion. The defendant has not yet received an answer to this date.

27. On August 2, 2012, after having recused himself on July 24, 2012, Justice Beaudoin released Reasons for Decision on Motion which finalized decisions made from the bench on June 20, 2012, which omitted a material decision made from the bench on June 20, 2012, and which provided additional decisions to those made on June 20, 2012, in the motion that was scheduled by the Justice to continue on July 24, 2012.

Unique Circumstances

28. Normally, one of two situations is encountered. Either (a) a reasonable apprehension of bias motion is heard during an on-going process, in which case the judge of the proceedings at issue hears the motion for recusal, or (b) the issue of reasonable apprehension of bias is raised on appeal or on a motion seeking leave to appeal, as in the present case.

> ***R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, p. 3**
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA), para. 12, 19, 20-21, 33**
>
> ***Button v. Jones*, 2003 CanLII 16098 (ON SC), para. 16, 26**

29. In the case at bar, there are unique circumstances in which a judge has recused himself in mid-motion,

(a) without a motion for recusal having been brought or heard,
(b) without allowing an adjournment to allow a recusal motion to be brought,
(c) while not finding a reasonable apprehension of bias, but
(d) rather concluding an absence of conflict (of interest), and
(e) stating the reason of the recusal as being the defendant's in-court behaviour.

30. Following this, and while the motion is still on-going, the defendant brought a motion for the determination of reasonable apprehension of bias of Justice Beaudoin, but the defendant's motion was dismissed without a hearing on its merits by the newly appointed case management judge, Justice Smith.

31. Meanwhile, the judge who recused himself, released Reasons after recusing himself, to finalize decisions he had made from the bench before recusing himself, to make decisions he had not made from the bench, and while omitting a material decision he had made from the bench, in the on-going motion.

32. In addition, the situation is unique because the Court may have decided (although not explicitly by Order, and without hearing submissions) to effectively separate the defendant's refusals motion into two motions, with two different judges, that are to be argued and/or appealed separately, while actually the defendant's motion is on-going and there is some overlap and/or interaction of issues heard by the two different judges.

33. Although the defendant's motion is on-going, the opposing party takes the position that the time delay for seeking leave to appeal the rulings from the bench of June 20, 2012 of Justice Beaudoin has expired.

Consequences to Public Confidence in the Judicial System

34. Any circumstances where, to a reasonable and informed observer, the courts appear to dodge a grounded allegation of reasonable apprehension of bias are circumstances of the greatest concern regarding public trust in and functional integrity of the judicial system.

> An allegation that a judgment may be tainted by bias or by a reasonable apprehension of bias is most serious. That allegation calls into question the impartiality of the Court and its members and raises doubt on the public's perception of the Court's ability to render justice according to law.
>
> **Wewaykum Indian Band v. Canada, 2003 SCC 45 (CanLII), [2003] 2 SCR 259, para. 2**

35. The manner in which Justice Beadoin recused himself and Justice Smith's refusal to schedule the reasonable apprehension of bias motion, have deprived the defendant of a judicial determination of whether reasonable apprehension of bias existed. This represents a liability in the maintenance of public confidence in the judiciary. In the words of the Divisional Court:

> "The appearance of justice must be addressed"
>
> ***Authorson v. Canada*, [2002] O.J. No. 2050 (ON DC); para. 1**

36. A determination of reasonable apprehension of bias is needed both to restore harm to confidence in the judiciary and because a finding of reasonable apprehension of bias necessitates the remedies established in the jurisprudence to restore justice.

Grounds for Leave to Appeal the Decisions of Justice Beaudoin

37. The defendant seeks leave to appeal the decisions of Justice Beaudoin on the grounds of reasonable apprehension of bias.

38. The intent to bring a recusal motion on the grounds of reasonable apprehension of bias was brought as soon as the grounds alleged in support of the motion (predominantly the April 24, 2012

Ottawa Citizen article) were discovered by the defendant on July 22, 2012, at a the next hearing date of July 24, 2012 in the on-going motion.

Affidavit of Denis Rancourt, affirmed on August 8, 2012

39. Justice Beaudoin recused himself on July 24, 2012 without finding reasonable apprehension of bias and without hearing the intended bias motion on its merits. This in itself conflicts with established jurisprudence.

40. Once a party has expressed an intention to bring a recusal motion, it should be heard before a judge makes a further decision in the case affecting the rights of the parties.

***Button v. Jones*, 2003 CanLII 16098 (ON SC), para. 16**

41. When a reasonable apprehension of bias motion is brought in mid-proceedings, the judge of the proceeding is required by case law to hear the motion.

> What the case law requires is that the trial judge hear full argument on the recusal motion and do the best that he can to apply the law to the facts and to decide the case on its merits.

***Button v. Jones*, 2003 CanLII 16098 (ON SC), para. 26**

42. The defendant had a right to have a duly served and filed reasonable apprehension of bias motion heard.

> Where reasonable grounds to make such an allegation arise, counsel must be free to fearlessly raise such allegation.

***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); para. 12, citing another case.**

43. The Court's refusal to hear and/or avoidance of and/or dismissal of and/or refusal to schedule the defendant's bias motion while maintaining the impugned decisions allegedly tainted by reasonable apprehension of bias is in conflict with <u>all</u> the currently accepted jurisprudence on reasonable apprehension of bias.

44. Although Justice Beaudoin did recuse himself, the sought determination of reasonable apprehension of bias was not made. Had it been made, as required, rather than avoided, and if reasonable apprehension of bias had been found, then the *Superior Court of Justice* would have been bound by higher court decisions to stay any orders of Justice Beaudoin for *de novo* determinations (see below).

45. If there is reasonable apprehension of bias then there is incontrovertible reason to doubt the correctness of the orders made by Justice Beaudoin. If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. Indeed, the *Superior Court of Justice* is bound by the latter conclusion having been made in the higher courts.

> ***R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, p. 3**
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); paras. 19, 33**
>
> ***Ontario Provincial Police v. MacDonald*, 2009 ONCA 805; para. 38**

46. The Ontario Court of Appeal has stated it this way, by approval of other decisions:

> "… in any case where the impartiality of a judge is in question the appearance of the matter is just as important as the reality"

And concluded, again by citing another authority:

> … if he fails to disclose his interest and sits in judgement upon it, the decision cannot stand. … if the interest is not disclosed, the consequence is inevitable.
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); para. 19**

47. If reasonable apprehension of bias is found, the complained of judge's decisions cannot stand.

> … if a reasonable apprehension of bias arises, it colours the entire proceedings and it cannot be cured by the affirmation of the underlying decision. As stated in Pinochet and in Lannon, where there is a reasonable apprehension of bias, the decision cannot stand.
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); para. 33**

48. Also, the Court of Appeal applies the same standard for ruling on bias to both interlocutory and final decisions:

> … the above cases arose from challenges to final decisions rather than interlocutory rulings like the one at issue. In my view, this is not a meaningful difference. … Further, there is no reason why the Divisional Court should approach an interlocutory ruling on bias in a different manner than if the issue was raised after the completion of the proceedings.
>
> ***Ontario Provincial Police v. MacDonald*, 2009 ONCA 805; para. 38**

Extension of Time Not Necessary

49. Only on August 2, 2012, after having recused himself on July 24, 2012, did Justice Beaudoin release Reasons for Decision on Motion. These Reasons finalized decisions made from the bench on June 20, 2012, omitted a material decision made from the bench on June 20, 2012, and provided additional decisions to those made on June 20, 2012, in the defendant's motion which is on-going.

50. The starting point for time to seek leave to appeal is therefore August 2, 2012. The instant motion is filed within seven days, as required by the *Rules of Civil Procedure*. Nonetheless, in anticipation of an objection from the plaintiff, the following additional grounds are submitted regarding the August 2, 2012 start time.

51. The Transcript for the June 20, 2012 hearing, despite being urgently ordered immediately, did not become available until July 28, 2012, and then only in the version without interpretation from French to English, where the plaintiff's counsel is not bilingual.

52. The motion in question had a scheduled continuation hearing date of July 24, 2012, is on-going, and there is overlap of issues between the June 20, 2012 hearing and the on-going procedure.

53. With trials, there is a longstanding principle that procedural mid-trial rulings are appealable only by way of appeal from the final judgement upon conclusion of the trial. The rational for this principle is said to be obvious: The trial process would soon grind to a halt if mid-trial rulings were subject to immediate appeal. It is a question of fair administration of justice.

***Button v. Jones*, 2004 CarswellOnt 4445, 73 O.R. (3d) 364, paras. 8-10**

54. The defendant submits that the same rational generally applies to motions, where it is common for decisions from the bench to be finalized in the concluding reasons. Otherwise, the motion process could be "made to grind to a halt" for motions that extend beyond one hearing day. It would allow expanded, needless, and costly interlocutory procedures.

55. The defendant submits that the circumstances of the instant case are such that a just and efficient administration of justice would have been best served if any motion seeking leave to appeal was made after the completion of the hearings in the motion, had the first motion judge not recused himself, and that, therefore, an extension of time should not be required.

56. The self-represented defendant had the expectation that an appeal time limit would start after the conclusion of the motion hearings, and had a firm and sustained intent to seek leave to appeal since June 20, 2012. On June 22, 2012, the defendant requested the June 20, 2012 court transcript to be obtained "as soon as possible" for "appeal."

Affidavit of Denis Rancourt, affirmed on August 8, 2012

In the Alternative, Grounds to Extend the Time

57. In the alternative, if a time extension is needed to appeal the June 20, 2012 decisions of Justice Beaudoin, then the following grounds are submitted in support of a time extension.

Time extension not required for decisions made after June 20, 2012

58. There are material discrepancies between rulings made from the bench on June 20, 2012, and the August 2, 2012 Reasons released after the Justice had recused himself on July 24, 2012. Justice Beaudoin made decisions in his August 2, 2012 Reasons which were not made on June 20, 2012. These include:

(a) The refusals questions to Allan Rock about medical information practices at the university (Issue 13, Refusals Chart) were not decided on June 20, 2012; and
(b) The refusals request to Allan Rock for all communications about the David Scott letter (Notice of Examination, para. 2) was not decided on June 20, 2012.

59. The latter August 2, 2012 decisions of Justice Beaudoin are within the seven day time limit to seek leave to appeal.

Test for time extension: (A) Justice above all other considerations

60. A foundational authority for time extensions on appeals has:

> … to do justice in the particular case is above all other considerations. (citing another case)
>
> ***Miller Co. v. Alden*, 1979 CarswellOnt 461, 13 C.P.C. 63 (Court of Appeal), paras. 4**

61. It would be unjust to deprive the defendant of a determination on reasonable apprehension of bias for a technicality related to time limitation.

> … the area of apparent bias is one 'in which legal technicality is particularly to be avoided'.
>
> ***Benedict v. The Queen*, 2000 Canlii 16884 (ON CA); para. 17**

62. The self-represented litigant expected that time for filing leave to appeal on interim decisions from the bench in an on-going motion would not start until the motion hearings were completed.

> **Affidavit of Denis Rancourt, affirmed on August 8, 2012**

Test for time extension: (B) Additional considerations for time extensions

63. In evaluating the justice of a time extension,

> … a number of considerations are viewed as important, the emphasis given to them in each case varying with the circumstances. They include the existence of a bona fide intention to appeal, the length of the delay, prejudice to the other party, whether it can be compensated by costs and the merits of the appeal. [Emphasis added]
>
> ***Miller Co. v. Alden*, 1979 CarswellOnt 461, 13 C.P.C. 63 (Court of Appeal), paras. 5**

Existence of a bona fide intension to appeal

64. The defendant had since June 20, 2012 and has sustained a bona fide intention to seek leave to appeal the June 20, 2012 decisions of Justice Beaudoin. The transcripts were ordered immediately for the purpose of appeal.

Affidavit of Denis Rancourt, affirmed on August 8, 2012, Exhibit F

Length of the delay

65. The delay to the filing of the defendant's July 26 and July 30, 2012 motions which each could have resolved the reasonable apprehension of bias matter is approximately one month. The delay occurred during the continuation of the motion in question. Had a motion date been available sooner for the continuation, the delay would have been shortened accordingly because the defendant fully intended to seek leave to appeal as soon as the motion was completed.

Prejudice to the other party and compensation by costs

66. The impacted motions are motions of the defendant: Defendant's refusals motion in the defendant's motion to stay the action for maintenance and champerty, as abuse of process. The maintenance and champerty motion will provide a final decision, appealable to the Court of Appeal. It is a substantive motion that could end the action.

> The question of whether the action can be stayed as an abuse of process because it is based on a champertous agreement was finally decided by Klowak J. That issue, although not a defence on the merits, is one that could finally determine the result of the action in favour of Stephenson.

***Aecon Buildings v. Brampton (City)*, 2010 ONCA 773 (CanLII), para. 2**

67. Therefore, not resolving the reasonable apprehension of bias matter would greatly prejudice the defendant, while determining the matter would not irreparably harm the plaintiff.

68. The plaintiff may argue that an appeal would delay a resolution to the defamation action and that the complained of blogs continue to be accessible on the internet. This argument has several flaws:

(a) It presupposes that the plaintiff will be successful in the defamation action, that the plaintiff's claim has superior merit to the merit of the defendant's defence; and
(b) The defamation claim is for $1 million and already seeks complete reparation from damages; and
(c) The plaintiff has not sought an injunction for posted materials claimed to be egregiously defamatory; and
(d) The plaintiff is suffering no costs, as her entire private litigation is fully funded by the University of Ottawa, without a spending limit, according to sworn testimony from university president Allan Rock.

Merits of the appeal – Grounds for reasonable apprehension of bias of Justice Beaudoin

69. In case conferences prior to June 20, 2012, Justice Beaudoin made statements that, in the complete circumstances that have emerged, attract a reasonable apprehension of bias.

70. In the hearing of June 20, 2012, and in prior hearings (case conferences), Justice Beaudoin made statements and/or procedural determinations that attract a reasonable apprehension of bias.

71. As one particular, the June 20, 2012 findings of credibility of the defendant were contrary to the defendant's affidavit evidence that was not cross-examined, and were made in the absence of any counter evidence properly before the court.

72. An article published in the *Ottawa Citizen* (April 24, 2012) reports that Justice Beaudoin has financial and/or emotional ties both to the University of Ottawa, and the BLG law firm representing the University of Ottawa in the present proceeding. The article states that Justice Beaudoin donated money to the University of Ottawa to establish a scholarship in the name of his late son, that his late son was a lawyer at BLG, and that BLG named a boardroom after his late son.

Affidavit of Denis Rancourt, affirmed on August 8, 2012, Exhibit H

73. On July 24, 2012, at the beginning of the continuation of the said refusals motion hearing, the defendant advised the Court that he was seeking to adjourn the hearing to allow him to prepare a motion to request that Justice Beaudoin recuse himself from the case on the grounds of reasonable apprehension of bias and appearance of conflict of interest.

74. On July 24, 2012, Justice Beaudoin avoided dealing with the defendant's reasonable apprehension of bias submission by recusing himself, both from the on-going motion and from all judicial dealings with the defendant, without finding that there was reasonable apprehension of bias.

75. In the hearing of July 24, 2012, the transcript will show that Justice Beaudoin made statements that confirm a reasonable apprehension of bias. Justice Beaudoin also stated the existence of a contract between himself and the University of Ottawa.

76. The contract is a "terms of reference for an endowed fund" at a public university and names Justice Robert Beaudoin as the Donor contact for the donor party. The endowed scholarship fund is in the name of Justice Beaudoin's late son.

77. One of the refusals issues in the defendant's refusals motion in the maintenance and champerty motion that was before Justice Beaudoin concerns a letter to the defendant from Mr. David W. Scott, Co-Chairperson of the BLG law firm, and this refusals issue is the object of the University's affiant that was not allowed to be cross-examined by the defendant, in a June 20, 2012 ruling from the bench of Justice Beaudoin. The above-noted *Ottawa Citizen* article of April

24, 2012 reports that BLG has named a boardroom in honour of Justice Beaudoin's late son and that this is important to Justice Beaudoin.

78. The University of Ottawa is represented by BLG in the defendant's maintenance and champerty motion where it was granted intervener status by Justice Beaudoin.

79. Image and reputation are a common feature which link Justice Beaudoin's media published efforts to preserve the memory of his son and to build his late son's legacy with a University of Ottawa scholarship fund on the one hand, with the accusation of maintenance and champerty against the University of Ottawa on the other hand. The scholarship's prestige is tied to the image and reputation of the University, which in turn is potentially impacted by the decisions in the maintenance and champerty motion.

80. As such, there is an appearance that Justice Beaudoin has a common interest with the University of Ottawa to not allow probing questions of motive (for the maintenance) in the defendant's refusals motion and to not find maintenance or champerty.

81. The scholarship fund invites donations and the "The University of Ottawa may invest the capital as it sees fit" (terms of reference). Donations both depend on reputation and image of the University and assure the longevity and status of the Endowed Fund named after Justice Beaudoin's late son.

82. The terms of reference of the university scholarship fund are accessible to the public and show an active contract with Justice Beaudoin regarding future cicumstances that may impact the fund's use.

83. Therefore, there is an appearance that Justice Beaudoin had an interest in the outcome of the champerty motion and/or a relevant interest in its subject matter.

84. Justice Beaudoin did not disclose the scholarship fund or the BLG boardroom.

85. The fact that Justice Beaudoin recused himself on July 24, 2012, without finding a reasonable apprehension of bias, while continuing in the same court session to make findings about the defendant and the defendant's character, will be further evidence submitted in support of a reasonable apprehension of bias.

86. The fact that Justice Beaudoin released decisions in the matter on August 2, 2012, after recusing himself on July 24, 2012, while stating in that session (the Transcript will show) that he could not act in a judicial manner towards the defendant, will be further evidence relied on to in support of reasonable apprehension of bias.

Grounds for Leave to Appeal the Decisions of Justice Smith

87. The defendant seeks leave to appeal the case management decision, made by letter of July 31, 2012 of Justice Robert J. Smith, to dismiss the defendant's July 30, 2012 motion for Reasonable Apprehension of Bias regarding Justice Beaudoin, without a hearing on its merits and without reasons for dismissing the motion. The chronology of the matters is given above.

88. While Rule 77 of the *Rules of Civil Procedure* allows simplified procedures for determining procedural motions at case conferences, nothing in Rule 77 allows a case management judge:

(a) to prevent a duly served and filed motion from being heard on its merits; and/or
(b) to definitively dismiss a duly served and filed motion without it being heard on its merits.

89. Rules 37 and 39 describe a litigant's procedural rights regarding the filing and hearing of a motion in an action. The motion was duly served and filed. The filing was accepted by the Registrar. The defendant has not waived his right to bring a motion.

90. In this case, the decision of Justice Smith impedes the defendant from obtaining a judicial determination as to whether there was reasonable apprehension of bias in the proceedings with Justice Beaudoin. Justice Smith's decision, therefore, is not simply a matter of the defendant's procedural right to bring a motion, but it also more importantly impacts the defendant's rights to a fair hearing and an impartial judge. It violates the *audi alteram partem* principle of natural justice.

91. Justice Smith's reason for his decision is "I have no jurisdiction to set aside decisions of Beaudoin J." This is contrary to case law which requires a reasonable apprehension of bias motion brought in mid-proceeding to be heard by the Court where the motion is brought. By the same judge, in fact. Here, the Justice complained of has recused himself without hearing the motion and there is no rule or statutory provision which prevents another judge from the same Court from hearing the motion.

92. The reasonable apprehension of bias motion, brought in mid-motion, and all of its consequences must be dealt with by the same Court where the impugned proceeding is being heard.

> If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision. A reasonable apprehension of bias, if it arises, colours the entire trial proceedings and cannot be cured by the correctness of the subsequent decision. [Emphasis added]
>
> ***R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, p. 3**

93. There is another reason to doubt Justice Smith's reason that "I have no jurisdiction to set aside decisions of Beaudoin J." At the hearing of July 27, 2012 in the on-going defendant's refusals motion, when the defendant, who is proceeding under protest, pointed to a prior decision of Justice Beaudoin which impacted a determination which Justice Smith was to make, the Justice decided that he would determine the prior decision of Justice beaudoin *de novo*, with the agreement of the plaintiff.

94. All the conditions for granting Leave to Appeal are met regarding Justice Smith's decision:
    (a) The decision was squarely contrary to the *Rules of Civil Procedure* regarding the procedural right to bring a motion; and
    (b) The decision was made without a hearing; and
    (c) The reason for the decision, regarding lack of jurisdiction, is inconsistent with a conflicting *Supreme Court of Canada* decision; and
    (d) The reason for the decision, regarding lack of jurisdiction, is inconsistent with the Justice's own decision to determine a impugned prior decision *de novo*; and
    (e) The decision represents a denial of natural justice by depriving the defendant of a determination regarding reasonable apprehension of bias; and
    (f) The decision impinges on the defendant's rule of law right to a fair trial; and
    (g) The decision enables Justice Beaudoin to dodge his jurisprudence duty to hear the bias motion, thereby constituting an improper administration of justice; and
    (h) The decision is of importance beyond the individual case, as it goes to the public's trust in the judiciary.

Other Specific Grounds for the Motion

95. Rules 1.04, 3.02, 4.1, 34, 34.10, 37, 39, 57, 58, 62, 63, and 77 of the Rules of Civil Procedure;

96. 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. The affidavit of Denis Rancourt affirmed on August 8, 2012; and

2. The transcripts of case conferences with Justice Beaudoin that the defendant files; and

3. The transcript of the June 20, 2012 court hearing with Justice Beaudoin; and

4. The transcript of the July 24, 2012 court hearing with Justice Beaudoin; and

5. The transcript of the July 26, 2012 court hearing with Justice Smith (defendant was absent from the hearing); and

6. The transcript of the July 27, 2012 court hearing with Justice Smith; and

7. The defendant's motion record and factum in the defendant's refusals motion in the maintenance and champerty motion; and

8. The letters to Regional Senior Justice Hackland (plaintiff's letters of July 24 and 25, 2012; defendant's letter of July 25, 2012); and

9. The defendant's Notice of Motion of July 26, 2012 (motion for directions and order of motions); and

10. The defendant's Notice of Motion and supporting Affidavit of July 30, 2012 (motion for Reasonable Apprehension of Bias); and

11. July 31, 2012 decision letter of Justice Robert Smith; and

12. August 1, 2012 letter of the defendant to Justice Smith; and

13. August 2, 2012 Reasons for Decision on Motion of Justice Beaudoin; and

14. Communications between the defendant and the plaintiff's counsel and/or counsel for the University of Ottawa as the Defendant may advise and this Honourable Court may permit.

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

Court File No.: C56905

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

FACTUM OF THE APPELLANT

May 9, 2013

Denis Rancourt
(Appellant)

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COURT OF APPEAL FOR ONTARIO

BETWEEN:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

and

DENIS RANCOURT

Defendant
(Appellant)

FACTUM OF THE APPELLANT

PART I—INTRODUCTION

1. The Appellant (Defendant), Denis Rancourt, appeals from a decision in the Ontario Superior Court of Justice. The decision was to dismiss his motion ("impugned motion") to stay or dismiss a defamation action on the grounds that the action is an abuse of process as maintenance and champerty. As such, the lower court's decision is a final decision, with right of appeal to the Court of Appeal.

2. The Respondent (Plaintiff) is Joanne St. Lewis. The alleged maintainer of the Plaintiff in the defamation action, the University of Ottawa, was granted permission to intervene in the impugned motion, and is thus a responding party in the instant appeal.

PART II—OVERVIEW

3. The Appellant submits that the judicial administration and judgment of the impugned motion contain fatal errors (apparent bias, time limitation, law of maintenance, admissibility of evidence, trial of an issue) which have deprived the Appellant of his rights to fair and just treatment. Furthermore, the impugned decision allows a costly private defamation action to be pursued against the Appellant, while being funded without impediment by the University of Ottawa using public money.

4. The $1,000,000 private defamation action at the heart of the litigation is for a blog post. The action was brought after third-party funding was guaranteed, more than two years after a critical blog post was published, presents no evidence of actual damage to reputation, and opportunistically uses a recent blog post's racial language. It is funded by proxy to suppress critical reporting about the funding institution (the "U of O Watch" blog). According to testimony, the decision for unlimited funding of the Respondent's lawsuit was made at a 30-minute meeting without any of the persons involved having read the blog post complained of, only its title appearing in a Google search result.

5. The Appellant is a caustic critic of the University of Ottawa ("University") and its management: In particular through his "U of O Watch" blog, on-line since 2007. He was a tenured Full Professor of physics at the University until he was dismissed in 2009. His dismissal case is currently in binding labour arbitration between his union and the University.

6. In a February 2011 U of O Watch blog post, the Appellant used the Malcolm X phrase “house negro”, a political term meaning privileged servitude to hierarchical superiors in minimizing the reality of institutional racism, in criticizing the academic work of tenured Assistant Professor of law Joanne St. Lewis (Respondent) at the University.

7. The Appellant had made all the same (and more) criticisms of the academic work of the Respondent in a December 2008 blog post, without using the term “house negro”, and without the benefit of access to information documents made public in 2011.

8. Soon after the Respondent was made aware by the Appellant of the February 2011 “house negro” blog post, on February 14, 2011 she wrote to the University president:

> Hi there Allan,
> I make it a practice to delete the communications from Mr. Rancourt and have done that in this case. lt has spared me a great deal of aggravation in the past.
> Do let me know if you want me to do anything. I will happy to fit into whatever strategy you decide but until then I intend to make no comment.
> Do take care,
> Joanne

9. The University guaranteed the Respondent unlimited University funding for a lawsuit against the Appellant regarding the “house negro” blog post and suggested Mr. Richard Dearden as a counsel to the Respondent. Following this, in April 2011 or later, the Respondent retained Mr. Dearden and then decided to pursue the $1,000,000 private defamation lawsuit against the Appellant, more than two years after the 2008 blog post was published.

10. The Respondent's June 2011 Statement of Claim states that the Respondent will donate half of awarded punitive damages to a University scholarship endowment fund.[1] No evidence for actual damage to the Respondent's reputation is claimed, nor was any such evidence disclosed in discovery.

11. The Appellant's Statement of Defence contains the fair comment defence, and a *Charter* defence that the action is a lawsuit by proxy using public funds. As soon as the University disclosed that it was funding the lawsuit, the Appellant brought the impugned motion to stay or dismiss the action on the grounds of abuse of process for maintenance and champerty.

PART III—FACTS

12. **The Appellant submits that there are five fatal errors with the impugned motion, as follows:**

(a) the motion is tainted with reasonable apprehension of bias;

(b) the imposed time limitation for oral argument of the Appellant at the hearing was unfair;

(c) the motions judge did not consider determinative evidence for maintenance, and misdirecting himself on the law of maintenance and champerty;

(d) the motions judge did not admit material evidence that was in evidence, and/or that should have been admitted; and

(e) the motions judge should have directed trial of the motion and/or of issues in the motion.

[1] **[Appeal Book Tab 12-2]**: Statement of Claim, p.23, at para. 60.

REASONABLE APPREHENSION OF BIAS

13. Overview: The process of the impugned motion is substantively pervaded by a reasonable apprehension of bias, based on cogent evidence and a judge who recused himself by stating that he could not be impartial towards the Appellant moving forward. The lower court circumvented ever making a judicial determination of apparent bias. The impugned decision relies heavily and explicitly on the recused judge's findings, released after the judge recused himself.

14. The Appellant cross-examined several affiants and witnesses for the impugned motion, including the president, the dean of the law faculty, and the chair of the board of governors of the University of Ottawa. This was followed by an Appellant's refusals and productions motion resulting from the cross-examinations.

15. During the refusals motion hearings, the Appellant discovered that the refusals motions and case management judge, Mr. Justice Robert Beaudoin, had a financial contract with the University of Ottawa, and a personal interest in the BLG law firm which represented the University. The appellant sought a judicial determination of reasonable apprehension of bias: On July 24, 2012, Beaudoin J. recused himself for a given reason other than apparent bias, and stated that he could not be impartial moving forward.[2]

[2] **[Appeal Book Tab 13-2]**: Excerpt of transcript of court hearing of July 24, 2012, Justice Beaudoin, p. 34-37.

16. The Appellant sought a judicial determination of apparent bias through motions, but the lower court circumvented ever providing a judicial determination of reasonable apprehension of bias of Beaudoin J.

17. A new case management judge was named, Mr. Justice Robert Smith, who continued the refusals motion(s), and heard and determined the impugned motion. Smith J. in the impugned decision relies extensively on a refusals motion decision of Beaudoin J.,[3] which was released on August 2, 2012, after Beaudoin J. recused himself on July 24, 2012 by finding that he could not be impartial moving forward.

18. The impugned Reasons also rely on case management decisions made by judge Beaudoin J., made prior to Beaudoin J. recusing himself on July 24, 2012.[4]

19. The cogent evidence supporting a reasonable apprehension of bias includes:[5]

(a) A terms of reference contract for a law faculty scholarship endowment fund between Beaudoin J. and the University of Ottawa, an intervening party;

(b) A boardroom named in honour of Beaudoin J.'s deceased son, at the law firm representing the University of Ottawa;

(c) A newspaper article quoting Beaudoin J. expressing the personal and emotional importance to him of the said scholarship fund and of the said boardroom honour;

[3] **[Appeal Book Tab 7]**: Impugned Reasons, Smith J., released March 13, 2013, at paras. 27, 30-31, 34-35, 45-50, 52, 55, 62, 66, 71-72, 76.
[4] **[Appeal Book Tab 7]**: Impugned Reasons, Smith J., released March 13, 2013, at paras. 20, 22, 25, 49.
[5] **[Appeal Book Tab 13-5]**: Excerpt of July 24, 2012 court transcript, p. 32-33; **[Appeal Book Tab 14-5a]**: Terms of Reference contract; **[Appeal Book Tab 14-5b]**: Newspaper article read in court; and **[Exhibit Book Tab 2-8]**: July 30, 2012 affidavit of Denis Rancourt.

(d) The fact that, at the hearing where the bias concern was first raised, Beaudoin J. threatened the Appellant with contempt of court if the Appellant continued to advance the concern.

20. The cogent evidence supporting an appearance of bias occurred in circumstances where Beaudoin J. had not disclosed his ties to the intervener, the University of Ottawa, and to its counsel.[6]

TIME LIMITATION AT THE HEARING

21. Overview: The presiding judge had, prior to the hearing, set one day of hearing, over sustained objections of the self-represented Appellant. Two additional substantive issues arose: one described in the motion factum (directing trial of the motion/issues), the other described in the motion confirmation (adjourning to make an application to the Supreme Court of Canada). The motions judge imposed a strict time limit on the Appellant to make oral arguments, thereby effectively not allowing the Appellant to proceed beyond completion of the two additional issues.

22. Smith J. imposed a strict time limit of one day for the entire hearing, over the objections of the Appellant, while not adjusting this time limit (originally decided in a pre-hearing case conference) for two preliminary issues which needed to be heard:[7]

[6] **[Exhibit Book Tab 2-8]**: July 30, 2012 affidavit of Denis Rancourt.
[7] **[Appeal Book Tab 13-7]**: Excerpts from the December 13, 2012 court transcript of the impugned motion.

(a) An Appellant's request to adjourn in order to allow a notice for leave to appeal to the Supreme Court of Canada to be filed, a matter that was ruled on after one hour; and

(b) An Appellant's request that the impugned motion be directed into trial of an issue, a matter which required the Appellant's remaining allotted time at the hearing.

23. Time limitation at the December 13, 2013 hearing of the impugned motion can best be seen in the court transcript as:

(a) The first matter (adjournment to make an application to the Supreme Court) took one hour, and the judge made his ruling on the record starting at 11:00 am (p. 37 l. 12); [8]

(b) After the ruling was pronounced, the following exchange occurred (p. 39-40):

> **M. RANCOURT:** La prochaine question c'est, si on veut, ma motion pour que cette motion soit amenée à procès.
> **LA COUR:** Et ça, ça va être une partie de votre -- vos représentations dans votre motion. Mais je veux pas entendre -- au tout, c'est pas une matière préliminaire.
> Donc, selon vous, ça devrait être un procès pour déterminer une question. Je vais vous entendre ---
> **M. RANCOURT:** Oui.
> **LA COUR:** --- mais ça c'est -- ça fait partie de votre représentation.
> **M. RANCOURT:** Donc, vous voulez que -- entendre ça au début -- au début de la motion comme telle.
> **LA COUR:** Au début et à la fin.
> **M. RANCOURT:** Parce que ce que je vais -- non, ça peut pas être à la fin parce que je demande ---
> **LA COUR:** Oui.
> **M. RANCOURT:** --- que la motion ne soit pas faite sous cette forme sur papier ---
> **LA COUR:** Oui.
> **M. RANCOURT:** --- mais qu'elle soit faite sous forme procès.
> **LA COUR:** O.k.
> **M. RANCOURT:** Donc, c'est évident que cette question doit être entendue en premier.
> **LA COUR:** Ça c'est à vous. Ça c'est à vous. ...

(c) Thus, the Appellant next made his oral arguments about the second matter (directing trial of the motion);

[8] **[Appeal Book Tab 13-7]**: December 13, 2012 court transcript of the impugned motion. p. 37-42.

(d) The second matter ended at 1:10 pm, and the motions judge ruled that this would be the end of the Appellant's oral arguments (p. 122 l. 23 to p. 123 l. 5):[9]

> **M. RANCOURT:** ... Donc, c'est ça le -- c'est ça, comme ça qu'on complète la chose.
> Donc, c'est pour ça qu'on a besoin d'un procès.
> **LA COUR:** O.k.
> **M. RANCOURT:** C'est pour ça qu'on a besoin d'un procès, monsieur le juge, c'est pour justement évaluer ces questions-là.
> **LA COUR:** O.k. Donc, c'est tout. Vous aurez votre droit de réplique. We'll adjourn until 2:00 and we'll have Mr. Deardon who will be up to bat.
> **THE REGISTRAR:** Order, all rise. À l'ordre, levez-vous.

(e) Thus, the Applicant was not heard on the main motion per say, nor on his motion to admit his May 23, 2012 affidavit.

24. Smith J. did not allow the Appellant time for an oral argument regarding admissibility of the Appellant's May 23, 2012 affidavit that was submitted after cross-examinations, and imposed that the entire hearing of the impugned motion would be completed in the absence of a ruling on admissibility of the affidavits.[10]

EVIDENCE OF MAINTENANCE AND CHAMPERTY

25. Overview: There is ample material evidence for improper motives of both the Respondent and the University regarding maintenance. Motive is a determinative factor in maintenance, especially regarding the maintained litigant's prior intent to litigate. The impugned decision makes no mention/use of the said material evidence, despite such evidence having been duly identified as exhibits in examinations, given by the respondents in transcripts of examinations, disclosed by the Respondent in discovery, and filed by the Appellant in supporting

[9] **[Appeal Book Tab 13-7]**: December 13, 2012 court transcript of the impugned motion. p. 122-123.
[10] **[Exhibit Book Tab 7]**: Impugned Reasons; **[Appeal Book Tab 13-7]**: Excerpts from the December 13, 2012 court transcript of the impugned motion, at p. 123 l. 23-29, and p. 221 l. 6-23.

affidavits. This evidence shows that the Respondent did not (for years and months) decide to litigate until after she was guaranteed unlimited funding by the University; and shows that the University suggested her choice of counsel, a choice decided at a meeting with President Rock.

26. The Appellant started his "U of O Watch" blog in May 2007, while he was a tenured Full Professor at the University. Mr. Allan Rock started his first mandate as president of the University on July 15, 2008.

27. On December 6, 2008, the Appellant published a U of O Watch blog post entitled "Rock Administration Prefers to Confuse 'Independent' with 'Internal' Rather Than Address Systemic Racism". The blog post extensively and directly questions the Respondent's professional ethics, in relation to a Respondent's November 2008 published report critical of a November 2008 student union report about systemic racism on campus. The Appellant at the time advised the Respondent about the publication of the blog post.[11, 12]

28. The Appellant was dismissed by President Rock on April 1, 2009.[13] On April 18-19, 2009, after the dismissal, President Rock had a five-part email exchange with Bruce Feldthusen about finding persons to help create a negative media image of the Appellant ("How best to get the facts out?").[14] Mr. Feldthusen is a protagonist, with Mr. Rock, in providing the 2011 funding for the Respondent's private lawsuit (below). This email exchange was identified as

[11] **[Appeal Book Tab 14-11]**: December 6, 2008 U of O Watch blog post; and December 7, 2008 email to the Respondent.
[12] **[Appeal Book Tab 12-3]**: Statement of Defence, paras. 27-28.
[13] The dismissal was covered internationally in the media at the time: *Globe and Mail*, *New York Times*, etc.
[14] **[Appeal Book Tab 14-14]**: April 18-19, 2009 email exchange between Allan Rock and Bruce Feldthusen.

an exhibit by Mr. Rock, yet it was found to be not admissible by Smith J. (impugned Reasons, at para. 59).

29. On April 20, 2009, after the dismissal of the Appellant, President Rock wrote to his chief of staff and to his head of communications to complain about the Appellant's published "toxic rants". This email was identified as an exhibit by Mr. Rock, yet it was found to be not admissible by Smith J. (impugned Reasons, at para. 59).[15] President Rock refused to answer all questions about his "view about"/"view of" the Appellant in his cross-examination, and the refusals were upheld in the August 2, 2012 Reasons of Beaudoin J.[16]

30. On February 11, 2011, the Appellant published his U of O Watch blog post which is complained of in the defamation action, entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?"[17] The Appellant immediately advised the Respondent and Mr. Rock of the publication.

31. On February 14, 2011, at 3:28 PM, the Respondent received an email from former student Lia Tarachansky, about the February 11, 2011 U of O Watch blog post, stating:[18]

> … where he refers to you in derogatory and racist language is really disturbing. I wanted to write to you to say I'm sorry that you have been forced to endure such a disgusting attack. [Emphasis added.]

[15] **[Appeal Book Tab 14-15]**: April 20, 2009 email from Allan Rock to staff.
[16] **[Appeal Book Tab 13-16]**: Excerpt of examination transcript of Allan Rock, p. 110 to 114; **[Book of Authorities Tab 11]**: *St. Lewis v. Rancourt*, 2012 ONSC 4494, (Justice Beaudoin, released August 2, 2012), at para. 38.
[17] **[Appeal Book Tab 14-17]**: February 11, 2011 U of O Watch blog post.
[18] **[Appeal Book Tab 14-18]**: February 14, 2011 emails of Respondent with Lia Tarachansky -- **This document was also identified as Exhibit 1 in the April 23, 2012 cross-examination of Joanne St. Lewis, see [Exhibit Book Tab 4-3].**

The Respondent responded to Ms. Tarachansky at 5:16 PM on the same day (same document). This email exchange was disclosed by the Respondent in discovery, yet it was found to be not admissible by Smith J. (impugned Reasons, para. 59).

32. On February 14, 2011, at 5:06 PM, after receiving the email from Ms. Tarachansky, the Respondent wrote to President Rock about the Appellant's February 11, 2011 blog post:[19]

> Do let me know if you want me to do anything. I will happy to fit into whatever strategy you decide but until then I intend to make no comment. [Emphasis added.]

This email was disclosed by the Respondent in discovery, yet it was found to be not admissible by Smith J. (impugned Reasons, para. 59).

33. On Friday April 8, 2011, the Respondent did a Google search of her own name and found that the February 11, 2011 U of O Watch blog post was on the first page of the Google search results, with the title of the blog post featured in the Google results. This made the Respondent furious: "my head was on fire".[20]

34. On Monday April 11, 2011, the Respondent went to meet her dean, dean of law Bruce Feldthusen, to discuss her great concern about the Google search results. The dean, who is an executive officer of the University, has testified that at that day's meeting with the

[19] **[Appeal Book Tab 14-19]**: Respondent's February 14, 2011 email to President Rock.
[20] **[Appeal Book Tab 13-20]**: Excerpt from the transcript of cross-examination of Joanne St. Lewis, p. 57 l.19 to p.59 l.8.

Respondent it was he who suggested that the University might provide assistance, and that it was he who suggested Mr. Richard Dearden as a counsel:[21]

> 59. Q. Was there anything else of substance that was discussed at that meeting?
> A. Well, we did discuss Professor St. Lewis was determined to do something about it, to put a stop to it. And at my suggestion, I said that we should go and see the President of the university to see what assistance the university would be prepared to offer her. And we discussed possible remedies. I really don't remember the full depth of the discussion, but I do remember we discussed defamation. And I do remember, as I say in my Affidavit, that I had mentioned possibly among others, but I had mentioned Mr. Dearden because I knew him to be an expert in this area.

35. On April 11, 2011, Dean Bruce Feldthusen, through a law faculty assistant, contacted the president's office to schedule a meeting with President Rock. The President's Outlook Schedule shows that: on April 11, 2011 Mr. Rock scheduled a meeting for that Friday April 15, 2011, which was to last 30 minutes, starting at 11:00 AM, having "Required Attendees" Allan Rock and Bruce Feldthusen, and "Optional Attendees" Joanne St. Lewis and Richard Dearden.[22, 23]

36. On April 15, 2011, the foreseen meeting between Mr. Feldthusen and Mr. Rock took place. Optional attendee Ms. St. Lewis was also present. Mr. Dearden was not present. Dean Feldthusen testified as follows regarding material aspects of this meeting:

(a) No firm prior intention of Respondent to litigate; Dean makes request for the funding:[24]

[21] **[Appeal Book Tab 13-21]**: Excerpt from the transcript of cross-examination of Bruce Feldthusen, p. 13 l.25 to p.14 l.12.
[22] **[Appeal Book Tab 14-22]**: Exhibit 3, Cross-examination of Joanne St. Lewis: President's Outlook schedule.
[23] **[Appeal Book Tab 15-23]**: Documents provided by Allan Rock prior to his cross-examination -- Impugned motion record pages 199-204.
[24] **[Appeal Book Tab 13-24]**: Excerpt of cross-examination transcript of Bruce Feldthusen, p. 21 l. 24 to p. 22 l. 16.

> 93. Q. So, if I understand correctly, Professor St. Lewis by this time had decided firmly that she was going to litigate this matter?
> A. I think that would be an overstatement, but she was certainly feeling out her options.
> 94. Q. Did Professor St. Lewis make any requests at the meeting?
> A. Well, I made a request which -- I requested that the university support her in her efforts to put a stop to this defamation.
> 95. Q. When you say "support her", could you be more specific?
> A. Well, support her financially, absolutely.
> 96. Q. How did Allan Rock respond to your request?
> A. Well, I think Allan Rock was as upset -- well, maybe not as upset as Professor St. Lewis, but as upset as I was about this turn of affairs. And he was definitely interested in supporting Professor St. Lewis. …

(b) Dean does not know if Respondent was to contact Mr. Dearden; but states obvious it would be "a client":[25]

> 195. Q. No, but you mentioned just now that there was mention at the meeting that Mr. Dearden would be consulted.
> A. Correct.
> 196. Q. What did you mean by that?
> A. What did I mean by what, I'm sorry, I don't ---
> 197. Q. You said "correct" as your answer. Is that correct?
> A. Correct, that Mr. Dearden would be consulted.
> 198. Q. Thank you. And who would consult Mr. Dearden?
> A. Well, I don't know. I guess I'll just leave it at that. I think it's fairly obvious it would be a client that would consult Mr. Dearden.
> 199. Q. But you don't know?
> A. Correct.
> 200. Q. Did Mr. Rock approve of the choice of Mr. Dearden?
> A. I believe he was favourably disposed to Mr. Dearden.
> 201. Q. And you yourself also recommended it?
> A. I certainly did.

(c) Dean clarifies his answer on re-examination by Mr. Dearden:[26]

> 220. Q. At one point in your Cross-Examination, Dean, you said a client would consult me, Rick Dearden. Who was the client you were referring to when you gave that answer to Mr. Rancourt?
> A. Oh, Professor St. Lewis.

[25] **[Appeal Book Tab 13-24]**: Excerpt of cross-examination transcript of Bruce Feldthusen, p. 43 l. 21 to p. 44 l. 18.
[26] **[Appeal Book Tab 13-24]**: Excerpt of cross-examination transcript of Bruce Feldthusen, p. 48 l. 10-14.

37. Mr. Rock testified that he granted funding for the Respondent's private defamation lawsuit about the "house negro" blog post at the April 15, 2011 meeting itself, and "without a cap" (without a spending limit). It is not contested that the litigation is funded without a spending limit.[27]

38. The Respondent testified that she engaged her counsel Mr. Dearden on April 15, 2011, after the morning meeting of that day with president Rock. Furthermore, the contacting of Mr. Dearden was decided at the morning meeting of April 15, 2011 (Dean's testimony above: paragraph 36(b)).

39. All cross-examined participants of the April 15, 2011 meeting (Rock, Feldthusen, St. Lewis) testified that each had not read the "house negro" blog post prior to the April 15, 2011 meeting. The position of the responding parties is that they did not read the "house negro" blog post until after April 15, 2011, if at all:

(a) Mr. Feldthusen testified: "I don't believe I ever have read the blog post." (transcript: p.11 l. 3-4)

(b) Mr. Rock testified that he only ever read the blog post as part of reading the June 23, 2011 Statement of Claim of the Respondent.[28]

(c) The Respondent Ms. St. Lewis testified that she first read the blog post after April 15, 2011, after retaining her counsel, and prior to finalizing her Statement of Claim:[29]

> Q. And when did you first read the February 11, 2011, "U of O Watch" blog article about you?

[27] **[Appeal Book Tab 13-27]**: Excerpt of cross-examination of Allan Rock, p. 35 l.9 to p. 36 l.9.
[28] **[Appeal Book Tab 13-27]**: Excerpt of cross-examination of Allan Rock, p. 6 l. 14 to p. 7 l.14.
[29] **[Appeal Book Tab 13-29]**: Excerpt of the cross-examination of Joanne St. Lewis, p. 59 l. 9-17.

> A. I told you, I read it later in April when my counsel asked me to read it prior to the preparation of the Statement of Claim. So, it was sometime between my engaging Mr. Dearden on April 15th and our actually producing the Statement of Claim. I had to read it then. It was essential that I read it then, he said, and I did.

40. That the Respondent swears to having read the "house negro" February 11, 2011 blog post after April 15, 2011, is significant because in her February 21, 2012 affidavit (at para. 20), the Respondent swears that she made the decision to commence the action "as soon as I read the Defendant's 'house negro' article in April, 2011."[30]

41. Furthermore, in cross-examination the Respondent explained her meaning of "read the blog post":[31]

> 200. Q. Oh, okay, let me clarify. Had you read it before the meeting began with Allan Rock?
> A. Mr. Rancourt, I've answered this several times. I did not read the blog post. In other words, what I mean by "read the blog post" is go to the Page 1 of the Google search results in my name in quotes, and click on the title to see the blog post. I did not do that until later in April when Mr. Dearden told me, "Joanne, you must do it."

42. The above described evidence supports that the Respondent decided to commence the action years after the December 2, 2008 blog post, months after the February 11, 2011 blog post, and after President Rock's April 15, 2011 guaranty of unlimited funding. As such, the Respondent did not have a prior intent. This evidence was presented and argued at the hearing of the impugned motion, as part of the Appellant's argument to direct a trial of the motion, yet it was not considered in the impugned Reasons.

[30] **[Appeal Book Tab 15-30]**: Excerpt from the February 21, 2012 affidavit of Joanne St. Lewis, at para. 20 -- from **[Exhibit Book Tab 2-5]**: Complete affidavit.
[31] **[Appeal Book Tab 13-29]**: Excerpt of the cross-examination of Joanne St. Lewis, p. 79 l. 20 to p. 80 l. 3.

PART IV—ISSUES ON APPEAL AND THE LAW

REASONABLE APPREHENSION OF BIAS

43. Issue: The Appellant submits that reasonable apprehension of bias is a ground to appeal the impugned decision, within the Court of Appeal's jurisdiction, and further submits that there is reasonable apprehension of bias of the lower court, in the impugned motion.

44. The bias argument which is a ground to appeal the impugned motion is distinct from the bias argument in the Appellant's filed application for leave to appeal from a different lower court decision to the Supreme Court of Canada. Although the factual basis for apparent bias of lower court Justice Beaudoin is the same, the Supreme Court application concerns distinct and broad issues outside of the Court of Appeal's jurisdiction: (a) a litigant's right to a judicial determination of apparent bias at the lower court in which the bias concern is first raised, and (b) the unconstitutionality of the rules for lower court leave to appeal motions, which can definitively bar a litigant from of a judicial determination of apparent bias.[32]

45. In the impugned motion, the bias issue is not whether a judicial determination of apparent bias should have been made in the lower court, but rather the issue is whether there is a reasonable apprehension of bias in the process of the impugned motion, which permeates the impugned decision.

[32] **[Appeal Book Tab 15-32]**: Letters from SCC, and Memorandum of Argument for the application to SCC.

46. The evidence for reasonable apprehension of bias of lower court Justice Beaudoin is presented in the above Facts section, and in the July 30, 2012 affidavit of Denis Rancourt (Exhibit Book). Also: court transcript of the brief July 24, 2012 hearing at which lower court Justice Beaudoin threatened the Applicant with contempt of court, and recused himself by stating that he could not be impartial moving forward (Exhibit Book).

47. The Appellant made the bias complaint about Beaudoin J. at the December 13, 2012 hearing of the impugned motion, including describing its impact on the impugned motion: Court transcript p. 24 l. 29 to p.28 l. 14.[33]

48. Regarding the effects and consequences of bias on the litigation process, in 1997 the Supreme Court of Canada established:[34]

> 99 If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. ... This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision. In the context of appellate review, it has recently been held that a "properly drawn conclusion that there is a reasonable apprehension of bias will ordinarily lead inexorably to the decision that a new trial must be held": *Curragh, supra*, at para. 5.
>
> 100 If a reasonable apprehension of bias arises, it colours the entire trial proceedings and it cannot be cured by the correctness of the subsequent decision. … [Emphasis added.]

[33] **[Appeal Book Tab 13-7]**: Excerpt of December 13, 2012 court transcript, pages 24-28.
[34] *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, at paras. 99, 100. **[Appellant's Book of Authorities]**

49. Regarding effects and consequences of bias on interlocutory motions in final decisions, this Court found:[35]

> [38] I pause to observe that the above cases arose from challenges to final decisions rather than interlocutory rulings like the one at issue. In my view, this is not a meaningful difference. If, as the recusal motion alleges, there exists a reasonable apprehension of bias that would taint the final decision, that same apprehension of bias taints the decision on the recusal motion itself. Further, there is no reason why the Divisional Court should approach an interlocutory ruling on bias in a different manner than if the issue was raised after the completion of the proceedings. [Emphasis added.]

TIME LIMITATION AT THE HEARING

50. Issue: The self-represented Appellant submits that the imposed time limitation for his oral arguments at the December 13, 2012 hearing of the impugned motion was such as to deny the Appellant his substantive rights to be heard fully.

51. The impugned motion was one that could end the action, and that involved conflicting material evidence. As explained in the above Facts section, despite objections the moving party (Appellant) was not given time to:

(a) make oral arguments in the main (impugned) motion, beyond two substantive matters heard first (request to adjourn, and request to direct trial of the motion); or

(b) make oral arguments in his request to admit his May 23, 2012 affidavit which had been served after cross-examinations.

[35] *Ontario Provincial Police v. Mac*, 2009 ONCA 805 (CanLII), para. 38

52. The Appellant submits that the December 13, 2012 court transcript of the impugned motion shows an embattled self-represented litigant, unfamiliar with the practice of motions, not being provided with a fair process to make his case to the best of his ability, nor even to be heard on material matters in the intended motion (his motion).

At approximately 4:50 pm, the Appellant started the reply by stating the day's unfairness to him, as he saw it (in part, p. 221-222):[36]

> ... Donc, ça je trouve ça des erreurs procédurales très importantes et, en plus, les contraintes de temps, pour moi -- je l'ai dit au début et je le répète -- je continue par respect à la Cour mais je continue en objection.
>
> J'estime que ce processus a été injuste à cause des contraintes pas raisonnables. Il y a plein de choses que je sais que je n'aurai pas la chance de dire, que je n'aurai pas la chance de répondre. Il y a des choses qui me sont venues après l'écriture de mon factum que je n'aurai pas la chance de dire.
>
> Donc, pour moi, c'est une injustice fondamentale qui vient de se produire aujourd'hui ...

The motion ended on page 250 of the transcript, followed by case management matters.

53. The Divisional Court considered a case where an experienced counsel was given 40 minutes by a motions court judge to speak directly to the issues of the day. It found that this was enough time in the circumstances. It also described the general principle as:[37]

> … The general rule is clear: <u>every litigant is entitled to have his case fully presented and fairly considered</u>: *Baker v. Hutchinson et al.* (1976), 13 O.R. (2d) 591 at p. 597, 1 C.P.C. 291. But that does not mean that the court must listen to everything that every counsel (or litigant appearing in person) wishes to say. … [Emphasis added.]

[36] **[Appeal Book Tab 13-7]**: Excerpt from December 13, 2012 court transcript of impugned motion, p. 219-222
[37] *Ferguson and Imax Systems Corp. et al.* (1984), 47 O.R. (2d) 225, 11 D.L.R. (4th) 249, at p.13

54. Regarding hearing self-represented litigants, this Court, in *Davids v. Davids*, found:[38]

> … Fairness does not demand that the unrepresented litigant be able to present his case as effectively as a competent lawyer. Rather, it demands that he have a fair opportunity to present his case to the best of his ability. Nor does fairness dictate that the unrepresented litigant have a lawyer's familiarity with procedures and forensic tactics. It does require that the trial judge treat the litigant fairly and attempt to accommodate unrepresented litigants' unfamiliarity with the process so as to permit them to present their case. … [Emphasis added.]

55. And, in *Toronto-Dominion Bank v. Hylton*, this Court found:[39]

> Once again, the fact that a party is self-represented is a relevant factor. That is not to say that a self-represented party is entitled to a "pass". However, as part of the court's obligation to ensure that all litigants have a fair opportunity to advance their positions, the court must assist self-represented parties so they can present their cases to the best of their abilities. … [Emphasis added.]

56. The Canadian Judicial Council, in 2006, put it this way:[40]

> Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.

EVIDENCE FOR MAINTENANCE AND CHAMPERTY

57. Issue: The Appellant submits that the judge erred by not considering determinative evidence for maintenance, and by misdirecting himself on the law of maintenance and champerty.

[38] *Davids v. Davids*, 1999 CanLII 9289 (ON CA), at para. 36
[39] *Toronto-Dominion Bank v. Hylton*, 2010 ONCA 752 (CanLII), at para. 39
[40] Statement of Principles on Self-represented Litigants and Accused Persons, Adopted by the Canadian Judicial Council, September 2006, p. 4, para. 1

58. The Supreme Court of Canada has consistently until present held the same definition of maintenance since 1907, reaffirmed in 1939, and in 1993, as centrally based on intervening "officiously or improperly":[41]

> A person must intervene "officiously or improperly" to be liable for the tort of maintenance. Provision of financial assistance to a litigant by a non-party will not always constitute maintenance. Funding by a relative or out of charity must be distinguished from cases where a person wilfully and improperly stirs up litigation and strife. The society's support was "out of charity and religious sympathy" and so did not constitute maintenance.
>
> To be liable for maintenance, a person must intervene "officiously or improperly": *Goodman v. The King*, [1939] S.C.R. 446. Provision of financial assistance to a litigant by a non-party will not always constitute maintenance. Funding by a relative or out of charity must be distinguished from cases where a person wilfully and improperly stirs up litigation and strife: *Newswander v. Giegerich* 1907 CanLII 33 (SCC), (1907), 39 S.C.R. 354.

59. The latter is a disjunctive condition. The intervening need only be either officious or improper to establish maintenance.

60. Smith J. erred by not following the binding Supreme Court of Canada definition of maintenance as consisting of intervening officiously or improperly, and as requiring a valid excuse, such as charity. A dictionary definition of officiously is "Marked by excessive eagerness in offering unwanted services or advice to others". Smith J. failed to consider officiousness, nor was a test for officiousness applied. Instead, the judge conflated officiousness with impropriety, and did not consider the evidence for officiousness (impugned Reasons).

[41] *Young v. Young*, 1993 CanLII 34 (SCC), at pages 22 and 155.

61. This Court found that justification or excuse for funding the litigation is relevant in establishing maintenance and champerty:[42]

> Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties is without justification or excuse. [Emphasis added]

And that propriety of motive is a relevant and determinative consideration in establishing maintenance (*ibid.*, at para. 27):

> The courts have made clear that a person's motive is a proper consideration and, indeed, determinative of the question whether conduct or an arrangement constitutes maintenance or champerty. It is only when a person has an improper motive which motive may include, but is not limited to, "officious intermeddling" or "stirring up strife", that a person will be found to be a maintainer. [Emphasis added.]

62. Smith J. erred by failing to consider, as argued by the defendant, that maintenance alone, without champerty, can give rise to an abuse of process which can end an action, or cause the maintenance to be stopped. Abuse of process is a finding made on the totality of the evidence and conduct, not on features in isolation:[43]

> Abuse of the court's process can take many forms and may include a combination of two or more strands of abuse which might not individually result in a stay.

63. Smith J. erred by failing to consider the maintained litigant's prior intent to litigate as a determinative factor in finding officious interference, and maintenance and champerty. Smith J. said nothing about the evidence that the plaintiff did not, for years, have an

[42] *McIntyre Estate v. Ontario (Attorney General)*, 2002 CanLII 45046 (ON CA), para. 26
[43] *Stocznia Gdanska SA v. Latreefers Inc*., [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC), para. 45

intent to litigate until after she was offered and guaranteed unlimited funding for the lawsuit, in April 2011. Regarding such encouragement to litigate, this Court found:[44]

> Whatever its historical origin, the authorities, both English and Canadian, have consistently treated champerty as a form of maintenance requiring proof not only of an agreement to share in the proceeds but also the element of encouraging litigation that the parties would not otherwise be disposed to commence. [Emphasis added.]

64. Smith J. erred by using a meaning of the term "trafficking in litigation" which is too limited for the factual context, and which is not consistent with the body of relevant case law (impugned Reasons, paras. 102-103). The judge's adopted meaning of "trafficking in litigation" would render the Ontario statute *An Act respecting Champerty*, and the principle of champerty itself, meaningless in most factual circumstances, including where there is both officious interference (maintenance) and sharing of the proceeds. Rather, "trafficking in litigation" is a broad concept which is consistent with the Supreme Court of Canada definition of maintenance:[45]

> Trafficking in litigation is, by the very use of the word "trafficking" something which is objectionable and may amount to or contribute to an abuse of the process. We think that it is undesirable to try to define in different words what would constitute trafficking in litigation. It seems to us to connote unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation. 'Wanton and officious intermeddling with the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse' may be a form of trafficking in litigation. [Emphasis added.]

65. The Appellant submits that Smith J. erred by failing to consider that if maintenance is established, and there is a sharing of the proceeds of the litigation, then there is champerty, even if the maintainer's dominant motive for the maintenance is not the sharing in

[44] *Buday v. Locator of Missing Heirs Inc.*, 1993 CanLII 961 (ON CA), 5th-last para.
[45] *Stocznia Gdanska SA v. Latreefers Inc.*, [2000] E.W.J. No. 469 (QL), as cited in: *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ONSC), para. 45

the proceeds. Consequently, Smith J. erred by failing to apply the Ontario statute *An Act respecting Champerty*, which stipulates "All champertous agreements are forbidden, and invalid."

66. Smith J. erred by failing to consider the vulnerability of the Respondent, who is an Assistant Professor employee of the alleged maintainer, the University. This Court has found that vulnerability of the funded litigant is relevant to a determination of abuse in the relationship with the maintainer, and is a central public policy concern in maintenance and champerty.[46]

67. Smith J. erred by not considering or determining the defendant's requested order (para. 90(b) of the impugned motion Appellant's factum):[47]

> "Alternatively, that the champertous maintenance be ordered terminated, with reimbursement of funds from the plaintiff to the University, and that the punitive damages paragraphs in the Statement of Claim be struck out."

The said punitive damages paragraphs stipulate that half of the punitive damages will be given to the University.[48]

ADMISSIBILITY OF EVIDENCE FOR MAINTENANCE AND CHAMPERTY

68. Issue: The Appellant submits that Smith J. erred by adopting Beaudoin J.'s August 2, 2012 Reasons, regarding relevancy for upholding refusals in the refusals motion, as defining relevancy for his purpose in determining evidence admissibility in the main (impugned) motion. Smith J. was not bound by Beaudoin J.'s Reasons for judging refusals, but rather had a

[46] *McIntyre Estate v. Ontario (Attorney General)*, 2002 CanLII 45046 (ON CA), paras. 47, 76.
[47] **[Appeal Book Tab 15-47]**: November 30, 2012 factum of the Appellant in the impugned motion, para. 90(b).
[48] **[Appeal Book Tab 12-2]**: Statement of Claim in the main action, p.23, at para. 60.

duty to determine relevancy based on the pleadings in the main motion before him, which in a motion includes the supporting affidavits.

69. In adopting Beaudoin J.'s August 2, 2012 Reasons regarding relevancy, Smith J. erred by failing to recognize that:

(a) It is the order of the Court which is binding, not the reasons assigned for making it;[49] and

(b) Beaudoin J. did not intend to bind the hand of the judge hearing the main motion regarding admissibility of evidence,[50] and did not have the jurisdiction to usurp the function of the judge hearing the main motion.

70. Consequently, having misdirected himself on finding the August 2, 2012 Reasons to be binding, Smith J. erred by not applying all the factors needed to determine maintenance and champerty. Namely, the judge was bound to a detailed examination of motives, of both the maintainer, and the maintained litigant, in determining both the main maintenance/champerty issue, and the issue of relevancy/admissibility of the evidence.

DIRECTING A TRIAL OF THE MOTION OR ISSUES

71. Issue: The Appellant submits that the motions judge erred by not directing a trial of the motion and/or of one or more issues of the motion, in the impugned motion that could end the $1,000,000 action for abuse of process.

72. The Appellant strenuously argued (court transcript of the December 13, 2012 motion hearing, p. 39 l. 14 to p. 122 l. 33, Exhibit Book) that the impugned motion should be directed to a trial of the motion and/or issues.

[49] *St. Lewis v. Rancourt*, 2013 ONSC 49 (CanLII), at para. 25, referencing the Court of Appeal.
[50] **[Appeal Book Tab 13-50]**: Excerpt from the June 20, 2012 court transcript for the refusals motion with Justice Beaudoin (which gave the August 2, 2012 Reasons), p. 140-141.

73. Rule 37.13(2)(b) foresees:[51]

> A judge who hears a motion may,
> …
> (b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge.

74. As described in the above facts section, and additionally in the court transcript of the December 13, 2012 hearing (p. 39 l. 14 to p. 122 l. 33), there are conflicts of material evidence which require a judicial determination of credibility. Notably:

(a) The Respondent and Allan Rock testified that the Respondent had a firm intension to litigate in arriving at the April 15, 2012 meeting to request the funding for the said litigation. Mr. Rock testified that he granted funding for the litigation, without a spending limit, at that April 15, 2012 meeting. To the contrary, the Respondent's own affidavit, and Bruce Feldthusen's testimony are that the Respondent did not have a firm intension/decision to litigate at the time of the said April 15, 2012 meeting. This is determinative of prior intent.

(b) Allan Rock testified to having proper motives for funding the litigation, yet Mr. Rock would not answer questions about email evidence of his animosity towards the Appellant, regarding Mr. Rock's "view about" the Appellant.[52]

[51] *Rules of Civil Procedure*, Rule 37.13(2).
[52] **[Appeal Book Tab 13-16]**: Excerpt of examination transcript of Allan Rock, p. 110 to 114

75. This Court has determined:[53]

> It is beyond the proper role of an application judge to determine the credibility of a deponent to resolve material facts which are disputed and which may affect the result: *Moyle v Palmerston Police Services Board* (1995), 25 O.R. (3d) 127 (Div. Ct.) at p. 136, *Yoo v. Kang*, [2002] O.J. 4041 (S.C.J.) at para. 24. [Emphasis added.]

76. The general principle that conflicting facts cannot be resolved using witness credibility from a paper record is the same in lower court motions where the settled case law is that questions testing personal credibility of affiants in out of court examinations are not proper questions. For example, the frequently cited *Caputo* case:[54]

> Questions may also be asked to test the credibility of the facts deposed or the answers given although questions otherwise irrelevant which are directed solely at credibility are improper.

OTHER FACTOR IN MAINTENANCE NOT CONSIDERED IN IMPUGNED REASONS

77. It is consistent with the common law that large corporations should not be allowed to sue individuals for defamation, either directly or by proxy, as the imbalance of arms necessarily causes an undue imbalance between freedom of expression rights and the right to protect reputation. The degree to which a litigation has the characteristics of a SLAPP, is therefore a relevant factor in a judicial determination of maintenance;[55] especially where the plaintiff is a lawyer and has monetary means, and where the defendant was dismissed by the alleged maintainer.

[53] *Newcastle Recycling Ltd. v. Clarington (Municipality)*, 2005 CanLII 46384 (ON CA), para. 11
[54] *Caputo v. Imperial Tobacco Ltd.*, [2002] O.J. No. 3767, at para. 14
[55] **[Appeal Book Tab 15-47]**: November 30, 2012 factum of the Appellant in the impugned motion, paras. 82-87.

PART V—ORDER REQUESTED

78. THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows:

1. Ordering re-hearing of the entire defendant's motion ("champerty motion"), including the defendant's refusals motion in the champerty motion, with the champerty motion treated as a trial;

2. In the alternative, granting the defendant's champerty motion to dismiss the action;

3. In the alternative, granting the defendant's champerty motion to terminate and repeal the University's funding of the plaintiff's litigation and bar sharing in the proceeds of the action;

Costs and other

4. The costs of the motion (impugned motion) and/or motions (refusals motion in the impugned motion) set aside by this Honourable Court;

5. The costs of this appeal on an appropriate scale;

6. Such further and other relief as the appellant may advise and this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

May 9, 2013

Denis Rancourt
(Appellant)

CERTIFICATE: ORIGINAL RECORD, AND ESTIMATED TIME REQUIRED

An order under subrule 61.09(2) (original record and exhibits) is not required.

The self-represented Appellant estimates that he will require 2 hours to make his oral argument, not including reply.

May 9, 2013

Denis Rancourt

Denis Rancourt
(Appellant)

SCHEDULE A

Authorities Referred To By The Appellant

Case Law

Buday v. Locator of Missing Heirs Inc., 1993 CanLII 961 (ON CA)

Caputo v. Imperial Tobacco Ltd., [2002] O.J. No. 3767

Davids v. Davids, 1999 CanLII 9289 (ON CA)

Ferguson and Imax Systems Corp. et al. (1984), 47 O.R. (2d) 225, 11 D.L.R. (4th) 249, (ON DC)

McIntyre Estate v. Ontario (Attorney General), 2002 CanLII 45046 (ON CA)

Newcastle Recycling Ltd. v. Clarington (Municipality), 2005 CanLII 46384 (ON CA)

Ontario Provincial Police v. Mac, 2009 ONCA 805 (CanLII)

Operation 1 Inc. v. Phillips, 2004 CanLII 48689 (ONSC)

R. v. S. (R.D.), 1997 CanLII 324 (SCC), [1997] 3 SCR 484

St. Lewis v. Rancourt, 2013 ONSC 49 (CanLII) (Justice Annis)

St. Lewis v. Rancourt, 2012 ONSC 4494 (Justice Beaudoin, released August 2, 2012)

St. Lewis v. Rancourt, 2013 ONSC 1564 (CanLII) (Justice Smith, impugned Reasons)

Toronto-Dominion Bank v. Hylton, 2010 ONCA 752 (CanLII)

Young v. Young, 1993 CanLII 34 (SCC)

Directives

Statement of Principles on Self-represented Litigants and Accused Persons, Adopted by the Canadian Judicial Council, September 2006

SCHEDULE B

Statutes and Regulations

1. *Rules of Civil Procedure*, Rule 21.01(3)

21.01(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Jurisdiction

(a) the court has no jurisdiction over the subject matter of the action;

Capacity

(b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

Another Proceeding Pending

(c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

(d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

2. *Rules of Civil Procedure*, Rule 37.13(2) [cited at paras. 51, 73]

37.13(2) A judge who hears a motion may,

(a) in proper case, order that the motion be converted into a motion for judgment; or

(b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge.

3. *An Act respecting Champerty* [cited at paras. 64, 65]

An Act respecting Champerty
R.S.O. 1897, Chapter 327

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition of Champertors

1. Champertors be they that move pleas and suits, or cause to be moved, either by their own procurement, or by others, and sue them at their proper costs, for to have part of the land in variance, or part of the gains. 33 Edw. I.

Champertous agreements void

2. All champertous agreements are forbidden, and invalid. (*Added in the Revision of 1897.*)

FILE NUMBER: _____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

Denis Rancourt

Applicant
(Defendant)

and

Joanne St. Lewis

Respondent
(Plaintiff)

and

University of Ottawa

Respondent
(Intervening Party)

AFFIDAVIT OF JOSEPH HICKEY

(Affirmed on January 3, 2014)

I, **Joseph Hickey**, of the City of OTTAWA, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I hold B.Sc. and M.Sc. degrees from the University of Ottawa and am the Executive Director of the Ontario Civil Liberties Association (OCLA), a nascent provincial organization that promotes the observance of fundamental human rights and civil liberties. OCLA's website is at: http://ocla.ca

2. I am a former graduate student representative to the University of Ottawa Senate and a current employee of CUPE Local 2626, the union of student workers at the University of Ottawa.

3. I was in attendance at the Ontario Superior Court of Justice on July 24, 2012, at a hearing before Justice Robert Beaudoin in the matter of *St. Lewis v. Rancourt*.

4. At this hearing, Justice Beaudoin reacted angrily to a request by the Defendant, Mr. Rancourt, for an adjournment in order to bring a motion that Justice Beaudoin recuse himself on grounds of Reasonable Apprehension of Bias (RAOB). The Defendant's request was based in part on an April 2012 Ottawa Citizen article that described a scholarship fund at the University of Ottawa's Faculty of Law created by Justice Beaudoin and the naming of a board room after Justice Beaudoin's son at the law firm representing one of the parties.

5. Justice Beaudoin showed no openness to hearing a motion for recusal on the basis of RAOB, repeatedly interrupted the Defendant, and ultimately threatened the Defendant with contempt of court if he continued to make his allegations regarding bias.

6. After a recess, Justice Beaudoin returned to court and informed the parties in *St. Lewis v. Rancourt* of his recusal for bias against the Defendant, due to the Defendant's decision to bring forward the allegations regarding bias.

7. Justice Beaudoin's vitriolic display of anger toward the Defendant in reaction to the Defendant presenting evidence of bias from a media article regarding Justice Beaudoin's financial relationship with a party in the case and the naming of a board room after Justice Beaudoin's son at the law firm representing one of the parties was highly disturbing and intimidating to me.

8. On July 24, 2012, I wrote the blog entry attached as **Exhibit 1**. It is an accurate description of what I witnessed.

9. I have followed and continue to follow this bias issue, which is of concern to me both as a citizen in a democratic society and as Executive Director of OCLA.

10. I was present in court at the Defendant's motion for leave to appeal heard before Justice Annis on November 15, 2012, at the Ontario Superior Court of Justice.

11. I was present at the Defendant's appeal at the Ontario Court of Appeal on November 8, 2013.

12. The apparent bias of Justice Beaudoin involves the University of Ottawa, an influential institution in the Ottawa region and beyond. OCLA has an ongoing campaign against the use of public money by the University of Ottawa to pay the Plaintiff's legal fees in the lawsuit in which the issue of bias has arisen, as per **Exhibits 2, 3, and 4**.

13. The following exhibits are attached to this affidavit:

    1) July 24, 2012, "A Student's-Eye View" blog entry
    2) August 2013, Web page of OCLA's "Public Money is Not for Silencing Critics" campaign
    3) August 28, 2013, Letter from OCLA to University of Ottawa President Allan Rock, re: OCLA's "Public Money is Not for Silencing Critics" campaign
    4) September 11, 2013, Letter from President Rock to OCLA, re: OCLA's "Public Money is Not for Silencing Critics" campaign

Sworn and affirmed before me at the City of Ottawa, Ontario, on

January 3rd, 2014

.....
Commissioner for Taking Affidavits
(or as may be)
N. Serdyńska

.....
(Signature of deponent)
Joseph Hickey

This is **Exhibit "1"**

to the Affidavit of Joseph Hickey,

sworn before me at the City of Ottawa this

3rd day of January, 2014.

A Commissioner for taking affidavits

A Student's-Eye View

The University of Ottawa and its Senate, from the eyes of students

Judge Accused of Conflict of Interest Loses Decorum and Withdraws from Case

JULY 24, 2012

by Student's-Eye View

Judge donated money to party in lawsuit in honour of deceased son, who was a lawyer at the firm now representing the party.

A judge of the Ontario Superior Court in Ottawa threw a fit this morning and withdrew himself from a defamation case (***St. Lewis vs. Rancourt***) after the Defendant presented documents suggesting links between the judge and another party to the case.

The Defendant, Mr. Rancourt asked Justice Robert Beaudoin this morning to hear a motion that the judge recuse himself on grounds of "reasonable apprehension of bias" and "appearance of conflict of interest." Mr. Rancourt presented an **article by the Ottawa Citizen** that described the judge's efforts to memorialize his son, including a **scholarship** he donated to the Faculty of Law at the University of Ottawa, which is a party in the proceeding (Intervener). The article also stated that a boardroom had been named after Justice Beaudoin's son at the law firm **Borden Ladner Gervais**, where the son worked as a lawyer until his death, and which represented the University of Ottawa as a party before Justice Beaudoin.

After angrily yelling at Mr. Rancourt that his request for an adjournment in preparation for a motion was denied, Justice Beaudoin threatened to hold Mr. Rancourt in contempt of court. The judge called a recess and then returned to inform the parties that he would be withdrawing himself from all further proceedings in the case, not before expressing that "never in his judicial career" had he seen actions so "disgusting and provocative" as the Defendant's submission of the newspaper article, and telling the Defendant that "unfortunately" he had "succeeded" in having the judge removed from the case.

There is nothing worse that can happen to a parent than the grief of losing his own child, and Justice Beaudoin's commitment to preserving the spirit of his son is honourable. However, his comments in the courtroom and his failure to disclose his connections to the University of Ottawa and the lawfirm representing it, Borden Ladner Gervais, raise serious ethical concerns that should be reviewed by the **Canadian Judicial Council**.

*Update: **July 27 Ottawa Citizen article about judge's recusal**. Note that the Plaintiff's lawyer, Richard Dearden, regularly represents the Ottawa Citizen.

This is **Exhibit "2"**

to the Affidavit of Joseph Hickey,

sworn before me at the City of Ottawa this

3rd day of January, 2014.

A Commissioner for taking affidavits

Public Money is Not for Silencing Critics

University of Ottawa must end its financing of a private defamation lawsuit

(*Ottawa, August 2013*) — The Ontario Civil Liberties Association (OCLA) is demanding that the University of Ottawa stop financing a private defamation lawsuit against its long-time and outspoken critic Denis Rancourt.

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

Rancourt has published his "U of O Watch" blog since 2007, and is a former professor of the university. The private action was initiated in 2011, and has been widely reported in the media. The Ontario Superior Court recently scheduled the matter for a three-week trial starting May 12, 2014. A pre-trial hearing will be held on December 19, 2013.

Recent Work

Dec. 5, 2013: Letter to Attorney General re: OCLA's position on Ontario's anti-SLAPP bill

Nov. 8, 2013: Inaugural OCLA Civil Liberties Award presentation to Harry Kopyto

Nov. 1, 2013: The Work and Legacy of David F. Noble public event and film screening

Oct. 20, 2013: Video from Wealth Inequality and Civil Liberties event

The University of Ottawa is using public funds to finance the lawsuit. University president Allan Rock admitted under cross-examination that he approved the financing without a spending limit (with "no cap") from the university's operating budget.

Based on court submissions for legal costs, OCLA estimates that the university has spent over $1 million to date pursuing Rancourt, who was fired by the university in 2009, and who is self-represented in the civil action.

OCLA believes that the university's funding is wrong because:
1. It violates Rancourt's right of freedom of expression and the public's right to hear all points of view; and
2. It is antithetical to academic freedom, which the university is bound to protect.

It is against the law in Canada for the government to sue an individual for defamation because that would violate the individual's *Charter* right to free expression, yet here the government is financing such a lawsuit about a matter of public interest — racial discrimination at a major public institution.

Oct. 3, 2013: Post: "Quebec Court of Appeal rewrites law on SLAPP actions"

Aug. 28, 2013: Opinion statement on new tasers permission

Aug. 28, 2013: Public Money is Not for Silencing Critics

Aug. 22, 2013: Justice for Deepan: Letter to Minister of Citizenship and Immigration

Jul. 25, 2013: Endorsement of public event: Deepan Speaks!

Jun. 17, 2013: Letter to York U president re: cancellation of student group's status

Jun. 10, 2013: PR: U of O tenure battle concludes amongst allegations of inciting violence

Key Documents

Video by Hazel Gashoka (former student, University of Ottawa):

Expert opinion of Cynthia McKinney (former U.S.A. Congresswoman from Georgia)

Expert report of Professor Adèle Mercier (Philosophy, Queen's University)

Jun. 10, 2013: CP : Bataille pour la permanence académique et incitations à la violence ?

May 8, 2013: Report on May 3 event "Silence is Deadly: Dr. Alex Nataros on reporting medical errors"

Mar. 20, 2013: OCLA Supports Bill C-475

Media Coverage

Oct. 21, 2013: « Affaire Rancourt : L'ancien professeur condamné à payer 100 000 $ d'indemnités » *La Rotonde*

Oct. 20, 2013: "London's tough stance on student rowdyism" *London Free Press*

Oct. 19, 2013: "Cops' doorstep visits with students under fire" *London Free Press*

Oct. 6, 2013: "SAIA protests outside Board of Governor's meeting" *The Excalibur*

Sep. 4, 2013: "U of O urged not to sue" *The Fulcrum*

Aug. 22, 2013: "Ontario Civil Liberties Assoc" *Talking Stress with Claude Laurin, CKCU FM Ottawa*

Jul. 31, 2013: "Should police take

Letters from this campaign

- September 11, 2013 – Letter from President Rock to OCLA. Download September 11, 2013 letter
- August 28, 2013 – Letter from OCLA to Allan Rock, President of the University of Ottawa. Download August 28, 2013 letter
- August 28, 2013 – Letter from OCLA to Nathalie Des Rosiers, Dean of Common Law at the University of Ottawa. Download August 28, 2013 letter

Jul. 31, 2013: "Should police take cameras to the streets?" *The Bill Good Show, CKNW AM Vancouver*

Jul. 25, 2013: "OCLA and Deepan Budlokati" *Talking Stress with Claude Larin, CKCU FM Ottawa*

Jun. 11, 2013: "U of O trying to link bomb to prof" *Ottawa Sun*

Jun. 11, 2013: "Former Ottawa U prof fights to have tenure restored" *CFRA News Ottawa*

Apr. 1, 2013: "A New Civil Liberties Association in Ontario" *Peace and Environment News*

Mar. 28, 2013: « L'Association des libertés civiles de l'Ontario » *Entre nous, TV Rogers Ottawa*

Mar. 12, 2013: "Cell phone seizures for traffic violations" *The Jeff Allan Show, 570 News Kitchener-Waterloo*

This is **Exhibit "3"**

to the Affidavit of Joseph Hickey,

sworn before me at the City of Ottawa this

3rd day of January, 2014.

A Commissioner for taking affidavits

OCLA
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.

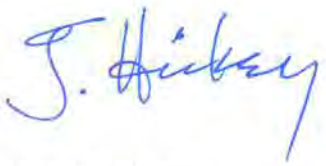
OCLA is also concerned that you appear to justify your decision with accusations of racism against Mr. Rancourt, and that you have done this by using a prominent lawyer to voice your accusations, rather than voice them yourself.

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

This is **Exhibit "4"**

to the Affidavit of Joseph Hickey,

sworn before me at the City of Ottawa this

3rd day of January, 2014.

A Commissioner for taking affidavits

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

CITATION: St. Lewis v. Rancourt, 2013 ONSC 49
COURT FILE NO.: 11-51657
DATE: 2013/01/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
Joanne St. Lewis	)	Richard G. Dearden and Anastasia Semenova, for the Plaintiff
Plaintiff	)	
– and –	)	
Denis Rancourt	)	Denis Rancourt, self-represented
Defendant	)	
University of Ottawa	)	Peter K. Doody, for the University of Ottawa
Rule 37 Affected Participant	)	
	)	**HEARD:** November 15, 2012

AMENDED REASONS FOR DECISION

ANNIS J.

This is an amendment to the Reasons for Decision released November 29, 2012. The amendments occur in paragraph [12] whereby the name "Mr. Rock" is changed to "Professor St. Lewis"; in paragraphs [23](1) and [27] whereby the date of the decision of Smith J. is changed from June 27, 2012 to July 27, 2012; and on page 8 where the heading "The University Witnesses Refusals Motion" is amended to read "The Plaintiff's Witnesses Refusals Motion".

Introduction

[1] This is yet another series of motions in a series of interlocutory motions brought by the defendant, on this occasion seeking leave to appeal three interlocutory decisions of Beaudoin J. and R. Smith J.

[2] The challenged orders are as follows:

(i) The decision of Beaudoin J. made from the bench on June 20, 2012 dismissing the defendant's motion to compel the University of Ottawa ("the University") witnesses to answer questions and produce documents on the grounds that the judge demonstrated a reasonable apprehension of bias.

(ii) The 'decision' by letter of July 31, 2012 of Smith J. as Case Management Judge to refuse to set down the defendant's motion to set aside the June 20, 2012 decision of Beaudoin J.

(iii) The decision of Smith J. of September 6, 2012 dismissing the portion of the defendant's motion that had been adjourned by Beaudoin J. concerning the refusal of witnesses produced by the plaintiff to answer questions and produce documents.

[3] The University argued that the first two leave motions were out of time, in reply to which the defendant sought an extension of time.

[4] I am prepared to grant the defendant an extension of time to bring these leave motions. However, I dismiss the three motions for leave to appeal with costs to the plaintiff and the University as indicated.

Factual Background

[5] The plaintiff, Professor Joanne St. Lewis, sued the defendant for defamation in respect of comments he published on his blog in which he referred to her as "Allan Rock's house negro". This comment was made following Professor St. Lewis' preparation of a report requested by the University into the issue of whether there was "systemic racism" at the University.

[6] Mr. Rancourt brought an interlocutory motion ("the champerty motion") seeking an order that the action be stayed or dismissed on the ground that it was vexatious or otherwise an abuse of process because the University is funding the litigation.

[7] The affidavit supporting the champerty motion includes the following averments:

(1) Mr. Rancourt had worked at the University for 23 years, attaining the rank of tenured full professor in 1997, until dismissed by the University in 2009;

(2) The dismissal is in binding labour arbitration between his Union and the University;

(3) The University was using the fact of the defamation litigation and its content as evidence against the defendant in the arbitration;

(4) The University was entirely funding the defamation action; and

(5) The University was "receiving a share in the proceeds of the action" because the plaintiff had stated in her statement of claim that if punitive damages were awarded, she would donate half of the award to the "Danny Glover Roots to Freedom Graduate Law Student Scholarship Fund".

[8] The University intervened in the litigation. It filed responding affidavits from Mr. Rock and Céline Delorme, the University's counsel in the arbitration. Neither affidavit contained evidence on "information and belief".

[9] The defendant served Robert J. Giroux, the Chair of the University's Board of Governors, with a summons to be cross-examined.

[10] During the cross-examinations, Mr. Rock, Mr. Giraud and Ms. Delorme refused to answer several questions or to produce several documents requested. The defendant brought a motion on June 20, 2012 before Beaudoin J., the Case Management Judge at that time, contesting the refusals.

[11] Justice Beaudoin dismissed the refusals motion pertaining to witnesses produced by the University. There is no claim that he erred in law regarding his June 20th refusals rulings relating to the witnesses from the University, only that he demonstrated a reasonable apprehension of bias requiring the decision to be set aside. He provided written reasons for his decision on August 2, 2012.

[12] Justice Beaudoin adjourned the remainder of the motion pertaining to the plaintiff's witnesses (Professor St. Lewis and Dean Feldthusen) to July 24, 2012. Other motions arising out of other cross-examinations were previously scheduled on that date.

[13] On the return of the refusals motion of the plaintiff's witnesses, the defendant, without prior indication, requested an adjournment to bring a motion that Beaudoin J. recuse himself due to an apprehension of bias in connection to events relating to his late son.

[14] Notice was also not provided to counsel for the University witnesses, although the allegations sustaining the proposed adjournment pertained to the June 20, 2012 decisions.

[15] The defendant alleged that there was an apprehension that Beaudoin J. would not adjudicate matters fairly involving the University because of the existence of a scholarship in honour of his late son at the University where he had attended, which was funded by the Government of Ontario and the Beaudoin family.

[16] In addition, he argued that Beaudoin J. could be unfairly influenced by the fact that Borden Ladner Gervais LLP, which was representing the University in this matter, had named a boardroom after his late son where he had worked.

[17] The request for an adjournment was made based on dated newspaper articles describing Beaudoin J.'s grief arising from the death of his son and the memorials that were created on his behalf. The basis of the request provoked Beaudoin J. to withdraw from any further determinations involving the defendant.

[18] Prior to withdrawing, Beaudoin J. dismissed the defendant's request for an adjournment and indicated that he had no conflict of interest in respect of the decisions made on June 20, 2012.

[19] The defendant filed a notice of motion on July 30, 2012 requesting a judicial determination of reasonable apprehension of bias regarding Beaudoin J.'s prior rulings in this action. He sought, *inter alia*, an order that all prior rulings of Beaudoin J. in the action, including his case management rulings, be set aside.

[20] Justice Smith was appointed as the Case Management Judge following the recusal of Beaudoin J. He informed the defendant, by letter dated July 31, 2012 as follows:

> Further to your fax of July 31, 2012, I wish to clarify, as I advised you at the motion on July 27, 2012, that I have no jurisdiction to set aside decisions of Justice Beaudoin and I will not be scheduling any motion for this purpose.

[21] On July 27, 2012, Smith J. heard the defendant's refusal motion regarding the cross-examinations of Professor St. Lewis and Dean Feldthusen. Justice Smith's Reasons for Decision dismissing the motion were released on September 6, 2012.

[22] On August 8, 2012, the defendant sought leave to appeal from Beaudoin J.'s decision of June 20, 2012 and Smith J.'s 'decision' of July 31, 2012 described above. In addition, the defendant sought leave to appeal from the September 6, 2012 decision of Smith J. on September 17, 2012.

Issues

[23] The issues raised in these three leave applications are:

(1) Whether the defendant should be granted an extension of time for leave to appeal Beaudoin J.'s decision of June 20, 2012 and Smith J.'s 'decision' of July 27, 2012?

(2) Whether there is a reasonable apprehension of bias that Beaudoin J. would not decide fairly the decision made on June 20, 2012?

(3) Whether Smith J.'s letter of July 31, 2012 is an order that can be appealed to the Divisional Court, and if so, whether the defendant meets the requirements for leave of Rule 62.02(4)?

(4) Whether the defendant has met the requirements of Rule 62.02(4) for leave to appeal Smith J.'s decision of September 6, 2012?

Extension of Time

[24] Rule 62.02 (2) of the *Rules of Civil Procedure* requires that a notice of motion for leave to appeal an interlocutory order shall be served within seven days after the making of the order.

[25] The time for appealing from the order is the time when the order is pronounced. An appeal is taken not from the reasons of the judgment, but from the judgment itself. It is the order of the Court which is binding, not the reasons assigned for making it. Accordingly, waiting for the release of reasons is not a valid ground for granting an extension of time. See *Byers (Litigation guardian of) v. Pantex Print Master Industries Inc.*, (2003) 62 O.R. (3d) 647 (C.A.) at para. 26 per Borins J.A. citing *Walmsley v. Griffith* (1886), 13 S.C.R. 434 at 438; *Canadian Express Ltd. v. Blair*, (1991) 6 O.R. (3d) 212 at para. 12 (Ont. Gen. Div.); *Westinghouse Canada Inc. v. Canada (Canadian International Trade Tribunal)*, [1989] F.C.J. No. 540 (F.C.A.) at p. 4.

[26] The factors to be considered in allowing an extension of time for service of a notice of motion for leave to appeal to the Divisional Court are as follows:

(a) the prejudice, if any, to the respondent;

(b) when the applicant formed the intention to appeal;

(c) the explanation for the delay; and

(d) whether or not an extension is required by the justice of the case.

[27] I am satisfied that the defendant should be granted an extension of time to seek leave to appeal the decisions of Beaudoin J. of June 20, 2012 and of Smith J. of the July 27, 2012.

[28] I agree that the time for appealing Beaudoin J.'s order started to run from June 20, 2012 when it was pronounced, as is clearly described from the transcripts of those proceedings. There were no outstanding matters to be decided with respect to the defendant's refusals motion for the three University witnesses after the hearing on that date. Accordingly, I accept the plaintiff's submission that the defendant was late in seeking leave.

[29] Nevertheless, no attempt was made either by the plaintiff or the University to claim procedural prejudice by an order extending time to seek leave to appeal. In addition, I find that there were unusual intervening circumstances between the date of Beaudoin J.'s oral decision and the filing of the leave to appeal motion which demonstrate a continuing intention to appeal and provide some explanation for the delay.

[30] These include the adjournment of the uncompleted portion of the defendant's motion, the subsequent determination of the remainder of that motion by another judge, the defendant's attempt to bring a motion on the same issue on July 30, 2012 and the subsequent release of Beaudoin J.'s written reasons on August 2, 2012.

[31] I have considered declining the request for an extension given the indication on the record that the defendant is abusing procedural processes, which in most circumstances would lead a court to refuse an extension.

[32] Nevertheless, I think it is in the interests of justice, not only from the perspective of the defendant, but also to uphold the reputation of this court, that an allegation of an apprehension of

bias of one of the Court's judges be considered, at least for the purpose of deciding whether to grant leave to appeal.

[33] It is not clear on the evidence that the defendant was out of time for seeking leave to appeal Smith J.'s letter refusing to schedule his motion.

Leave to Appeal an Interlocutory Order

[34] Leave to appeal to the Divisional Court may only be granted pursuant to Rule 62.02(4) of the *Rules of Civil Procedure* on the following grounds:

> (a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or
>
> (b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

[35] The test for granting leave to appeal from an interlocutory order is an onerous one. The first ground for obtaining leave to appeal requires the defendant to demonstrate that "conflicting decisions" present a difference in the principle chosen as a guide to the exercise of judicial discretion and not merely in outcome as a result of the exercise of discretion. See *Bell ExpressVu Limited Partnership v. Morgan* (2008), 67 C.P.C. (6th) 263 (Div. Ct.) at para. 1 and *Brownhall v. Canada (Ministry of National Defence)*, (2006) 80 O.R. (3d) 91 (Sup. Ct.) at para. 27.

[36] The second ground for obtaining leave to appeal requires the defendant to convince the court that there is a good reason to doubt the correctness of the judge's decision and proposed appeal involves matters of such importance of leave should be granted. The court should ask itself whether the decision is open to "very serious debate" and, if so, whether the decision warrants resolution by a higher level of judicial authority. See *Brownhall*, *supra*, at para. 30.

Reasonable Apprehension of Bias

[37] The test to be applied for determining whether there exists a reasonable apprehension of bias has been formulated by the Ontario Court of Appeal in *Bailey v. Barbour*, 2012 ONCA 325, 110 O.R. (3d) 161 at para. 16 as follows:

> …what would an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through conclude. Would he or she think it is more likely than not that the judge, whether consciously or unconsciously, would not decide fairly?

[38] Determining whether a reasonable apprehension of bias arises requires a highly fact-specific inquiry. The test is an objective one. The record must be assessed in its totality and the interventions complained of must be evaluated cumulatively rather than as isolated

occurrences from the perspective of a reasonable observer throughout the trial. Moreover, isolated expressions of impatience or annoyance by a trial judge as a result of frustrations do not of themselves create unfairness. See *Lloyd v. Bush*, 2012 ONCA 349, 110 O.R. (3d) 781 at paras. 25-26.

[39] There is a strong presumption in favour of the impartiality of the trier of fact. Where a party seeks the recusal or disqualification of a judge, allegations of judicial bias will have to overcome the strong presumption of judicial impartiality. See *Bailey v. Barbour*, *supra*, at para. 19.

Analysis

[40] This is not a case that could possibly give rise to a reasonable apprehension of bias on the part of Beaudoin J. There are no interventions or declarations by him that could lend themselves to a concern of partiality. He is not personally involved in any of the circumstances of the case. There is nothing the defendant could point to in Beaudoin J.'s conduct which could begin to suggest that he somehow favoured the University.

[41] Moreover, the University is a large quasi-governmental institution in our community. Being multifaceted, ubiquitous and amorphous, it is anonymous and thus does not permit a suggestion that a judge by setting up a memorial scholarship in the name of his departed son could give rise to an apprehension that the judge might be favourably disposed to the University in litigation brought before him or her.

[42] The University was merely the means whereby Beaudoin J. could obtain some solemnity from the untimely death of his son in establishing a scholarship for others who wished to study at the University. Actions of this nature intended to benefit Society, even if taken to memorialize a close relation, are not the type of conduct that consciously or unconsciously could suggest a judge cannot act fairly.

[43] Similarly, no reasonable apprehension of a favourable consideration by Beaudoin J. towards the University could possibly arise by the University being represented by a law firm that had named one of its meeting rooms in memory of his son where he was working at the time of his premature demise.

[44] It is unreasonable to suggest that the mere act of respect by a law firm towards one of its associates who was the son of a judge and whose untimely death touched the firm could indirectly cause the judge to be biased in favour of the law firm's clients. Were this to be the case, Beaudoin J. could not hear any case pleaded by Borden Ladner Gervais LLP. This is an untenable proposition that fails to recognize that lawyers are officers of the court who are required to advance their clients' interests without adopting them as their own.

[45] The defendant's motion for leave to appeal the decision of Beaudoin J.'s decision of June 20, 2012 is dismissed with costs to the University.

The Letter 'Decision' of Justice Smith

[46] The plaintiff contends that the letter of Smith J. was not a decision: he was merely informing the defendant that his proposed motion was in the wrong court and therefore would not be scheduled to proceed.

[47] I cannot see any problem with a Case Management Judge refusing to set down a motion entirely void of merit, such as occurred here when the defendant's request was to set aside the decision of a fellow Superior Court judge on grounds of apprehension of bias.

[48] Nevertheless, whether the form is one by letter indicating immediate rejection of the motion or the refusal to set it down, substantively the results are the same, i.e. a decision rejecting the defendant's motion. As such, the defendant is entitled to seek leave to appeal the decision not to schedule his motion.

[49] This said however, leave is refused because the defendant seeks by his motion to set aside the interlocutory decision of Beaudoin J. of June 20, 2012 on grounds of reasonable apprehension of bias: a remedy which only the Divisional Court can consider.

[50] In addition, having decided that there is no possibility of success on a claim of reasonable apprehension of bias by Beaudoin J., leave to appeal this decision would serve no purpose if granted.

[51] Accordingly, it is dismissed with costs to the University.

The Plaintiff's Witnesses Refusal Motion

[52] As it is clear that no judge could conclude that the proposed appeal involves matters of any importance or that it would be desirable to grant leave, the defendant's motion for leave to appeal the order of Smith J.'s decision of September 6, 2012 is dismissed with costs to the plaintiff.

[53] For the record, I also conclude that there is no reason to doubt the correctness of the orders of Smith J., and in particular, I reject the defendant's main submission that although the applicable legal principles were properly stated, he misapplied them to the facts.

Costs

[54] The plaintiff and the University may file submissions on costs not to exceed three (3) pages in addition to a costs outline within ten (10) days of the release of these reasons. The defendant may respond within ten (10) days with submissions limited to three (3) pages.

Mr. Justice Peter Annis

Released: January 2, 2013

CITATION: St. Lewis v. Rancourt, 2013 ONSC 49
COURT FILE NO.: 11-51657
DATE: 2013/01/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Joanne St. Lewis

Plaintiff

– and –

Denis Rancourt

Defendant

University of Ottawa

Rule 37 Affected Participant

AMENDED REASONS FOR DECISION

Annis J.

Released: January 2, 2013

CITATION: St. Lewis v. Rancourt, 2012 ONSC 4494
COURT FILE NO.: 11-51657
DATE: 2012/08/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Joanne St. Lewis Plaintiff/Responding Party	Richard Dearden for the Plaintiff/ Responding Party Peter Doody for the University of Ottawa
– and –	
Denis Rancourt Defendant/Moving Party	Self-Represented
	HEARD: June 20, 2012

REASONS FOR DECISION ON MOTION

BEAUDOIN J.

[1] In accordance with my case management order of May 4, 2012, the Defendant brought a motion to address refusals arising from the cross-examinations on the affidavits filed in response to his Champerty Motion and arising from his summons to a witness. I had previously determined that the University of Ottawa was a necessary party to the Champerty Motion.

Background

[2] The Plaintiff, Professor Joanne St. Lewis, is a tenured Assistant Professor at the Faculty of Law of the University of Ottawa. Her professional accomplishments and achievements in the area of race relations are detailed in her Statement of Claim. She was the first and only Black woman to be elected as a Bencher of the Law Society of Upper Canada.

[3] The Moving Party Defendant, Dr. Rancourt, is a former tenured professor of physics at the University of Ottawa who was dismissed from the University in 2009. That dismissal is presently in arbitration. Dr. Rancourt currently publishes a blog entitled U of O Watch. Joanne St. Lewis alleges that the Defendant defamed her in his blog of February 11, 2011 wherein he referred to her as a "House Negro" and made a number of other statements that the Plaintiff claims were racist and defamatory.

[4] The blog commentary in issue cites an evaluation that was completed by Professor St. Lewis of a report by the Student Appeal Centre of the Student Federation of the University. That report accused the University of Ottawa of systemic racism in its handling of academic fraud complaints against students. Given her background, Professor St. Lewis was asked by the University to investigate those complaints. Her advisory report was released in November, 2008. She concluded that the Student Appeal Report was methodologically flawed, lacked substantiation, and failed to provide a sufficient foundation to enable the University to identify the specific areas of concern or to assess the depth or existence of a problem.

[5] This action was commenced on June 23, 2011. The Statement of Defence was delivered on July 22, 2011. On January 5, 2012, the Defendant served a Notice of Motion wherein he seeks to have Professor St. Lewis‟ action stayed on the basis that her action is vexatious or is an abuse of process pursuant to rule 21.01(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 because it is based on a champertous agreement.

Grounds for the Motion

[6] In his Notice of Motion, the Defendant goes on at some length as to background facts and he specifically refers to a letter dated October 25, 2011 wherein the University of Ottawa admits that is entirely funding the within litigation. He cites a need to examine the Plaintiff and witnesses as to the funding of the agreement; the source of the funding, the maintenance and champertous characteristics of the funding and the motives in the funding agreement.

[7] In support of the Motion, the Defendant filed a lengthy affidavit that focused on his dismissal from the University. He describes his anti-discrimination record and his social justice advocacy and the merits of the defamation claim against him. He does not address the Motion to Stay until paragraph 26 of his Affidavit where he describes the procedural history of the action. Commencing with the heading „D.1 Conflict between the Defendant and the University of Ottawa‟, he then sets out the evidence of maintenance and champerty. Most of this focuses on his ongoing dispute over his dismissal from the University that is the subject of an ongoing arbitration. At paragraphs 40 and 41 he says:

> 40. Attached as Exhibit-N to my affidavit is a copy of an October 26, 2011 letter from the counsel Sean McGee for my union (APUO) to a counsel Lynn Harnden for the University specifying many particulars in the labour arbitration about the dismissal. Item-9 in the list of particulars is:
>
> > 9. Funding of the legal fees relating to the ongoing defamation lawsuit initiated by Professor St. Lewis against Professor Rancourt

> 41. 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.

[8] I note that the letter from Mr. McGee makes a number of bad faith allegations and yet the Defendant chose to select and identify only paragraph 9 in his Notice of Motion. He could have referred to all of the contents of the letter but he chose not to.

[9] The next heading is „D.2 University entirely funding the Plaintiff‟s action‟ and paragraph 42 reads:

> 42. Attached as Exhibit-P to my affidavit is an October 25, 2011 letter from counsel for the University of Ottawa David W. Scott disclosing to me that the University is entirely funding the Plaintiff‟s defamation action.

[10] Then heading D.3 follows: „University receiving a share in the proceeds of the action‟ and paragraph 43reads:

> 43. Attached as Exhibit-P to my affidavit are pages from the (June 23, 2011) Statement of Claim. $250,000 in punitive damages are claimed. Paragraph-60 of the statement of claim states (in part): „In the event that punitive damages are awarded against the Defendant, Professor St. Lewis will donate half of the award of punitive damages to the Danny Glover Routes To Freedom Graduate Law Student Scholarship Fund.”

[11] The subsequent headings do not appear to relate to the allegations of champerty and maintenance.

[12] In short, I conclude that the allegations of champerty and maintenance are based on the following:

1. The University is entirely funding the litigation.
2. The University will receive a share in the proceeds.
3. The University is using the fact of the defamation suit to bar the Defendant from a return to his post even if his dismissal is found to be unjustified.

[13] In response to the Motion, the University of Ottawa filed affidavits from Céline Delorme, Alan Rock and Alain Roussy. Ms. Delorme is one of the counsel representing the University in the labour arbitration. In her Affidavit, she states that the University is not using the defamation action in the arbitration nor is it asking the arbitrator to determine issues in relation to the defamation action. The University is only asking the arbitrator to consider that the content of the Defendant‟s blog is such that Dr. Rancourt‟s reinstatement should not be considered by the arbitrator.

[14] Alan Rock is the President and Vice Chancellor of the University of Ottawa. In his Affidavit he refers to a meeting in the late spring of 2011 where he met with the Plaintiff and Bruce Feldthusen, the Dean of the Common Law Section of the Faculty of Law. He states that Professor St. Lewis advised him that the references to her on the Defendant"s blog were causing her enormous anguish and emotional upset as well as difficulties in her professional and personal life. Professor St. Lewis advised him that she had decided to commence a defamation action to restore her personal and professional reputation and she then asked that the University pay the fees that she would incur. Mr. Rock says he made the decision that the University would reimburse Professor St. Lewis for the legal fees she would incur and he cites the reasons set out in the David Scott letter of October 25, 2011:

> Your defamatory remarks about Professor St. Lewis were occasioned by work 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.

[15] Mr. Rock adds that his decision to have the University reimburse the Plaintiff for her legal fees had nothing to do with her intention to donate a portion of any eventual award to a scholarship fund and that at the time he made his decision, he had no idea that this was her intention. He adds that he first became aware of the fact after the Statement of Claim was issued.

[16] Professor St. Lewis filed a responding Affidavit wherein she swears that the University has no control how she conducts her libel action and has no input into the instructions she provides to her counsel. She states that it was her decision alone to commence an action against the Defendant. On her behalf, Bruce Feldthusen, swore an Affidavit wherein he notes that he met with Professor St Lewis who was distraught and upset by what the Defendant had published. She informed him of her intention to sue the Defendant and he was the one who recommended that she retain Richard Dearden as counsel. Together they decided to meet with Mr. Rock and request that the University pay her legal costs. He adds that they met with Mr. Rock in April, 2011 and that President Rock agreed to pay the legal costs.

Request for an Adjournment

[17] On June 16, 2012, the Defendant put the Respondents on notice that he would be seeking an adjournment to cross-examine Mr. Alain Roussy whose Affidavit was served by the University on June 14, 2012.

[18] Mr. Roussy is a lawyer employed by the University. In his Affidavit, he refers to a search of documents in response to a Notice of Examination dated April 19, 2012 directed to Allan Rock, the President of the University, and he later was cross-examined on his Affidavit. In that Notice, Dr. Rancourt sought:

> 2. All documents about the October 25, 2011 David Scott letter (para. 5 of your affidavit), including and not limited to: all internal (para. 5 of your affidavit),

including and not limited to: all internal messages, etc.) relevant to the David Scott letter.

[19] Mr. Roussy says he has reviewed all documents which were discovered as a result of that search. He notes that some e-mails were sent to the Defendant but that the remainder are covered by solicitor-client privilege.

[20] In an Affidavit sworn and filed June 19, 2012 and in support of the request to cross-examine Mr. Roussy, the Defendant alleges that he received new information from one Joseph Hickey on June 18, 2012 that revealed a document not previously disclosed: namely an e-mail between Stéphane Émard-Chabot to Allan Rock dated September 1, 2011. This document was disclosed to Mr. Hickey as a result of an access to information request made by him. The Defendant says he obtained this document by downloading it from Mr. Hickey‟s blog. This document is identified as record "348". Dr. Rancourt then goes so far as to accuse Mr. Roussy of perjury at paragraph 2 of his Reasons to cross-examine Mr. Alain Roussy.

[21] I agree with the University that there is no contradiction, let alone any perjury, on the part of Mr. Roussy. The e-mail in question is between Mr. Stéphane Émard-Chabot and Mr. Rock and it predates the time period set out in the Notice of Examination. It is an e-mail that refers to retaining Mr. Scott. This is no basis for any adjournment of a motion dealing with over 147 refusals.

[22] More importantly, the Defendant‟s claim of last minute discovery of this e-mail on June 18, 2011 is questionable. I have been provided with a copy of his May 1, 2012 blog wherein he cites Mr. Hickey‟s blog and the results of his request for copies for all of the e-mails between Allan Rock and Stéphane Émard-Chabot. The Defendant does not deny the authenticity of this blog, nor the fact that he could have accessed all of these documents earlier, at least as early as May 1, 2012.

[23] Finally, if Dr. Rancourt had wanted the claim of privilege to be reviewed he could have asked the court to do so but that is not what he has done. The Defendant seems to feel he has a right to cross-examine anyone who has filed an Affidavit. Rule 39.03(1) is permissive. There is no basis to cross-examine Mr. Roussy.

The Admissibility of The Defendant's Expert Report

[24] The Defendant wishes to rely on the Affidavit of Louis Béliveau to provide an expert opinion on electronic communications. Mr. Béliveau has a Bachelor of Engineering Degree as well as an LL.B. and B.C.L. from McGill University. While The Defendant‟s Motion Record does not clearly spell out the basis for Mr. Béliveau‟s opinion, it appears that he relies on this as evidence of incomplete production of documents.

[25] Mr. Béliveau‟s report is inadmissible as there is no compliance with Rule 53 (Duty of an Expert). More importantly, it does not comply with the common law requirements of relevance and necessity as set in *R. v. Mohan*, [1994] 2 S.C.R. 9. The report refers to a series of e-mails that discuss a meeting to be held on April 15, 2011 between Allan Rock, Joanne St. Lewis and Bruce Feldthusen to discuss the defamation action. Mr. Dearden, as Professor St. Lewis‟ counsel,

asked her to print copies of this e-mail correspondence. As a result there is an e-mail that appears to be from Allan Rock to Richard Dearden dated March 30, 2012, apparently scheduling a meeting nearly 11 months earlier.

[26] The Defendant‟s motion materials suggest that this e-mail is more evidence of documents that have not been disclosed. Even assuming that this is the case, this is not an issue that requires an expert opinion. Dr. Rancourt could ask Mr. Rock questions about the e-mail. It was explained to the Court that the March, 2012 date was the result of the functionality of the Microsoft Outlook software. It reflects the date when Mr. Dearden asked Professor St. Lewis for a copy of the e-mail. Mr. Béliveau‟s opinion is of no assistance in explaining how an e-mail asking someone to attend a meeting in April 15, 2011 can be sent on March 30, 2012. He makes no comment about the functionality of the software in issue.

Overview Arguments

[27] The Defendant and counsel for the University and Professor St. Lewis presented overview arguments on the topics of (1) champerty and maintenance and (2) the scope of the questions permitted on the cross-examination of the various affiants and of the witness who was summoned, Mr. Robert Giroux.

(1) Issues Relevant to a Consideration of Whether an Action May be Dismissed on the Basis of Champerty and Maintenance

[28] The parties agree on the law as set out below:

> Champerty and maintenance are torts. Neither of them, without more, provides a defence to an action. See *Webb v. Metro Toronto Condominium Corp. No. 973*, [2004] O.J. No. 5973 at para. 8 (S.C.J.).
>
> 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.
>
> 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.

[29] The motives for funding the litigation are critical. The Defendant says he is entitled to cross-examine all affiants and witnesses broadly on any possible improper motive that the University may have to fund this litigation.

[30] In the Compendium of Argument that he filed at the hearing of this motion, Dr. Rancourt alleges for the first time on page 1:

> In order to establish that the University has engaged in maintenance and champerty to the extent that it constitutes an abuse of process, the Defendant wishes to demonstrate that the **real motive for the University funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process.** (Emphasis mine)

[31] This motive is not stated anywhere in his Notice of Motion, nor does it appear in his Affidavit. The Defendant argues that this is somehow implicit in his Motion when he says in his material that he needs to ascertain "the motives for entering the funding agreement." He also maintains that the Respondents would be aware of the importance of the issue of motive and that they should not be surprised by his questions. He also emphasizes that he is a self-represented litigant.

[32] I agree with the counsel for the University that it is clear from a review of the breadth of the documentary requests, and the nature of the questions asked and to which objection was taken, that the Defendant seeks to have this Court examine and make factual determinations about issues which were not raised in his Notice of Motion, nor were they raised in the Affidavit he swore in support of that Motion. If he wished to make broad allegations that the University was funding this litigation as part of a plan to persecute, harm or suppress him, he ought to have said as much. Instead, he waited until the University had delivered its evidence, responding to the specific allegations of improper motive made in the Notice of Motion and Affidavit, and only then asked questions which he hoped would produce evidence to show a motive other than the entirely proper motive described by Mr. Rock in his Affidavit. A Notice of Motion is not meant to invite a guessing game. The Defendant"s attempts to seek out information on any issue which he theorizes might be relevant to the issue of motive are nothing more than a fishing expedition because he does not like the answers he was given.

(2) Principles Governing Cross-Examination of Witnesses on a Motion

[33] Relevancy is determined by an examination of the issues raised on the motion, and by a review of the affidavits filed in support and in response. However, a party cannot broaden the scope of cross-examinations beyond what is required to determine the issues in the motion by putting irrelevant material in his or her transcript.[1] I would add that a party cannot broaden the scope of cross-examination by including a reference to irrelevant material in his or her Notice of Examination.

[34] A witness being cross-examined on an affidavit may be cross-examined on the truth of facts deposed or answers given, but not on irrelevant issues directed solely at credibility.[2]

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[1] *BASF Canada Inc. v. Max Auto Supply (1986) Inc.*, [1998] O.J. No. 3676 at para. 10 (S.C.J.) (Master Beaudoin); *Caputo v. Imperial Tobacco Ltd*., [2002] O.J. No. 3767 at para. 14 (S.C.J.) (Master Macleod).
[2] *Caputo, supra,* at para. 14.

[35] The scope of allowable questions under rule 39.03 where a witness is being examined in aid of a motion is of more limited than that which would be proper on an examination for discovery. It is similar to, but not completely the same, as the scope of allowable questions on the cross-examination of a party on an affidavit.[3]

[36] In *Ontario v. Rothmans Inc*., 2011 ONSC 2504, at paras 132-134 (S.C.J.), Perrell J. conducted an extensive review of the law governing cross-examinations on affidavits sworn in support of an interlocutory motion and application. He noted that a cross-examination differs significantly from an examination for discovery because, among other things, a party being examined for discovery has an obligation to inform himself or herself about the matters in issue and the same is not true for a witness being cross-examined on an affidavit. He wrote:

> Second, the court can compel undertakings to be given on examinations for discovery because the person examined is required under the *Rules of Civil Procedure* to inform himself or herself about the matters in issue.
>
> Third, the extent to which the court can compel undertakings to be given on a cross-examination is less clear. If the deponent confines his or her evidence to personal knowledge, there is no apparent basis to compel him or her to obtain information about what others know about the case. For an application, the information would be hearsay and not admissible for contentious matters.
> Moreover, compelling the evidence raises concerns that the adversarial system has been replaced by an inquisitorial system.
>
> Fourth, if a deponent does provide information based on information and belief, there would appear to be a basis to compel him or her to give undertakings, at least with respect to that information.

[37] I agree with the Counsel for the University"s argument that deponents of affidavits based on their own knowledge and not given on "information and belief" ought not to be required to give undertakings or ask others information. This would entitle a person to obtain what amounts to an additional examination for discovery. This reasoning applies with greater force where someone is being examined pursuant to a Summons to Witness under rule 39.02. Our *Rules of Civil Procedure* place clear limits on the right to discovery of a non-party.

Refusals on Examination of Robert Giroux

[38] Mr. Giroux, Chair of the Board of Governors of the University of Ottawa, was examined pursuant to a Summons to Witness:

> No. 2: University liability policies
> QQ. 11-12, pp. 5-6
> Ruling: Answered; there is no policy that covers this situation: in any event, not relevant.

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[3] *Elfe Juvenile Products Inc. v. Bern*, [1994] O.J. No. 2840 (O.C.G.D. Div. Ct.) at para. 21.

No. 3: University policies for funding legal costs:
QQ. 13-22, pp. 6-8
Ruling: Answered; moreover witness not required to give an undertaking. Answered by another witness.

No. 4: University Budget for outside legal fees in a typical year
Q. 37, p. 12
Ruling: Not relevant

No. 5 Witness to search e-mail accounts
QQ. 124-135, pp. 33-36:
Ruling: Answered; it was a telephone communication. Otherwise, questions not relevant or too vague. Witness has no obligation to give undertakings.

No. 6: Relevant Communications
QQ. 136-154, pp. 36-42
Ruling: Answered; it was a telephone communication. A search was undertaken. No reason to conduct an e-mail search; this is a fishing expedition.

No. 7: Information about agenda for October 19, 2011
QQ. 188-194, pp. 48-49
Ruling: Witness answered. Who was at the meeting is not relevant.

No. 8: Witness‟s reaction to University sharing the proceeds
Q. 244, pp. 58-59
Ruling: Mr. Giroux‟s reaction is not relevant nor is his opinion on the conflict with any University policy.

No. 9: Expected cost of the litigation
Q. 273, pp 64-65
Ruling: Not relevant; cases cited by the Defendant are not applicable; class action cases.

No. 10: Reasons why the litigation is important
QQ. 286-287, p. 67-68
Ruling: Not relevant

No. 11: Cap on the amount to fund litigation
Q. 341, pp. 79-80
Ruling: Cap on funding is not relevant.

No. 12: Financial impact of the Agreement
QQ. 348-351, pp. 80-81
Ruling: Not relevant. Pure speculation on the part of the Defendant

No. 13 University policy limiting discretionary funding

QQ. 357, 359, 360, p. 83

Ruling: Not relevant. To the extent that the question was at all relevant, it was answered. No requirement of a witness to give an undertaking.

No. 14: Quantum that triggers control on capital expenditures
Q. 362, pp. 83-84

Ruling: Not relevant.

No. 15: University policy about surveillance
Q. 381, p. 87

Ruling: Not relevant to the matters raised in the Notice of Motion. Dr. Rancourt was aware of surveillance of himself in 2008 before Mr. Rock became President, moreover, this is being litigated in the labour arbitration.

No. 16: Acceptable practices of surveillance
QQ. 383-393, pp. 88-91

Ruling: Not relevant

No. 17: University policy about obtaining/using medical information
Q. 416, p. 96

Ruling: Not relevant

No. 18: Acceptable practice of third party psychiatric evaluations
QQ. 421-426, pp. 98-100

Ruling: Not relevant

No. 1: Request for documents as set out in the Summons to Witness
Q. 8-9, pp. 3-4 (as per the chart)

Ruling: The only relevant documents are those that relate to the decision to fund Professor St. Lewis‟ costs and these have been produced. Any other documents requested are not relevant to the issues raised in the Champerty motion. Furthermore, Mr. Giroux is the Chair of the Board of Governors. He does not have personal possession, control or power over all documents within the control of the University. This witness does not have to give an undertaking. This has been addressed by the witness earlier. Question relates to credibility only.

Cross-Examination of Alan Rock

Ruling: The Defendant did not pursue Items 1-10 as a result of earlier rulings.

No. 11: Common Motives for dismissal and maintenance
QQ. 508, 510, 511, 513, 515, 517, 518, 520, 525, pp. 102-106

Ruling: Not Relevant to the issues pleaded in the Notice of Motion or supporting affidavit. Mr. Rancourt refers to documents that he will need leave to produce at the Champerty Motion; he can‟t introduce them now. The dismissal is not being tried in this forum.

Nos. 12, 13
Ruling: Not pursued as result of earlier rulings.

[39] From Notice of Examination:

Item 5: All documents relevant to his litigation
Ruling: Seven relevant documents were produced. Remaining documents sought are not relevant or are covered by solicitor client privilege. Request is too broad. This is not a motion for a better affidavit of documents.

Cross-examination of Céline Delorme

[40] From Notice of Examination:

Nos. 1 and 2:
Ruling: Not pursued in the light of previous rulings

No. 3: Credibility of Exhibit "A"
QQ. 65, 67, 70, 71, 72, 133, 134, 138, pp 19-25, 48-53
Ruling: Exhibit "A" is the document that was filed in the arbitration. There is no contradiction. Not relevant to the Champerty Motion.

"original signed"

Mr. Justice Robert N. Beaudoin

Released: August 2, 2012

CITATION: St. Lewis v. Rancourt, 2012 ONSC 4494
COURT FILE NO.: 11-51657
DATE: 2012/08/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Joanne St. Lewis

Plaintiff/Responding Party

– and –

Denis Rancourt

Defendant/Moving Party

REASONS FOR DECISION ON MOTION

Mr. Justice Robert N. Beaudoin

Released: August 2, 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	)	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

involved or funds litigation in which the maintainer has no interest. With champerty the maintainer shares in the profits of the litigation. Paragraph 26 reads as follows:

> Although the type of conduct that might constitute champerty and maintenance has evolved over time, the essential thrust of the two concepts has remained the same for at least two centuries. Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties 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. Importantly, without maintenance there can be no champerty ...

[11] The person's motive is a proper consideration when deciding whether the arrangement constitutes champerty or maintenance. Paragraph 27 of *McIntyre*, *supra*, reads as follows:

> The courts have made clear that a person's motive is a proper consideration and, indeed, determinative of the question whether conduct or an arrangement constitutes maintenance or champerty. It is only when a person has an improper motive which motive may include, but is not limited to, "officious intermeddling" or "stirring up strife", that a person will be found to be a maintainer.

[12] In *McIntyre*, *supra*, at para. 28 the Court of Appeal set out the definition of champerty and maintenance as summarized in *Buday v. Locator of Missing Heirs Inc.* (1993), 16 O.R. (3d) 257 (C.A.) quoting from *Monteith v. Calladine* (1964), 47 D.L.R. (2d) 332 (B.C.C.A.), at p. 342:

> It would appear, therefore, that champerty is maintenance plus an agreement to share in the proceeds, and that while there can be maintenance without champerty, there can be no champerty without maintenance. There must be present in champerty as in maintenance <u>an officious intermeddling, a stirring up of strife, or other improper motive.</u> [Emphasis in original.]

[13] The above definition of maintenance and champerty and the background facts are the context in which I will decide whether St. Lewis' refusal to answer certain questions during cross-examinations on her affidavit was justified.

[14] St. Lewis has grouped the refusals into seven areas on the Refusals Chart ("chart") attached as Schedule 'A'. The summary of the dispositions will be entered on the chart. (see the attached chart)

<u>Issue º1 – Questions related to the Plaintiff's Academic and Promotions Background</u>

[15] This group of questions relates to St. Lewis' application for tenure, promotions, and the calibre of her work and academic background with the University. Rancourt submits that

whether St. Lewis had applied for promotions beyond being appointed as a tenured professor in 2001 is relevant to her vulnerability and independence from her employer.

[16] I agree with St. Lewis' submissions that the refusals to answer questions 49, 53-54, 56, 64 and 76-78 are irrelevant to the issues to be decided in the champerty motion.

[17] Since St. Lewis was appointed as a tenured professor in 2001 and the University has admitted that it has agreed to pay for St. Lewis' legal costs in her libel action against Rancourt, I am not persuaded that these questions are relevant to whether the University's agreement to pay for her legal fees constitutes maintenance or champerty.

Issue º2 – Questions Related to the Plaintiff's Intent to Commence Action in 2008 Before Seeking University Funding

[18] Rancourt submits that questions related to whether the plaintiff intended to commence litigation against in 2008, some two years before he published the blog which is the subject of the libel action, and before the University agreed to pay her legal fees, is relevant to this motion.

[19] The questions related to Rancourt's December 7, 2008 blog are irrelevant to whether the defendant's blogs published in February and May of 2011 are libellous. Whether or not St. Lewis had any intent to litigate over blogs published by Rancourt, before the blogs complained of were published, is irrelevant to the champerty motion. Refusals to answer questions 99, 103, 104 and 107 were therefore justified.

[20] Questions 110, 135, 136 and 137 relate to whether St. Lewis recalled receiving an e-mail giving her an opportunity to provide factual corrections. These questions would be relevant to the defamation action but not to the champerty motion. These refusals were therefore justified with regards to the champerty motion.

Issue º3 – Questions Relating to Choosing Counsel to Represent St. Lewis

[21] Rancourt submits that whether or not St. Lewis was prepared to pay for the best libel lawyer in town is relevant to her prior intent to litigate before the University agreed to pay for her legal fees.

[22] I agree with the plaintiff that Question 192 was answered by St. Lewis in detail in together with her response to Question 191, on pages 75-76 of the transcript.

(i) Question 193

[23] Whether St. Lewis was prepared to pay for the best libel lawyer in the City from her own resources, if her legal fees were not going to be paid by the University involves speculation and is not relevant as the University did agree to pay for her legal fees incurred by counsel of her choice. Her choice of counsel and the rates charged by counsel are also not relevant to the question of whether the University's agreement to fund St. Lewis' counsel of choice constitutes champerty and maintenance.

(ii) Question 232

[24] I agree with St. Lewis' submissions that whether or not she was able to pay Mr. Dearden's fees if the University had not agreed to provide funding involves speculation and is irrelevant as the University has admitted that it has agreed to provide funding to St. Lewis to retain counsel of her choice, because Rancourt's comments related to her work for the University.

Issue °4 – Independence of Plaintiff's Choice of Counsel

[25] Rancourt submits that these questions are relevant to St. Lewis' prior intent to litigate and to her vulnerability.

(i) Question 195

[26] This question was answered in sufficient detail.

(ii) Question 196

[27] What other lawyers St. Lewis may have considered hiring and their qualifications or rates is mere speculation and is irrelevant as she chose to engage Mr. Dearden and the University has admitted that it agreed to pay for his fees.

Issue °5 – The Plaintiff's Financial Situation

(i) Question 237

[28] Question 237 was satisfactorily answered at pp. 93-94.

(ii) Questions 238, 239, 240 and 241

[29] These questions relate to the plaintiff's financial situation and presumably whether she could afford to retain Mr. Dearden or any other counsel if the University had not agreed to pay for her legal fees to defend her reputation. The payment arrangements that could have been negotiated between St. Lewis and her legal counsel of choice are quite varied, involve speculation about what she might have done, and are not relevant to the champerty motion. As a result, her financial situation is also irrelevant to the champerty motion because the University has agreed to provide funding to the plaintiff before she retained Mr. Dearden, and the reason given was because she alleges that she suffered damage to her reputation as a result of preparing a report for the University.

Issue °6 – Implementation and Financial Administration of the Funding Agreement

[30] Rancourt submits that the details of how counsel for St. Lewis is paid by the University are relevant.

(i) Questions 242, 243, 244, 245, 247, 248 and 249

[31] Questions 242, 243, 244, 245, 247, 248 and 249 relate to the invoicing and payment of St. Lewis' counsel's legal fees by the University. The amount of the invoices and whether the invoices were submitted monthly or at the end of an event or are paid within 30 days or 60 days are not relevant to the champerty and maintenance motion. The question of whether the legal fees charged were fair and reasonable is one to be addressed at another time, either between the solicitor and his client or possibly at the end of a legal proceeding if costs are awarded. They are not relevant to the champerty motion as the University has admitted that it would pay Mr. Dearden's fees "without a cap". As a result the exact amounts charged and the payment terms are not relevant to the Champerty motion.

Issue °7 – Communication between the University and Plaintiff and/or Her Counsel

[32] Rancourt submits that his alleged expert witness' affidavit should be admitted related to an Outlook record of a meeting held on April 15, 2011. He seeks relevant e-mail communication between Allan Rock and plaintiff's counsel related to a meeting held on April 15, 2011 between Allan Rock, Dean Feldthusen and St. Lewis. A copy of the e-mail was forwarded to counsel for St. Lewis on March 30, 2012. St. Lewis was not a recipient of the March 12, 2012 Outlook calendar appointment and Allan Rock has already answered this question in detail.

[33] Rancourt relies on the expert opinion of Mr. Louis Béliveau, a lawyer in New Brunswick who also graduated as an engineer. Mr. Béliveau has provided his opinion that the March 30, 2012 e-mail is a communication between Allan Rock and counsel for the plaintiff. I find that Mr. Béliveau's opinion does not meet the requirements of *R. v. Mohan*, [1994] 2 S.C.R. 9 (S.C.C.), as he lacks any special qualifications in how appointments recorded in Outlook are forwarded by e-mail at a subsequent date. In addition, his opinion does not meet the requirements of relevancy to an issue in the champerty motion and is also not necessary to assist the Court in deciding the issues in this refusals motion or in the champerty motion as the University has admitted that it has agreed to pay for St. Lewis' legal fees to pursue her libel action against Mr. Rancourt.

[34] The e-mail has been produced enclosing an Outlook scheduled meeting on the Outlook software program which occurred on April 15, 2011. All three of the persons present at the meeting, namely St. Lewis, Dean Feldthusen and President Rock have been cross-examined concerning this meeting. Therefore I fail to see the relevance of any further answers to this question that can be given by St. Lewis on whether the Outlook record indicates that Allan Rock sent an e-mail to counsel for the plaintiff. In these circumstances an expert report is also not necessary as Allan Rock has already been questioned on this issue. In addition, I agree with the plaintiff's submissions that it amounts to a "fishing expedition".

Re-examination of Dean Feldthusen

[35] Rancourt seeks to strike the answers given by Dean Feldthusen to questions posed to him in re-examination. This request is denied because I find that the questions were proper re-examination and were related to questions asked by Rancourt during his cross-examination

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

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
1. Issue: Vulnerability of the plaintiff. Related to: Abuse of process, maintenance, champerty.	49	14-15	Mrs. St. Lewis, you mentioned that you had made an application in the fall of 1999. Was that the application for tenure?	- the "vulnerability of the plaintiff" is irrelevant the issues in the champerty motion - the Defendant does not dispute that the Plaintiff is a tenured professor – he says so in his champerty Notice of Motion at para 1, page 2 - the date the Plaintiff applied for tenure is irrelevant to the issues in the champerty motion. - the Plaintiff was granted tenure in 2001, 10 years prior to the publication of the articles in issue in the libel action	❖ irrelevant
	53-54	15-17	Have you ever applied for a promotion to the Associate Professor level?	- applications for promotion by the Plaintiff are irrelevant to the issues in the champerty motion	❖ irrelevant
	56	18	How many times have you applied for any promotions since becoming Assistant Professor in 1992?	- the number of times the Plaintiff has applied for any promotions since becoming an Assistant Professor in 1992 is irrelevant to the issues in the champerty motion -the question is an improper and malicious attempt by the Defendant to put in dispute whether the Plaintiff was worthy of being granted tenure	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
	64	19-20	Do you feel that the calibre of your work is at the Associate or full Professor level?	- the Plaintiff's "feelings" about the calibre of her work at the Associate or Full Professor level is irrelevant to the issues in the champerty motion - the question is an improper and malicious attempt by the Defendant to put in dispute the calibre of the Plaintiff's work	❖ irrelevant
	76-78	21-22	And is that the only time you were enrolled in a graduate degree program?	- questions about the time when the Plaintiff was enrolled in a graduate degree program are irrelevant to the issues in the champerty motion - the question is an improper and malicious attempt by the Defendant to put in dispute whether the Plaintiff was qualified to be granted tenure	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
2.Issue: Plaintiff's inclination and/or intent to litigate prior to securing third-party funding. Related to: Abuse of process, maintenance, champerty.	99	32	Do you recall having received this e-mail dated December 7th, 2008?	- the email dated December 7, 2008 (Exhibit "A" for identification) sent by the Defendant to the Plaintiff attaches a blog published by the Defendant in 2008 - the libel action in issue claims damages for defamation regarding two blogs published by the Defendant in February and May, 2011. The libel action does not assert a cause of action arising out of the December 2008 blog. - the December 7, 2008 publication is irrelevant to the issues in the champerty motion	❖ irrelevant
	103	33-34	It is something that you've included in your Discovery documents? (Exhibit "A" for identification)	- the December 7, 2008 publication is irrelevant to the issues in the champerty motion and an attempted examination for discovery by the Defendant	❖ irrelevant
	104	34	Do you recognize this? (Exhibit "A" for identification)	- whether the Plaintiff "recognizes" the December 7, 2008 email (Exhibit "A" for identification) is irrelevant to the issues in the champerty motion	❖ irrelevant
	107	35	So, you're refusing to answer any questions or to deal with this or to acknowledge this e-mail at all?	- whether the Plaintiff "acknowledges" the December 7, 2008 email (Exhibit "A" for identification) is irrelevant to the issues in the champerty motion	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
	110	36-37	This is an e-mail dated February 11, 2011, at 8:14 p.m. It is from me to Allan Rock and to Joanne St. Lewis. And it says: "Dear Mr. Rock and Ms St. Lewis, this blog post is about you ", it provides a link. And then it says: "Please provide any factual corrections or comments for posting." And it's signed "Yours truly, Denis Rancourt". Do you recall having received this e-mail? (Exhibit "B" for identification)	- the email dated February 11, 2011 attaches the "House Negro" article published by the Defendant that is one of the causes of action asserted in the Statement of Claim - whether the Plaintiff "recalls having received this email" (Exhibit "B" for identification) is irrelevant to the issues in the champerty motion - the date the Plaintiff "received" the February 11, 2011 email has nothing to do with the issues in the champerty motion; the Defendant's question relates to when the libel came to the Plaintiff's knowledge and is an examination for discovery of the Defendant's time limitation defence in the libel action	❖ irrelevant
	(135) 136 137	(50) 50-51 51-52	(Then the e-mail says a little later that the blog post is "a disgusting attack". Is that correct? – Yes, it does.) (Exhibit 1) What was your reaction to this information about the blog post? (Exhibit 1) So, what was your reaction when you received this information? (Exhibit 1)	- The Plaintiff's "reactions" are irrelevant to the issues in the champerty motion - these questions relate to when the libel came to the Plaintiff's knowledge and is an examination for discovery of the Defendant's time limitation defence in the libel action	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
3. Issue: Plaintiff's inclination and/or intent to litigate without substantial third-party funding. Related to: Abuse of process, maintenance, champerty.	(192)	(75-76)	(What criteria did you provide him with? – In part: I said, "I need to know who's the best in town in defamation law.")	- the Plaintiff answered this question in detail at Q. 193, pp. 75-76	❖ satisfactory answer
	193	76-77	At that point when you were describing these criteria, were you prepared to pay for the best defamation lawyer in town from your own financial resources?	- whether the Plaintiff was "prepared to pay for the best defamation lawyer in town from her own financial resources" is irrelevant in the issues in the champerty motion. - the Plaintiff testified at Q. 195, pp. 77-78 that "my meeting with the University was not to get them to assist me to select my counsel. After my meeting with the President when there was an Agreement to actually pay for my legal fees, I then spent my afternoon looking up this counsel and the others that I was interested in because I saw the selection as solely my discretion …It was very important to me to see that I had very able, highly experienced counsel in this area." - the Defendant's champerty motion is attacking the University's agreement to pay for the Plaintiff's counsel of choice. The Plaintiff's financial resources are irrelevant to whether there was a trafficking of litigation in this libel action	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
	232	91-92	Could you not afford to pay your own private litigation?	- the Defendant's champerty motion attacks the University of Ottawa's agreement to pay the legal fees of the Plaintiff's counsel. Whether the Plaintiff "could not afford to pay" her counsel is irrelevant to the issues in the champerty motion - the Defendant's Notice of Motion seeking to have the libel action stayed or dismissed as an abuse of process admits that the Plaintiff is a tenured assistant professor in law at the University of Ottawa and admits that her defamation action is about the Defendant's criticisms of the Plaintiff's work for the University (Grounds 1, 3, 4 of the Defendant's Champerty Notice of Motion at page 22 of the Defendant's Refusals Motion Record) - the University agreed to pay the legal fees of the Plaintiff's counsel because the Defendant's defamatory publications were about her work for the University. Whether the Plaintiff "could not afford to pay" her counsel is irrelevant to whether there was a trafficking of litigation in this libel action	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
4. Issue: Independence of plaintiff's choice of counsel. Issue: Plaintiff's credibility. Related to: Abuse of process, maintenance, champerty.	(195)	(77-78)	(Were you personally aware of the lawyer work of Richard Dearden at the time it was discussed with the Dean? – In part: After my meeting with the President when there was an Agreement to actually pay for my legal fees, I then spent my afternoon looking up this counsel and the others that I was interested in because I saw the selection of counsel as solely in my discretion.)	- this question was answered by the Plaintiff in detail	❖ satisfactory answer
	196	78-79	Who were the other lawyers that you were interested in that you researched that afternoon as you just said?	- this question is irrelevant to the issues in the champerty motion. The Defendant has attacked the University's agreement to pay the legal fees of Gowlings (para 7 of the Defendant's Champerty Notice of Motion, Defendant's Refusals Motion Record, p. 23). "Other lawyers" that the Plaintiff researched is irrelevant - the Defendant claims this question goes to the issue of the Plaintiff's credibility. The Defendant has no foundation for challenging the Plaintiff's credibility and his claim is inappropriate.	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
5. Issue: Plaintiff's financial situation, independent access to iustice.	(237)	(93-94)	(Did you make any comments about your financial situation to Mr. Rock in relation to your request? In part: I don't really remember, I'm not saying that	- this question was fully answered - see pp. 93-94 of transcript	❖ satisfactory answer
Related to: Abuse of process, maintenance, champerty.	238	94-97	What is your financial situation?	- the Defendant's champerty motion attacks the University of Ottawa's agreement to pay the legal fees of the Plaintiff's counsel. The Plaintiff's "financial situation is irrelevant to the issues in the champerty motion	❖ irrelevant in circumstances
	239	97	I want to know your answer. Will you answer this question or not?		
	240	97	I'm not going to answer anymore of your counsel's questions on this matter. I only want to know if you're refusing to answer.	- the Defendant's Notice of Motion seeking to have the libel action stayed or dismissed as an abuse of process admits that the Plaintiff is a tenured assistant professor in law at the University of Ottawa and admits that her defamation action is about the Defendant's criticisms of the Plaintiff's work for the University (Grounds 1, 3, 4 of the Defendant's Notice of Motion at page 22 of the Defendant's Motion Record)	❖ irrelevant
	(241)	(97)	(In part: My position is that that is a refusal. Let's move on.)	- the University agreed to pay the legal fees of the Plaintiff's counsel because the Defendant's defamatory publications were about her work for the University. The Plaintiff's "financial situation" is irrelevant.	❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
6. Issue: Implementation and financial administration of the agreement to fund the litigation. Related to: Abuse of process, maintenance, champerty.	(242)	(97-98)	(Did you ask about how payments would actually be made or how reimbursement would be made at that meeting? – No, no, I didn't.)	- the Defendant is attacking the University's agreement to pay the Plaintiff's legal fees as a champertous agreement. "How the reimbursement is to occur" is irrelevant.	❖ irrelevant
	243	98	How did you find out those details?	- "How much has the University reimbursed you so far" is an irrelevant question. The question is also an attempt by the Defendant to obtain information and publish it on his blog to embarrass the University and President Rock. The Defendant filed all the transcripts and exhibits of these cross-examinations to make them publicly available months prior to the hearing of the champerty motion. He refuses to provide counsel for the Plaintiff an explanation why he did this. If the Defendant obtained this information he would immediately publish the amount to embarrass the University of Ottawa and President Rock. - whether the Plaintiff "verifies the costs that are charged by Gowlings" is irrelevant - whether the Plaintiff is "expected to keep track of costs" is irrelevant - whether there is a limit in "how much this can cost" is irrelevant - whether the Plaintiff is expected to "keep track of costs" is irrelevant	❖ irrelevant
	244	98	How does the reimbursement occur?		❖ irrelevant
	245	98	How much has the university reimbursed you so far?		❖ irrelevant
	247	99	Do you verify the costs that are charged by Gowling's?		❖ irrelevant
	248	99	Is there a limit or a checking point or a flag about how much this can cost?		❖ irrelevant
	249	99	Are you expected to keep track of costs?		❖ irrelevant

Appendix 'A'

Refusals Chart

Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific question	Joanne St. Lewis' Basis For Refusal	Disposition by the Court
7. Issue: Relevant direct communications between the University and the plaintiff and/or her counsel. Issue Rule 34.10 Related to: abuse of process, maintenance, champerty.	339	123	Can you undertake to instruct your counsel to provide all e-mail communications with Allan Rock that are relevant to this litigation? (Exhibit 2)	- this question was asked in the context of an alleged Outlook calendar appointment sent on March 30, 2012 from Allan Rock to Richard Dearden and Allan Rock for a meeting to be held on April 15, 2011. The Plaintiff Joanne St. Lewis is not a recipient of this alleged appointment. - an alleged appointment from the President of the University to counsel for the Plaintiff sent one year after the meeting at which Allan Rock agreed that the University would pay the Plaintiff's legal fees in the libel action is completely irrelevant to the issues in the champerty motion - the Defendant cross-examined President Rock for hours and this question is nothing more than a fishing expedition	❖ satisfactorily answered by President Rock ❖ St. Lewis was not a recipient of e-mail

COURT FILE NO.: 524/08
DATE: 20081119

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

B E T W E E N:	)	
	)	
BELL EXPRESSVU LIMITED PARTNERSHIP, ECHOSTAR SATELLITE LLC, ECHOSTAR TECHNOLOGIES CORPORATION and NAGRASTAR LLC	)	*Christopher D. Bredt*, for the Plaintiffs
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
DAVID MORGAN a.k.a DAVID EDWARD MORGAN, DAVID MORGAN c.o.b. as www.modchipit.com, DAVID MORGAN c.o.b. as MODCHIPIT, MODCHIPIT, JOSEPHINE MORGAN, SHARON ALBERTA MORGAN, JOHN DOE, and other persons unknown who have conspired with the named Defendants	)	*Ian W. M. Angus*, for the Defendants
	)	
Defendants	)	
	)	
	)	**HEARD at Toronto:** November 19, 2008

BELLAMY J.: (Orally)

[1] The test for granting leave to appeal to the Divisional Court from this interlocutory order of Justice Wilton-Siegel is an onerous one. As far as I am concerned, the defendants have failed to meet the test in rule 62.04(b) and, for the following reasons, leave to appeal is denied.

[2] First, I see no good reason to doubt the correctness of the motion judge's decision. This was a well-reasoned decision, in which Wilton-Siegel J. applied the proper legal principles with respect to the review of all the facts and issues before him. He then applied the correct test established in the Supreme Court of Canada's decision in *Celanese Canada Inc. v. Murray Demolition*, [2006] 1 S.C.R. 189.

[3] Second, this appeal does not raise matters that are of general importance. This decision is essentially a factual one. The issues raised in it are presumably of importance to the parties, although I must confess to being surprised that the defendants waited a year after the Anton Piller Order was executed to even bring their motion. In any event, the issues raised lack general legal importance, they do not transcend the immediate interests of the specific facts of this case, they do not raise issues of general public interest, and, in the final analysis, they have very little jurisprudential value.

COSTS

[4] I have endorsed the Motion Record: "For oral reasons given, leave to appeal is denied. Costs payable by the defendants forthwith in the amount of $7,000.00, inclusive of GST and disbursements".

BELLAMY J.

Date of Reasons for Judgment: November 19, 2008