

University of Ottawa's Covert Surveillance of a Professor and Several Students (2006-2008)

First Supplementary Report

Prepared and made public by Denis G. Rancourt, former professor, University of Ottawa

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NOTE: Supporting documents for all statements in the present First Supplementary Report are available on request (claude.cde@gmail.com) and may be posted to the web as time permits and based on demand.

Reason for First Supplementary Report – Recent Developments

The present First Supplementary Report follows my January 2010 public report about the University of Ottawa's 2006-2008 campaign of covert information gathering against both me and several students. The latter January 2010 Report was posted here:

<http://rancourt.academicfreedom.ca/background/reportoncovertsurveillance.html>

The publication of my January 2010 Report catalyzed several developments which in turn make the present First Supplementary Report necessary.

The January 2010 Report encouraged several individuals to come forward with new and relevant evidence that they possessed about the University's actions. And the Report obliged the University and other implicated parties to position themselves relative to the allegations (supported by documentary evidence). The Report also encouraged journalistic and independent investigators to examine the matter and report it.

Important developments since January 2010 include the following.

- I independently contacted dean of the Faculty of Science André E. Lalonde, former University Legal Counsel Michelle Flaherty (now co-Chair of the Human Rights Tribunal of Ontario), and former University of Ottawa student Maureen Robinson (now a graduate student in Australia) to ask that they (or the University) provide any corrections or commentary for posting with the January 2010 Report. There were no answers except from Maureen Robinson who did not provide any corrections or commentary.
- Following a broadly distributed press release, several media (mostly student newspapers) reported about the University's 2006-2008 campaign of covert information gathering. See media list here: <http://rancourt.academicfreedom.ca/media/news.html> . Several of these reports provided new information, such as statements from Maureen Robinson.
- A new request for an investigation into the matter was denied by the University, thereby implicating President Allan Rock and VP-Governance Diane Davidson in the University's continued cover up, now referred to as UofOgate: <http://uofowatch.blogspot.com/2010/01/new-vp-governance-diane-davidson-and.html> .
- The organization *Canadians for Accountability* received my case and has posted independent reporter Ben Godby's account of the facts on its web site: <http://canadians4accountability.org/blog/2010/02/27/cover-ups-101-at-university-of-ottawa/> . The latter report contains new responses from former VP-Governance Nathalie Des Rosiers regarding her role in the cover up.
- On receiving my union (APUO) grievance about its covert surveillance of me the University stated in writing that it would follow the steps of the Collective Agreement in processing the grievance (while stating that the grievance was "unarbitrable"). The University then abruptly backtracked after the APUO tried to schedule the first required grievance meeting with court reporter present and it stated in writing that it now refused to follow or participate in the legal grievance process. This appears to be a *prima facie* illegal component of the University's cover up.
- The teacher assistant (TA) union (CUPE Local 2626) at the University of Ottawa filed an association grievance against the University for having covertly gathered information about several of its members. In pursuing their grievance, the TA union found that the University was either lying to them in formal legal proceedings or lying to the Information and Privacy Commissioner (IPC) of Ontario in legal representations. The TA union president reported this in a letter to the IPC and asked the IPC to investigate and report on the matter. His letter was made public here: <http://rancourt.academicfreedom.ca/Data/Documents/covertsurveillance/ToIPC-CommissionerReAppeal-PA08-224-From-CUPE-2626.pdf>

- I filed a complaint with the Ombudsman of the Fulcrum Publishing Society (FPS) which runs *The Fulcrum* (U of O student newspaper). The complaint was about conflicts of interest and unethical and unprofessional behaviours of Fulcrum associates and staff including Maureen Robinson and Frank Appleyard. A second interim report of the Ombudsman, thanks to subsequent written revelations from Frank Appleyard, concludes that both Robinson and Appleyard acted unethically and in breach of the FPS Constitution. The Ombudsman was immediately and summarily suspended from his duties in an unjustified move by the Board of Directors (BOD) of the FPS. Then on February 27, 2010, the Ombudsman was removed from his position by the BOD: 5 for, 3 abstentions. The Ombudsman's second interim report and the Appleyard revelations were made public here: <http://rancourt.academicfreedom.ca/Data/Documents/covertsurveillance/FPS-OmbudspersonReport02232010andAppleyardResponses.pdf>
 - Individuals at Queens University came forward with evidence showing that Maureen Robinson misrepresented herself as a Fulcrum (U of O student newspaper) journalist to the Queens University student radio station in order to secure a sound recording of my Queens University lecture of October 18, 2007.
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Discussion and Implications

The Queens University talk recording(s)

It was established in the January 2010 Report that at least one recording of my October 18, 2007, Queens University talk existed and was used to make a transcript that was sent to then Legal Counsel Michelle Flaherty and to then VP-Academic Robert Major.

Although the talk organizers did not, the Queens University campus radio station did make a recording of my talk and of an interview for broadcast. I assumed that these recordings would not be obtained by the University of Ottawa for the following reasons:

- The University of Ottawa would not know that the talk was recorded by a campus radio reporter unless it had an agent in the room.
- If there was an agent in the room then the agent could make his/her own recording.
- It was for local FM waves broadcast only and the broadcast day and time were not known.
- The shows were not streamed or podcast or otherwise publicly available.
- The radio journalist had assured me that the recording was to be used only for this broadcast.

- I assumed that the recording was for the use of the radio journalist only and only for preparing her broadcast.
- Any outside request for the radio recording would risk alerting me of the request.
- Unjustified outside requests for the radio recording would be refused.
- I had formally enquired about or stated on several occasions to the University of Ottawa that a covert recording was obtained and this was never denied by the University.

My many repeated written requests to the University for clarifications about the University's covert activities (see January 2010 Report) have never produced any response; this is part of the extensive cover up that is now being documented. For example, it would have been very easy for the University of Ottawa to state that a covert recording of my October 18, 2007, Queens University talk was never made or acquired by the University or its agents.

Indeed, when I published my January 2010 Report I directly asked the University if it wanted to provide any corrections or commentary for posting. There was no response.

Next, having produced my well-documented January 2010 Report, I followed up the possibility that there may have been a leak of the Queens University campus radio sound recording. I found the talk organizers and the campus radio personnel to be both appalled by the University of Ottawa's actions and very cooperative. They remembered that there had been an enquiry from Ottawa about the recording and were able to provide me with their statements and all relevant email correspondence which they could find.

It turns out that Maureen Robinson contacted the Queens University radio station and had an exchange of several emails with a director. In this way she was able to eventually pay incidental costs and obtain a CD-player recording (of the talk and interview) on a CD which was mailed to her.

The manner in which this was done was improper in many regards:

- Maureen Robinson at no time stated that her reason for obtaining the recording was to make a transcript and forward both to the University Legal Counsel for use against me.

Had she done this, her request would have been flatly refused. Knowing that if she had been honest her request would most likely have been denied means that to not state her true purpose was to misrepresent herself.

- Instead, Maureen Robinson used her full real name and an email address (maureenfulcrum@gmail.com) that conveyed that she was collecting material as part of her work with *The Fulcrum*. She introduced herself to the Queens University student radio media as "This is Maureen Robinson from the University of Ottawa."

Indeed, when the station director and the radio journalist conferred by email about the reason for Robinson's request, they found a page on the web that discussed Maureen Robinson's affiliation with *The Fulcrum* and they exchanged emails concluding that she was probably using the material in work for *The Fulcrum*. In fact, *The Fulcrum* never reported anything about my talk at Queens University.

- For a known established student media journalist to misrepresent herself or to risk misrepresenting herself as a student media journalist while secretly gathering information for an unnamed employer or interested third party is a most serious violation of journalistic professional ethics.

It is therefore not surprising that the FPS-Ombudsman's February 23, 2010, interim report concluded (on the basis of other evidence):

"I have to reaffirm that I believe Maureen Robinson acted unethically and was in a conflict of interest under the FPS Editorial Constitution."

Since the recording and transcript in question and email communications between Maureen Robinson and the University Legal Counsel Michelle Flaherty about the recording and transcript are being denied in an Information and Privacy Commissioner (IPC) Appeal on the basis that Maureen Robinson was an "agent of [University] Legal Counsel" (see University Representations to the IPC, January 2010 Report) and that Maureen Robinson was therefore protected under the exemption of "solicitor-client privilege" and since according to the Law Society of Upper Canada Rules of Professional Conduct Michel Flaherty had complete professional responsibility for all the student's actions [Law Society of Upper Canada, Rule of Professional Conduct 5.01(2)] and was bound to maintain the integrity of her profession [Rule 6.01(1)], it follows that Michelle Flaherty is professionally responsible for the unethical actions of Maureen Robinson.

This could be a serious enough breach of professional ethics for Michel Flaherty to be disciplined by her professional association (the Law Society of Upper Canada) and for her credibility as a co-Chair (judge) of the Human Rights Tribunal of Ontario to be compromised.

The University of Ottawa changes its tune

As described in the CUPE-2626 letter of February 22, 2010 (above link), contrary to its detailed Legal Representations to the IPC, the University of Ottawa has now adopted the astonishing position that Maureen Robinson was hired only to perform clerical duties such as filing and that all of her communications with University Legal Counsel were the result of "*giving herself over to activities that were not part of the work for which the University had hired her*" (translated from French). In the presence of the new Legal Counsel Alain Roussy, human resources officer Jean-Yves Leduc further stated that the University "*categorically denies that it participated in such practices.*"

Maureen Robinson is now singing the same tune also. She has stated to the media: *“I was never hired by the administration at the University of Ottawa for the purpose of reporting on Denis Rancourt’s lectures and/or activities. This fabrication is an attention-seeking affront to my integrity and that of the University.”*

OK, so the former Legal Counsel and the dean of the Faculty of Science both received dozens of email reports from Maureen Robinson containing my personal information and that of several student CUPE members and told the IPC in Legal Representations that these emails were exempt from disclosure because they were part of the University’s work managing employees but the University in no way “participated in such [covert information gathering] practices.” So what would it look like if the University *did* “participated in such practices?”

Excuse me for being sceptical but it’s rather difficult to believe, for example, that Maureen Robinson would prepare or secure an accurate transcript of a two-hour or more event as a personal project motivated only by her zeal to have “P&C” communications with the Dean and Legal Counsel of the University of Ottawa.

Frank Appleyard and Allan Rock

In the months leading to the University’s political dismissal of me on March 31, 2009, Frank Appleyard was editor of *The Fulcrum* and he produced an exceedingly negative and contrived editorial report (using student commentary) about me. This “editorial” was used inappropriately by the University as one of only two negative media pieces linked to one of its press releases about me (only several weeks later did the University add four more links to media items to its press release originally posted on February 6, 2009).

Following this unethical action by the University, Frank Appleyard had the following email exchange on the matter with a third party in February 2009:

*THIRD PARTY: I just wanted to make sure that you saw the U of O Statement on Rancourt linking to the Fulcrum: [link].
The admin is giving you a big high five!*

*APPLEYARD: Yeah, I saw that yesterday. I love the fact that my column's presence is incredibly out of context in that piece.
I have my own opinions about Rancourt and his struggles, but Im a little disappointed the admin would try to pass off my column as something akin to news coverage of him.
Anyway. Unfortunate...*

THIRD PARTY: Yeah, unfortunate for sure. And it's also quite a scandal (and irresponsible, and libelous) that the U of O would include your piece in the way

they did.

Have you considered writing about this?

I think its essential and respect that we all have different views on Rancourt.

I predict most will agree; the U of O pulling a stunt like this in reaction to a Globe and Mail article is shameful.

APPLEYARD: I contemplated writing about it, but at the end of the day newspapers aren't supposed to write about themselves or the people involved with them. It's kind of a convention among papers, as it comes off looking self-serving and biased. So, I don't think we'll write about it. I would encourage you to tell La Rotonde about it though. I think students should know what they did.

But, I am displeased and I'm planning to send a letter to media relations about it. Also, have you seen the New York Times article about Rancourt?

THIRD PARTY: [link to Globe and Mail article]

I continue to think that you need to write about how the administration has used your piece. This would not be self serving - it is simply campus news. The Fulcrum is a part of campus - you are obviously an important player. Use that power efficiently.

[End of exchange – Appleyard never responded beyond this point]

The Fulcrum editorial also gave Frank Appleyard special status as representing “the other side” as a rare campus member who agreed to speak negatively on the matter: He was interviewed on national radio (CBC’s *The Current*) to present a critical view of me (during his term as Fulcrum Editor). All these events occurred in the winter 2009 semester.

The recent FPS-Ombudsman’s interim report (above link) and subsequent email revelations from Frank Appleyard (same above link) established that following the winter 2009 semester Frank Appleyard was hired to work in the office of University President Allan Rock for the summer of 2009 while he retained the position of Business Manager of *The Fulcrum*. The latter is a violation of the FPS Constitution.

Mr. Appleyard does not see a problem with this and feels that he was hired on the basis of “merit”, not as a reward for his “editorial support.”

Surely Allan Rock on the other hand, as a former member of the same Liberal Party of Canada that succumbed to the sponsorship scandal, must recognize that to have hired a student editor under these circumstances can only hurt the public image and reputation of the academic institution that he is charged to protect and guide following the highest principles of ethics and professional conduct?

What was Mr. Rock thinking?