

April 23, 2008

Louise Pagé-Valin
Associate Vice-President
Human Resources Services
University of Ottawa
Tabaret Hall
550 Cumberland Street

**Re: Member's brief pursuant to 13.3.3;
Dean's letter of March 19, 2008;
matter of uOttawa.ca copyrighted images on UofOWatch blog.**

Dear Mrs. Pagé-Valin:

This is a member's brief pursuant to 13.3.3, in the matter of the Dean of Science's 39.4.2.2(c) letter of March 19, 2008, regarding my use of copyrighted images on the UofOWatch blog.

Missing documents

In my letter of disagreement pursuant to 13.3.1, in this matter and dated March 27, 2008 (**APPENDIX A**), I asked that Collective Agreement procedural violations be corrected. I reiterate those requests.

The Dean's letter of March 19, 2008, to the Board did not include all relevant documentation as required by 39.4.2.2. I again ask that this be corrected.

Missing documents that should have been included with the Dean's March 19th letter include:

(1) Copies of all the posts at UofOWatch.blogspot.com that contain copyrighted uOttawa.ca images. One cannot judge the issues in this case without seeing the primary evidence and without being clear on exactly which images are claimed to be in contravention of University regulations or guidelines.

(2) All the correspondence between the Dean and myself about the investigative methods that were used in connection with this case. (My e-mail of February 17, 2008, is absent, although its existence is mentioned in my email of March 2, 2008, which was included in the dean's submission to the BOG.)

(3) All the documents relating to the Notice under the Libel and Slander Act served to me by VP-Resources Victor Simon, given the connection explained in my grievance G-16 which the dean has included in his letter to the Board of March 19, 2008.

(4) Copies of my past grievances (and attached/supporting documents) that are referred to in my grievance G-16 which the dean has included in his letter to the Board of March 19, 2008.

Dean's investigation methods

I also again continue to ask that the Dean specify his investigation methods and sources in securing the private Ottawa Cinema Politica emails that he has used in this matter. An answer should be provided (39.1.2.1) before the Board can judge this case. To say that the emails are sent to many people does not explain how every email ends up on the Dean's desk or how this mechanism for the Dean receiving the emails was established.

The latter is of great concern because I have evidence that the dean has established and nurtured a working relationship with a student informant. I have evidence of the student's true identity, of the student's fabricated identity used to approach third parties about my activities, reports of several information gathering campaigns performed by the student, evidence that benefits were provided to the student, and evidence about the nature of the relationship with the dean's office for the purpose of performing surveillance activities.

It would therefore be desirable for the dean to be forthright about his investigative methods (as I have repeatedly asked) rather than continue to avoid my requests for transparency in this regard. This relates to missing documents (2) in the above list.

Arbitrary treatment, inconsistencies, and infringement of privacy

We note that the employer accepts that the UofOWatch blog that I manage is an integral part of my workload and responsibilities as a professor, otherwise the employer could not use the Collective Agreement in this way to challenge the blog's content and would instead file a civil action. The letter from Legal Counsel dated August 28, 2007, is ambiguous in this regard, however, the dean's subsequent and present charges under the Collective Agreement leave no doubt as to the employer's position regarding the status of my blog as part of my professional work.

This is in contrast to the employer's position that the Friday documentary film and discussion series on social justice themes (recently called Ottawa Cinema Politica, OCP) that I organize and moderate on campus (since 2005) is not part of my work as a professor. The latter is a change in the employer's position regarding the status of the film series. This matter of the film series status is summarized in **APPENDIX B**, including some recent letters of support that show the intrinsic educational value of the film series. Many other relevant documents on this matter (including correspondence with the employer) can be provided as needed.

The employer should explain how it is that the UofOWatch blog is part of my work but that an educational and engaging film and discussion series run on campus with campus resources,

which was previously acknowledged in writing to be part of my workload, is now apparently not part of my work. This inconsistency shows arbitrary treatment and, in my opinion, suggests that the employer recognizes that its uOttawa.ca copyright argument in the present context would not hold in a civil court of law.

More importantly, how can the dean on the one hand state that the OCP has “absolutely nothing” to do with my work (as he has done on several occasions and in writing) and on the other hand (illegitimately) secure, use and propagate private email communications between myself and OCP participants (sent to participants from a non-university server, using a list of personally and individually collected emails) as evidence regarding my intent in producing my work-related UofOWatch blog in the matter of copyrighted uOttawa.ca images (Dean’s letter of January 8, 2008)? What right does the dean give himself to secure and use communications that in his opinion have “absolutely nothing” to do with my work and in which I express my opinion (“In my opinion, ...”; Dean’s letter of January 8, 2008) about the university?

Merit of the Dean’s charges

The dean’s recently unqualified charge of copyright infringement has no merit because the University gives explicit permission to its students and professors to use uOttawa.ca images: (**APPENDIX-P1**: <http://web9.uottawa.ca/services/sic-ccs/banquedimages-imagebank/photodetail.asp?lang=en&photoID=182>)

“The images found on this Web site are the sole property of the University of Ottawa. Faculty, staff, students, and the news media may use the images solely for the positive promotion of activities related to the University of Ottawa.

Please credit the University of Ottawa for images used in external electronic and print media as follows: (uOttawa).”

Indeed, the letter from University Legal Counsel (August 28, 2007) and subsequent communications between the dean and me (me-December 27, 2007; dean-January 8, 2008; me-January 14, 2008; dean-February 5, 2008) make it clear that the employer acknowledged the central relevance of this web directive or policy, regarding the positive nature of my blog and uOttawa.ca image use.

It is difficult to believe that the University intended or intends this “policy” (Legal Counsel’s letter of August 28, 2007) to be interpreted in a restricted and literal sense: Why would the “news media” practice “positive promotion of activities related to the University of Ottawa”? By definition, “news” is not “positive promotion.” (Except in cases where there may exist agreements to provide “editorial support”? For example: **APPENDIX-P2**. But even in such cases, editorials should not be considered “news”.)

The said “policy” does not only confuse news with propaganda but it is also embarrassing in our academic context in that it appears to restrict the use of one of the University’s resources (University copyrighted images) by its students and professors to only congratulatory niceties and to exclude criticism; this in an environment that is intended to be rooted in academic

freedom, freedom of expression, intellectual discourse, critical analysis, and the challenging of established views.

In my opinion, the publicized University “policy” itself therefore contributes to giving the University a negative and regressive image whereas my UofOWatch blog with credited uOttawa.ca photos shows that the University accepts criticism. My blog thereby propagates a positive image of allowed intellectual criticism and debate, further enabled by unedited posted comments to the blog articles.

The dean’s view that criticism is negative is difficult to understand (dean quoted in my email of January 14, 2008) and is more akin to a particular ideology than to a university setting.

So here we have a university professor who, as part of his formally recognized academic work (UofOWatch, see above) and in the exercise of his academic freedom, uses University materials that are normally provided to professors for enhancing their communications about the University and who is consequently disciplined because the communications are critical of the University. This can only be understood as violating my academic freedom. To call it an unqualified infringement of copyright and to thus remove it from its actual context, as though my use of these images was for some illegitimate purpose outside of my professional responsibilities, in my opinion, is disingenuous. What would this illegitimate purpose be? The University has not openly contested any of the word-content of UofOWatch, which it agrees is part of my professional work.

Political motivation and conflict of interest

I advance that the dean’s tenuous charges are politically motivated: The University is uncomfortable with criticism (dean as quoted in my email of January 14, 2008) and believes that its benefactors and others portrayed in uOttawa.ca images on UofOWatch will be uncomfortable having their images portrayed on a blog that practices critique and editorial analysis and commentary regarding the University. It seeks to relieve these perceived discomforts, which is a political endeavour, not one consistent with allowing a diversity of opinions and needed criticism.

In this regard, all communications to the University from individuals (portrayed in uOttawa.ca images on the UofOWatch blog) complaining or expressing concern about the use of their images on the blog are relevant to the present case and should also have been included in the dean’s March 19, 2008, letter to the BOG (39.4.2.2). I ask that this be corrected and to be shown all such records.

Allow me to further advance that most objective observers would conclude, as the evidence stands presently, that the University’s charges are either political (in the above sense) and/or part of harassment aimed against me rather than an objective impulse to “protect its intellectual property rights” as it claims (as per the Legal Counsel letter of August 28, 2007).

It is also relevant that I have previously pointed out to the dean (January 14, 2008): *“Indeed, you are in conflict of interest in this matter since one post (see link below) on UofOWatch has a*

uOttawa.ca picture of you and is critical of one of your administrative actions, since you believe such criticism to be negative. Therefore, if you wish to continue, I request that an independent third party (chosen by mutual consent) evaluate this matter of academic freedom.”

I continue to be concerned that this entire charge of the dean is in conflict of interest. And I continue to ask that this conflict of interest be recognized and amended.

I have secured a video tape of the University of Ottawa town hall event of December 11, 2007. I will show this video tape to BOG members in my defence. In it, the president at one point states (in answer to my comments): “We know your [UofOWatch] blog well. Indeed we know all the things that you do. And therefore continue doing that.” (Translated from French)

I believe the tone, context, and content of this video show that the President is annoyed with both me and the blog and that the administration does not like the blog. This, in my opinion, constitutes evidence that there exists a culture of dislike of criticism (of the University) at the highest levels of the University administration. More evidence that a University of Ottawa executive culture of intolerance to criticism exists is found in several recent media reports (**APPENDIX-P3**). Such circumstances are not conducive to my getting fair treatment in this case and point to possible interference/influence from the upper administration to the dean’s office.

There is evidence, therefore, that the University’s target may be me and my blog, not violations of copyright law.

Bias in treatment: uOttawa.ca images used in other critical venues

In possibly the most striking example, and one that was not missed on campus, the editorial of the student newspaper La Rotonde of the January 7, 2008, issue was very critical of the University and prominently used four uOttawa.ca photos (of executives Major, Patry, Feldthusen, and Simon), yet La Rotonde did not receive any notice or communication about this violation of copyright. Did the University not notice the editorial? Is the University not interested in “protect[ing] its intellectual property rights” as it claims (as per the Legal Counsel letter of August 28, 2007)?

There are several other such striking examples on the web that a Google image search can find. The University has not contacted the authors or site managers. Here is one:
<http://ottawa.indymedia.ca/en/2007/12/6432.shtml>

In the University’s efforts to “protect its intellectual property rights”, the latter post would have been particularly easy to find because it is linked from several pages on UofOWatch.

My own uOttawa.ca image was once used (in 2005) by The Ottawa Citizen in a critical article about me and the University did not, to my knowledge, intervene to “protect its intellectual property rights”. (I can produce the article as needed.)

Government and public officials understand that their web images will be used by bloggers and commentators and the media. They don’t “protect the government’s intellectual property rights” in these contexts of public discourse. They accept that they are public figures and that their

images posted publicly will be used in the public arena. Why would tenured university officials venture into such untenable territory? Why would the University stand for protectionism, control and censorship rather than for transparency and tolerance? Such a stance does not protect image and, in my opinion, is contrary to the purpose of the University and contrary to the *University of Ottawa Act, 1965*. It is at best misguided.

I ask to be present at the Board meeting(s) that will discuss this matter in arriving at the Board's 13.3.9 decision, and to be given the opportunity to present my defence in person to the Board.

Please acknowledge receiving the present brief.

Sincerely,

Denis Rancourt
(Professor)

Cc: APUO.

APPENDIX A: Letter of disagreement

March 27, 2008

Louise Pagé-Valin
Associate Vice-President
Human Resources Services
University of Ottawa
Tabaret Hall
550 Cumberland Street
(INTRA and by email)

Re: Letter of disagreement pursuant to 13.3.1;

Dean's letter of March 19, 2008; matter of uOttawa.ca copyrighted images on UofOWatch blog.

Dear Mrs. Pagé-Valin:

This is a letter of disagreement pursuant to 13.3.1, in the matter of the Dean of Science's 39.4.2.2(c) letter of March 19, 2008, regarding my use of copyrighted images on the UofOWatch blog.

The Dean's charges have no merit in the academic circumstances of this case.

In addition, the Dean's letter of March 19, 2008, to the Board does not include all relevant documentation as required by 39.4.2.2. I therefore ask that the Dean prepare a new letter and that all deadlines be adjusted accordingly by reinitiating the 39.4.2.2(c) process.

Missing documents that should be included with the Dean's new letter include:

(1) Copies of all the posts at UofOWatch.blogspot.com that contain copyrighted uOttawa.ca images. One cannot judge the issues in this case without seeing the primary evidence and without being clear on exactly which images are claimed to be in contravention of University regulations or guidelines.

(2) All the correspondence between the Dean and myself about the investigative methods that were used in connection with this case.

(3) All the documents relating to the Notice under the Libel and Slander Act served to me by VP-Resources Victor Simon, given the connection explained in my grievance G-16 which the dean has included in his letter to the Board of March 19, 2008.

(4) Copies of my past grievances (and attached/supporting documents) that are referred to in my grievance G-16 which the dean has included in his letter to the Board of March 19, 2008.

(5) A copy of the present Letter of Disagreement.

Also, I continue to ask that the Dean specify his investigation methods and sources in securing the private Ottawa Cinema Politica emails that he has used in this matter. An answer should be provided (39.1.2.1) before the Board can judge this case and before I am given a chance to respond. To say that the emails are sent to many people does not explain how each email ends up on the Dean's desk or how this mechanism for the Dean receiving the emails was established.

I ask to be present at the Board meeting(s) that will discuss this matter and to be given the opportunity to present my defence in person to the Board.

Please acknowledge the present letter. I await the dean's new 39.4.2.2(c) letter that follows 39.4.2.2 and the dean's answer to the above question so that I may respond following the Collective Agreement.

Sincerely,

Denis Rancourt
(Professor)

Cc: APUO.

APPENDIX B: Workload-status of OCP

----- Original Message -----

Subject: Faculty of Science support for Friday film series, your answer required by April 25th

Date: Mon, 14 Apr 2008 15:39:26 -0400

From: Denis Rancourt <fm358@ncf.ca>

To: deansci@uottawa.ca

CC: dgr@uottawa.ca, president@uottawa.ca, rmajor@uottawa.ca

April 14, 2008

André Lalonde
Dean, Faculty of Science
University of Ottawa

Re: Faculty of Science support for Friday film series, your answer required by April 25th

Dear André Lalonde:

You have not responded to or acknowledged my February 12, 2008, invitation to attend one of the Friday evening film and discussion events that I organize on campus. In that invitation I provided you with evidence of how much the series, known as Ottawa Cinema Politica (OCP), is appreciated by many professors and students of the University.

As you know, the series has been continuous during academic terms since the fall 2005 term and has enjoyed continued and growing support. This academic year was well attended again, with a filled auditorium being most common.

As you know, the university has always encouraged this community and campus life service by supplying an auditorium and projection equipment access without charge. As you know, I have always included this activity as part of my community service as a university professor in my annual reports to your office. As you know, previous Dean of the Faculty of Science Christian Detellier stated in writing that the series was part of my official workload, as community service. Community service is a recognized component of a professor's responsibilities and the professor's choice of community service is never dictated by the administration.

The OCP series is eminently in line with the goals expressed in the University's Vision 2010 mission statement (<http://web5.uottawa.ca/vision2010/home.html>). It is an interdisciplinary and all-ages-and-backgrounds meeting of minds and hearts concerned with the full spectrum of social justice and societal issues. My work in organizing, promoting, and hosting OCP is consistent with the ideals of a university professor's community outreach and community service.

For all these reasons, I was surprised when you unilaterally announced, in 2007 as I attempted to reserve an auditorium for the fall 2007 season, that you would not consider the OCP as part of my work as a university professor in the Faculty of Science. As you know, your decision means that auditorium allocations become tenuous at best.

I was also surprised by your petty refusal to allow the University computing services to establish an email listserve for the OCP series, as they had offered to do if you agreed.

You did not explain your new position but implied that social justice issues did not have their place in a faculty of science (despite my repeated explanations that many of the OCP events have a significant science and technology component).

I find your position to be inconsistent with the university's Vision 2010 goals, inconsistent with the University of Ottawa Act, 1965 (<http://web5.uottawa.ca/admingov/university-act.html>) which describes the purpose of the University, inconsistent with the history of academia in Canada, and terribly close-minded in that it applies an arbitrary disciplinary division in a regressive way to frustrate a truly commendable project. This is the opposite of interdisciplinarity and of the broad educational goals of a university.

One can only wonder at your motivation for doing this? I do not believe that your action is based in ignorance as it may appear on the face of it. Instead it seems to me that it may be part of a concerted effort to limit my professional efforts and my academic freedom to practice legitimate community service of my choice as part of my professorial responsibilities.

Since you regularly consult the upper administration and management

staff on how to limit my academic and professional freedoms in the classroom (the administration has had to apologise for such intervention in the past), one might conclude that you were instructed to perform this ad hoc removal of OCP from my recognized workload?

As a result of your opinion regarding my workload, the University has wrongly argued that since OCP is not part of my recognized workload, then OCP is not a University service (despite the University having provided the auditorium, equipment, and my salary) such that the University is not (it claims) legally responsible to provide Deaf participant access (sign language interpretation) for the OCP events. As you know, an Ontario Human Rights Commission complaint has been filed (and accepted) on this point.

The latter is particularly mean-spirited coming from a university that had a \$67 million surplus in its last fiscal year. Indeed, in my opinion, it is not understandable that President Gilles Patry would publicly adopt this position regarding Deaf access to OCP.

This is the time to book auditoriums for the coming 2008-2009 academic year. I ask you, therefore, to correct your position on OCP because I believe it is wrong and that it is damaging to both the community and the University.

You understand the advance planning that is required for such a series, including promotion. I do not want to repeat the last-minute approval of an auditorium that occurred for the fall 2007 season of OCP. Therefore, I ask that you answer my request by April 25, 2008. Otherwise, I will assume that you will continue to not acknowledge OCP as part of my recognized workload and that you do not mind continuing to appear to conspire with the administration to push OCP off campus and out of my recognized workload.

I have made many many efforts over the years to secure OCP as a valued and recognized University service to the community, often in the face of significant administrative barriers; therefore you will understand my present directness in this matter.

Sincerely,

Denis Rancourt

(Professor of Physics and organizer and host of OCP since 2005)

Cc:

President Gilles Patry <president@uOttawa.ca>

VP-Academic Robert Major <rmajor@uOttawa.ca>

All professors

All University Senate members

All members of the Board of Governors

OCP participants

BACKGROUND

<http://uofowatch.blogspot.com/2008/01/christian-values-do-not-apply-to-deaf.html>

<http://www.petitionspot.com/petitions/fecdgruo>

<http://uofowatch.blogspot.com/2008/03/oli-cosgrove-to-minister-of-education.html>

<http://uofowatch.blogspot.com/2007/12/u-of-o-apologises-for-deans-2005.html>