

**BY FACSIMILE**

February 14, 2011

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George Rontiris

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Andrew Tremayne

Steven Williams

Ontario Labour Relations Board  
505 University Avenue, 2<sup>nd</sup> Floor  
Toronto, Ontario M5G 2P1

**Attention: Mr. Tim Parker, Registrar**

Dear Mr. Parker:

**Re: Application for Interim Order  
Denis Rancourt (Applicant) and University of Ottawa (Responding Party)**

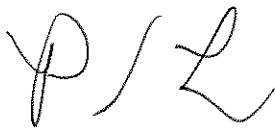
We represent the University of Ottawa with respect to the aforementioned matter. Although not entirely clear from the Application, it appears the pending proceeding to which the Application for Interim Order relates is Mr. Rancourt's ULP complaint in **OLRB File No. 2567-10-U**.

Please find enclosed our client's "Response to Application for Interim Order" (Form A-15) and schedules E through I thereto, which are being delivered to the Applicant and the Association of Professors of the University of Ottawa simultaneously in accordance with the Board's *Rules of Procedure*.

We trust this is satisfactory.

Yours truly,

**Emond Harnden LLP**



Paul Lalonde

/sm

Enclosures

cc: Denis Rancourt (by electronic mail and courier)  
cc: Association of Professors University of Ottawa (by fax)  
cc: J.F.W. Weatherill (by fax)  
cc: Allan Roussy, Legal Counsel, University of Ottawa (by electronic mail)

**Form A-15**

File No. \_\_\_\_\_

LABOUR RELATIONS ACT, 1995  
AND/OR  
STATUTORY POWERS PROCEDURE ACT

**RESPONSE TO APPLICATION FOR INTERIM ORDER**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

**Between:**

**Denis Rancourt, Former Professor, University of Ottawa**

**Applicant,**

- and -

**University of Ottawa**

**Responding Party.**

**The responding party states in response to the application:**

**OR**

\_\_\_\_\_ **intervenes in this proceeding and**  
**(Name of Intervenor)**

**states in response to the application:**

1. (a) **Correct name of the responding party/intervenor:**

**University of Ottawa**

(b) **Address, telephone number, facsimile number and e-mail address of the responding party/ intervenor:**

**University of Ottawa  
Legal Services  
550 Cumberland (302)  
Ottawa, Ontario**

**Attention: Mr. Allan Roussy, Legal Counsel**

**T: 613-562-5800, x 1137**

**F: 613-562-5178**

**Email: [aroussy@uottawa.ca](mailto:aroussy@uottawa.ca)**

## Form A-15

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party/intervenor:

**Emond Harnden LLP  
707 Bank Street  
Ottawa, Ontario K1S 3V1**

**Attention: Mr. Lynn Harnden and Mr. Paul Lalonde**

**Phone : 613-563-7660  
Fax : 613-563-8001  
Email : [lharnden@emondharnden.com](mailto:lharnden@emondharnden.com)  
and  
[plalonde@emondharnden.com](mailto:plalonde@emondharnden.com)**

2. (a) Name, address, telephone number, facsimile number and e-mail address of any other person, trade union, employer or employers' organization who may be affected by the application and who has not already been identified by another party:

**N/A**

- (b) The person, trade union, employer or employers' organization named in paragraph 2(a) is affected by the application for the following reason(s):

**N/A**

**[You must deliver to the person(s) named in paragraph 2(a): a copy of the application, including the four Schedules, a copy of the Notice to Responding Party and/or Affected Party of Application for Interim Order, a completed copy of your response, including the five Schedules, and a blank response form. You must also complete the attached Certificate of Delivery.]**

3. The responding party/intervenor must attach five Schedules as part of this response:

- (a) **Schedule E** must contain a detailed statement of agreement or disagreement with each fact or allegation in the application.
- (b) **Schedule F** must describe the position of the responding party/intervenor with respect to the order(s) requested by the applicant.

**Form A-15**

- (c) **Schedule G** must contain one or more declarations signed by persons with first-hand knowledge, detailing all of the facts upon which the responding party/intervenor relies including, as the case may be, the harm caused if interim relief were granted (or not granted, if the intervenor supports the request). Each signed declaration must include the following statement: "This declaration has been prepared by me or under my instruction and I hereby confirm its accuracy."
  
- (d) **Schedule H** must contain complete written representations in support of the position of the responding party/intervenor with respect to the applicant's request. The responding party/intervenor must include **all** of the submissions that it wishes the Board to consider. Where the application is pursuant to section 98(1)(b) [reinstatement] or 98(1)(c) [terms and conditions], the written representations must address whether:
  - (a) the circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway;
  - (b) there is a serious issue to be decided in the pending proceeding;
  - (c) the interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives,
  - (d) the balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding;
  - (e) the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.
  
- (e) **Schedule I** must contain any other relevant statements that the responding party/intervenor wishes to make.

4. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

N/A

DATED Feb. 14, 2011.



**Signature for the Responding Party/Intervenor**

Form A-15

[Complete either section 3 or section 4 below.]

3. The documents were delivered by [ X ] facsimile transmission or [ ] hand delivery on

February 14, 2011 at 2:00 ~~a.m.~~ p.m. (approximately 8m)  
(Date)

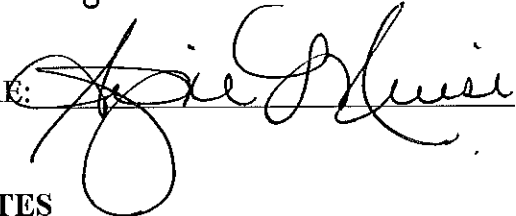
4. The documents were given to Swift Courier on February 14, 2011,  
(Name of Courier) (Date)

and I was advised that they would be delivered not later than February 14, 2011,  
(Date)

at 3:30 ~~a.m.~~ p.m. (approximately 8m)

NAME: Signe Moise

TITLE: legal assistant to Paul Lalonde

SIGNATURE: 

**IMPORTANT NOTES**

YOU MUST FILE WITH THE BOARD ONE SIGNED ORIGINAL AND ONE COPY OF THIS RESPONSE AND ANY MATERIALS THAT ACCOMPANY IT. IF YOU FILE YOUR RESPONSE BY FACSIMILE TRANSMISSION, ONLY ONE COPY SHOULD BE FILED.

PLEASE CONSULT THE BOARD'S RULES OF PROCEDURE BEFORE COMPLETING THIS RESPONSE. THE RULES OF PROCEDURE DESCRIBE HOW A RESPONSE MUST BE FILED, WHAT INFORMATION MUST BE PROVIDED, AND THE TIME LIMITS THAT APPLY.

YOU CAN OBTAIN A COPY OF THE RULES FROM THE BOARD'S OFFICES AT 505 UNIVERSITY AVENUE, 2ND FLOOR, TORONTO, ONTARIO, M5G 2P1 (TEL. (416) 326-7500) OR FROM THE BOARD'S WEBSITE AT [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca).

BOARD HEARINGS ARE OPEN TO THE PUBLIC UNLESS THE PANEL DECIDES THAT MATTERS INVOLVING PUBLIC SECURITY MAY BE DISCLOSED OR IF IT BELIEVES THAT DISCLOSURE OF FINANCIAL OR PERSONAL MATTERS WOULD BE DAMAGING TO ANY OF THE PARTIES. HEARINGS ARE NOT RECORDED AND NO TRANSCRIPTS ARE PRODUCED.

## **Schedule E**

### **Detailed statement of agreement or disagreement with each fact or allegation**

1. Unless otherwise stated herein for the purposes of this Application the Responding Party disagrees with each fact or allegation in the Applicant's declaration, being Schedule A to the Application for Interim Order.
2. The Responding Party agrees the Applicant filed twenty seven (27) grievances against the Responding Party since 2005 as alleged in paragraph 1 of the declaration. The Responding Party disagrees with the details provided by the Applicant regarding those grievances. However, the Responding Party is of the view that those discrepancies are of no significance to the present Application and as a result will not provide details to the contrary in its response materials.
3. The Responding Party agrees it filed three (3) applications on January 28, 2011 as alleged in paragraph 2 of the declaration. However, each of those applications was a "Request for Appointment of Single Arbitrator Under Section 49 (Expedited Arbitration)" ("section 49 request"). As such they were not filed with the Board as alleged, but with the Minister of Labour.
4. The Responding Party agrees the Applicant has put grievances G25, G26, and G27 (following the Applicant's system for numbering the grievances) and his alleged statutory right to the pre-arbitration mediation processes in the governing collective agreement at issue in an "Application Under Section 96 of the Act (Unfair Labour Practice)" assigned Board File No. 2567-10-U (the "ULP Application") as alleged in paragraph 3 and 7 of the declaration. The Responding Party, however, has taken the position that the ULP Application is without merit. Furthermore, the parties are not awaiting a hearing in that matter as alleged in paragraph 3 of the declaration, but a decision from the Board on the issue of the preliminary dismissal of the ULP Application.
5. The Responding Party agrees the APUO has assumed carriage of grievance G24 as alleged in paragraph 10 of the declaration. However, the Responding Party disagrees the APUO did not have standing in grievance G24 when the Responding Party filed a section 49 request for that grievance on the APUO on January 28, 2011 as alleged in paragraph 9 of the declaration.
6. The Responding Party agrees that the three (3) January 28, 2011, section 49 requests were not served personally on the Applicant as alleged in paragraph 11 of the declaration. However, the Responding Party disagrees it was required to serve the section 49 requests

on the Applicant as alleged in paragraphs 11, 12, and 13 of the declaration. Furthermore, the Responding Party has no knowledge of whether the Applicant only became aware of the section 49 request on February 3, 2011 when the APUO forwarded them to his attention as alleged in paragraph 14.

7. The Responding Party agrees that Arbitrator Weatherill was appointed as arbitrator pursuant to all three (3) of the Responding Party's January 28, 2011, section 49 requests on February 1, 2011, as alleged in paragraph 15. However, the Responding Party has no knowledge of whether the Applicant only became aware of the appointment on February 9, 2011, when the APUO forwarded them to his attention as alleged in paragraph 16.
8. With respect to the allegation in paragraph 17 of the declaration that the Responding Party has never before made a section 49 request that involved the APUO, the Responding Party states that the details regarding previous section 49 requests are of no significance to the present Application and as a result will not be detailed in these responding materials.
9. With respect to the allegation in paragraph 17 of the declaration that the Responding Party agrees made no requests to the APUO to advance or accelerate any of the Applicant's grievances prior to filing the section 49 requests, the Responding understood the Applicant had instructed the APUO not to communicate with the Responding Party regarding the Applicant's grievances. The Applicant's ULP Application confirms he provided the APUO with instructions in that regard.
10. The Responding Party vehemently denies it targeted the Applicant and conspired at the highest administrative levels to remove the Applicant from his position for reasons other than those stated in his letter of dismissal as alleged in paragraphs 19, 20 and 21 of the Application.
11. The Responding Party is of the view that the allegations at paragraphs 4, 5, 6, 8, 18, 22, 23, 24, 25, 26 and 27 of the declaration are of no significance to the present Application, and therefore the Responding Party will not provide details contrary to the allegations in those paragraphs in its response materials.

## Schedule F

### Position of the responding party with respect to the orders requested

1. It is the position of the Responding Party that the Applicant is not entitled to the orders requested in the Application and set out in paragraphs (I), (II), (III), (IV) and (V) on the Application form, and paragraphs (3), (5), (15) and (16) of Schedule B to the Application.
2. The orders requested by the Applicant are based on the misapprehension that a "Request for Appointment of Single Arbitrator Under Section 49 (Expedited Arbitration)" ("section 49 request") is made to and determined by the Board.
3. The orders request do not relate to the preservation of the process in the pending proceedings before the Board, namely the Applicant's "Application Under Section 96 of the Act (Unfair Labour Practice)" assigned Board File No. 2567-10-U (the "ULP Application").
4. With respect to the order requested by the Applicant in paragraph (I) on the Application form and paragraphs (3) and (5) of Schedule B, the Board does not have jurisdiction under section 49 of *Labour Relations Act* (the "Act") to dismiss the three (3) section 49 requests made by the Responding Party to the Ministry of Labour on January 28, 2011, or to extend the time limit in section 49 of the Act for the commencement of the hearing. Furthermore, and in the alternative, the Board does not have jurisdiction to issue such orders pursuant to section 98(1)(a) of the Act because in the circumstances such orders would be substantive rather than procedural in nature.
5. With respect to the orders requested by the Applicant in paragraphs (III), (IV) and (V) on the Application form and paragraphs (15) and (16) of Schedule B, pursuant to section 98(1)(a) the Board is without jurisdiction to order document disclosure in preparation for arbitration, to order the consolidation of all grievances broadly related to the Applicant's dismissal at arbitration, and to order the arbitration proceedings be open to the public, held at a venue suitable for public attendance and be recorded for public access. In the circumstances such orders would be substantive rather than procedural interim orders.
6. In the alternative to paragraphs 3. and 4. above, if the Board has jurisdiction to make some or all of the orders requested (which is denied by the Responding Party) the Board should refuse to exercise its discretion to issue those orders.


## Schedule G

### Declaration of Céline Delorme

1. I am a lawyer at Emond Harnden LLP. Our firm represents the University of Ottawa in the present Application, the Applicant's "Application Under Section 96 of the Act (Unfair Labour Practice)" assigned Board File No. 2567-10-U (the "ULP Application"), and in connection with the Applicant's termination grievance and related issues.
2. The Applicant filed twenty seven (27) grievances against the Responding Party since 2005.
3. The Responding Party filed a "Request for Appointment of Single Arbitrator Under Section 49 (Expedited Arbitration)" ("section 49 request") with the Ministry of Labour in connection with three of the Applicant's outstanding grievances; namely the grievances referred to by the Applicant as G14, G15, and G24.
4. The Applicant has put grievances G25, G26, and G27 (following the Applicant's system for numbering the grievances) and his alleged statutory right to the pre-arbitration mediation processes in the governing collective agreement at issue in an "Application Under Section 96 of the Act (Unfair Labour Practice)" assigned Board File No. 2567-10-U (the "ULP Application"). The Responding Party has taken the position that the ULP Application is without merit. Furthermore, the parties are presently awaiting a decision from the Board regarding the preliminary dismissal or deferral of the ULP Application.
5. The three (3) January 28, 2011, section 49 requests were not served on the Applicant. They were served on the Association of Professors of the University of Ottawa (the "APUO").
6. Arbitrator Weatherill was appointed as arbitrator pursuant to all three (3) of the Responding Party's January 28, 2011, section 49 requests on February 1, 2011.
7. The Responding Party understood the Applicant had instructed the APUO not to communicate with the Responding Party regarding the Applicant's grievances prior to filing the section 49 requests.

8. The Responding Party denies targeting the Applicant and conspiring at the highest levels of its administration to terminate him for reasons other than those stated in his letter of dismissal.
  
9. This declaration has been prepared by me or under my instruction and I hereby confirm its accuracy.

DATED AT OTTAWA, ONTARIO, THIS 14<sup>th</sup> DAY OF FEBRUARY, 2011

  
Céline Delorme

## Schedule H

### Complete written representations

1. It is submitted that the present Application is misguided and should be dismissed by the Board without a hearing or consultation.
2. The Applicant commenced this Application on the misapprehension that a "Request for Appointment of Single Arbitrator Under Section 49 (Expedited Arbitration)" ("section 49 request") is made to and determined by the Board, and that the Responding Party filed three section 49 requests with the Board on January 28, 2011.
3. Therefore the Applicant is seeking orders from the Board pursuant to s. 98(1)(a) of the *Labour Relations Act* (the "Act") that focus on the Responding Party's section 49 requests and the resulting arbitration proceedings, rather than the preservation of the process of the pending proceedings before the Board in the Applicant's "Application Under Section 96 of the Act (Unfair Labour Practice)" assigned Board File No. 2567-10-U (the "ULP Application").
4. The Applicant is therefore not entitled to the orders requested in the Application, and set out in paragraphs (I), (II), (III), (IV) and (IV) on the Application form, and paragraphs (3), (5), (15) and (16) of Schedule B to the Application.

### Jurisdiction

5. It is submitted that the Board does not have the jurisdiction to issue the orders requested by the Applicant (with the exception of the requested order to defer the section 49 requests until after the ULP Application is finally determined in paragraph (II) on the Application form) because they are substantive in nature and are not necessary to preserve the process of the pending litigation of the ULP Application before the Board.
6. The source of the Board's jurisdiction to grant the interim remedies requested by the Applicant is found in s 98(1)(a) of the Act which provides that:  
  
98. (1) On application in a pending proceeding, the Board may,  
  
(a) Make interim orders concerning procedural matters on such terms as it considers appropriate;  
  
...  
  
7. The Board has determined that s. 98(1)(a) creates a jurisdiction to make orders that do not amount to substantive orders, but that provide more than orders in respect of

procedural issues that arise in respect of the hearing (see L.I.U.N.A., 2010 CanLII 161 (ON L.R.B.) at para. 15 and case law referred to therein).

8. Subsection 98(1)(a) has been interpreted as giving the Board power to do what is necessary to preserve the process of the Board in a pending proceeding before the Board. That is, to preserve the Board's process from becoming irrelevant by the time a decision was made. To the extent an order is necessary to preserve some meaning for the Board's process, the Board may preserve some prevailing conditions for the purpose of being able to adjudicate them in the pending proceeding (see L.I.U.N.A., 2010 CanLII 161 (ON L.R.B.) at para. 16 and case law referred to therein).
9. It is therefore submitted that the Board does not have jurisdiction to order the following remedies requested by the Applicant because they are substantive in nature and are not necessary to preserve the process of the Board in the pending ULP Application:
  - a. To dismiss the three (3) section 49 requests made by the Responding Party to the Ministry of Labour on January 28, 2011.
  - b. To extend the time limit in section 49 of the *Act* for the commencement of the hearing.
  - c. To order document disclosure in preparation for arbitration.
  - d. To order the consolidation of all grievances broadly related to the Applicant's dismissal at arbitration.
  - e. To order the arbitration proceedings be open to the public, held at a venue suitable for public attendance and be recorded for public access.

### **Discretion**

10. If the Board has the jurisdiction to issue certain or all of the remedies requested (which is denied by the Responding Party), it is submitted that the Board should not exercise its discretion to issue any of those orders.
11. The Board has confirmed the appropriate considerations to determine whether to exercise its discretion to grant relief under s. 98(1)(a) are (see *Brick & Allied Craft Union*, 2007 CanLII 16241 (ON L.R.B.) at para. 22 and case law referred to therein):
  - a. Whether there is a serious issue;

- b. Whether there would be irreparable harm to the Applicant if relief is not granted; and,
  - c. Where the balance of labour relations harm and public interest lie.
12. It is submitted that the Applicant is not entitled to any of the interim orders requested because the ULP Application fails to make out a *prima facie* case for the remedies requested. That is, there is no serious issue to be determined (we refer the Board to the responses filed by the University of Ottawa and Allan Rock as well as the APUO in the ULP Application).
  13. It is further submitted that the Applicant is not entitled to an order for document disclosure in preparation for arbitration because such remedy would result in irreparable harm to the Responding Party. Furthermore, the balance of harm favours a refusal of such remedy on an interim basis. If the documents were disclosed now that would effectively decide the issue of document disclosure. However, there would be no harm or prejudice to the Applicant if he had to wait until after the ULP Application was determined for disclosure and/or until an arbitrator considered the issue of document disclosure at arbitration.
  14. Irreparable harm for these purposes relates to preserving the capacity of both parties to litigate the ULP Application in a meaningful manner (see *Brick & Allied Craft Union*, 2007 CanLII 16241 (ON L.R.B.) at para. 22 and case law referred to therein).
  15. It is therefore further submitted that all of the other orders requested (with the exception of the requested order to defer the section 49 requests until after the ULP Application is finally determined in paragraph (II) on the Application form) should be refused because they do not relate to preserving the capacity of the parties, and in particular the Applicant, to litigate the ULP Application in a meaningful way.

## Schedule I

### Other Relevant Statements

N/A