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LABOUR RELATIONS ACT, 1995

**APPLICATION UNDER SECTION 96 OF THE ACT
(UNFAIR LABOUR PRACTICE)**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

AMENDED APPLICATION*
OLRB File No. 2567-10-U

Between:

Denis Rancourt of Ottawa, Ontario; former professor, University of Ottawa, Ottawa, Ontario.

Applicant,

- and -

- (1) Allan Rock, President, University of Ottawa, Ottawa, Ontario; and
- (2) University of Ottawa, Ottawa, Ontario; and
- (3) Association of Professors University of Ottawa (APUO), Ottawa, Ontario.

Responding Parties.

The applicant states that the responding parties have violated section(s) **56., 76.** of the *Labour Relations Act, 1995*. (You must claim that some section OTHER THAN SECTION 96 has been violated.)

The applicant requests the following:

That the Responding Parties be ordered to immediately convene the “Step-1” required resolution-attempt meetings foreseen by the Collective Agreement (13.4.2) between the University of Ottawa and the Association of Professors University of Ottawa (APUO) in three grievances filed by the Applicant denoted: G25 filed on November 22, 2009, G26 filed on September 21, 2010, and G27 filed on October 14, 2010.

The Applicant further requests that the Responding Parties be ordered to participate in good faith in a complete Step-1 process resolution attempt for each of the three grievances in question, G25, G26 and G27, as foreseen by the Collective Agreement between the University of Ottawa and the Association of Professors University of Ottawa (APUO).

This will establish that the Applicant is entitled to the Step-1 resolution-attempt process which the Respondent Parties (1) and (2) have an obligation under the Act to convene and that the

* The present Amended Application is filed following the procedure suggested to the applicant by the Board.

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Applicant cannot be intimidated away from securing his Collective Agreement right to the process in question for these three grievances.

(Describe **in detail** what you wish the Board to order as a result of this application.)

The applicant states:

1. (a) Name, address, telephone number, facsimile number and e-mail address of the applicant:

Denis Rancourt, [REDACTED]

- (b) Name, address, telephone number, facsimile number and e-mail address of a contact person for the applicant:

None.

- (c) Name, address, telephone number, facsimile number and e-mail address of the responding parties:

(1) Allan Rock, President, University of Ottawa, Office of the President (Room 212), Tabaret Hall, 550 Cumberland, Ottawa ON K1N 6N5, Ph 613-562-5809, Fax 613-562-5103, allan.rock@uOttawa.ca

(2) University of Ottawa, Office of the President (Room 212), Tabaret Hall, 550 Cumberland, Ottawa ON K1N 6N5, Ph 613-562-5809, Fax 613-562-5103, president@uOttawa.ca

(3) Association of Professors University of Ottawa (APUO), University Centre (Room UCU 348), 85 University, Ottawa, ON K1N 6N5, Ph 613-562-5800 ext.4364, Fax 613-562-5197, apuoadm@uottawa.ca

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:

None.

- (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.

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[Before you file your application with the Board, you must deliver to the responding party and to the person(s) named in paragraph 2(a): a copy of your application, a blank response form, and a Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act (Form C-12) with the names of the parties and the date inserted. You must also complete the attached Certificate of Delivery.]

3. In support of its request, the applicant relies on the following material facts:

These facts were prepared by the Applicant as self-represented. I hereby confirm their accuracy.

The paragraphs below are numbered as P1, P2, and so on.

Grievances at issue and academic freedom context

P1. Three grievances are at issue in the present application, as per this table:

code	grievance title	date filed
G25	“Grievance G-25 (my code) – covert surveillance of a professor and of students”	November 22, 2009
G26	“Grievance G26 – Violation of academic freedom, global warming science”	September 21, 2010
G27	“Grievance G27 – Unethical behaviours of employer and conspiracy to do harm, IPC Adjudication Order PO-2915”	October 14, 2010

P2. These grievances concern alleged egregious violations in the academic workplace context, including an extensive covert information gathering campaign using a hired student journalist, an unambiguous violation of research academic freedom, and the fabrication of harmful and baseless “mental health concerns”. In part the three grievances constitute violations of academic freedom, a legal and foundational principle in academia, and several other breaches of the applicant’s rights.

P3. For example, in a recent labour arbitration decision a professor in Ontario was awarded cash reparation for violation of his academic freedom because his university had (without defamation or naming the professor) publicly disagreed with his research on a controversial topic.

P4. The grievances relate to alleged violations perpetrated by the university while the applicant was a tenured professor and thereby merit reparation for damages irrespective of the applicant’s present employment status and irrespective of any other grievances filed by the applicant.

P5. Duly grieved damages experienced in a workplace do not expire because the employer fires the employee, irrespective of whether the dismissal itself is upheld or not when separately arbitrated.

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P6a. The three grievances (G25, G26, G27) and the events related to the Applicant's April 1, 2009, dismissal occurred in the context of the unresolved firing of a tenured professor that is considered by the Canadian Association of University Teachers (CAUT) to be a major academic freedom case in Canada and where expert researcher on the academic workplace (several books on the subject), Professor Kenneth Westhues (University of Waterloo), has in an independent public report concluded with stated certainty that the firing of the Applicant was an "administrative mobbing". [See attached background document on the legal status of Academic Freedom.]

P6b. The grading question advanced by the university for its dismissal of the Applicant is a pretext. It was a political firing to silence the institution's most vocal critic. The Applicant's criticism of the institution includes the acerbic web site "U of O Watch" and grievances for institutional malfeasance based on access to information (FIPPA) records. The contested dismissal was and is an intimidation and coercion (section 76.) to prevent all present and future grievances based on the Applicant's over twenty past and ongoing FIPPA requests and appeals (see below).

P7. A previous precedent-setting labour arbitration award (released on June 25, 2008) overturned discipline and established that grading is an intrinsic part of pedagogical method which in turn is part of a professor's academic freedom:

"... the major change being with respect to the pedagogical innovation of independent group studies, the involvement of the students themselves in identifying areas of interest and the introduction of the satisfactory/not-satisfactory grading system. The Arbitrator is satisfied that those pedagogical initiatives were legitimately within the purview of the academic freedom enjoyed by Professor Rancourt ..."

P8a. The academic freedom case surrounding the Applicant's dismissal and its political overtones have been extensively reported in the New York Times (twice), the Globe and Mail (twice), the National Post, The Chronicle of Higher Education (several times), TV Ontario (feature interview with Steve Paikin), CBC national radio (The Current, twice), an international academic freedom conference held at New York University, and many local papers and television and radio.

P8b. An Employment Insurance (EI) investigation found that a "dismissal with cause" could not be substantiated, EI was paid, and this was prominently reported in the media.

P8c. A Canadian Association of University Teachers (CAUT) Independent Committee of Inquiry (ICOI) public report into the whole matter of the Applicant's dismissal and academic freedom rights was launched prior to the dismissal and is ongoing.

Collective Agreement jurisdiction

P9. The Collective Agreement between the University of Ottawa and the Association of Professors University of Ottawa (APUO) (the "Collective Agreement" for short) has the force of law pursuant to the *Labour Relations Act* (section 56.).

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P10. Some sections of the Collective Agreement relevant to the present application changed between the 2004-2008 Collective Agreement and the 2008-2011 Collective Agreement. The latter came into force on May 1, 2008. The changes are given in a publicly available document entitled “Settlement – Collective Agreement – 1 May 2008 to 30 April 2011” here: <http://www.apuo.uottawa.ca/Info/2008-201CA/2008-11%20SETTLEMENT.pdf> (and attached).

P11. The complete current 2008-2011 Collective Agreement is publicly available on the web here: <http://www.hr.uottawa.ca/policies/agreements/apuo.php> .

P12. The complete previous 2004-2008 Collective Agreement is publicly available on the web here:
http://www.apuo.uottawa.ca/Info/Convention/APUO_CA_04-08.pdf

P13. The alleged substantive violations of the Collective Agreement for G25 and G27 occurred before May 1, 2008. Therefore, G25 and G27 relate to the 2004-2008 Collective Agreement.

P14. The alleged substantive violations of the Collective Agreement for G26 occurred after May 1, 2008. Therefore, G26 relates to the 2008-2011 Collective Agreement.

P15a. For all three grievances the alleged violations of the Collective Agreement were only discovered by the Applicant after they occurred, thanks to access to information (i.e., *Freedom of Information and Protection of Privacy Act*, Ontario, FIPPA) requests and appeals. The FIPPA request and appeal results were the last significant developments that in each case gave rise to the particular grievance filing date pursuant to the Collective Agreement (section 13.4.1: “or the date the member had notice of the event in question”).

P15b. The Applicant has many ongoing and pending FIPPA requests and appeals that could lead to discovery of grievable damage to the Applicant sustained while he was a tenured professor at the University of Ottawa and to corresponding new labour grievances pursuant to the Collective Agreement. The Applicant submits (P6b and see below) that the employer’s dismissal of the Applicant is a section-76. intimidation and coercion intended to compel the Applicant to refrain from exercising his rights under the Collective Agreement and the Act regarding the due process filing and processing of grievances G25, G26, G27, and future grievances.

P15c. The intimidation and coercion (P15b) included an unjustified suspension and physical banning from campus (unjustified discipline) while the Applicant was a tenured professor in a four-month period ending on April 1, 2009, and led to an Ottawa Police arrest of the Applicant at a regular installment of the Applicant’s weekly Cinema Politica public discussion series on campus. The police charges were dropped at trial and the university stopped barring the Applicant from campus and from his campus radio show after the media-reported arrest. Responding party (1) Allan Rock was directly involved in the undisclosed (to the Applicant and public) decision to stop arresting the Applicant.

P16. At the times of the alleged substantive violations of the Collective Agreement for all three grievances (G25, G26, and G27) the Applicant was a tenured professor at the highest rank of Full

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Professor at the University of Ottawa and was therefore a full member of the Association of Professors University of Ottawa (APUO).

P17. The three grievances were correctly filed pursuant to the Collective Agreement procedure (13.4.1). This has not to this date been challenged by the Responding Party.

P18. In cases where due process and procedure or established practice or delays caused by a party other than the grievor are such that the filing of a grievance must occur after the grievor has been fired by the employer, then the changed employment status of the grievor does not in itself make the grievance not receivable or void or not arbitrable.

P19. The obvious example in the latter regard (P18) is the applicant's own grievance (G24) for dismissal which was filed on April 16, 2009, after the April 1, 2009, dismissal and which led to the ongoing processing foreseen by the Collective Agreement; including a duly completed Step-1 resolution-attempt process (at issue in the present application, see below).

Applicant's right to the Step-1 process

P20. The Collective Agreement stipulates that the Responding Parties (1) and (2) ("the employer's liaison officer") "shall convene" (or "shall arrange for", 2008-2011) a resolution-attempt Step-1 meeting within ten working days of filing a grievance (section 13.4.2).

P21. The Applicant, not the Applicant's association (APUO), has legal standing in the grievance process up to and including the Step-1 process, at least up to the point when the Applicant's association (APUO) assumes the grievance or formally decides to not assume the grievance (13.1, 13.2.1, 13.2.2).

P22. Some relevant parts from Collective Agreement section 13.1 are (**emphasis added**):

"GRIEVOR: the member, members, Association or employer initiating a grievance.

*PARTIES: for the purposes of this article, the parties to the grievance, being the Association and the employer, **except in the case of a private grievance** where they are the aggrieved member or members and the employer.*

***PRIVATE GRIEVANCE: a grievance which is initiated by a member or members is a private grievance prior to and throughout the Step 1 meeting, and remains so thereafter unless and until assumed by the Association.** A private grievance may be pursued beyond Step 1 only where the subject matter involves an employer decision with respect to tenure, promotion or discipline.*

13.2.1 Any grievance initiated by a member or members against the employer may be assumed by the Association, at which point the Association replaces the member(s) as a party.

*13.2.2 **Only a party shall have the authority to settle or withdraw a grievance.**"*

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P23. The Step-1 meeting is a resolution-attempt meeting facilitated by liaison officers (13.2.6, 13.4.2).

P24. The Step-1 resolution-attempt process ends with a Step-1 memorandum (13.4.5).

P25. Only a party (with standing) in the Collective Agreement has the authority to settle or withdraw a grievance (13.2.2).

P26. It is therefore clear that the Applicant has a right under the Collective Agreement to the Step-1 grievance process. It is also clear that the Step-1 process is intended to be a good faith attempt to resolve the grievance before it needs to be assumed by the association for further processing.

P27. The Applicant submits (see below) that the Responding Parties have intimidated the Applicant to accept an abrogation of the Applicant's right to the Step-1 process for each grievance in question (section 76.) and that the Responding Parties have violated the Act by refusing its binding obligations pursuant to the Act (section 59.).

Communications between the Applicant's association (APUO, Respondent Party (3)) and the Respondent Parties (1) and (2)

P28. The Applicant has on several occasions, both in writing and verbally, instructed the Applicant's association (APUO, Respondent Party (3)) to not have any communications with the employer (Respondent Parties (1) and (2)) about the Applicant's grievances during all Step-1 processes and during all times when the Applicant has standing in the grievances; which are private grievances before the grievances are assumed by the Applicant's Association.

P29. The APUO has confirmed both in writing and verbally (via both APUO Legal Counsel John D. Henderson and APUO Liaison Officer Mario Lamontagne) that it would always comply with the Applicant's instructions to not have any communications with the employer (Respondent Parties (1) and (2)) about the Applicant's private-by-definition grievances during all Step-1 processes and during all times when the Applicant has standing in any such grievance and before such grievance is assumed by the Applicant's association (APUO).

P30. The Applicant has direct knowledge that the APUO has informed the employer (Respondent Parties (1) and (2)) of this agreement of non-communication.

P31. The Applicant has no direct evidence that would establish that the APUO has violated this agreement of non-communication.

P32. The Applicant submits that this agreement of non-communication may well have been effectively breached by the APUO.

P33. Likewise, the Applicant has reason to believe (despite explicit and acknowledged requests from the Applicant to the APUO) that not all communications from the Respondent Parties (1)

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and (2) to the Applicant's association (APUO, Respondent Party (3)) about grievance matters for which the Applicant has/had standing were promptly communicated to the Applicant by the Applicant's association (APUO).

P34. The fact that Respondent Party (3) (APUO) explicitly agreed to the Applicant's non-communication directive and affirmed it to the employer supports the fact that the Applicant has standing (i.e., is the party to the Collective Agreement) for a private grievance.

P35. That the APUO would violate the non-communication directive or not promptly communicate all employer messages about private grievance matters to the Applicant would suggest that (is evidence that) the APUO is collaborating with Respondent Parties (1) and (2) to disregard the Applicant's rights.

Grievance G25

P36. The Applicant duly filed "Grievance G-25 (my code) – covert surveillance of a professor and of students" (G25 for short) on November 22, 2009.

P37. Receipt of the grievance G25 was acknowledged by email by an agent (Director of Human Resources Louise Page-Valin) of the Responding Party on November 23, 2009.

P38. The entire November 23, 2009, email from Louise Page-Valin to the Applicant reads:

"I acknowledge receipt of your e-mail and the grievance it contained. The position of the University is that the grievance is inarbitrable. Without prejudice, the grievance will be processed in accordance with the procedures under the Collective Agreement with the APUO."

P39. No further explanation was given. "Inarbitrable" is not an English word nor does it appear in the Collective Agreement.

P40. Two common definitions of intimidate are: "1. To make timid; fill with fear. 2. To coerce or inhibit by or as if by threats."

P41. The Applicant interpreted the terse November 23, 2009, e-mail as a threat that the Responding Parties (1) and (2), which commands and is a powerful and influential institution, would present significant but undefined barriers against the grievance being even heard.

P42. On December 8, 2009, following a verbal request to the employer Responding Party ((1) and (2)) from the Applicant's association (APUO, Responding Party (3)) that the required Step-1 meeting be scheduled, an agent (Assistant Director Human Resources Jean-Yves Leduc) of the Responding Parties (1) and (2) informed the APUO (Legal Counsel John D. Henderson) by email that the Responding Parties (1) and (2) would not convene a Step-1 meeting for G25. The central point was:

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“As previously advised, it is the position of the University that this grievance is inarbitrable in light of the fact that the grievor is no longer employed. In these circumstances, a Step 1 meeting will not be scheduled.”

P43. Here the Responding Parties (1) and (2) are now contradicting their earlier commitment to proceed with a Step-1 meeting and denying access to the Collective Agreement process on the basis that they have fired the Applicant. This statement with the firing is illegitimately based only on imposing the employer's authority, not based in law or accepted practice. It is a further intimidation, an illegitimate attempt to dissuade the Applicant from pursuing access to the Applicant's Step-1 and further Collective Agreement rights.

P44. On December 8, 2009, the APUO (APUO Legal Counsel John D. Henderson) responded by email to the agent (Jean-Yves Leduc) of Responding parties (1) and (2) that the APUO was of the position that the Step-1 meeting for G25 should be convened. The APUO questioned the legitimate basis for refusing to hold a Step-1 meeting and pointed out the contradiction with the Respondent Party's initial written commitment.

P45. To the knowledge of the Applicant, no further communication occurred about G25 between the association (APUO) and the Respondent Parties (1) and (2).

P46. The Step-1 meeting for G25 has not been convened by the employer as required to this date. The mandatory deadline for the employer to convene a Step-1 meeting is ten working days (P20).

P47a. On the face of it, it is difficult to understand why the employer Respondent Party would advance such a rash and tenuous objection to respecting the Applicant's Collective Agreement rights. It appears to be an attempt to intimidate by stone-walling so as to discourage all future grievances that could arise from several on-going access to information (FIPPA) requests and appeals.

P47b. Further, in light of the employer's now-overt and unjustified use of the dismissal to block grievances (P42 and made more explicit in the Responding Party's Response of November 19, 2010 – its paragraph 14c), it appears clear that the dismissal (and pre-dismissal barring from campus and campus arrest) of the Applicant was and is part of a section-76. intimidation and coercion to compel the Applicant to refrain from exercising his rights under the Collective Agreement and the Act to have grievances duly processed in good faith and to access the foreseen private resolution-attempt process.

P48. This (P47), in the prominent academic freedom context described above: P6a, P6b, P7, P8a, P8b, P8c. [Academic Freedom specifically protects a professor's right to criticize the institution and has a longstanding precedent history (see attached background document).]

P49. The fact that the APUO refused to pursue the matter of the Step-1 process for G25 beyond its communication of December 8, 2009, the fact that its December 8, 2009, statement was not more engaging, and the fact that the APUO from that point on refused to attempt to secure further Step-1 meetings (G26 and G27) show that the APUO abandoned the matter and virtually collaborated with the employer in disregarding the Applicant's right to the Step-1 resolution-attempt process.

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P50. The fact that the APUO did not file its own policy grievance on learning that the employer would precede without basis to disregard the Step-1 process of a private grievance indicates that the APUO folded and is evidence that it thus condoned the employer's overt violation of the Collective Agreement affecting all APUO members.

Grievance G26

P51. The Applicant duly filed "Grievance G26 – Violation of academic freedom, global warming science" (G26 for short) on September 21, 2010.

P52. Receipt of the grievance G26 was acknowledged by email by an agent (co-Director Human Resources Jean-Yves Leduc) of the Responding Party on September 21, 2010. No mention was made that the grievance was "unarbitrable" or defective in any way. It was simply received and not acted upon by the Responding Party.

P53. The Step-1 meeting for G26 has not been convened by the Respondent Party as required to this date. The mandatory deadline for the employer to convene a Step-1 meeting is ten working days (P20).

P54a. Ignoring a required process to which an employee has a statutory right and which the Respondent Party has a legal duty to initiate (13.4.2), without even an explanation, is a form of authority-based intimidation, especially following a similar grievance (G25) with the same employee (the Applicant) where the same issue was debated.

P54b. Further, in light of the employer's now-overt and unjustified use of the dismissal to block grievances (P42 and made more explicit in the Responding Party's Response of November 19, 2010 – its paragraph 14c), it appears clear that the dismissal (and pre-dismissal barring from campus and campus arrest) of the Applicant was and is part of a section-76. intimidation and coercion to compel the Applicant to refrain from exercising his rights under the Collective Agreement and the Act to have grievances duly processed in good faith and to access the foreseen private resolution-attempt process.

P55. The APUO, Responding Party (3), is contributing to the latter intimidation by remaining silent to the employer and by refusing to support my requests for the foreseen G26 Step-1 resolution-attempt processes.

Grievance G27

P56. The Applicant duly filed "Grievance G27 – Unethical behaviours of employer and conspiracy to do harm, IPC Adjudication Order PO-2915" (G27 for short) on October 14, 2010.

P57. This grievance (G27) partly concerns an alleged fabrication of false and baseless "mental health concerns" and a dean's role in attempting cover up the involvement of more senior management in the generation of the letter to the Applicant alleging the employer's "mental health concerns".

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P58. As part of the October 14, 2010, grievance G27, the Applicant wrote:

“I hope to resolve the present grievance during the Step-1 mediation process foreseen by the Collective Agreement (13.4.2). Please convene the Step-1 meeting within 10 working days, as you are required to do under the Collective Agreement. Please arrange for court reporter recording of the Step-1 meeting, as per our established practice.

I note that the employer has, in violation of the Collective Agreement, so far refused to convene Step-1 meetings for two former grievances, G25 (dated November 22, 2009) and G26 (dated September 21, 2010). Please also convene these Step-1 meetings immediately.”

P59. Receipt of the grievance G27 was acknowledged by email by an agent (co-Director Human Resources Jean-Yves Leduc) of the Responding Parties (1) and (2) on October 14, 2010. Like with G26, no mention was made that the grievance was “unarbitrable” or defective in any way. It was simply received and not acted upon by the Responding Party.

P60. Likewise, the employer did not acknowledge or responded to the Applicant’s above explicit requests now included in the text of grievance G27 for the Step-1 processes for G25, G26 and G27, except only for the specific case of grievance G27 and as late as November 2, 2010 (see below P68, P69, P70, P71), only after my letter directly to President Allan Rock of November 1, 2010 (see below P67) and after the Collective Agreement (13.4.2, and P20 above) deadline for convening a Step-1 meeting for grievance G27.

P61. Such an employer’s refusal to respond to the party with standing (the Applicant, with a private grievance and see below) to a specific request pursuant to the Collective Agreement, even beyond the foreseen deadlines of the Step-1 process, is negligent in the circumstances and is an element of intimidation by disregarding a party with standing.

P62. The latter alleged negligence (failure to respond to the requests for the Step-1 processes) represents disregarding the Collective Agreement and the Act.

P63. The Step-1 meeting for G27 has not been convened by the Respondent Parties (1) and (2) as required to this date. The mandatory deadline for the employer to convene a Step-1 meeting is ten working days (P20).

P64. Refusing to convene the Step-1 meetings as required by the Collective Agreement constitutes disregarding and repudiating the Collective Agreement regarding the Step-1 process. It cannot be seen as simply “a difference of interpretation” because it amounts to denying the member (the Applicant) a procedural right. This procedural right (Step-1 process) in turn foresees the possibility of remediation, reparation, and settlement. To deny access to the entire process (Step-1 process) is not a mere “difference of interpretation”. It is a violation of a right guaranteed by the Collective Agreement.

P65. The APUO (Responding Party (3)) was asked by the Applicant to request the Step-1 meetings and refused. This and the APUO’s November 18, 2010, response to the original application served on November 5, 2010, show the APUO to be effectively collaborating, facilitating and enabling the employer’s disregard for the Step-1 components of the Collective

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Agreement. In its November 18, 2010, response the APUO disregarded OLRB Rule of Procedure 7.5(b), thereby avoiding taking the needed position.

P66a. Ignoring a required process to which an employee has a statutory right and which the Respondent Party has a legal duty to initiate (13.4.2), without even an explanation, is a form of authority-based intimidation, especially following two similar grievances (G25 and G26) with the same employee (the Applicant).

P66b. Further, in light of the employer's now-overt and unjustified use of the dismissal to block grievances (P42 and made more explicit in the Responding Party's Response of November 19, 2010 – its paragraph 14c), it appears clear that the dismissal (and pre-dismissal barring from campus and campus arrest) of the Applicant was and is part of a section-76. intimidation and coercion to compel the Applicant to refrain from exercising his rights under the Collective Agreement and the Act to have grievances duly processed in good faith and to access the foreseen private resolution-attempt process.

Applicant's further attempts to access the Step-1 resolution process and direct involvement of Allan Rock

P67. On November 1, 2010, the Applicant wrote an email directly to Respondent Party (1), President of the University Allan Rock, with the APUO (Respondent Party (3)) and Human Resources agents (Respondent Party (2)) in cc. The text of the email was:

RESPONSE NEEDED BY NOVEMBER 2nd, 5PM.

Dear Mr. Rock,

In university press releases that you approved you stated that the Collective Agreement procedures would be followed in my case.

Yet you have refused to convene Step-1 meetings for my Grievances G25, G26, and G27. The legal deadlines are far overdue. These meetings are resolution-attempt meetings that you are required to convene under the Agreement which in turn has force of law pursuant to section 56. of the Labour Relations Act.

I am prepared now, after a long time and several attempts, to file a complaint with the Ontario Labour Relations Board (and to serve you accordingly) to ask that you be ordered to follow the law.

I would prefer if you agreed to follow the Step-1 resolution-attempt process in good faith as foreseen by the law.

Please therefore respond by end of work day Tuesday November 2nd (tomorrow) that we can proceed to schedule the needed Step-1 meetings for these three grievances.

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In an email dated November 23rd 2009 you (via your agent Louise Page-Valin) had agreed to proceed with the Step-1 process for grievance G25 but then later reneged in writing on your commitment.

Please acknowledge the present communication.

Sincerely,
Denis Rancourt

P68. There were two (contradictory) responses, both as signed letters dated November 2, 2010, from co-Director Human Resources Jean-Yves Leduc in PDF-file format sent in two separate emails.

P69. The first November 2, 2010, letter stated that the Respondent Party would not communicate with the Applicant in this matter and would only recognize communications from the Applicant's association (the APUO):

Dear Mr. Rancourt:

Subject: your email of November 1, 2010 regarding Step 1 grievance meetings

Your email of November 1, 2010 has been referred to me for reply.

With respect to all communications in relation to outstanding grievances, it is the practice of the University to deal solely with the representatives of the trade union which has carriage of the grievances. This practice is in conformity with the University's obligations under the Labour Relations Act.

I would be pleased to respond to any inquiries regarding the grievances in question which might be forwarded by your trade union, the APUO.

Regards,
Jean-Yves Leduc

P70. Refusing to respond to the party with standing in the Collective Agreement (the Applicant for a private grievance, see P21 and P22 above) constitutes disregarding the relevant sections of the Collective Agreement.

P71. The second November 2, 2010, letter provided the Applicant directly with an answer addressed to the Applicant (with the APUO in cc). The text of the letter was:

Dear Mr. Rancourt:

Subject: your grievance (G-27) dated October 14, 2010

As I have already acknowledged receipt of your grievance by email on 2010 10 14, I would like to offer the following in response to the filing of your grievance:

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1. As has been the case in the past, the position of the University is that the grievance is inarbitrable at this time pending the outcome of other grievances, particularly those dealing with your dismissal;
2. Without prejudice to the University's position, the grievance will be processed in accordance with the procedures under the Collective Agreement once the outcome of other grievances regarding your dismissal has been determined.

Regards,
Jean-Yves Leduc

P72. This is now quite remarkable in many regards. First the Respondent Parties (1) and (2) stated they would not communicate with the Applicant on this matter. Now (on the same day) they communicate but deal only with one of the three grievances in question, without any explanation as to why.

P73. The APUO (Respondent Party (3)) was a recipient of the above communications of November 1 and November 2, 2010 (P67, P69, P71), yet it apparently did not respond or intervene in any way. This shows the APUO to be effectively collaborating, facilitating and enabling the employer's disregard for the Step-1 components of the Collective Agreement, despite the APUO's responsibility to uphold and defend the Collective Agreement in the interest of its members.

P74. The employer Respondent Party ((1) and (2)) first stated (G25) that it would proceed with the Step-1 process, then (G25) that it would not because the grievance was filed after the Applicant had been fired, then the employer Respondent Party ignored the issue altogether for many months and with three separate grievances filed, and now the employer Respondent Party astonishingly states (G27; November 2, 2010, P71) that it will proceed with the Step-1 process, irrespective of the outcome of a separate dismissal grievance, but only after the entire dismissal process has been completed (presumably to an arbitration ruling and beyond to an appeal?). An arbitration start date for the dismissal grievance has not even yet been set.

P75. In all of this (P74), the APUO Respondent Party has been mostly silent to the employer, despite many requests from the Applicant for support and except for a tentative effort with grievance G25 (P42, P44). This constitutes the APUO to be effectively collaborating, facilitating and enabling the employer's disregard for the Step-1 components of the Collective Agreement, in a labour context where the APUO has a responsibility to uphold and defend the Collective Agreement in the interest of its members.

P76a. There is no basis in the Collective Agreement for agreeing to the required Step-1 process while arbitrarily and illegally delaying the process in question until a separate grievance is completely resolved to the limit of the law. This is absurd and is contrary to extensive past practice with which the Applicant has direct experience (twenty seven grievances filed since 2005).

P76b. For the employer in this way to arbitrarily and without explanation use the Applicant's dismissal as a pretext for refusing to process and attempt to resolve duly filed grievances for reparable damages amounts to disregard of the Collective Agreement and of the Act.

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[See: P4. The grievances relate to alleged violations perpetrated by the university while the applicant was a tenured professor and thereby merit reparation for damages irrespective of the applicant's present employment status and irrespective of any other grievances filed by the applicant. P5. Duly grieved damages experienced in a workplace do not expire because the employer fires the employee, irrespective of whether the dismissal itself is upheld or not when separately arbitrated.]

P77. Such contradictory and convoluted maneuvering while steadfastly refusing to follow the unambiguous prescriptions of the Collective Agreement, all effectively condoned by the APUO via its silence, can only be understood, in the Applicant's opinion, as sustained stone-walling intended to intimidate the Applicant away from seeking access to his rights, intended "to make timid" the Applicant.

P78. A record obtained by access to information shows Allan Rock (Respondent Party (1)) to be directly and improperly involved with the Applicant's discipline and dismissal whereas the dismissal is now being used by the employer as a pretext to block the Step-1 resolution-attempt meetings for grievances G25, G26 and G27. Many more such records were blocked from access to information but could be requested and discovered by the Board for the present purpose relating to sections 56. and 76. of the Act.

P79. In addition, at the time when the employer was executing its public (it emitted two press releases) campaign to dismiss the Applicant, Allan Rock (Respondent Party (1)) made personal written commitments (P80) to many students and community members that the Collective Agreement would always be strictly followed in the employer's dealings with the Applicant.

P80. In a further most recent attempt to secure my Step-1 rights, I reminded Allan Rock of his personal commitment to the community as follows, on November 28, 2010:

Allan Rock
President
University of Ottawa

Re: Your personal written commitment to the community

Dear Allan,

In and around January 2009 during your administration's campaign to fire me you received over one hundred student and community member letters contesting your actions.

At that time you personally and individually responded in writing to these letters and stated:

"The relationship between the University and its faculty members, including Professor Rancourt, is governed by a collective agreement. In all of its dealings with Professor Rancourt, the University has complied strictly with the terms of that collective agreement, and will continue to do so. Professor Rancourt has due

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process and opportunities for recourse through this collective agreement and his union.”

Yet now it appears that you are not respecting your commitment to the community in this matter by refusing to process three of my collective agreement grievances on matters including:

- the university's covert information gathering campaign of 2006-2008 and its cover up
- the university's fabrication of false concerns about my “physical and mental well-being”

As you know, I have been obliged to file a complaint with the Ontario Labour Relations Board (OLRB) in this unfortunate matter.

I have also made the documents public with my commentary here:
<http://rancourt.academicfreedom.ca/background/olrb.html>
<http://uofowatch.blogspot.com/2010/11/is-allan-rock-disregarding-law-in.html>

Contrary to your personal commitment to the community, you are disregarding my rights under labour law and disregarding the law itself.

This is not a behaviour that one would accept from a professor responsible for a class let alone a university president.

Please follow the collective agreement and receive my grievances in good faith so that they may be processed following the law and so that the tedious and expensive OLRB application can be immediately resolved.

I await your response. (I also welcome any corrections or commentary you may have for public posting.)

Sincerely,
Denis Rancourt
Former physics professor, University of Ottawa

Cc: Civil society, the media, the community

P81. The latter attempt by direct appeal to Mr. Rock to resolve this matter of Step-1 rights for three grievances is ongoing. It is hoped that since Mr. Rock has made a personal commitment, he will resolve the matter soon and without needing a Board hearing but the Applicant has not yet received any indications in this direction.

P82. Respondent Party (1) Allan Rock is also directly involved in the application via his responsibilities pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA) as head of the institution regarding a request that he release respondent records related to grievance G27.

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P83. The related request that Mr. Rock release the records (that would normally be examined at in Step-1 meeting) was made as follows on October 15, 2010:

Allan Rock
head, institution subject to FIPPA
President, University of Ottawa

**RE: Release of documents about Denis Rancourt, pursuant to the
Freedom of Information and Protection of Privacy Act (FIPPA)**

Dear Allan,

As you know, I filed a labour law grievance against the University of Ottawa on October 14, 2010 ("Grievance G27 - Unethical behaviours of employer and conspiracy to do harm, IPC Adjudication Order PO-2915").

The matter involves you because as head of the institution subject to FIPPA you have the authority to release the eleven FIPPA-request respondent documents in question.

The Information and Privacy Commissioner of Ontario (IPC) Adjudicator Frank DeVries has, in his IPC Order PO-2915, ruled that he generally agrees with me that these records should be released but that he does not have the authority to order this release.

In addition, the IPC Assistant Commissioner (Access) Brian Beamish has informed me in writing that in a case such as this one, a head such as yourself would have a moral responsibility to release the records.

Mr. Beamish put it this way in a recent letter to me about PO-2915:

I can also advise you that the Commissioner has consistently called for changes to the exclusion from the Act found in section 65(6). In addition to opposing its introduction, the IPC has continued to advocate for the repeal of the section. For example, in the IPC's 1998 Annual Report, the Commissioner stated the following:

One primary concern of the IPC is legislation or programs that exclude information or records from the scope of the Acts. When this happens access and privacy rights are compromised, and the right of review by an independent body, the IPC, is lost.

One piece of legislation that excludes records from the Acts is the Labour Relations Act, 1995 (Bill 7). Its stated purpose is to restore balance and stability to labour relations and to promote economic prosperity." However, very broadly drafted provisions in the new law exclude many employment-related records about public sector employees, including records that do not have any bearing on labour relations. As a result, public sector employees may be precluded from obtaining access to employment-related records about themselves, and from making a privacy

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complaint if their personal information is improperly used or disclosed... This approach to information about employees is not in keeping with world-wide trends favouring fair information practices, and in particular, the protection of personal privacy.

... In addition to opposing section 65(6), the IPC has also encouraged institutions to consider the voluntary disclosure of records falling within the ambit of the section. In Order PO-2613, Adjudicator DeVries had the following observations after finding that the records at issue in that appeal fell within the exclusion:

In this order, I was compelled by the wording of section 65(6)3, as interpreted by the courts (see Solicitor General, cited above) to uphold the Ministry's claim that a record containing the job positions, job descriptions, and classification standards within the Ontario Public Services not covered by the Act. However, section 65 in no way prohibits an institution from disclosing records, it simply removes them from the access and privacy regimes established by the Act. Outside the scope of the Act, an institution still has the discretion to disclose records even when section 65 is applicable. Relying on this provision to deny public access to information about jobs the public's tax dollars pay for seems at odds with the stated purposes of the Act, and the Government's recent statements supporting its "culture of openness".

It seems to me, Allan, that these concerns and recommendations from the Commissioner would be even more vital to uphold in the publicly funded university setting.

I am certain that you will agree that transparency "in keeping with world-wide trends favouring fair information practices" is as vital as, for example, freedom of expression in a university.

I am certain also that, as former Minister of Justice, you agree with the Commissioner that section 65(6) of the FIPPA should not be used to deny fair access.

Therefore, I ask that you release the eleven records in question, as they are about me.

Sincerely,
Denis Rancourt
Cc: made public

P84. Despite this reasoned appeal (P83), Mr. Rock refused to consider releasing the FIPPA-respondent records.

P85. This refusal by Mr. Rock to release records is a further stone walling to prevent the application of the Step-1 resolution-attempt process (for G27) foreseen by the Collective Agreement. It contributes to the overall intimidation away from accessing Step-1 and further disregards the sections of the Collective Agreement relating to Step-1 rights. A good faith Step-1 process includes disclosures of relevant key documents or records, is premised on transparency.

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P86. Allan Rock was on the Executive Committee of the Board of Governors (university of Ottawa) that unanimously approved the Applicant's dismissal. Furthermore, despite the dismissal being grieved and being headed for arbitration, Mr. Rock has personally and in writing responded on December 3, 2009, to a university community member's public letter to the media that he personally continued to support the dismissal as:

“To respect confidentiality and legal obligations surrounding this matter, I cannot comment further. However, I continue to stand by the dismissal recommendation made previously this year.”

P87. The latter public statement by the renowned university president (Allan Rock, former Minister of Justice, etc.) is prejudicial. The dismissal in question is now being used by the employer as a pretext to block the Step-1 resolution-attempt meetings for grievances G25, G26 and G27.

Past practice with Step-1 process and APUO position

P88. The Applicant has had to file twenty seven (27) grievances against the employer since 2005, numbered as G1, G2, and so on.

P89. One grievance was completed to arbitration and ruling (see P7 above). Others were settled, not assumed by the APUO, and are ongoing.

P90. Several of the Applicant's past grievances were resolved and settled thanks to the Step-1 process, without needing arbitration.

P91. For some grievances, the parties to the Collective Agreement for a private grievance (that is, the Applicant and the employer; see P21 and P22 above) mutually agreed to waive the Step-1 process and settlements to that effect were signed. In those cases Step-1 meetings were not held, by mutual consent. Such mutual consent exceptions are foreseen by the Collective Agreement.

P92. For other grievances the Applicant asked that the Step-1 process be waived and this was refused by the employer. As a result, the Step-1 meetings were required to be held and were held for those grievances. This shows that one party cannot unilaterally opt out of the Step-1 process. This would be even more so for a griever who wants the Step-1 resolution-attempt process and believes it can be helpful.

P93. The last Step-1 meeting to be held was for the Applicant's dismissal grievance (G24).

P94. In the specific cases of grievances G25 to G27 (present application) the Applicant believes that the Step-1 process would be beneficial and would best serve justice in the manner foreseen by the Collective Agreement.

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P95. If the APUO now accepts that the Step-1 process and its deadlines for by-definition-private grievances can be unilaterally repudiated by the employer, as is the case here, then this harms all the members of the APUO.

P96. If the APUO does not object and intervene to ensure that the Step-1 process and its deadlines for by-definition-private grievances cannot be unilaterally repudiated by the employer, as the APUO appears to be doing here, then this disregards the Collective Agreement, intimidates the member away from seeking due rights and harms all the members of the APUO.

P97. Common relevant definitions of “repudiate” include: “To reject the validity or authority of” and “To refuse to recognize”.

P98a. The Collective Agreement and the past record both show that the member (the griever, the Applicant) is entitled to the Step-1 resolution-attempt process irrespective of whether the APUO will eventually assume the grievance or not.

P98b. The Step-1 process is intended to be immediate whereas the internal APUO process to decide to assume a grievance can be and has in the past been very lengthy. Then one must add the time to secure arbitration hearing dates and the time to await a ruling.

Applicant’s desire to resolve the grievances

P99. As indicated in P92 above, the Applicant’s desire is to access the intended Step-1 resolution-attempt process for grievances G25, G26 and G27 in order to attempt resolutions in good faith so that the matters can be fully or partially resolved quickly and before any labour arbitration is needed.

P100. Resolutions of grievances G25, G26 and G27 would clarify any factual or contextual relations between these grievances and the separate dismissal grievance, to the benefit of all parties.

P101. This has the potential to partially resolve the overall conflict and to simplify the dismissal grievance before any labour arbitration is needed.

P102. If the G25, G26 and G27 matters cannot be resolved it is possible that they will enter the dismissal grievance arena but only at a significantly later time.

Conclusion and arguments

P103. The Respondent Parties have no basis in law for overtly, continuously and repeatedly denying the Applicant’s right to the foreseen Step-1 resolution-attempt process of the Collective Agreement which is in turn binding on the Respondent Party by virtue of the Act (section 56.).

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P104. The Respondent Parties seek by intimidation (stone-walling, prolonged ignoring, and multiple and contradictory communications directly sent to the Applicant and others) to compel the Applicant to refrain from exercising his resolution-attempt Collective Agreement right under the Act (section 76., section 59.).

P105. The Respondent Parties are directly violating the Act (section 56.) by overtly, consistently and repeatedly refusing its binding obligations prescribed in the Collective Agreement, a collective agreement, subject to and for the purposes of the Act, binding upon the employer (the Respondent Party).

P106. The employer's refusal to grant the right to grieve and the right to the private-grievance resolution-attempt Step-1 process is systematic and constitutes a continuous pattern spanning over one year and three separate grievances, without due explanations and using contradictory and past-deadline messages. It also extends into the future for any new grievances (P42 and made more explicit in the Responding Party's Response of November 19, 2010 – its paragraph 14c). It constitutes a repudiation or disregard of the Collective Agreement.

P107. The above-described lack of prompt responses systematically disregarding the Collective Agreement deadline to convene a Step-1 meeting, the lack of explanations, the refusals to communicate with the Applicant having standing in the private grievances, the contradictory (“bait and switch type”) messages, the prejudicial interventions, the interference with document disclosures for the Step-1 process, and more, constitute section-76. intimidation to compel the Applicant to refrain from exercising his rights under the Collective Agreement and the Act to have grievances duly processed in good faith and to access the foreseen private resolution-attempt process.

P108. Further, in light of the employer's now-overt and unjustified use of the dismissal to block grievances (P42 and made more explicit in the Responding Party's Response of November 19, 2010 – its paragraph 14c), it appears clear that the dismissal (and pre-dismissal barring from campus and campus arrest) of the Applicant was and is part of a section-76. intimidation and coercion to compel the Applicant to refrain from exercising his rights under the Collective Agreement and the Act to have grievances duly processed in good faith and to access the foreseen private resolution-attempt process.

P109. The three grievances in question (G25, G26, G27) for which Collective Agreement rights are denied are egregious violations of the Collective Agreement that have been blocked and covered up by the Responding Parties. Grievance G25 in particular is unprecedented in Canadian academic history. [See attached background document on Academic Freedom.]

P110. The employer's only argument that the three grievances were filed after the Applicant was dismissed, in a dismissal that may be upheld at arbitration, is untenable and amounts to repudiation or disregard for both the Collective Agreement and the Applicant's natural rights.

P111. The Responding Parties' denial of the Step-1 resolution-attempt process in which the Applicant has standing is not based on a simple difference in interpretation but is rather a denial of a right to a process of resolution pursuant to a collective agreement that is binding under the Act (section 56.) for all parties. The denials amount to repudiation or disregard of the Step-1

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sections of the Collective Agreement. No such key sections can be selectively and arbitrarily repudiated without effectively repudiating the validity of the Collective Agreement as a whole.

P112. The Step-1 process is the only part of the grievance process where the employee (the Applicant) has standing under the terms of an as-defined private grievance (see P21 and P22 above) and both other parties to the Collective Agreement (employer and union) are denying this process from the employee (Applicant).

P113. The matter of the present application (access to Step-1) cannot be handled by a new labour grievance under the Collective Agreement for at least three reasons:

- (1) The new grievance would have to be filed after the Applicant's April 1, 2009, dismissal and would be rejected by the employer on that false basis;
- (2) This would be a lengthy process whereas the purpose of a Step-1 resolution-attempt is to attempt resolution early in the grievance process and there is no other meeting step in the grievance process;
- (3) Such a grievance (the new grievance to access Step-1) must itself have a Step-1 and can only then proceed to arbitration if both assumed by the APUO and not agreed to be dropped or settled by the employer and union, both respondents in the present application. (Such is the Collective Agreement.)

P114. The Applicant submits that section 56. of the Act can be violated and can be the subject of a section 96. complaint under the Act. In the circumstances of the present application, this is the most natural interpretation of the Act because the Responding Parties together control the application to arbitration of the Collective Agreement and are denying an employee right.

P115. A further reason that the Board should have jurisdiction in the present matter is that Board decisions are much faster than arbitrations at the University of Ottawa or than judicial solutions, thereby preserving the intent of an efficient Step-1 process.

P116. The Responding Party denials of the Step-1 process are breaches of the Collective Agreement and these sustained and repeated denials, including intimidations and cover up, amount to repudiation or disregarding of the Collective Agreement.

(Include **all** of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the application and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

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4. Other relevant statements:

None.

DATED _____.

Signature for the Applicant

[Signed and served to all three Responding Parties on December 6, 2010.]

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CERTIFICATE OF DELIVERY

1. I certify that the following documents were delivered to [X] the responding party, and [] any affected party named in paragraph 2 of the application:
- Application under Section 96 of the Act (Amended Application, No. 2567-10-U);
 - a blank copy of a Response to Application under Section 96 of the Act (Form A-34); and
 - Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act (Form C-12) **with the names of the parties and the date inserted.**

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
whom documents were delivered

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
whom documents were delivered

[Complete either section 2 or section 3 or section 4 below.]

2. These documents were delivered by [] facsimile transmission or [X] hand delivery on _____ at _____ a.m./p.m.
(Date)

NAME: _____ Denis Rancourt _____

TITLE: _____ Applicant _____

SIGNATURE: _____

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IMPORTANT NOTES

YOU MUST FILE WITH THE BOARD ONE SIGNED ORIGINAL AND ONE COPY OF THIS APPLICATION AND ANY MATERIALS THAT ACCOMPANY IT.

THE BOARD'S RULES OF PROCEDURE DESCRIBE HOW AN APPLICATION MUST BE FILED, WHAT INFORMATION MUST BE PROVIDED, AND THE TIME LIMITS THAT APPLY. AN APPLICATION MAY NOT BE PROCESSED BY THE BOARD IF IT DOES NOT COMPLY WITH THE BOARD'S RULES OF PROCEDURE.

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

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