

By E-mail

October 18, 2011

Arbitrator Claude Foisy  
c/o Counsels Lynn Harnden (University) and Sean McGee (Union)

Dear Arbitrator Foisy,

**Re: FOLLOW UP SUBMISSION ON VIDEO-RECORDING AT RANCOURT  
ARBITRATION**

As you know, I made oral submissions about video recording of the arbitration hearings about my grievance for wrongful dismissal on October 12, 2011. My oral submissions are summarised in the Appendix below.

Since I had little time to prepare my oral submissions, I wish to submit the present follow up submissions. You had provided a deadline of October 18, 2011, for written submissions on the matter.

**FOLLOW UP SUBMISSIONS:**

1. Given that both parties (University and Union) had recognized in writing on the record that video recording with suitable safeguards should be allowed, and given the circumstances of my case, I am of the position that to deny video reporting of the proceedings would be a violation of my Charter right to a fair hearing in an open court setting.
2. The violation would be all the more clear given that I have requested without success to the Union (APUO) that transcripts of the hearings should be secured. The lack of independent recording (transcription and video recording) vitiates my right to an appeal if such recourse is sought.
3. I submit that a progressive precedent needs to be established with your Decision which takes into account the special workplace environment that is the public university and its unique societal role in Canada. This is also particularly true in a case such as this one that has attracted national and international media attention (New York Times, Globe and Mail, National Post, TVO, etc.).
4. I do not want the grievance arbitration of my dismissal case to result in a strengthened precedent regarding banning video reporting of labour arbitrations in Ontario when both sides wish video reporting because this would be against my strongly held principles regarding individual and media scrutiny of societal institutions.

5. Finally, I fear that the initial Youtube videos that were embedded on my “U of O Watch” blog (\*) and the way these were signalled to you by the University may create a reasonable apprehension of bias or prejudicial conditions regarding the question of video access unless the circumstances of these Youtube videos are sufficiently examined. I believe that such (\*) criticisms with sting should be allowed in the public discourse and do not intimidate the professional counsels and judiciary.

(\*) <http://uofowatch.blogspot.com/2011/09/universitys-lawyer-lynn-harnden-wants.html>

(\*) <http://uofowatch.blogspot.com/2011/08/natural-justice-as-foreign-concept-u-of.html>

**APPENDIX:** Summary of oral submissions of Denis Rancourt (from memory)

- I want public access, as an accurate and complete record that video can ideally provide; given my experience of several years of conflict with the university administration.
- The open court principle does not constraint note-taking.
- The open court should evolve with advancing technology.
- A balance is already achieved between allowing responsible and critical reporting with sting on matters of public interest and safeguards to reputations by two mechanisms: (1) Public discourse including counter statements and media outreach, and (2) defamation law for individuals.
- To constrain or micro-manage media skews this accepted balance of influences in a free society, especially given the already large asymmetry of resources between the university institution and individuals or alternation and student media.
- Video reporting should be unambiguously allowed for: Oral representations, motions, opening statements, final arguments, and orders issued. There can be no concerns about the “integrity of the process” in these circumstances.
- An order to ban accurate electronic media would be counter to established campus norms and would be a source of unnecessary conflict. It would be a clash of cultures between an overly conservative judiciary and a liberal academic community.
- Students and academic observers have a high degree of discernment and judgement regarding edited video reports and commentary.
- I recognize the Arbitrator’s legal authority in making the Order.

Sincerely,  
Dr. Denis Rancourt  
(Griever)