

Joanne St. Lewis (Plaintiff) – and – Denis Rancourt (Defendant)

Court File No.: 11-51657

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT OTTAWA

STATEMENT OF DEFENCE

Denis Rancourt

(no tax)

Defendant

Fax number of person on whom document is to be served:
613-788-3430 (Richard G. Dearden, LSUC #019087H)

**FILED SUPERIOR COURT
OF JUSTICE AT OTTAWA**

JUL 22 2011

DÉPOSÉ À LA COUR
SUPÉRIEURE DE JUSTICE À OTTAWA

RCP-E 4C (July 1, 2007)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

STATEMENT OF DEFENCE

- (1) The Defendant admits the allegations contained in paragraphs 48, 61 of the Statement of Claim.
- (2) The Defendant has no knowledge in respect of the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 35, 55 of the Statement of Claim.
- (3) The Defendant denies all other allegations contained in the Statement of Claim, unless expressly admitted below.

The following are consecutively numbered paragraphs of allegations of material fact relied on by way of defence.

Chronology of material facts

The Defendant

(4) For twenty three years until 2009 the Defendant was a physics professor at the University of Ottawa; starting in 1987 jointly as an Assistant Professor and Natural Sciences and Engineering Research Council of Canada University Research Fellow, then promoted to Associated Professor and granted tenure in 1992, and promoted to Full Professor in 1997.

(5) In addition to his sustained scientific work, the Defendant has since approximately 2004 been an outspoken defender of student and minority rights and the rights of all oppressed peoples, via his university courses, community service, public lectures, blog and other writings, weekly radio show, media commentary, and community organizing efforts. The defendant has high regard for and has written about the American Black liberation struggle, such as the works of iconic figures Assata Shakur and Malcolm X.

The U of O Watch blog

(6) In May 2007 the Defendant started the blog “U of O Watch” with (as the name implies) the express purpose via public criticism of pressuring the University of Ottawa towards improved institutional behaviour. The blog was also expressly an actuation of a professor’s

statutory academic freedom “right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.”

(7) The “U of O Watch” blog was included in the Defendant’s academic staff annual report every year since May 2007 (for academic year 2006-2007) that the Defendant was a professor at the University of Ottawa. The blog was an integral part of the Defendant’s professional activities protected under the purview of the Defendant’s academic freedom.

(8) In August 2007 University of Ottawa VP-Resources Victor Simon sent the Defendant a Notice pursuant to the *Libel and Slander Act* for two July 2007 posts on the “U of O Watch” blog about the VP-Resources and about the university president. The Defendant immediately made a claim to the University’s liability insurance and no further action was pursued by the university in the matter. The matter was reported in the media.

(9) In 2008 the Defendant was disciplined by the University of Ottawa for using images from the university’s web site on the “U of O Watch” blog, despite the university’s qualified permission to professors to use the images. The matter was grieved under the Defendant’s collective agreement and the grievances have not yet been heard in binding labour arbitration.

(10) The “U of O Watch” blog has been run with continuity in style and content since its initiation in 2007 to the present. It has regularly made allegations of administrative and professional malfeasance based on verified facts. The Defendant was never disciplined or knowingly investigated for discipline by the University of Ottawa for any of the blog’s written content.

(11) The “U of O Watch” blog has been continuously and regularly critical of powerful groups and institutions other than the University of Ottawa, such as the pro-Israel lobby in Canada and its influence on university affairs (sixteen blog posts labelled “Israel lobby” to date).

(12) The Defendant receives no direct or indirect financial benefit from the “U of O Watch” blog or from any broadcast activities and no financial benefit arising from readership or web connectivity.

(13) Contrary to the Plaintiff’s allegations, the Defendant does not and has never “taken steps” to influence the Google rankings of blog posts, nor does the Defendant have knowledge about how Google search results can be manipulated.

The SAC Report

(14) On November 12, 2008, the Student Appeal Centre (SAC) of the Student Federation University of Ottawa (SFUO) released a report entitled “Student Appeal Centre 2008 Annual Report - Mistreatment of Students, Unfair Practices and Systemic Racism at the University of Ottawa” (hereafter the “SAC Report”). Several media news articles followed the release of the SAC Report.

(15) The 16-page SAC Report, described three case studies in some detail, included four tables of data and reported that: “Out of the 48 students who consulted the Student Appeal Centre between November 1, 2007 and October 31, 2008 with cases of academic fraud, 71% were visible minorities. Arab, Black and Asian men and women – these are the students that most often get accused of academic fraud.” and “Out of the 388 students who consulted the

Student Appeal Centre, 47% were women and 45% were visible minorities.” The SAC Report made seventeen “Recommendations and Demands”, some of which were implemented at the University of Ottawa.

(16) The 2008 SAC Report was the first public report about systemic racism at the University of Ottawa. The University of Ottawa to this date does not have an anti-discrimination policy. In 2011 many high profile allegations of systemic racism and tribunal cases against the University of Ottawa were reported nationally and regionally in the media.

The University’s counter report

(17) Following the release of the 2008 SAC Report, on the same day November 12, 2008, university president Allan Rock coordinated several University of Ottawa executives and staff, including VP-Academic Robert Major, VP-Resources Victor Simon, VP-Governance Nathalie Des Rosiers and the director of media relations, in strategizing to mitigate the public image impact of the SAC Report on the University. On November 12, 2008, the Plaintiff, law professor Joanne St. Lewis, agreed to write a critical “response”. It was immediately decided to produce a counter report that would be authored by the Plaintiff.

(18) On November 16, 2008, the Plaintiff sent her “draft evaluation of the SAC report” to President Allan Rock, VP-Academic Robert Major and former University Secretary Henry Wong, with the note “I am happy to respond to any suggestions that you may have.”

(19) On November 17, 2008, Robert Major informed the Plaintiff, with Allan Rock in cc, that he would circulate her “document” to colleagues of the “admin committee” and that he had the

intent of responding to the Plaintiff the next day. On the same day, Robert Major sent a request to Allan Rock and others to provide immediate feedback on the Plaintiff's document. On the same day, Allan Rock provided feedback and also explained to members of the Administrative Committee of the University and to University media relations staff how to mitigate his concern that the Plaintiff's report might not appear to be "independent."

(20) At the November 17, 2008, University of Ottawa Board of Governors meeting Allan Rock is reported by the print media as having stated "I know enough about the work that's been done to date to tell you that we're going to disagree very strongly that there's any evidence to support the allegations that have been made," in reference to the University's (Plaintiff's) evaluation of the SAC Report.

(21) On November 18, 2008, the Plaintiff sent her "final report of an evaluation of the Student Appeal Centre 2008 Annual Report" to Allan Rock, Robert Major and others, with the note "I look forward to your comments." On the same day Allan Rock approved the Plaintiff's "final report" and personally managed a communication strategy for the Plaintiff's report to obtain the broadest possible media attention, including securing media interviews for the Plaintiff. The University's media communication exercise about the Plaintiff's report continued into late November 2008 and included exchanges with the Plaintiff about media strategy and messaging content.

(22) On November 24, 2008, in a written communication to a university community member, VP-Academic Robert Major referred to the University's (Plaintiff's) evaluation as a soon to be released public evaluation "by an independent assessor".

(23) On November 25, 2008, the University of Ottawa released the Plaintiff's report about the SAC Report in a news release entitled "The University of Ottawa releases its evaluation of the Student Appeal Centre 2008 Annual Report". The news release linked to the Plaintiff's report about the SAC Report, posted on the University's corporate web site.

(24) In the first line of the Plaintiff's report about the 2008 SAC Report, dated November 15, 2008, and released November 25, 2008, the Plaintiff characterizes her report as an "independent evaluation". Misrepresentation of one's academic research is academic fraud. In a media news article published on November 26, 2008, the Plaintiff is said to have "laughed at the suggestion that she was not acting independently of the university administration" and is quoted as characterizing the charge of not being independent as a "rhetorical flourish".

(25) On November 26, 2008, Allan Rock published a post on his "Rock Talk" president's blog entitled "Evaluation Report of the Student Appeal Centre (SAC) 2008 Annual Report". Mr. Rock in his post linked to the University press release and to the Plaintiff's report but not to the SAC Report.

(26) The Plaintiff's 2008 report for the university about the 2008 SAC Report has infringed the rights of minority students to be protected from discrimination by impeding the needed institutional response and by delaying development and implementation of a needed institutional anti-discrimination policy (to the present date), thereby allowing the many egregious high-profile University of Ottawa racial discrimination cases reported in the media in 2011 to occur.

December 2008 U of O Watch blog post

(27) On December 6, 2008, a blog post entitled “Rock Administration Prefers to Confuse ‘Independent’ with ‘Internal’ Rather Than Address Systemic Racism” was posted on the “U of O Watch” blog:

- (i) The December 6, 2008, blog post referred to the Plaintiff, in the context of her report about the SAC Report, as a “service intellectual”.
- (ii) The blog post described the Plaintiff’s “attempt to pass an internal report as an independent report” as constituting “intellectual dishonesty”.
- (iii) The blog post described the Plaintiff’s report about the SAC Report: as not independent,
- (iv) as “far from being of professional calibre”,
- (v) as “*prima facie* intended to diffuse a media and public relations image management liability for the University,” and
- (vi) as having “an unprofessional tone throughout [...using a] language that is not characteristic of objectivity.”
- (vii) The blog post criticized the Plaintiff’s report’s main statistical argument (about sample size) as obviously incorrect.
- (viii) The blog post criticized the Plaintiff’s report’s individual recommendations variously: as “her position is the absurd one...”,
- (ix) as constituting “itself systemic racism”,
- (x) as pleasing the university executives,
- (xi) as affirming the “position of the supremacy of western academic practice, while being insensitive to cultural diversity”, and
- (xii) as being “paternalistic”.

- (xiii) The blog post described the Plaintiff's report's main recommendation to obtain the SAC data as being improper, confused, contradictory, and harmful to students; the proposal was characterized as "get that SAC data and shred it so it can't hurt us any more".
- (xiv) The blog post suggested that the Plaintiff in writing her report was serving her employer for illegitimately-obtained advantage as "I predict that St. Lewis is in line for a promotion to Associate Professor soon."

(28) On December 7, 2008, the Defendant, as a university colleague, made the Plaintiff aware of the December 6, 2008, "U of O Watch" post and invited comment. The Plaintiff has never directly or indirectly communicated to the Defendant about the December 6, 2008, "U of O Watch" post, nor has the Defendant ever denied or attempted to correct the December 6, 2008, "U of O Watch" post.

December 2008 SAC blog post

(29) On December 17, 2008, the SAC posted a critique of the Plaintiff's report about the SAC Report on the SAC's blog:

- (i) The SAC blog post questioned the possibility that the Plaintiff's report could be "independent",
- (ii) noted that the Plaintiff's report on the one hand concluded "that the SAC's data is too limited to enable any analysis supporting the Centre's claims" yet on the other hand made mostly the same recommendations as in the SAC Report, and
- (iii) critiqued the asymmetry in the University's treatment of the SAC Report compared to the Plaintiff's report about the SAC Report.

- (iv) The SAC blog post concluded: *“The Student Appeal Centre denounces the University of Ottawa’s tactics as an attempt to discredit student voices. Professor St. Lewis’ accusation of the SAC report as “methodologically flawed” not only detracts from the issues of racism and injustice on campus, but also silences the valuable student perspective on matters of appeals and the broader student/university relationship.”*
- (v) In its blog post the SAC also clarified that its 388 cases were official cases and that its continuing concern about system racism was also based on “over 400 informal consultations.”

The Plaintiff has never denied or attempted to correct the December 17, 2008, SAC blog post.

Plaintiff appointed to conduct university review

(30) On March 20, 2009, the Plaintiff wrote to Robert Major, Allan Rock and dean of law Bruce Feldthusen to express thanks for confirming by letter the Plaintiff’s appointment by the University to “conduct a systemic review of the student academic fraud appeals process.”

(31) On March 24, 2009, Robert Major wrote to the SAC asking it to provide all its data related to systemic racism to the Plaintiff to assist the Plaintiff in conducting a systemic review of the student academic fraud appeals process. The SAC refused on the basis that the university already had access to all the academic appeals data except the identities of the students in the sub-group of appellants who filed their cases with the SAC.

February 2011 SAC blog post

(32) On February 11, 2011, the SAC posted a post entitled “Freedom of Information Documents Show Joanne St.Lewis’ Lack of Independence from Central Administration” on the SAC’s blog and released access to information (ATI) records it obtained in the matter of its 2008 SAC Report. The SAC blog post stated and implied:

- (i) that the Plaintiff’s report about the 2008 SAC Report was not independent,
- (ii) that the Plaintiff only browsed a few lines of the SAC Report before expressing outrage and accepting to write a rebuttal,
- (iii) that the Plaintiff sent a draft to both Allan Rock and Robert Major saying she was “happy to respond to any suggestions”,
- (iv) that Allan Rock requested a change in wording to the Plaintiff’s draft,
- (v) that Allan Rock coordinated how to make the Plaintiff’s report appear “independent”,
- (vi) that the University arranged for the Plaintiff to speak on CBC morning radio about her evaluation of the 2008 SAC Report,
- (vii) that Robert Major gave the Plaintiff content suggestions for her CBC radio interview,
- (viii) that the Plaintiff reported back to Robert Major that she had worked in the new suggested information,
- (ix) that in March 2009 the Plaintiff asked the university administration to write to the SAC “asking them to cooperate with me in the sharing of the data and reassuring them that I will be independent of the University...”.

(33) The February 11, 2011, SAC blog post concludes about the Plaintiff:

“The access to information documents show a close collaboration between the Administration and St.Lewis in elaborating the final report, in securing media access, and

in dealing with media messaging. In addition, there is troubling evidence of a cover up of the lack of independence engineered by the President himself.

Joanne St.Lewis was an untenured professor charged with a high profile task and she elaborated her final report and her media work in communication with the Administration, yet she wrote in her report that her evaluation was “independent”. She knew or should have known that her high profile public report about racism in academic fraud appeals could not be characterized as independent.

The most troubling aspect of the St.Lewis exchanges with the Administration and their report is a total lack of admitting the possibility of the systemic racism or unequitable procedure indicated by the SAC report.”

(34) The Plaintiff has made no attempt to deny or correct the February 11, 2011, SAC blog post on the official blog of the Student Appeal Centre of the Student Federation University of Ottawa, or to mitigate any perceived damage it directly may have caused to the Plaintiff’s reputation.

February 2011 U of O Watch blog post

(35) On February 11, 2011, a blog post entitled “Did Professor Joanne St. Lewis act as Allan Rock's house negro?” was posted on the “U of O Watch” blog. The post linked to the SAC blog post of the same date and to the ATI records posted by the SAC. The post also linked to the 2008 SAC Report and to the December 6, 2008, “U of O Watch” blog post entitled “Rock Administration Prefers to Confuse ‘Independent’ with ‘Internal’ Rather Than Address Systemic Racism”.

(36) The February 11, 2011, “U of O Watch” blog post makes only the following statements about the Plaintiff:

- (i) that “released documents obtained by an access to information (ATI) request”
“suggest that law professor Joanne St. Lewis acted like president Allan Rock's
house negro when she enthusiastically toiled to discredit a 2008 SAC report about
systemic racial discrimination at the university.”
- (ii) that “The newly released ATI records are disturbing far beyond the nontenured
professor St. Lewis' uncommon zeal to serve the university administration: The
ATI records expose a high level cover up orchestrated by Allan Rock himself to
hide the fact that the St. Lewis efforts were anything but "independent", as she
characterizes her report on the first page.”
- (iii) “Ironically, the original SAC report was about racial discrimination regarding
academic fraud appeals; such as when an academic misrepresents his/her work as
"independent" when it is verifiably and factually not "independent" (by any
stretch!).”

(37) The February 11, 2011, “U of O Watch” blog post defines the term “house negro” as it is used in the blog post by citing and directly embedding the source, a video clip from a delivery of the Malcolm X speech in which Malcolm X defined the term.

(38) The term “house negro” (and its near-equivalents such as “an Uncle Tom”) is a common criticism of Black public figures, in the public discourse reported in the media, and it has an established meaning in these contexts.

(39) The February 11, 2011, “U of O Watch” blog post opens with the statement “*February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out*

Black Americans who were and continue to be house negroes to masters.” as a general statement of position regarding social criticism in issues of public interest, specifically Black liberation.

(40) The February 11, 2011, “U of O Watch” blog post closes with the statement “*When the bosses have such high professional ethics why would professors be any different?*” This statement refers to the alleged unethical behaviours of President Allan Rock and VP-Academic Robert Major described in the post and is a commentary questioning the professional ethics of all professors.

(41) The ATI records obtained by the SAC amply provide a true factual basis for all of the SAC’s and the Defendant’s statements about the Plaintiff and about the University of Ottawa and its officers or staff.

(42) On February 16, 2011, the Defendant posted a 261-word considered comment to the “U of O Watch” blog post of February 11, 2011, explaining that the post’s use of the term “house negro” is not racist. The comment included the general affirmation:

“I am entitled to express my views about which black persons are "house negroes" in my opinion even if I am white. I will not be deprived of one of the most powerful and meaningful expressions of class analysis in cantonized societies.”

(43) On May 17, 2011, the Defendant received a letter threatening to sue for damages dated May 16, 2011, from the Plaintiff’s lawyer Mr. Richard G. Dearden. This letter made demands about the February 11, 2011, “U of O Watch” blog post and wrongly accused the Defendant of having broadcast racist statements.

May 18 2011 U of O Watch blog post

(44) On May 18, 2011, a blog post entitled “Top dog Canadian freedom of the press lawyer targets UofOWatch blog” was posted on the “U of O Watch” blog. In the blog post, the Defendant defends against the unwarranted May 16, 2011, racist allegations as:

- (i) *“I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro.”*
- (ii) *“She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts about U of O racism [HERE](#).”*

(45) The latter two statements were the only two statements relating to the Defendant in the blog post. The first is intended only as an explanation that a correct and non-racist use of the term “house negro” is not racist, while the second is intended only to explain the justification for this correct use of the term. The post was entirely a response to the Plaintiff’s lawyer’s letter dated May 16, 2011.

(46) On May 23, 2011, the Defendant was served with a notice dated May 20, 2011, from the Plaintiff’s lawyer. The notice made no mention of racism and complained about the May 18, 2011, “U of O Watch” blog post, without making any reference to the *Libel and Slander Act*.

May 23 2011 U of O Watch blog post

(47) On May 23, 2011, a blog post entitled “UofOWatch update::: Richard Dearden promises to sue” was posted on the “U of O Watch” blog. The post showed an email exchange between the Defendant and the Plaintiff’s lawyer ending on May 23, 2011. The post stated about the exchange: “It also shows an aggressive lawyer not interested in discussing solutions or even providing clarifications on simple points.”

Statement of Claim posted

(48) On June 23, 2011, the Defendant was served with the Statement of Claim, Court File No.: 11- 51657.

(49) On June 23, 2011, a blog post entitled “U of O law professor Joanne St. Lewis sues Rancourt for \$1 million, will give half to a law student scholarship fund” was posted on the “U of O Watch” blog. The post linked to a posted electronic copy of the Plaintiff’s Statement of Claim and quoted two paragraphs from the Statement of Claim. On and after June 24, 2011, media articles were published about the lawsuit, as were blog posts on law news and law discussion blogs.

(50) On July 12, 2011, the Defendant served and filed a Notice of Intent to Defend.

Absence of malice

(51) The Defendant denies the Plaintiff’s allegations of malice. The Plaintiff’s allegations of malice as improper motive are unfounded regarding a blog critical of the University of

Ottawa, run with continuity in style and content since 2007 when the Defendant was a Full Professor with tenure at the University of Ottawa, then (2007-2009) protected by the Defendant's academic freedom, involving strong opinions often conveyed with colourful and provocative language, informed by true and verified facts, and run for the express purpose of improving institutional behaviour on matters of public interest.

Absence of racism

(52) The Defendant denies the Plaintiff's allegations of racist statements. The Plaintiff's allegations of racist statements are frivolous, vexatious or an abuse of process; unfounded, opportunistic, and presented in the Statement of Claim in such a way as to obfuscate and conflate the legal issue of libel. There is no stated (Statement of Claim) reason or material valid legal reason to allege racist statements in this legal action. As a particular, the Defendant denies the Plaintiff's stated meanings of the phrase "house negro" as extrapolated and misguided and as inconsistent with the actual and established definition and media use in English North American society. As a particular, the Defendant denies the Plaintiff's implication that it is always unacceptable or improper for a white man to correctly use the term "house negro" in referring to the actions of a black woman; here in a media context of critical commentary in a matter of public interest, namely systemic racism and improper professional and institutional behaviour at a university.

Limitation of action

(53) The Defendant denies the words-complained-of bore the meanings alleged or any meaning defamatory of the Plaintiff.

(54) The legal action has not been initiated in a way, regarding limitation of action, which is consistent with the text, spirit and intent of the *Libel and Slander Act*. Although the threshold for establishing prima facie defamation is low, courts should not be too quick to find defamatory meaning. Triers of fact should be mindful of ensuring that the plaintiff's reputation is actually threatened by the impugned statements before turning to the available defences.

(55) The "U of O Watch" blog post of May 18, 2011, was not defamatory and was only a clarification in response to an aggressive letter (which was not a Notice pursuant to the *Libel and Slander Act*, nor was it understood to be such a Notice) alleging malice and racism. The May 18, 2011, blog post cannot reasonably on its own be linked to any harm. Yet it is the only broadcast within the limitation of action time frame of the *Act* to initiate the instant lawsuit.

(56) In addition, all of the Plaintiff's allegations of libel in the Statement of Claim relate to, stem from, and are repetitions of criticisms made publicly and discussed in the media in 2008, beyond the one-year statutory limitation of action for libel and slander. All these 2008 criticisms of the Plaintiff were made in the context of a highly publicized conflict between the Student Appeal Centre (SAC) of the student union (Student Federation of the University of Ottawa) and the University of Ottawa, were not denied or contested by the Plaintiff, and at least one criticism was admitted by the Plaintiff.

(57) Therefore, in this matter of the Plaintiff's counter report of the SAC Report, the Plaintiff's public reputation was established in the public's mind in 2008. The Plaintiff by her professional behaviour and her interactions with broadcast media in 2008 gave herself, a known Black professional woman, a widespread general reputation in the systemic racism matter of the 2008 SAC Report for serving her employer over acting along lines of strict professional ethics and responsibility. No new material allegations were broadcast in 2011.

Defence of truth

(58) In the alternative, if statements were defamatory at law, which is denied, the Defendant relies on the defence of truth for all statements, as entire statements in their contexts. The statements made as questions are true questions. The statements of explicitly expressed opinion are true statements of opinion.

Defence of fair comment

(59) In the alternative and in conjunction with the defence of truth, for all statements the Defendant relies on the defence of fair comment consisting of the following elements: (a) the comment is a matter of public interest; (b) the comment is based on fact; (c) the comment, though it can include inferences of fact, is recognizable as comment; (d) the comment satisfies the following objective test: could any person honestly express that opinion on the proved facts?

Defence of responsible reporting

(60) In the alternative and in conjunction with the defence of truth and with the defence of fair comment, for all statements the Defendant relies on the defence of responsible reporting, consistent with freedom of expression of the media in matters of public interest.

Government entity and third-party involvement – Charter

(61) In the alternative or as a preliminary matter, the legal action is improper because it constitutes an action by direct or indirect proxy, involving one or more institutions or groups and government funds or improperly used or attributed funds and/or resources.

(62) The Defendant's former employer and the Plaintiff's present employer the University of Ottawa (a public university) and/or its agents or representatives have illegally or improperly, directly or indirectly, verbally or otherwise, released the Defendant's personal and former employee information to the Plaintiff and/or to the Plaintiff's counsel.

(63) It is inconsistent with section 2(b) of the *Canadian Charter of Rights and Freedoms* for a government entity, such as a school board or university, to use government funds or tuition fee moneys, to enable a civil action for defamation by an employee – having acted improperly or contrary to professional ethics – against a citizen to inhibit justified criticism of the entity's

institutional governmental activities, including those of the employee. Universities were only granted independence status by the *Supreme Court of Canada* in order to effectively *defend* the academic freedoms of their professors and students, in order to allow protected criticisms of society's institutions including universities.

(64) It is essential that citizens be granted an absolute privilege against the threat of a civil action for defamation being initiated against them by their government (directly or by proxy).

(65) Further, in a case such as the instant one, a balance between an individual's protection against defamation and a free speech criticism (protected by the *Charter* and of a key societal public institution) cannot be achieved if the individual (the Plaintiff) benefits from improper or interested enabling third-party support.

(66) Given that half of the claimed punitive damages, which are denied, are stated (Statement of Claim) to be intended for donation to the University of Ottawa (the Plaintiff's employer), any/all facilitation, guarantees or resources from the University of Ottawa or any of its allies or partners for the instant action is/are improper.

(67) The instant action is intended to punish, intimidate and silence (the Defendant) a vocal, responsible and dedicated critic of many powerful groups, institutions and the University of Ottawa, regarding matters of public interest, and as such is frivolous, vexatious or an abuse of process.

No damages

(68) The Defendant denies that the Plaintiff has suffered any loss or damages for which he is responsible and puts the Plaintiff to the strict proof thereof.

(69) If the Plaintiff has suffered any damages or losses, which is denied, the Plaintiff has failed or refused to take proper steps to mitigate the damages or losses.

(70) The Plaintiff's damages, as claimed, are excessive, exaggerated, too remote, and unrecognized at law.

(71) The Plaintiff's damages, as claimed, are against an unemployed individual and would put the Defendant out of house and home in a matter where there is no claimed actual damage to the Plaintiff. Such asymmetry in attempted extraction of damages is frivolous, vexatious or an abuse of process; and unrecognized at law.

(72) The Plaintiff claims that half of any punitive damages would be donated to a student scholarship at the University of Ottawa (the Plaintiff's employer), named after a United States personality, without deference to the fact that the Supreme Court of Canada only allowed punitive damages in libel cases as an instrument to provide deterrence against wealthy and powerful societal individuals and corporations.

Request for dismissal

(73) The Defendant asks that the within action be dismissed with costs payable by the Plaintiff to the Defendant on a substantial indemnity basis.

Date: July 22, 2011

Dr. Denis G. Rancourt (B.Sc., M.Sc., Ph.D.)
Former Full Professor (and tenured) at the University of Ottawa

TO:
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