

Joanne St. Lewis

Plaintiff - and - Denis Rancourt

Defendant
Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
OTTAWA

REPLY

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FILED SUPERIOR COURT
OF JUSTICE AT OTTAWA

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DÉPOSÉ À LA COUR
SUPÉRIEURE DE JUSTICE À OTTAWA

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

REPLY

1. The Plaintiff admits paragraphs 14, 23, 25, 48 and 50 of the Statement of Defence (the “Defence”) and makes specific replies below to certain paragraphs of the Defence.
2. The Plaintiff has no knowledge of paragraphs 4-12 and 20 of the Defence and makes specific replies below to certain paragraphs of the Defence.
3. The Plaintiff denies all other allegations in the Defence and makes specific replies below to certain paragraphs of the Defence.
4. In reply to paragraph 4 of the Defence, the Plaintiff has not participated in any discussions with any member of the senior Administration of the University of Ottawa regarding any of the Administration’s concerns regarding the Defendant. The Plaintiff has had no involvement in the Defendant’s loss of tenure and his ongoing labour grievances with the University of Ottawa.
5. In reply to paragraph 15 of the Defence, the Plaintiff admits that the 2008 Student Appeal Centre (“SAC”) report is 16 pages.
6. In reply to paragraph 16 of the Defence, the SAC report of 2008 made allegations of systemic racism against the University of Ottawa but failed in its analytical framework to demonstrate that this was indeed the case. Nevertheless, the Plaintiff’s November 2008 report considered that this was a sufficiently important allegation in and of itself that it

merited that the University of Ottawa take all necessary steps to work with the SAC to conduct a full and proper analysis of the allegation in the SAC report (this was the first recommendation of the Plaintiff's November 2008 report).

7. In reply to paragraph 17 of the Defence, the Plaintiff has no knowledge of any discussions that may have taken place between University of Ottawa President Allan Rock and any of the senior Administration of the University of Ottawa on November 12, 2011. The Plaintiff denies that she agreed to write a "critical response". The Plaintiff denies that she was asked to or agreed to produce a "counter report" to the SAC's report. The November 2008 report prepared by Professor St. Lewis was an advisory report provided to the University of Ottawa's senior Administration upon its request. The Plaintiff attempted to obtain information from the SAC. The Plaintiff provided the SAC advance notice of the analytical problems in the SAC report and requested that data be provided to her that supported the SAC report. When the SAC expressed concern regarding potential privacy concerns for the student data, the Plaintiff met with SAC to suggest that if her position as a lawyer and then Bencher of the Law Society of Upper Canada was not sufficient in that regard that another lawyer at arm's length from both the SAC, the Plaintiff and the University of Ottawa could be provided with the data. The data could then be stripped of identifiers and a report subject to the SAC's approval could be provided to the Plaintiff so that she could verify the definitions used by the SAC and the SAC's interpretation of the data. There was no response by the SAC to this or any other requests for assistance made by the Plaintiff.
8. In reply to paragraph 18 of the Defence, as of November 16, 2008, the SAC had made it clear that it had no intention of providing any information to the Plaintiff regarding the preparation of the SAC report. The Plaintiff sought to ensure that insofar as she was referring to information provided by Registrar and Vice-President Robert Major that it was accurate. The Plaintiff was in no way seeking directions or approval from senior members of the Administration of the University of Ottawa about the content of her November 2008 report.

9. In reply to paragraphs 19 and 20 of the Defence, the Plaintiff had no knowledge of the conversations which allegedly took place at the Administrative Committee or the Board of Governors nor did she ever have a discussion with anyone on the Administrative Committee or the Board of Governors about the independence of her work. The Plaintiff had the requisite independence given: (a) her position as then Director of the Human Rights Research and Education Centre; (b) her established reputation in the field of human rights; and (c) her position as a fully tenured professor. The Plaintiff acted independently in the preparation and drafting of her November 2008 report. The Defendant's pleas impugning the Plaintiff's independence further aggravate the damages the Defendant has caused to the Plaintiff's reputation and are malicious.

10. Paragraph 19 of the Defence misrepresents President Rock's November 17, 2008 email regarding the Plaintiff's independence in preparing her report. President Rock's email of November 17, 2008 also states:

“One last point, I would like Robert to be the only point of contact for us with Professor St. Lewis. Although her report is excellent, it may be criticized as not being “independent” from the administration. So far, our dealings with her have been through Robert and have been scrupulously objective. We have simply sought her view, and have imposed no limitations, constraints or conditions. She has been entirely free to say anything she wants. In order to maintain this professional and objective relationship with her, I want Robert to be the only one in communication with her. Robert can simply observe that the first recommendation seems inconsistent with her findings. It will then be up to Professor St. Lewis to decide whether to make a change. If a number of people all send emails and call, we will lose that focus of professionalism and independence.”

11. In reply to paragraph 21 of the Defence, the Plaintiff states that when asked to make herself available to comment to the media about her report, the Plaintiff agreed and restricted her statements to the media to the public content of her report. The Plaintiff was in no way seeking directions or approval from senior members of the Administration of the University of Ottawa about the content of her November 2008 report.

12. In reply to paragraph 24 of the Defence, the Plaintiff denies that her November 2008 report constitutes academic fraud. The Defendant's plea in paragraph 24 that “misrepresentation of one's academic research is academic fraud” is malicious, false,

defamatory and further aggravates the damages the Defendant has caused to the Plaintiff's reputation.

13. Paragraph 24 of the Defence misrepresents the Plaintiff's position regarding the SAC report that is reported in the media news article published on November 26, 2008. In addition to the parts of the article quoted in paragraph 24, the November 26, 2008 *Ottawa Citizen* article also reports:

(i) "But Ms. St. Lewis also recommends that the university assess whether systemic racism plays any part in its process for handling academic fraud. "The fact that the report did not succeed in its methodological attempts does not mean that there is not a problem that should be addressed", she wrote."

(ii) "She [the Plaintiff] concluded her report with 10 recommendations, including that the university and the Student Appeal Centre work together to determine whether systemic racism plays any part in the academic fraud process. "Perhaps even with such a small pool there is something worthy of investigation and analysis," she said. Student Appeals Centre coordinator Mirelle Gervais dismissed Ms. St. Lewis' criticism, saying she stands by the centre's report. It is a typical institutional response to deny the problems we are witness to on a daily basis", she said, adding that the report is not scientific, but based in the Centre's experience meeting with hundreds of individual students. "We are witness to the fact that visible minorities are more likely to run into problems through the appeal process".

Ms. St. Lewis laughed at the suggestion she was not acting independently of the university administration. "This is my area of expertise," she said. "This is what I do... What she (Ms. Gervais) should be actually tackling is not a rhetorical flourish that says I'm not independent; she should be tackling the substance of what I said in the report and rebut the substance".

The Plaintiff states that, as of the date she prepared her report, she had been serving as a Bencher of the Law Society of Upper Canada, the governing body for over 41,000 lawyers in Ontario and was then the Chair of its Equity and Aboriginal Issues Committee. The Plaintiff had been recognized by her peers in the Canadian Association of Black Lawyers for her outstanding contributions to the community and the legal profession. She had also contributed to a number of similar analyses, including providing an independent assessment of the Indigenous Black and Mi'kmaq Program at Dalhousie Law School. In

this context and given her well-established reputation for advocacy, the Plaintiff would not be concerned about acknowledging racism within her own institution if it existed. The Defendant's malicious attack on the Plaintiff's independence further aggravates the damages he has caused to the Plaintiff's personal and professional reputation.

14. In reply to paragraph 26 of the Defence, the Plaintiff denies that her report infringed on the rights of minority students to be protected from discrimination or in any way impeded an institutional response to racism at the University of Ottawa. The Plaintiff's November 2008 report asked the University of Ottawa to cooperate with the SAC to conduct a systemic analysis to identify the scope (if any) of systemic racism in its academic fraud process. The SAC must take responsibility for any aspects of its report that inadvertently stereotyped international students based on its miniscule pool of students relied upon for the findings of the SAC report and in contradiction of the significant number of international students who had no difficulty operating within the academic fraud policy of the University of Ottawa in the submission of their work.

The Plaintiff's November 2008 report did not infringe the rights of minority students to be protected from discrimination. The Plaintiff's November 2008 report did not allow "many egregious high-profile University of Ottawa discrimination cases" to occur in 2011. The Defendant's plea in paragraph 26 contains malicious, false and defamatory statements that aggravate the damages the Defendant has caused to the Plaintiff's reputation.

15. In further reply to paragraph 26, Professor St. Lewis provided an advisory report to the Vice-President Academic (Robert Major) upon the request of the President of the University of Ottawa (Allan Rock). The purpose of the Plaintiff's report was to inform the University of Ottawa about the accuracy or not of the SAC report. To characterize the SAC report as determinant of the scope of the University's obligations to its students in the area of systemic racism would fall far short of the University's obligations under the *Ontario Human Rights Code*. The SAC's analysis, the minuscule pool of students relied upon by the SAC, and the understanding of the actual academic fraud process was inadequate to form such a prescriptive. The Plaintiff's November 2008 report was simply

an analysis of the SAC's report. The Plaintiff does have the requisite expertise to have provided the University of Ottawa with a comprehensive plan to address the issue of systemic racism (including advice on the design of an anti-discrimination policy) but this was not part of the request made of the Plaintiff by President Rock in November 2008.

The SAC report was focused on the practices of the University of Ottawa in the Administration of its student academic fraud processes. No aspect of the SAC report or the analysis by the Plaintiff purported to address possible systemic racism in any other areas of the University's activities and responsibilities. Responsibility for the development of a University-wide anti-discrimination policy rests solely with the senior Administration of the University of Ottawa.

16. In reply to paragraph 27 of the Defence, the Defendant made no attempt to speak to the Plaintiff prior to publishing his blogpost of December 6, 2008. The Defendant's blogpost contains unfounded statements that go much further than the statements of the SAC's report upon which he claims to rely.
17. In reply to paragraph 28 of the Defence, the issues in this action are the Defendant's racist and defamatory statements about the Plaintiff and his personalized racist focus on the Plaintiff in his blogpost of February, 2011 and thereafter.
18. In reply to the statement in paragraph 29 that "the Plaintiff has never denied or attempted to correct the December 17, 2008 blogpost", the Plaintiff states that she has been very deliberate in confining her comments to her publicly available report of November 2008. The Plaintiff has no obligation to acknowledge the Defendant's statements about her November 2008 report or to contribute to his blogpost. It has remained open to the SAC to follow up on the Plaintiff's advisory report to inquire as to the status of the recommendations in the Plaintiff's November 2008 report or to submit additional reports to the University of Ottawa calling for further action. There has been no additional public report by the SAC since its initial report released in November 2008.
19. In reply to paragraphs 31 and 32 of the Defence, the Plaintiff did initially agree to conduct the systemic review that followed from the first recommendation in her

November 2008 report. When it became clear to the Plaintiff that the University would receive no cooperation from the SAC, the Plaintiff declined to undertake the review because it was not possible for her to properly undertake the implementation of the first recommendation in her November 2008 report.

20. In reply to paragraph 32 of the Defence, the Plaintiff denies that the records posted on the Defendant's blog of February 2011 demonstrates any lack of independence on her part. The Plaintiff acted independently in preparing her report. The Defendant's plea in paragraph 32 of the Defence that the Plaintiff lacked independence is malicious and further aggravates the damages the Defendant has caused to the Plaintiff's reputation.
21. In reply to paragraphs 33 and 34 of the Defence, the Plaintiff states that these pleas further aggravate the damages the Defendant has caused to the Plaintiff's reputation. The Plaintiff acted independently from the University of Ottawa's Administration in preparing and drafting her report.
22. In reply to paragraph 35 of the Defence, the Plaintiff admits the Defendant published the February 11, 2011 blog entitled "Did Professor St. Lewis act as Allan Rock's house negro?"
23. In reply to paragraph 36 of the Defence, the Plaintiff states that the Defendant has further aggravated the damages to her reputation by pleading that he "only" made the statements set out in paragraph 36. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff.
24. In reply to paragraph 37 of the Defence, the Plaintiff admits that the Defendant included a link to a videoclip of a Malcolm X speech and denies the remainder of paragraph 37.
25. The Plaintiff denies paragraphs 38 and 39 of the Defence.
26. The Plaintiff denies the meaning of the statement quoted in paragraph 40 of the Defence. Further, the meaning pleaded in paragraph 40 aggravates the damages the Defendant has caused to the Plaintiff's reputation by impugning the Plaintiff's professional ethics as a law professor.

27. The Plaintiff denies paragraph 41 of the Defence. The plea that the Defendant's statements about the Plaintiff are true further aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation.
28. In reply to paragraph 42 of the Defence, the Plaintiff states that the defamatory statements published by the Defendant on February 16, 2011 were not "comments" and were not "considered". The plea in paragraph 42 aggravates the damages the Defendant has caused to the Plaintiff's reputation by maintaining that the Plaintiff is a "house negro". The term "house negro" as published by the Defendant about the Plaintiff is racist, subjects the Plaintiff to ridicule and is a malicious attack by the Defendant on the Plaintiff's personal integrity and professional reputation.
29. In reply to paragraph 43 of the Defence, the Plaintiff denies the Defendant's characterization of the May 16th letter written by her counsel. The May 16th letter was clear notice to the Defendant that he maliciously published false, defamatory and racist statements about the Plaintiff that had to be taken down from his blog immediately. Further, the plea in paragraph 42 of the Defence aggravates the damages the Defendant has caused the Plaintiff by pleading that he was wrongly accused of broadcasting racist statements.
30. In reply to paragraph 44 of the Defence, the Plaintiff admits that the Defendant published the May 18, 2011 blogpost entitled "Top Dog Canadian freedom of the press lawyer targets U of O Watch blog". The Plaintiff states the plea in paragraph 44 aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation by taking the position that the Plaintiff's claim that he made racist allegations was unwarranted.
31. In reply to paragraph 45 of the Defence, the Plaintiff denies the meaning and explanations pleaded. The Defendant's plea that the statements published in his May 18th blogpost were the "only" two statements relating to the Plaintiff further aggravates the damages he has caused to the Plaintiff's reputation. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff in his May 18th blog.

32. The Plaintiff denies paragraph 46 of the Defence.
33. The Plaintiff admits the Defendant published the May 23, 2011 blogpost entitled "U of O Watch Update: Richard Dearden promises to sue". The Plaintiff denies the last sentence of paragraph 47 of the Defence.
34. In reply to paragraph 49 of the Defence, the Plaintiff admits the Defendant posted the Statement of Claim herein on his U of O Watch blog. The Plaintiff states the Defendant caused further damage to her reputation by posting the Statement of Claim and Statement of Defence herein on his blog so he could generate media reports and on-line communications that disseminated his defamatory statements to a broader audience than the audience that followed his U of O Watch blog.
35. The Plaintiff denies paragraph 51 of the Defence. Further, the Defendant has aggravated the damages he has caused to the Plaintiff's personal and professional reputation by pleading that his defamatory statements are "true and verified" facts. The Defendant refuses to recognize the gravity and seriousness of his false and defamatory statements about the Plaintiff and maliciously maintains that those statements are true.
36. The Plaintiff denies paragraph 52 of the Defence. The Defendant has falsely accused the Plaintiff of an "abuse of process" and being "opportunistic". The Defendant maliciously maintains that his defamatory statements that the Plaintiff acted as a "house negro" were acceptable in Canada and it is the Plaintiff who is misguided. The plea in paragraph 52 aggravates the damages the Defendant has caused to the Plaintiff's personal and professional reputation.
37. The Plaintiff denies paragraph 53 and 54 of the Defence.
38. The Plaintiff denies paragraph 55 of the Defence. The plea in paragraph 55 aggravates the damages the Defendant has caused to the Plaintiff's reputation.
39. The Plaintiff denies paragraph 56 of the Defence.
40. The Plaintiff denies paragraph 57 of the Defence. The Plaintiff's report was not a "counter report" of the SAC report. The Defendant's plea in paragraph 57 of the Defence

aggravates the damages he has caused to the Plaintiff by falsely stating that she served “her employer over acting along lines of strict professional ethics and responsibility”. The Plaintiff did not breach the Code of Professional Conduct which bound her as a lawyer. She in no way behaved contrary to accepted norms of academic conduct. There was no ethical breach committed by the Plaintiff in any aspect related to her report of November 2008. The plea in paragraph 57 is particularly egregious and damaging to the Plaintiff’s professional reputation in that the Plaintiff was a Bencher of the Law Society of Upper Canada at the time she prepared her report.

41. The Plaintiff denies paragraph 58 of the Defence. The plea in paragraph 58 aggravates the damages caused to the Plaintiff’s reputation by claiming the statements the Defendant published about her were true and not defamatory. The Defendant refuses to recognize the gravity and seriousness of the false and defamatory statements he has maliciously published about the Plaintiff. The Defendant refuses to apologize. The Defendant refuses to take down the defamatory publications. The Defendant’s malicious conduct warrants substantive awards of punitive damages and aggravated damages.
42. The Plaintiff denies paragraph 59 of the Defence. The defence of fair comment has no application to the defamatory statements published by the Defendant about the Plaintiff. In addition, even if the Defendant could rely on the defence of fair comment, the defence is defeated by the Defendant’s malice.
43. The Plaintiff denies paragraph 60 of the Defence. The defence of public interest responsible communication has no application to the defamatory statements published by the Defendant about the Plaintiff. The defence is not available to malicious libel defendants. The publications in issue are totally irresponsible and the antithesis to the type of publications the defence was created to protect.
44. The Plaintiff denies paragraph 63 of the Defence. The plea in paragraph 63 aggravates the Plaintiff’s damages by again accusing her of acting improperly or contrary to professional ethics.
45. The Plaintiff denies paragraphs 64, 65 and 66 of the Defence.

46. The Plaintiff denies paragraph 67 of the Defence. This action is a defamation action that also seeks a Court Order requiring the Defendant to take down his false and defamatory publications which he refuses to do, further aggravating the Plaintiff's damages and demonstrating his malice towards the Plaintiff
47. The Plaintiff denies paragraphs 68 to 72. The Defendant's plea in paragraph 70 that "the Plaintiff's damages, as claimed, are against an unemployed individual and would put the Defendant out of house and home" is irrelevant to the issues to be tried in this libel action. Unless and until the Plaintiff obtains judgment against the Defendant and the Plaintiff takes steps to enforce the judgment against the Defendant's assets (such as the residential property he owns), the pleas in paragraph 70 is irrelevant and scandalous.

Dated: August 5, 2011

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