

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

NOTICE OF MOTION

The Plaintiff, Joanne St. Lewis, will make a motion to the Court on September 2, 2011, at 10:00a.m., or as soon after that time as the motion can be heard, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1)
- in writing as an opposed motion under subrule 37.12.1(4);
- orally

THE MOTION IS FOR:

1. An Order that the mandatory mediation of this action take place during the month of September, 2011 and prior to the exchange of affidavits of documents and the conduct of the examinations for discovery;
2. An Order appointing James Chadwick as the mediator, or in the alternative Kevin Mullington;
3. The costs of this motion on a substantial indemnity basis; and
4. Such further and other relief as counsel may advise, and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. This action involves the publication by the Defendant of egregious, racist and defamatory statements about the Plaintiff.
2. The Plaintiff, Joanne St. Lewis, is a tenured Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa. Professor St. Lewis' life work has been dedicated to the promotion of equality rights in the law and legal culture, including racial and gender equality. Professor St. Lewis' work and contributions to the community in her role as a national expert in the area of anti-racist decision making and critical race theory have been acknowledged through numerous awards including the Canadian Association of Black Lawyers Outstanding Achievement Award.
3. The Defendant Denis Rancourt is a former physics professor at the University of Ottawa whose employment was terminated by the University. The Defendant publishes a blog entitled U of O Watch (uofowatch.blogspot.com) which he claims is "devoted to transparency at the University of Ottawa" and "exposes institutional behaviour that is not consistent with the public good". The Defendant's blog contains a multiplicity of attacks on the reputation of Allan Rock, the President of the University of Ottawa.
4. The defamatory and racist statements the Defendant has published about Professor St. Lewis include:
 - (i) that she acted as Allan Rock's "house negro";
 - (ii) that she was involved in a high level cover-up of wrongdoing at the University of Ottawa;
 - (iii) that she needed to be outed as a "house negro";
 - (iv) that she dishonestly authored a report for the University of Ottawa for personal benefit.

5. The nature of this action and circumstances of the Plaintiff are such that this action requires an early mediation to attempt to settle this action. Rule 24.1.09(2), entitled "extension or abridgment of time", states that "in considering whether to exercise the power conferred by subrule 24.1.09(1), the court shall take into account all the circumstances, including, ... (d) whether, given the nature of the case or the circumstances of the parties, the mediation will be more likely to succeed if the 180-day period is extended or abridged".
6. Rule 3.02(1) states:
Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.
7. Rule 1.04(1) states:
These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.
8. The Defendant refuses to take down his defamatory publications. In fact, when first notified to do so, the Defendant published additional libels on his blog (U of O Watch) about Professor St. Lewis. The Defendant has also published on his blog all communications with counsel for the Plaintiff and the pleadings in this action to attract media attention to his defamatory and racist statements about the Plaintiff.
9. Professor Joanne St. Lewis will be teaching two classes at the University of Ottawa's Faculty of Law in the Fall 2011 term that commences on September 6, 2011. Professor St. Lewis is concerned that her Faculty colleagues and students will be asking her questions about this libel action and the Defendant's publications in issue in this action. The Plaintiff wants to attempt to settle this action through early mediation to avoid any negative impact on her classes and the manner in which she is viewed as a professor and an individual at the law school and in the community.

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10. The Defendant refuses to agree to a mediation prior to the exchange of affidavits of documents and the examinations for discovery alleging that "this will make for a more informed, efficient and successful mediation". This is a reversal of the Defendant's initial response to the Plaintiff's Notice that he take down his defamatory and racist publications in that he insisted on meeting with counsel for the Plaintiff to discuss "the benefits of a possible apology". In a subsequent response the Defendant's position was: "without implying guilt or blame on any party, I continue to seek a meeting to help clarify and resolve this matter".
 11. The Statement of Claim and Reply provide the Defendant a detailed account of the issues in this action that provide him sufficient information to conduct an early mediation.
 12. Rule 24.1.01 states that the purpose of mandatory mediation is to "reduce cost and delay in litigation and facilitate the early and fair resolution of disputes". Conducting the mediation prior to the exchange of affidavits of documents and examinations for discovery will reduce the costs of this action in the event the mediation results in a settlement.
 13. After pleadings were closed, the Defendant sent a request for particulars of the Statement of Claim listing 19 requests, many of which are irrelevant to the issues in this action. It is anticipated that the discoveries will be protracted and that motions will be filed arising out of objections made during the examinations for discovery. This will increase costs and delay the possibility of an early settlement of this action.
 14. The Defendant refuses to agree to select a mediator. The Plaintiff proposed James Chadwick, the former Regional Senior Justice. The Defendant's response was that he needed "to examine such a proposal and I also may have a suggested mediator". The Defendant refuses to provide counsel for the Plaintiff with the

name of his suggested mediator and has not agreed to James Chadwick conducting the mediation in this action.

- 15. Rules 1.04(1), (1.1); 3.02, 24.1 of the *Rules of Civil Procedure*; and
- 16. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The Affidavit of Ryan William Kennedy, sworn August 18, 2011;
- 2. Such further and other evidence as counsel may advise, and this Honourable Court may permit.

Date: August 18, 2011

Richard G. Dearden

GOWLING LAFLEUR HENDERSON LLP
 160 Elgin St. Suite 2600
 Ottawa, ON K1P 1C3

Richard G. Dearden (LSUC#019087H)
 Wendy J. Wagner (LSUC#46380Q)
 Tel: (613) 786-0135
 Fax: (613) 788-3430
 Counsel for the Plaintiff Joanne St. Lewis

TO: Denis Rancourt

OTT_LAW\2889469\1

Joanne St. Lewis

Plaintiff

- and - Denis Rancourt

Defendant

Court File No. 11-51657

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
OTTAWA

NOTICE OF MOTION
((Mandatory Mediation And Appointment Of A Mediator))

GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
Suite 2600,
160 Elgin Street
Ottawa ON K1P 1C3

Tel: (613) 786-0135
Fax: (613) 788-3430

Richard G. Dearden (LSUC #019087H)
Wendy J. Wagner (LSUC#46380Q)
Counsel for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

FACTUM
(Mandatory Mediation And Appointment Of A Mediator)

GOWLING LAFLEUR HENDERSON LLP
160 Elgin St. Suite 2600
Ottawa, ON K1P 1C3

Richard G. Dearden (LSUC#019087H)
Wendy J. Wagner (LSUC#46380Q)
Tel: (613) 786-0135
Fax: (613) 788-3430

Counsel for the Plaintiff Joanne St. Lewis

I. FACTS**(a) The Defendant's Refusal To Mediate**

1. The Defendant was served with a Notice dated May 16, 2011 to take down from his blog (U of O Watch) the defamatory and racist statements he published about the Plaintiff. In response, the Defendant sent counsel for the Plaintiff an email on May 20, 2011 that states in part: "Without implying guilt or blame on any party, as a self-represented individual, I request to informally meet with you as soon as is convenient in order to discuss and explore (1) informally resolving our possible misunderstandings, (2) the benefits of a possible apology regarding your client's feeling of having been offended by statements alleged to be racist, and (3) matters that you have raised."

Exhibits "F" and "H" to the Affidavit of Ryan William Kennedy.

2. Counsel for the Plaintiff sent an email on May 23, 2011 that states: "Mr. Rancourt – I have served you with two Notices demanding that you take down the defamatory statements you have published about my client. You refuse to do so. I will not consider any meeting with you until you take down your offensive statements. Let me be clear – there are no "possible misunderstandings" - you have published false and defamatory statements about Professor St. Lewis that have damaged her, must be retracted immediately and require an unequivocal apology from you. I strongly recommend that you retain a lawyer." In response, the Defendant sent an email to counsel for the Plaintiff on May 23, 2011 that states in part: "Without implying guilt or blame on any party, I continue to seek a meeting to help clarify and resolve this matter, as I have indicated."

Exhibits "I" and "J" to the Affidavit of Ryan William Kennedy.

3. Counsel for the Plaintiff sent an email to the Defendant on May 23, 2011 that states in part: "There is nothing to clarify regarding your defamatory statements – you take down your defamatory blogs immediately and then I will consider meeting with you to discuss the wording of your unequivocal retraction and apology to Professor St. Lewis that you will publish on your blog. That may assist in mitigating the damages you have caused

her". The Defendant refused to take down his defamatory publications with the result that no meeting took place and a Statement of Claim was issued.

Exhibit "K" to the Affidavit of Ryan William Kennedy.

4. Counsel for the Plaintiff sent an email to the Defendant on August 5, 2011 stating: "Mr. Rancourt - we are required to select a mediator and conduct a mediation of this libel action. I propose that we select former Regional Senior Justice James Chadwick as our mediator. You will find background information about Mr. Chadwick at <http://www.odrg.net/chadwick.html> . Assuming you agree to have Mr Chadwick conduct the mediation , I propose that the mediation be held on September 13th or September 30th . Please let me know soon so we can schedule the mediation before those dates become unavailable."

Exhibit "L" to the Affidavit of Ryan William Kennedy.

5. The Defendant's email to counsel for the Plaintiff on August 10, 2011 states:
1. I suggest that we do discoveries (and outstanding requests for particulars) before mediation. This will make for a more informed, efficient and successful mediation.
 2. I will send you a suggested discovery plan shortly.
 3. At the present time I have no knowledge or opinion about Mr. Chadwick or his fees and methods. I will need to examine any such proposal and I also may have a suggested mediator.
 4. At this time I ask that you accept, as I am self-represented, that at any mediation I will be accompanied by an adviser."

Exhibit "M" to the Affidavit of Ryan William Kennedy.

6. Counsel for the Plaintiff sent an email to the Defendant on August 12, 2011 that states:
1. I do not agree to delay the mediation until after discoveries. Your false and defamatory publications are causing damage to Professor St. Lewis every day this matter remains unresolved and I insist that we make an attempt to mediate a

settlement as soon as possible. In the event that we do not settle this action at a first mediation, nothing precludes us from holding a second mediation after discoveries if we agree to do so.

2. I have proposed as a mediator James Chadwick , a former Regional Senior Justice of the Superior Court of Justice who is skilled in mediation. Please identify your "suggested mediator" mentioned in your paragraph 3 below.

3. Please identify the "adviser" you wish to accompany you at a mediation and the role of the "adviser". Once I have this information I will consider your request. "

Exhibit "O" to the Affidavit of Ryan William Kennedy.

7. The Defendant refuses to agree to a mediation prior to the exchange of affidavits of documents and examinations for discovery. The Defendant sent an email to counsel for the Plaintiff on August 12, 2011 that states in part that the Defendant does "not agree to have the mandatory mediation without information and clarifications that will be provided to both parties in discovery."

Exhibit "P" to the Affidavit of Ryan William Kennedy.

8. Subsequent to the filing of the Statement of Defence and the Reply in this action, the Defendant requested particulars of the Statement of Claim, listing 19 requests.

Exhibit "N" to the Affidavit of Ryan William Kennedy.

(b) **The Statement of Claim**

9. Paragraphs 35 and 36 of the Statement of Claim state:

35. In April 2011, Professor St. Lewis conducted a Google search of her name and was horrified to discover that Denis Rancourt's February 2011 blog now appeared on the front page of the Google search results for "Joanne St. Lewis" and referred to her as Allan Rock's House Negro. The page one Google search result reads:

U OF O WATCH: Did Professor Joanne St. Lewis act as Allan Rock's ...

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11 Feb 2011 ... Did Professor *Joanne St. Lewis* act as Allan Rock's house negro? February is Black History Month in Canada and the US. ...
uofowatch.blogspot.com/.../did-professor-joanne-st-lewis-act-as.html -
Cached

36. Within two days of Professor St. Lewis' discovery of the Google search result containing the racist and defamatory statement that she was a "House Negro", she discovered that its ranking changed from the fourth search result to the second search result on page one of her Google search results, indicating that measures were taken to give greater prominence to the Defendant's February 11, 2011 blog.

Exhibit "A" to the Affidavit of Ryan William Kennedy.

10. Paragraph 38 of the Statement of Claim states:

38. The Defendant Denis Rancourt falsely and maliciously published the following highly offensive, racist and defamatory statements of and concerning Professor St. Lewis in the February 11, 2011 blog entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro":

i. "Did Professor Joanne St. Lewis act as Allan Rock's house negro?"

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);
- b. acted in a servile manner toward President Allan Rock (a white male) and the University of Ottawa;
- c. acted in an inauthentic manner toward President Allan Rock (a white male) and the University of Ottawa;
- d. forfeited her cultural and racial identity, heritage and/or traditions to serve the interests of President Allan Rock (a white male) and the University of Ottawa;

- e. supports racism;
- f. cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- g. has betrayed Black people or other minorities in order to gain a privileged position at the University of Ottawa or for personal gain or advantage;
- h. lacks integrity;
- i. was biased in the conduct and authoring of her evaluation of the SAC Report.
- ii. “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.”

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. needs to be “outed” for acting in a servile and inauthentic manner toward President Allan Rock (a white male) and the University of Ottawa;
- b. needs to be “outed” for forfeiting her cultural and racial identity, heritage and/or traditions to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;
- c. needs to be “outed” for supporting racism and cooperating in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- d. needs to be “outed” for betraying Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- e. is a fraud;
- f. is untrustworthy;

- g. is a sell out to the Black community;
- h. sold herself out to the President of the University of Ottawa;
- i. falsely misrepresents her actual beliefs about Blacks.
- iii. “The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom.”

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. has abased herself on this or previous occasions;
- b. has acted in an abjectly servile and deferential manner to, President Allan Rock and the University of Ottawa;
- c. has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of President Allan Rock and the University of Ottawa.
- iv. “The Student Appeal Centre (“SAC”) of the student union at the University of Ottawa today released documents obtained by an access to information (“ATI”) request that 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”.

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. acted as a “slave” to her white “master” (University of Ottawa President Allan Rock);

- b. acted in a servile manner toward University of Ottawa President Allan Rock (a white male) and the University of Ottawa;
- c. acted in an inauthentic manner toward University of Ottawa President Allan Rock (a white male) and the University of Ottawa;
- d. forfeited her cultural and racial identity, heritage and/or traditions to serve the interests of University of Ottawa President Allan Rock (a white male) and the University of Ottawa;
- e. supported racism;
- f. cooperated in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- g. betrayed Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- h. conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote the interests of University of Ottawa President Allan Rock, the University of Ottawa and/or herself;
- i. sold herself out to the President of the University of Ottawa;
- j. acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report;
- k. was biased in conducting and authoring her evaluation of the SAC Report.
- v. “The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis’ uncommon zeal to serve the university administration”

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. conducted and authored her evaluation of the Student Appeal Centre Report with a view to obtaining tenure, a promotion, or other personal benefit or gain;
- b. conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote her self interest or the interests of University of Ottawa President Allan Rock and/or the University of Ottawa;
- c. acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report;
- d. was biased in conducting and authoring the evaluation of the SAC Report.
- vi. “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.”

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. participated in a high level cover up of wrongdoing;
- b. was biased;
- c. was dishonest in her evaluation of the SAC Report;
- d. conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself;
- e. acted without integrity in conducting and authoring her evaluation of the SAC Report.
- vii. “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!).”

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- a. was biased;
- b. acted without integrity in conducting and authoring her evaluation of the SAC Report;
- c. was dishonest in conducting and authoring an evaluation of the SAC Report;
- d. conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.

Exhibit "A" to the Affidavit of Ryan William Kennedy.

11. Paragraphs 41 and 42 of the Statement of Claim state:

41. In a flagrant and reckless disregard of the May 16, 2011 Notice from the Plaintiff's counsel, the Defendant refused to take down his defamatory statements, posted the May 16, 2011 Notice (referring to the Notice as a "new threat"), and published additional defamatory statements about Professor St. Lewis on his blog.

42. In a blog dated May 18, 2011 entitled "Top dog Canada freedom of the press lawyer targets U of O Watch blog", the Defendant falsely and maliciously published the following racist and defamatory statements of and concerning Professor St. Lewis.

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. 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 of U of O racism HERE".

In their natural and ordinary meaning, the words meant and were understood to mean that Professor St. Lewis:

- (a) acted as a "slave" to her white "master" (University of Ottawa President Allan Rock);
- (b) acted in a servile manner toward the University of Ottawa and President Allan Rock when conducting and authoring her evaluation of the SAC Report;

- (c) acted in an inauthentic manner toward the University of Ottawa and President Allan Rock when conducting and authoring her evaluation of the SAC Report;
- (d) forfeited her cultural and racial identity, heritage and traditions to serve the University of Ottawa's interests in discrediting the Student Appeal Centre Report;
- (e) supports racism;
- (f) cooperates in the denigration of Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- (g) has betrayed Black people or other minorities in order to gain a privileged position or for personal gain or advantage;
- (h) lacks integrity;
- (i) was biased in the conduct and authoring of her evaluation of the Student Appeal Centre Report.

Exhibit "A" to the Affidavit of Ryan William Kennedy.

II. ISSUES

12. The issues in this motion are:

(i) whether a mandatory mediation should be held in September, 2011 prior to the exchange of affidavits of documents and examinations for discovery?

(ii) whether the Court should appoint a mediator?

III. LAW

13. This action involves the publication by the Defendant of egregious, racist and defamatory statements about the Plaintiff.

14. The Plaintiff Joanne St. Lewis is a tenured Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa. Professor St. Lewis' life work has been dedicated to the promotion of equality rights in the law and legal culture, including racial and gender equality. Professor St. Lewis' work and contributions to the community in her role as a national expert in the area of anti-racist decision making and critical race theory have been acknowledged through numerous awards including the Canadian Association of Black Lawyers Outstanding Achievement Award.

15. The Defendant Denis Rancourt is a former physics professor at the University of Ottawa whose employment was terminated by the University. The Defendant publishes a blog entitled U of O Watch (uofowatch.blogspot.com) which he claims is "devoted to transparency at the University of Ottawa" and "exposes institutional behaviour that is not consistent with the public good". The Defendant's blog contains a multiplicity of attacks on the reputation of Allan Rock, the President of the University of Ottawa.

16. The defamatory and racist statements the Defendant has published about Professor St. Lewis include:

(i) that she acted as Allan Rock's "house negro";

- (ii) that she was involved in a high level cover-up of wrongdoing at the University of Ottawa;
- (iii) that she needed to be outed as a "house negro";
- (iv) that she dishonestly authored a report for the University of Ottawa for personal benefit.

17. The nature of this action and circumstances of the Plaintiff are such that this action requires an early mediation to attempt to settle this action. Rule 24.1.09(2), entitled "extension or abridgment of time", states that "in considering whether to exercise the power conferred by subrule 24.1.09(1), the court shall take into account all the circumstances, including, ... (d) whether, given the nature of the case or the circumstances of the parties, the mediation will be more likely to succeed if the 180-day period is extended or abridged".

Rule 3.02(1) states:

Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

Rule 1.04(1) states:

These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.
[emphasis added]

18. The Defendant refuses to take down his defamatory publications. In fact, when first notified to take down the defamatory blog, the Defendant published additional libels about the Plaintiff on his blog (U of O Watch). In addition, the Defendant has also published on his blog all communications with counsel for the Plaintiff and the pleadings in this action to attract media attention to his defamatory and racist statements about the Plaintiff.
19. The Defendant's defamatory publications are causing damage to Professor St. Lewis every day that this action remains unresolved. Professor Joanne St. Lewis will be teaching two classes at the University of Ottawa's Faculty of Law in the Fall 2011 term that commences on September 6, 2011. Professor St. Lewis is concerned that her Faculty

colleagues and students will be asking her questions about this libel action and the Defendant's publications in issue in this action. The Plaintiff wants to attempt to settle this action through early mediation to avoid any negative impact on her classroom environment and the manner in which she is viewed as a professor and as a member of the law school and university community.

20. The Defendant refuses to agree to a mediation prior to the exchange of affidavits of documents and the examinations for discovery alleging that "this will make for a more informed, efficient and successful mediation". This is a reversal of the Defendant's initial response to the Plaintiff's Notice that he take down his defamatory and racist publications in that he insisted on meeting with counsel for the Plaintiff to discuss "the benefits of a possible apology". In a subsequent response the Defendant's position was: "without implying guilt or blame on any party, I continue to seek a meeting to help clarify and resolve this matter".
21. In *Gambeta v. Canadian Imperial Bank of Commerce et. al.*, the defendant requested an order for costs thrown away as a result of the plaintiff's late cancellation of a mediation session. The parties agreed to conduct mediation before discoveries of all parties were completed, having examined only the defendant before the mediation session was to take place. Further none of the parties had delivered affidavits of documents or made documentary production at the time the mediation was scheduled. At no time leading up to the mediation date had any party raised exchanging affidavits of documents or making documentary discovery prior to mediation being conducted. On the date prior to the mediation though, the plaintiff wrote to defence counsel and requested that the mediation be cancelled and rescheduled since he had not received the defendants' productions. Defence counsel opposed the cancellation as the defendants were prepared to proceed to mediation at the early stage in the action, having delivered statements of issues as well as the Mediation Brief. Despite the opposition, the mediation session was cancelled.

In awarding the defendants reasonable costs thrown away, Master Pope commented at paragraph 13 on the practical benefits of conducting mediation before discoveries and documentary production takes place:

In my view the plaintiff caused the defendants to incur unnecessary costs when it cancelled the mediation session on late notice. While it is the plaintiff's view that the scheduled mediation would not have been productive and would likely have failed due to lack of documentary production, it is my view that the parties had agreed to mediate early in the case; that is before documentary production and before the completion of discoveries, in order to keep costs down in the event of a settlement at mediation. Conducting mediation early in a case is a common practice at least in this community for precisely that reason. (emphasis added)

Gambeta v. Canadian Imperial Bank of Commerce et al., 2010 ONSC 4812.

22. After pleadings were closed, the Defendant sent a request for particulars of the Statement of Claim listing 19 requests, many of which are irrelevant to the issues in this action. It is anticipated that the discoveries will be protracted and that motions will be filed arising out of objections made during the examinations for discovery. This will increase costs and delay the possibility of an early settlement of this action.
23. The Statement of Claim and Reply provide the Defendant a detailed account of the issues in this action that provide him sufficient information to conduct an early mediation.
24. Rule 24.1.01 states that the purpose of mandatory mediation is to “reduce cost and delay in litigation and facilitate the early and fair resolution of disputes”. Conducting the mediation prior to the exchange of affidavits of documents and examinations for discovery will reduce the costs of this action in the event the mediation results in a settlement. Further, as counsel for the Plaintiff informed the Defendant on August 12th, there is nothing precluding the parties from holding a second mediation after discoveries if the parties agree to do so.
25. The Defendant also refuses to agree to select a mediator. The Plaintiff proposed James Chadwick, the former Regional Senior Justice. The Defendant's response was that he had “no knowledge or opinion about Mr. Chadwick or his fees and methods” and that he needed “to examine such a proposal and I also may have a suggested mediator”. The Defendant refused to provide counsel for the Plaintiff with the name of his suggested mediator and has not agreed to James Chadwick conducting the mediation in this action.

Date: August 18, 2011

Richard G. Dearden

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Richard G. Dearden
Wendy Wagner
Tel:(613) 786-0135
Fax:(613) 788-3430

OTT_LAW\2889543\1

Joanne St. Lewis

Plaintiff

- and - Denis Rancourt

Defendant

Court File No. 11-51657

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FACTUM
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GOWLING LALEUR HENDERSON LLP
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Suite 2600,
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Richard G. Dearden (LSUC #019087H)
Wendy J. Wagner (LSUC#46380Q)
Counsel for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

AFFIDAVIT

I, Ryan William Kennedy, of the City of Ottawa, in the Province of Ontario MAKE OATH AND SAY AS FOLLOWS:

1. I am an associate at Gowling Lafleur Henderson LLP and as such have knowledge of the matters sworn to in this affidavit.
2. Attached as Exhibit "A" is a copy of the Statement of Claim in this action filed on June 23, 2011.
3. Attached as Exhibit "B" is a copy of the Statement of Defence in this action filed on July 22, 2011.
4. Attached as Exhibit "C" is a copy of the Reply in this action filed on August 5, 2011.
5. Attached as Exhibit "D" is a copy of U of O Watch as of August 17, 2011.
6. Attached as Exhibit "E" is the first page of the Google search results for "Joanne St. Lewis" as of August 17, 2011. The Defendant's defamatory publication of February 11, 2011 appears as the second item of this search.

7. Attached as Exhibit "F" is a copy of a letter dated May 16, 2011 from counsel for the Plaintiff to the Defendant.
8. Attached as Exhibit "G" is a letter dated May 20, 2011 from counsel for the Plaintiff to the Defendant.
9. Attached as Exhibit "H" is a copy of an email sent by the Defendant to counsel for the Plaintiff on May 20, 2011 at 2:43 p.m. that states in part: "Without implying guilt or blame on any party, as a self-represented individual, I request to informally meet with you as soon as is convenient in order to discuss and explore (1) informally resolving our possible misunderstandings, (2) the benefits of a possible apology regarding your client's feeling of having been offended by statements alleged to be racist, and (3) matters that you have raised."
10. Attached as Exhibit "I" is a copy of an email sent by counsel for the Plaintiff to the Defendant on May 23, 2011 at 11:54 a.m. that states: "Mr. Rancourt - I have served you with two Notices demanding that you take down the defamatory statements you have published about my client. You refuse to do so. I will not consider any meeting with you until you take down your offensive statements. Let me be clear - there are no "possible misunderstandings" - you have published false and defamatory statements about Professor St. Lewis that have damaged her, must be retracted immediately and require an unequivocal apology from you. I strongly recommend that you retain a lawyer."
11. Attached as Exhibit "J" is a copy of an email sent by the Defendant to counsel for the Plaintiff on May 23, 2011 at 3:25 p.m. that states in part: "Without implying guilt or blame on any party, I continue to seek a meeting to help clarify and resolve this matter, as I have indicated."
12. Attached as Exhibit "K" is a copy of an email sent by counsel for the Plaintiff to the Defendant on May 23, 2011 at 4:04 p.m. that states in part: "There is nothing to clarify regarding your defamatory statements - you take down your defamatory blogs

immediately and then I will consider meeting with you to discuss the wording of your unequivocal retraction and apology to Professor St. Lewis that you will publish on your blog. That may assist in mitigating the damages you have caused her”.

13. Attached as Exhibit “L” is a copy of an email sent by counsel for the Plaintiff to the Defendant on August 5, 2011 at 10:47 a.m. stating: “Mr. Rancourt - we are required to select a mediator and conduct a mediation of this libel action. I propose that we select former Regional Senior Justice James Chadwick as our mediator. You will find background information about Mr. Chadwick at <http://www.odrg.net/chadwick.html> . Assuming you agree to have Mr Chadwick conduct the mediation , I propose that the mediation be held on September 13th or September 30th . Please let me know soon so we can schedule the mediation before those dates become unavailable.”
14. Attached as Exhibit “M” is a copy of an email sent by the Defendant to counsel for the Plaintiff on August 10, 2011 at 10:48 a.m. stating:
 - “1. I suggest that we do discoveries (and outstanding requests for particulars) before mediation. This will make for a more informed, efficient and successful mediation.
 2. I will send you a suggested discovery plan shortly.
 3. At the present time I have no knowledge or opinion about Mr. Chadwick or his fees and methods. I will need to examine any such proposal and I also may have a suggested mediator.
 4. At this time I ask that you accept, as I am self-represented, that at any mediation I will be accompanied by an adviser.”
15. Attached as Exhibit “N” is a copy of an email sent by the Defendant to counsel for the Plaintiff on August 10, 2011 at 9:57 a.m. requesting particulars of the Statement of Claim listing 19 requests. The Statement of Defence and the Reply were filed prior to this request for particulars.

16. Attached as Exhibit "O" is a copy of an email sent by counsel for the Plaintiff to the Defendant on August 12, 2011 at 4:13 p.m. that states: 10

"1. I do not agree to delay the mediation until after discoveries. Your false and defamatory publications are causing damage to Professor St. Lewis every day this matter remains unresolved and I insist that we make an attempt to mediate a settlement as soon as possible. In the event that we do not settle this action at a first mediation, nothing precludes us from holding a second mediation after discoveries if we agree to do so.

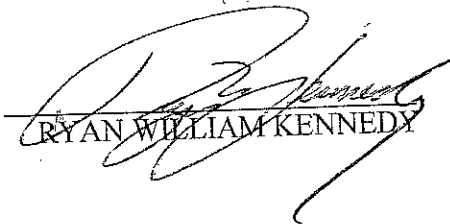
2. I have proposed as a mediator James Chadwick , a former Regional Senior Justice of the Superior Court of Justice who is skilled in mediation. Please identify your "suggested mediator" mentioned in your paragraph 3 below.

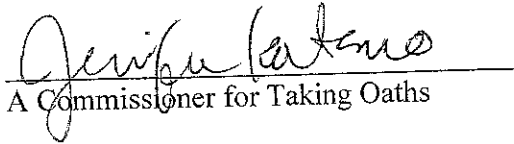
3. Please identify the "adviser" you wish to accompany you at a mediation and the role of the "adviser". Once I have this information I will consider your request. "

17. Attached as Exhibit "P" is a copy of an email sent by the Defendant to counsel for the Plaintiff on August 12, 2011 at 10:31 p.m. that states in part that the Defendant does "not agree to have the mandatory mediation without information and clarifications that will be provided to both parties in discovery."

18. I have been informed by the Plaintiff Joanne St. Lewis and verily believe that she will be teaching two classes at the University of Ottawa's Common Law Faculty in the Fall 2011 term that commences on September 6, 2011. I have been informed by Joanne St. Lewis and verily believe that she is concerned that her Faculty colleagues and students will be asking her questions about this libel action and the Defendant's publications in issue in this action. The Plaintiff wants to attempt to settle this action through early mediation to avoid a negative impact on her classes and the manner in which she is viewed as a professor and an individual at the law school and in the community.

Sworn before me at the City
of Ottawa in the
Province of Ontario
on August 18, 2011


RYAN WILLIAM KENNEDY


A Commissioner for Taking Oaths

OTT_LAW 2888788v1

Jennifer Lynn Teruko Katsuno,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 23, 2013.