Court File No.: 11-51657

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff

and

**DENIS RANCOURT**

Defendant

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AFFIDAVIT

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I, **Denis Rancourt**, of the City of OTTAWA, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

Purpose of the instant (second) affidavit of Denis Rancourt

1. The instant affidavit is about mediation in the action and about my status with Law Help Ontario, a Pro Bono Law Ontario Project – for response to a Plaintiff's Motion intended to be heard initially on September 2, 2011.

2. The instant affidavit is a second affidavit by me as deponent for response to the Plaintiff's Motion intended to be heard initially on September 2, 2011.

About the deponent

3. I am the defendant in the action. I am self-represented. I am not a lawyer.

4. I was a university professor in physics for twenty three years and attained the highest rank of tenured Full Professor in 1996. My 2009 dismissal case is presently in hearing before binding labour arbitration with unanimous support from my union. The Canadian Association of University Teachers (CAUT) is in mid independent enquiry into the breaches of my academic freedom since 2005, including the dismissal. The dismissal was reported in the national and North American media and is considered a

major academic freedom case. I won a significant first labour arbitration award in 2008, reviewed in a law journal, and past settlements have included letters of apology or explanation from the University of Ottawa.

Defendant cannot afford plaintiff-imposed mediator of Mandatory Mediation

5. Attached as exhibit "AA" is a copy of the Notice of Requirement to Mediate for the instant action. It states that the first defence was filed on "12-JUL-2011".

6. Following a written application made in due form, on August 25, 2011, at 11:45am, Mr. Ayoub Cherkaoui, Litigation Projects Coordinator, Law Help Ontario, 5th floor, 161 Elgin Street, Ottawa, Ontario, confirmed to me in person that my application to Law Help Ontario was approved and that I am now registered and accepted to receive the services of Law Help Ontario. Mr. Cherkaoui further stated to me in person that he had the authority to make this approval and that the application was approved by him.

7. Acceptance into the Law Help Ontario program is based on financial need, based on income.

8. Law Help Ontario does not provide representation but rather provides legal help on questions arising in a given litigation; the instant action in this case.

9. In our August 25, 2011, meeting Mr. Ayoub Cherkaoui explained that I qualified for the new "Mediation Assistance Project", a Pro Bono Law Ontario project also managed by his office.

10. Attached as exhibit "BB" is a copy of my August 25, 2011, signed application to the Mediation Assistance Project of Pro Bono Law Ontario. The application contains an example letter sent to the other side to invite voluntary participation in mediation provided free of cost under the purview of the Mediation Assistance Project.

11. I understand that such an invitation will be sent to the Plaintiff as soon as possible.

| Sworn and affirmed before me at the City of Ottawa, Ontario, on<br><br>August 26, 2011<br><br>..........................................<br>Commissioner for Taking Affidavits<br>*(or as may be)* | ..........................................<br>*(Signature of deponent)*<br>Denis Rancourt |
|---|---|

Michelle Antoinette Hannah, a Commissioner, etc., City of Ottawa, for the Government of Ontario, Ministry of the Attorney General. Expires August 21, 2013.
Michelle Antoinette Hannah, un commissaire, etc., ville d'Ottawa, au service du gouvernement de l'Ontario, Ministère du Procureur général. Expiration: le 21 août 2013.

RCP-E 4D (July 1, 2007)

THIS IS EXHIBIT " AA "

OF THE AFFIDAVIT

OF **Denis Rancourt**

SWORN BEFORE ME THIS **August 26, 2011**

nAHannah

Commissioner for Taking Affidavits

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Court File No. / *Numéro du dossier de la cour* : CV-11-00051657-0000

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
***COUR SUPÉRIEURE DE JUSTICE***

BETWEEN:
*ENTRE:*

JOANNE ST.LEWIS

Plaintiff
*Demandeur*

*and / et*

DENIS RANCOURT

Defendant
*Défendeur*

AA

# NOTICE OF REQUIREMENT TO MEDIATE
# *AVIS DE MÉDIATION OBLIGATOIRE*

Pursuant to Rule 24.1.09(1), the parties to this proceeding are required to attend a mediation session within 180 days after the first defence has been filed, unless the court orders otherwise. The first defence was filed on
*Conformément à la règle 24.1.09(1), les parties à l'instance sont tenues d'assister à une séance de médiation dans les 180 jours qui suivent le dépôt de la première défense, sauf ordonnance contraire du tribunal. La première défense a été déposée le*

**12-JUL-2011**
(Date)

To prevent the assignment of mediator, the parties to this proceeding are required to file Notice of Name of Mediator and Date of Session (Form 24.1(A)) with the court within 180 days after the filing of the first defence.
*Afin d'éviter qu'un médiateur soit affecté au dossier, les parties à cette instance sont tenues de déposer un avis du nom du médiateur et de la date de la séance (formule 24.1(A)) auprès du tribunal, dans les 180 jours qui suivent le dépôt de la première défense.*

The parties may select a mediator from the approved list of mediators, or on consent may select a mediator who is not named on the list. The list is available on the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca.
*Les parties peuvent choisir un médiateur sur la liste des médiateurs approuvés ou elles peuvent consentir à choisir un médiateur qui ne figure pas sur cette liste. La liste est consultable sur le site Web du ministère du Procureur général, à www.attorneygeneral.jus.gov.on.ca.*

If the mediation co-ordinator does not, within 180 days from the date of this notice, receive a consent or an order extending the time for the completion of a mediation session, a Form 24.1A notice, a mediator's report or a notice that the action has been settled, he or she shall immediately assign a mediator from the list who will fix a place, date and time for the mediation session and notify the parties at least 20 days before that date.
*Si le coordonnateur de la médiation ne reçoit pas, dans les 180 jours qui suivent la date du présent avis, une ordonnance prolongeant le délai prescrit pour la tenue d'une séance de médiation, un avis sur la formule 24.1A, le rapport du médiateur ou un avis de règlement de l'action, il désignera immédiatement un médiateur dont le nom figure sur la liste qui fixera les date, heure et lieu de la séance de médiation et en avisera les parties au moins 20 jours avant cette date.*

The date fixed for the mediation session shall be within 90 days after the appointment of the mediator unless the court orders otherwise.
*La médiation doit avoir lieu dans les 90 jours qui suivent la nomination du médiateur sous réserve d'une ordonnance contraire du tribunal.*

# NOTICE OF REQUIREMENT TO MEDIATE
# *AVIS DE MÉDIATION OBLIGATOIRE*

CV-11-00051657-0000
*Court File No../ No du dossier de greffe*

Please notify the Mediation Office immediately in writing if this proceeding:
*Veuillez aviser immédiatement le Bureau de la médiation, par écrit, si l'instance répond à l'un ou l'autre des critères suivants :*

(a) is an action to which Rule 75.1 (Mandatory Mediation – Estates, Trusts and Substitute Decisions) applies;
*elle est une action à laquelle la Règle 75.1 s'applique (médiation obligatoire – successions, fiducies et décisions au nom d'autrui);*

(b) is in relation to a matter that was the subject of a mediation under section 258.6 of the Insurance Act, and the mediation was conducted less than a year before the delivery of the first defence, as such actions are exempt from Rule 24.1;
*elle se rapporte à une affaire qui fait l'objet d'une médiation en vertu de l'article 258.6 de la Loi sur les assurances et si la médiation a eu lieu moins d'une année avant le dépôt de la première défense, auquel cas ces actions sont exemptées de la règle 24.1;*

(c) is an action placed on the Commercial List;
*elle est une action inscrite au rôle commercial;*

(d) is an action under Rule 64 (Mortgage Actions);
*elle est une action relevant de la Règle 64 (actions hypothécaires);*

(e) is an action under the Construction Lien Act, except a trust claim;
*elle est une action en vertu de la Loi sur le privilège dans l'industrie de la construction, sauf une action relative à la fiducie;*

(f) is an action under the Bankruptcy and Insolvency Act (Canada);
*elle est une action en vertu de la Loi sur la faillite et l'insolvabilité (Canada);*

(g) is an action that has been certified as a Class Proceeding under the Class Proceedings Act 1992; or
*elle est une action qui a été certifiée comme un recours collectif en vertu de la Loi de 1992 sur les recours collectifs;*

(h) has settled so that no further action need be taken.
*elle a été réglée et elle ne nécessite plus aucune mesure.*

Date: 13-JUL-2011
*Fait le:*

Mediation Office
*Bureau de la médiation*

Address of court office: Ottawa
*Adresse du greffe:* 161 Elgin St 2nd fl
Ottawa ON K2P 2K1

**TO/À** DENIS RANCOURT

THIS IS EXHIBIT " BB "

OF THE AFFIDAVIT

OF **Denis Rancourt**

SWORN BEFORE ME THIS **August 26, 2011**

[signature]

Commissioner for Taking Affidavits

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PRO BONO LAW ONTARIO Law Ontario

# Mediation Assistance Project

*Mediation is a process in which a neutral person, known as a mediator, facilitates negotiation among parties to a dispute. Mediation is an excellent opportunity to resolve a dispute in a manner decided by the parties themselves. PBLO is fortunate to have been approached by a number of mediators who are prepared to provide pro bono (free) mediation services. We view this as a very promising addition to our services and encourage you to participate.*

*The purpose of this form is to determine if you are interested and would like us to contact the other parties in your dispute to see if they are interested. If all parties are interested, we will try to find an available mediator.*

*Thank you for your cooperation in filling out this form.*

BB

Name: DENIS RANCOURT Date: 25-AUG-2011

Title of proceedings or Court file number: 11-51657

Has your dispute been mediated? ☐ Yes ☑ No

Are you interested in pro bono (free) mediation? ☑ Yes ☐ No ☐ Maybe

If not, why not? ______

Would you like to learn more about mediation? ☑ Yes ☐ No

May we contact the other parties in the matter to convey your interest in mediation? ☑ Yes ☐ No

Do you authorize PBLO to complete and send the attached letter to the other parties? ☐ Yes ☐ No
*(A template for this letter is on page 2, the reverse side of this document.)*

Signature: Denis Rancourt

**DRAFT LETTER TO OTHER PARTIES**

Dear Sir/Madam:

Re: [insert short title of proceedings/court file number]

As you may know, Pro Bono Law Ontario (PBLO) is a charity with a mandate to promote access to justice by providing opportunities for lawyers to do pro bono work. Law Help Ontario (LHO) is a project of PBLO that operates court-based help centres for low-income, self-represented litigants with civil, non-family matters in the Superior Court of Justice and Small Claims Court.

Currently, LHO's services include the provision of general legal information, form completion assistance, and brief summary advice from volunteer duty counsel. We have recently been approached by a number of mediators who have indicated a desire to provide pro bono services in matters involving one or more of our clients. We view this as an extremely promising expansion of our services.

[insert client name] has received assistance from LHO. [Mr./Ms. last name of client] has expressed to us an interest in pro bono mediation. The purpose of this letter is to convey that that interest to you and to determine whether [you/your client] is similarly interested. If so, we can make efforts to arrange mediation that would be conducted on a pro bono basis. We trust you appreciate that we cannot guarantee that we'll be able to do so. We do, however, encourage you to express an interest in these efforts.

In response to this letter, we would be grateful if you would send a short email message to mediator@pblo.org. The message need only indicate whether [you/your client] is or is not interested in having us try to arrange pro bono mediation in this matter. If you indicate an interest, you will not be committing to anything else. Thereafter, we and/or a proposed mediator will be in touch with further details.

Thank you for your assistance.

Pro Bono Law Ontario

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Court File No.: 11-51657

**_ONTARIO_**
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff

and

**DENIS RANCOURT**

Defendant

---

RESPONDING PARTY'S FACTUM
(Mandatory Mediation)

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**Denis Rancourt**

[redacted]
[redacted]

Tel. [redacted]

Defendant
(and Responding Party)

# I. FACTS (Action)

1. There is considerable disagreement regarding the material facts in the action. The version of the Defendant is cogently outline in paragraphs 4 to 47 (chronology), 51 (absence of malice) and 52 (absence of racism) of the Statement of Defence.

**Plaintiff's Motion Record affidavit exhibit "B": Statement of Defence**

2. The Defendant holds that his blogposts at issue are not defamatory and provide a service to his readers in a matter of public interest.

**Plaintiff's Motion Record affidavit exhibit "B": Statement of Defence, paragraphs 4 to 12 and 51**

3. The Defendant provides expert evaluation for the motion regarding the absence of racism in the blogposts at issue and regarding a false and unreasonable basis for the unjustified Plaintiff's allegation of "egregious" and "racist" communication.

**Defendant's Motion Record first-affidavit exhibit "E": Expert statement affidavit of Claude Lamontagne**

4. In paragraph 17 of the Reply the Plaintiff states that the action is focussed on a particular blogpost as:

> "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."

**Plaintiff's Motion Record affidavit exhibit "C": Reply**
**Plaintiff's Motion Record affidavit exhibit "B": Statement of Defence**

5. In the Statement of Defence the Defendant is asking the court to dismiss the action.

**Plaintiff's Motion Record affidavit exhibit "B": Statement of Defence, paragraph 73**

# II. FACTS (Motion)

6. The Defendant is self-represented and is not a lawyer.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraphs 1 and 2**

## Plaintiff refusing early voluntary mediation or resolution

7. Early in the process, before filing of the Statement of Claim, the Defendant repeatedly requested voluntary mediation.

**Plaintiff's Motion Record affidavit exhibits "H" and "J"**

8. This was flatly and abruptly refused by the Plaintiff (see below).

**Plaintiff's Motion Record affidavit exhibits "I" and "K"**

9. In particular, counsel for the Plaintiff's May 23, 2011, email rebuking the Defendant's requests for early informal voluntary mediation reads (emphasis added as underline):

> Mr. Rancourt
> 1. cease communicating with my client directly - you communicate with me as counsel for Professor St. Lewis.
> 2. i attach my May 20th letter to you which is the second Notice i was referring to in my email to you today.
> 3. 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.
> 4. as for your para 4 below, the Statement of Claim that will be issued against you should answer your questions. Once again i strongly recommend that you retain a lawyer to defend the defamatory statements you continue to repeat and add to (such as the statements in para 5 below that are false and defamatory). I am informing you to not repeat the accusations in para 5 below to any third party. To do so will be malicious and further aggravate my client's damages.

The Plaintiff thus refused all possibility of attempting voluntary informal discussion or mediation and instead informed the Defendant that a lawsuit was unavoidable and that the Defendant's only option was to attempt to mitigate damages that would be sought at trial.

**Plaintiff's Motion Record affidavit exhibit "K"**

10. The latter email was in answer to the Defendant's email of May 23, 2011, which reads (emphasis added as underline):

> Dear Mr. Dearden,
> Thank you for your reply. Clarifications are needed in this matter.
> (1) Since you have not indicated that you would inform your client about my May 20th offer to publish her response, I have put Ms. St. Lewis in cc. This will also make Ms. St. Lewis fully aware of our exchange.
> (2) 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.
> (3) In your today's email, you state "I have served you with two Notices demanding..." yet your letter of May 16, 2011, is the only paper communication that I have ever received from you (and in which you make no mention of a previous communication). Are you counting your email of 11:54am today as having served me a second "Notice"? Please clarify.
> (4) Please clarify the nature of any legal action that you may be contemplating. I note that you do not refer to any specific law or legal principle that would have been violated. In the absence of any allegations of my having violated a specific common law or Act, please clarify the legal basis of the apology that you are now demanding and that was not mentioned in your letter of May 16, 2011.
> (5) I am concerned that you or your client Joanne St. Lewis have obtained my unlisted personal home address. Please inform me how you obtained my personal information. In particular, I am concerned that my former employer the University of Ottawa could have illegally or improperly released my personal and former employee information to you and your client Joanne St. Lewis.
> (6) Please acknowledge receiving the present email communication.

**Plaintiff's Motion Record affidavit exhibit "J"**

11. In particular, for example, the Plaintiff has rebuked the following early requests (from an email of May 20, 2011, at 2:43pm) by the Defendant for informal and voluntary resolution:

> "(5) I was concerned by the possible negative societal impact of your client's apparent professional behaviour in relation to the SAC report but I am open to considering new facts and new reasoned interpretations in this matter and to correct my U of O Watch blog position accordingly.

(6) Please offer to your client Joanne St. Lewis that she write a response (to the U of O Watch post of expressed concern) that I will immediately publish without editorial changes in as conspicuous a place and type as was the alleged defamatory post. This response can include links to any supporting documents. I am also open to posting a guest op-ed by a third person selected by your client Joanne St. Lewis."

**Plaintiff's Motion Record affidavit exhibit "H"**

## Plaintiff refusing to provide requested clarifications

12. The above (paragraph 10) May 23, 2011, email shows (point-4) the Defendant's requests to know the precise legal nature of the anticipated action and of the allegations. As per above, this request was also rebuked by the Plaintiff: "the Statement of Claim that will be issued against you should answer your questions."

13. Contrary to the counsel for the Plaintiff's assertion, the Statement of Claim contains no mention of a statute or a specific violation in a statute.

**Plaintiff's Motion Record affidavit exhibit "A": Statement of Claim**

14. On August 10, 2011, I made the request again as part of what I called a request for particulars, by email which read in part (it was the first point of the email, emphasis added by underline):

> Mr. Dearden:
> Please provide the following particulars of allegations in your Statement of Claim.
> (1) Particulars of the allegations of wrongdoing in the claim. Specifically: Identify the Acts and sections of Acts that are argued to have been breached. Recall that I requested this as a clarification in an email to you dated May 23, 2011, which you have not answered.

**Plaintiff's Motion Record affidavit exhibit "N"**

15. An email exchange ending August 11, 2011, at 3:38pm shows that the latter request and other repeated requests and a reasoned appeal for clarifications where all rebuked by the Plaintiff. This despite the Defendant having provided prompt answers to all the Plaintiff's requests for particulars.

**Defendant's Motion Record first-affidavit exhibit "A"**

16. An email exchange ending August 5, 2011, at 10:39am, in combination with the above-cited email exchange ending August 11, 2011, at 3:38pm, shows that the Plaintiff disregarded the Rules of Procedure to file an unnecessary Reply but insisted on a strict application of the Rules regarding the Defendant's requests for clarifications or particulars that would reasonably be required for a fruitful mediation.

**Defendant's Motion Record first-affidavit exhibit "B"**
**Defendant's Motion Record first-affidavit exhibit "A"**
**Plaintiff's Motion Record affidavit exhibit "C": Reply**

17. To this day, the Plaintiff is refusing to specify the statutes and sections that she is alleging have been breached. This is of concern because "defamation" is a material matter in several different statutes and because each such statute contains several different offences. This refusal by the Plaintiff and all the Plaintiff's refusals for clarifications are not compatible with authentic mediation or with the intent and guidelines of the Mandatory Mediation Program, as described by the Attorney General.

**Defendant's Motion Record first-affidavit exhibit "K": Fact Sheet: Mandatory Mediation**

## Plaintiff refusing that discovery be initiated

18. An eight-part email exchange ending on August 19, 2011, at 9:50am which also contains an appended forwarded three-part email exchange ending August 10, 2011, at 2:21pm which in turn contains a proposed Discovery Plan of the Defendant shows that the Plaintiff is unreasonably refusing any and all attempts to even discuss a Discovery Plan in order to initiate discovery.

**Defendant's Motion Record first-affidavit exhibit "C"**

19. These exchanges suggest that the Plaintiff is using the instant requested Mandatory Mediation order as a pretext to avoid early and efficient discovery or is using the denial of discovery as leverage to force Mandatory Mediation under plaintiff-imposed conditions. It is otherwise difficult to understand the Plaintiff's reactions to the Defendant's attempts to initiate an efficient discovery process.

**Defendant's Motion Record first-affidavit exhibit "C"**
**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 12**

## Plaintiff seeks to impose highly expensive mediator

20. The Defendant has been unemployed since 2009 and has no source of income.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 13**

21. The fees of mediator James Chadwick, which the Plaintiff seeks to impose by the instant motion, are significantly larger than those of other professional mediators, including those of his two colleagues in the same firm. The fees of mediator Chadwick, on an hourly rate basis, are more than twice the allowed maximum fees for mediators on the Mandatory Mediation Program's roster of mediators.

**Defendant's Motion Record first-affidavit exhibit "D": Fee schedule**
**Defendant's Motion Record first-affidavit exhibit "K":**
**Fact Sheet: Mandatory Mediation**

22. The Defendant cannot financially afford such high fees as a basis for initiating a mediation process.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 16**

23. The Defendant has recently (August 25, 2011) been accepted by Law Help Ontario to receive free legal help and to benefit from its new mediation project in which the mediator is provided free of charge to both parties. An invitation to participate in this mediation is being sent by Law Help Ontario as soon as possible to the Plaintiff.

**Defendant's Motion Record second-affidavit of Denis Rancourt, paragraphs 6 to 11**
**Defendant's Motion Record second-affidavit of Denis Rancourt, exhibit "BB"**

## Plaintiff's allegations of racism unjustified at law

24. The Defendant does not agree with the Plaintiff's unsubstantiated and bold declarations about the Defendant's positions, intensions, motives and character. For example, such as in paragraph 18 of the Plaintiff's Factum.

**Defendant's Motion Record first-affidavit of Denis Rancourt,**

**paragraphs 17 and 18**
**Plaintiff's Factum**

25. The Plaintiff alleges "egregious, racist and defamatory statements" but does not explain the legal basis for the alleged racism (which is denied) or answer the questions: How is it racism based on the dictionary definition of a racist statement? What statute is being breached? What remedy is foreseen under the law for the alleged "racism"?

**Plaintiff's Motion Record affidavit exhibit "A": Statement of Claim**
**Plaintiff's Motion Record affidavit exhibit "C": Reply**
**Plaintiff's Notice of Motion**
**Plaintiff's Factum**

26. The Defendant is a recognized staunch defender of the rights of all oppressed peoples and groups through his sustained previous professional and now volunteer work in media, teaching and scholarly research.

**Plaintiff's Motion Record affidavit exhibit "B": Statement of Defence, paragraphs 4 to 7**
**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 20**

27. The Defendant is married to a person of colour and has two daughters who are persons of colour.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 21**

28. Psychology Professor Dr. Claude Lamontagne, recognized researcher of cognition and perception, has provided an expert evaluation affirming the absence of racism in the blogposts at issue and describing an unreasonable false-basis for the Plaintiff's allegations of "egregious" and "racist" communications. His affidavit concludes:

*"In conclusion, any trier of fact faced with allegations of racist communication should (i) use the formally accepted definition of racism as the proper gauge, and (ii) be cognisant of the bias caused by the psychological impact of taboo words. I find no racism in the use of the term "house negro" in the blog communications of the Defendant."*

**Defendant's Motion Record first-affidavit exhibit "E": Expert statement affidavit of Claude Lamontagne**

## Plaintiff's alleged urgency unjustified

29. (a) All of the statement meanings at issue in the instant action were completely made in a detailed broadcast in 2008, as explained in the Statement of Defence, without the use of the defined racial socio-political term "house negro" but communicating the same meaning.

(b) The 2008 broadcast is a post dated December 6, 2008, on the "U of O Watch" blog entitled "*Rock Administration Prefers to Confuse "Independent" with "Internal" Rather Than Address Systemic Racism*".

> **Plaintiff's Motion Record affidavit exhibit "D"; December 6, 2008, post**
> **Plaintiff's Motion Record affidavit exhibit "B": Statement of Defence, paragraphs 56 and 57**
> **Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 24**

30. The 2008 broadcast was directly and entirely about a high-profile university matter covered at the time by the major media outlets and personally involving the Plaintiff as a leading figure, including a CBC live interview with the plaintiff.

> **Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 26**

31. The Defendant sent the Plaintiff an email about the 2008 broadcast on December 7, 2008 at 6:44pm. In the Statement of Claim the Plaintiff acknowledged receiving the email. The email informs the Plaintiff about the 2008 broadcast and asks for comment. The Plaintiff never responded, <u>for three years from 2008 to 2011</u>, for alleged reasons given in the Statement of Claim.

> **Defendant's Motion Record first-affidavit exhibit "F": 2008 email**
> **Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 27**

32. When the February 11, 2011, U of O Watch blogpost was broadcast (which the Plaintiff asserts is central to the instant defamation action, see above "I. FACTS (Action)" section) the Defendant sent both the Plaintiff and University of Ottawa president Allan Rock two emails: One sent February 11, 2011, at 9:14pm, the other sent February 11, 2011, at 11:26pm. In the Statement of Claim the Plaintiff acknowledged receiving at least one of the emails. These emails inform the Plaintiff and Mr. Rock about the February 11, 2011, "U of O Watch" blogpost. The emails ask "Please provide any factual corrections or comments for posting." The second email asks "Also, please inform your colleague Robert Major [former VP-Academic] so he can verify the content about him."

**Plaintiff's Motion Record affidavit exhibit "D": February 2011 blogpost**
**Defendant's Motion Record first-affidavit exhibit "G": 9:14pm email**
**Defendant's Motion Record first-affidavit exhibit "H": 11:26pm email**

33. The Defendant would have been pleased to make accommodations regarding the February 2011 broadcast based on a reasoned exchange with the Plaintiff or Mr. Rock or Mr. Major, as the Defendant has done with other posts and persons in the past. And the Defendant would certainly have posted any submitted counter view or explanation or criticism, as has always been the Defendant's practice. The Defendant continues to invite the Plaintiff, on a voluntary basis, regarding such accommodations and posts or adjustments.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 30**

34. The Defendant never received an answer from Mr. Rock or Mr. Major.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 31**

35. The Defendant received no answer from the Plaintiff for over three months from February to May 2011, to this important email in which the president was also a recipient. The eventual "answer" was two letters of "notice" from a counsel, quickly followed by a Statement of Claim, without any possibility for discussion or informal voluntary mediation, despite repeated requests from the Defendant for such early resolution.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 32**
**Plaintiff's Motion Record affidavit exhibit "F": May 16, 2011, letter**
**Plaintiff's Motion Record affidavit exhibit "G": May 20, 2011, letter**
**Plaintiff's Motion Record affidavit exhibit "A": Statement of Claim**

## Defendant cannot be made responsible for Google

36. The Plaintiff has stated in the Statement of Claim (SOC par.35 and 36), in her Motion Record (Plaintiff affidavit exhibit "E") and in her Factum (Factum par.9) that a central and dominant alleged cause of concern or damage (which is denied) is that the February 11, 2011, blogpost appears prominently on doing a Google search of the Plaintiff's name. Further, the Plaintiff in the Statement of Claim has insisted (which is denied) that the Defendant has caused the high Google ranking. On asking for clarifications on the latter allegations the Plaintiff flatly refused to provide any response (email exchange ending August 11, 2011, at 3:38pm). The Defendant has no control or

influence over Google rankings. The Plaintiff is refusing to provide clarification on this material point prior to mediation.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 33**

## Plaintiff's irrational fear of impending harm

37. The Plaintiff's has stated in her Notice of Motion (NOM par.9) that the impending harm to be averted by the instant motion arises from the new academic semester's anticipated contacts with her students and colleagues.

38. University students and law students in particular (who have previous university degrees) are highly intelligent and most able to discern facts and arguments, as are law professors.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraphs 34 and 35**

39. It is the job of a university professor to help students ameliorate their analytical and discernment skills regarding issues of public interest, and to present a variety of alternative facts and interpretations, rather than attempt to limit, sensor or control the considerations of facts and positions, especially when some of the facts and positions are contrary to the professor's own views. Professors who actively practice this accepted pedagogical approach acquire good reputations with students, irrespective of their expressed personal positions and views.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraphs 34, 36 and 37**

40. Several mainstream media articles about the instant action have been broadcast:

- Vancouver Sun June 24, 2011
- Ottawa Citizen June 24, 2011
- Ottawa Citizen July 26, 2011
- National Post July 27, 2011
- Vancouver Sun July 27, 2011
- Ottawa Citizen August 21, 2011

Many more similar media articles about the action appeared in cities across Canada. At least two of the articles use the term "House Negro" in the article title.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 38**

**Defendant's Motion Record first-affidavit exhibit "I": media articles**

41. (a) The media articles achieve adequately balanced presentations of the facts regarding the instant action, which would allow students and university colleagues of the Plaintiff to find additional freely-available needed facts and to arrive at their own reasoned and correct conclusions; especially since the public record and the web contain the pleadings.

(b) Further, the *Law Times* (lawtimesnews.com) is planning to run a story the week of August 22, 2011, or so regarding the instant action and exploring the arising issues about race, freedom of speech, and freedom of information. This will provide the students and colleagues of the Plaintiff with a specialized analysis from the legal perspective for added consideration.

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraphs 39 to 41**

## Issue of Defendant's liability insurance

42. The Rules of Procedure (24.1.11(1.1)) require the Defendant's insurer which may be liable to be present at the Mandatory Mediation.

43. The Defendant is of the position that he has a right to be covered by the University of Ottawa's CURIE liability insurance policy. This was alluded to in the Statement of Defence (SOD paragraphs 6 to 8 and 56 to 57). The Defendant is actively seeking that the University comply (see Defendant first-affidavit exhibit "J"). The matter is complicated by the fact that President Allan Rock (a material subject in the instant action; see blogposts at issue) is involved in the University's decision to acknowledge the Defendant's right to liability insurance coverage (see Defendant first-affidavit exhibit "J"). Based on the Rules of Procedure, the Defendant expected to have more time to resolve this difficulty before Mandatory Mediation would be imposed. The Defendant expects to make an action and/or motion in this matter of liability insurance.

**Defendant's Motion Record first-affidavit exhibit "J": liability insurance email exchange**

## Plaintiff refusing to allow an adviser at mediation

44. The Attorney General's "Fact Sheet: Mandatory Mediation" effective January 1, 2010, states in part (page 11):

> **"How can lawyers assist clients during the mediation session?**
> Throughout the session, the lawyer can help the client by gauging the client's reactions and suggesting breaks where appropriate. During breaks in the session, the lawyer can discuss any observations about the progress of the session and advise the client on negotiation tactics and possible compromise solutions, where appropriate."

**Defendant's Motion Record first-affidavit exhibit "K": Fact Sheet**

45. It follows that a just accommodation for a self-represented party would be to allow that party to have an adviser of his choice which would play essentially the same role at Mandatory Mediation. The Plaintiff is refusing to consent to the Defendant's reasonable request for an accompanying adviser chosen by the Defendant.

**Plaintiff's Motion Record affidavit exhibit "O": email exchange**

# III. LAW

46. The motion is an application that, if granted, would have the result of forcing immediate Mandatory Mediation <u>on terms determined by the Plaintiff</u> including:

(1) Mandatory Mediation rather than early voluntary mediation/resolution (paragraphs 7 to 11 and 20 to 23);
(2) an immediate date, much before the foreseen 180 day limit (Defendent's Motion Record second-affidavit exhibit AA: Notice of Requirement to Mediate);
(3) the Plaintiff's choice of mediator and mediator's fee therefore (paragraphs 20 to 23);
(4) an imposed requirement to pay a mediator rather than benefit from Law Help Ontario's "Mediation Assistance Project" which provides a free mediator to the Defendant (paragraphs 20 to 23);
(5) barring the self-represented Defendant from being accompanied by an adviser (paragraphs 44 to 45);
(6) without any of the material clarifications for mediation which the defendant has repeatedly requested (paragraphs 12 to 17);
(7) while rebuking all efforts by the Defendant to initiate the process of discovery (paragraphs 18 to 19);

(8) without giving time to resolve the question of the required presence at Mandatory Mediation of the Defendant's liability insurer (paragraphs 42 to 43; and Rule 24.1.11(1.1))

47. The problem of the required presence of the Defendant's liability insurer (paragraphs 42 to 43; and Rule 24.1.11(1.1)) needs to be resolved before Mandatory Mediation can be scheduled.

48. The Plaintiff's motion is premised on guilt of the Defendant in the action whereas the public discourse (media, paragraphs 40-41) has presented balanced arguments and whereas the question of law is far from obviously on the side of the Plaintiff (to the extent that one can surmise because the Plaintiff is refusing to expressly specify the question of law in the action, see paragraphs 12 to 17).

49. The Plaintiff relies on alleged "egregious" and "racist" communication without providing any legal or reasoned basis for such allegations, which are contradicted by an expert evaluation (Defendant's Motion Record first-affidavit exhibit "E", affidavit of Claude Lamontagne; and above paragraphs 24 to 28) and by the balanced and extensive media reporting (paragraphs 40 and 41).

50. The Plaintiff's claim of urgency is difficult to reconcile with the Plaintiff's informed lengthy delays (three years and more than three months; see above paragraphs 29 to 35) for responding to the matter in any way.

51. The Plaintiff's motion for immediate and urgent forced Mandatory Mediation is difficult to receive as authentic and in the spirit of the Mandatory Mediation Program in view of the Plaintiff's repudiation of the Defendant's repeated requests to engage in informal voluntary resolution or mediation (paragraphs 7 to 11).

52. (a) The Plaintiff's stance on forcing Mandatory Mediation in the instant circumstances is incompatible with the intent and spirit of the Mandatory Mediation Program, as is amply evident from the Attorney General's Fact Sheet (in parts):

> "disputing parties look for a solution that works for them..."
> "to gain a better understanding of the interests of all parties, and to find a resolution based on common understanding and mutual agreement..."
> "to develop creative solutions to disputes in a way that is not possible at a trial..."
> "to craft a solution that meets their needs..."
> "mediation a more comfortable and constructive process than a trial..."

> "explore settlement options and may be able to avoid the pre-trial and trial process..."
> "It is important that all parties are comfortable with their mediator."

(b) The idea of forcing mediation on one side's terms, under the presumed guilt of one side, is inconsistent with mediation.

(c) It is unreasonable and an abuse of process.

(d) It is contrary to the intended purpose Mandatory Mediation which is not meant as a substitute for motions to directly require compliance against impending harm (which is denied).

**Defendant's Motion Record first-affidavit exhibit "K": Fact Sheet**

53. The Plaintiff relies on assumed harm which it is alleged would arise if Mandatory Mediation is not ordered immediately yet there is no justification for expecting such harm and the Plaintiff presents no reasoned argument as to how such harm would arise. Quite to the contrary, one should expect no such harm to arise in the relevant university context of a law faculty (paragraphs 37 to 41). Also, it is difficult to reconcile the alleged "egregious, racist and defamatory statements" with a communication that would be considered reliable and noteworthy by law students and law professors regarding the reputation of a professor or colleague. (Notice of Motion paragraphs 1 and 9)

54. The Plaintiff is motivated in pursuing the instant motion by the high Google ranking of a blogpost and expressly blames the Defendant for the high ranking yet the Defendant has no control or influence over Google rankings (paragraph 36). No mediation can remove Google's ability to find searched documents.

55. The Plaintiff is refusing all of the Defendant's attempts to initiate discovery and refuses to even comment on a reasonable Discovery Plan voluntarily proposed by the Defendant, despite the fact that discovery could aid in creating conditions for successful mediation, since material clarifications are needed and since their are material errors in the Plaintiff's pleadings (paragraphs 12 to 17; and Defendant's first-affidavit of Denis Rancourt paragraph 46). Indeed, the Rules foresee that the supporting documents must be attached to the Statement of Issues for Mandatory Mediation (Rule 24.1.10(3)).

**Defendant's Motion Record first-affidavit of Denis Rancourt, paragraph 46**

56. The Rules of Procedure foresee that the parties can voluntarily agree to postpone the mediation (Rule 24.1.09(3)), with the main goal as always to avoid pre-trial and trial; and foresee that extensions can be usefully ordered to allow further discovery (Rule

24.1.09(2)(c)); but the Rules foresee forcing a party to comply with Mandatory Mediation before 180 days by order of a judge exclusively in the circumstances that "*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 24.1.09(2)(d)).

57. Given the facts contained herein and given the Plaintiff's knowledge of or access to the facts, it is unreasonable for the Plaintiff to advance that forcing an immediate Mandatory Mediation will result in "the mediation [being] more likely to succeed".

58. On the contrary, the mediation will be more likely to succeed if the Plaintiff provides the needed clarifications, corrects her incorrect facts contained in her pleadings, uses a cooperative discovery process to facilitate the latter ends, does not assume a high-handed stance of irrefutable guilt of the Defendant, and respects the intent of mediation that it should ideally be voluntary and comfortable to the parties.

59. Therefore, following Rule 1.04(1), it would "secure the just, most expeditious and least expensive determination of [this] civil proceeding on its merits" to not have an imposed immediate Mandatory Mediation, thereby increasing the chances of success of un-forced mediation under better circumstances and avoiding an expensive trial.

60. Given the substantial matters at issue in the instant motion and its late filing date, it is questionable whether a ruling could be given before the end of September 2011, thereby making the motion moot. The first tentative short hearing before a Master is intended for September 2, 2011.

61. The Defendant respectfully asks this Honourable Court to consider the damage to the integrity of the Rules of Procedure and their intent that could be caused if Mandatory Mediation is allowed to be used, in the manner advanced by the Plaintiff, as a substitute for urgent motions to directly require compliances against demonstrated impending harms (which is denied); and to send a clear message against such future practice.

62. The Defendant respectfully requests that this Honourable Court quashes the motion and further administers the unresolved matters arising from and related to the motion by issuing the following directives:

(1) That the Plaintiff provide all requested clarifications that would reasonably be expected for mediation prior to any mediation;
(2) That the Plaintiff consider reviewing the material facts of her pleadings relating to the Student Appeal Centre (SAC) prior to any mediation;

(3) That the Plaintiff consider the Defendant's continued request for voluntary resolution or mediation on mutually accepted terms and prior to Mandatory Mediation which can be later;
(4) That the Plaintiff consider starting the Law Help Ontario "Mediation Assistance Project" free mediation as soon as possible on mutually accepted terms and prior to Mandatory Mediation which can be later;
(5) That the Plaintiff consider immediately agreeing to initiate a productive and cooperative discovery process that can only help any mediation attempt;
(6) That the Plaintiff accept a mutually agreed mediator from the Mandatory Mediation Program's roster of mediators for the eventual Mandatory Mediation at modest cost, if Mandatory Mediation is found to be necessary or desired after any voluntary mediation;
(7) That the Plaintiff accept that the Defendant will have an adviser of his choice at the eventual Mandatory Mediation, if Mandatory Mediation is found to be necessary or desired after any voluntary mediation.
(8) Or such different or further directives which this Honourable Court deems beneficial in a just and efficient administration of the case.

63. The Defendant requests the costs of this motion on a substantial indemnity basis; and such further and other relief as the Defendant may advise, and this Honourable Court deems just, justly taking into account that the Defendant is self-represented.

Date: August 29, 2011

**Denis Rancourt**
(Defendant)

Tel.: