

**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 October 6, 2011, at 10:00 a.m., or as soon after that time as the Motion can be heard, at the Ottawa Courthouse, 161 Elgin Street in the City of Ottawa.

PROPOSED METHOD OF HEARING: The motion is be heard

in writing under subrule 37.12(1);

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

orally.

THE MOTION IS FOR:

1. An Order compelling the Defendant Denis Rancourt, to answer the questions that were taken under advisement or refused during the cross-examination of his Affidavits sworn August 25 and 26, 2011;
2. An Order requiring the Defendant, if so requested by the Plaintiff, to re-attend at the

Defendant's own expense before an official examiner at a time and place to be determined by Plaintiff's counsel to answer the questions taken under advisement and questions refused, as well as all questions arising therefrom;

3. An Order compelling Claude Lamontagne to provide answers to the questions that were taken under advisement, refused or subject to his undertakings during the cross-examination of his Affidavit sworn August 25, 2011;
4. An Order requiring Claude Lamontagne, if so requested by the Plaintiff, to re-attend at the Defendant's expense before an official examiner at a time and place to be determined by Plaintiff's counsel to answer the questions taken under advisement, refused, or subject to his undertakings , as well as all proper questions arising there from;
5. An Order awarding the Plaintiff costs of this motion on a substantial indemnity basis payable by the Defendant and/or Claude Lamontagne forthwith; and
6. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On August 18, 2011, counsel for the Plaintiff served the Defendant, Denis Rancourt, with a motion seeking an Order that mandatory mediation of this action take place prior to the exchange of documents or conducting examinations for discovery. The motion also seeks an Order appointing James Chadwick as the mediator for the mandatory mediation session in this action or alternatively, Kevin Mullington.
2. In response to the Plaintiff's motion, the Defendant Denis Rancourt served a motion record containing two affidavits he swore on August 25 and 26, 2011, and an affidavit sworn by Claude Lamontagne on August 25, 2011.
3. In his affidavits dated August 25 and 26, 2011, Denis Rancourt deposes as to his lack of income; to the fact that he cannot financially afford what he describes as the "high fees" for a mandatory mediation session with James Chadwick; as to the status of his application with Law Help Ontario; as well as to his opinion that he has the right to be financially covered in the current action by the University of Ottawa's CURIE liability

insurance policy.

4. As part of his motion record, the Defendant also included an affidavit from Claude Lamontagne, a professor of psychology at the University of Ottawa. The Defendant purports to adduce the opinions of Claude Lamontagne contained in his affidavit as an "expert" opinion.
5. Cross-examinations on the two Affidavits of Denis Rancourt and the Affidavit of Claude Lamontagne were conducted on September 6, 2011.
6. At those cross-examinations, the Defendant took a number of questions under advisement or refused to provide answers to questions properly posed to him.
7. Claude Lamontagne has refused to answer questions or fulfill his undertakings to date.
8. On September 13, 2011, counsel for the Plaintiff wrote to the Defendant providing a list of refusals, advisements and undertakings arising from the September 6, 2011, cross-examinations of Denis Rancourt and Claude Lamontagne.
9. The Defendant responded by email to counsel for the Plaintiff on September 14, 2011, maintaining his objections to a number of questions posed on cross-examinations. The Defendant's email of this date stated in part: "You need to contact affiant Associate Professor Claude Lamontagne directly."
10. On September 15, 2011, counsel for the Plaintiff sent Claude Lamontagne an email attaching a list of refusals, advisements and undertakings arising out of his cross-examination. Six days later, Claude Lamontagne sent counsel for the Plaintiff an email stating:

"Just a quick note to say that I am proceeding to obtain legal evaluation of your requests (Refusal/advisements to questions asked during cross-examination of Claude Lamontagne and undertakings), emailed to me on September 15. My teaching and research duties at the University are particularly heavy this term. I may be in a position to be able to respond to you within a week or so, depending on the circumstances."

11. The questions set out in the refusals charts for the Defendant Denis Rancourt and Claude Lamontagne arise directly from statements contained in the two affidavits of Denis Rancourt, and the affidavit of Claude Lamontagne that the Defendant filed as evidence to oppose the Plaintiff's motion to set a date for mandatory mediation and to appoint a mediator.
12. The questions set out in the refusals charts for the Defendant Denis Rancourt and Claude Lamontagne relate directly to issues raised in their affidavits, relate to issues raised by the Plaintiff's motion to set a mandatory mediation date and appoint a mediator, and relate to the credibility of the affiants.
13. Rules 34.10(4), 34.12(3), 34.15, 37.02(2), 39.02, 57.03 of the *Rules of Civil Procedure*.

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

1. The Affidavit of Ryan Kennedy, sworn September 22, 2011, and the exhibits attached thereto; and
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED: September 22, 2011

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Counsel for the Plaintiff Joanne St. Lewis

TO: Denis Rancourt
[REDACTED]
[REDACTED]

AND TO: Claude Lamontagne

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Joanne St. Lewis

- and - Denis Rancourt

Plaintiff

Defendant

Court File No. 11-51657

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PROCEEDING COMMENCED AT
OTTAWA**

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